EMPLOYMENT TRIBUNALS

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE FRANCES SPENCER**

MEMBERS **MS S CAMPBELL**
MS E THOMPSON

BETWEEN: **DR M SYED** **CLAIMANT**

AND

DR P TAPPING
DR T ROWE
DR A SURMAN **RESPONDENTS**

ON: **2nd – 5th (and in chambers) 6th OCTOBER 2017**

Appearances

For the Claimant: in person
For the Respondent: Mr T Coghlin, counsel

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that the Claimant's claims of direct race discrimination and harassment related to race are not well founded and are dismissed.

REASONS

1. This is a case brought by Dr. M Syed for direct race discrimination and harassment related to race contrary to sections 13 and 26 of the Equality Act 2010. The Claimant is a partner in a GP practice (the Vine Medical Centre) and the 3 Respondents (who are all white) are the remaining partners in the practice.

2. The Claimant describes his race as South Asian and compares the treatment that he received with that of Ms Young the Practice Manager and with the other partners or with a hypothetical white comparator.

3. The particular actions about which he complains and the issues were set out in the case management order made on 14th December 2016 and appended to this judgment for ease of reference. Time limits are in issue in respect of matters which occurred before 30th June 2016.

4. The Tribunal had an agreed bundle of documents. We heard from the Claimant and from the 3 individual Respondents and on their behalf from Dr Sekhon, who was present at one of the incidents of which the Claimant complains.

Findings of relevant fact.

5. The Vine Medical Centre is a GP practice. The Claimant was recruited as a fixed income partner in July 2011 by the 3 Respondents following the retirement of Dr. Hamill. We accept that he was selected from a field of other able candidates. In July 2012 the Claimant was made a full equity partner (entitled to 26.5% of the profits). The Claimant worked Mondays Wednesdays and Fridays.

6. The surgery premises were owned by Dr. Tapping, Dr. Rowe and by Dr. Hamill. After Dr Hamill died his share in the premises passed to his estate. Proceeds from notional rent and expenditure on property mortgage interest and repairs to the building and building insurance were allocated to those partners. When he became an equity partner the Claimant considered buying Dr Hamill's share but told the Tribunal that "the market wasn't right."

7. The four partners worked harmoniously together for a number of years. However in late 2015 and early 2016 the Respondent partners became concerned about the Claimant's contribution to both clinical and management work. All of the Respondent partners gave evidence that the Claimant appeared to start his clinical appointments late, clear his workload quickly and leave on time. (A table prepared for the purpose of this hearing from the practice computer records corroborates this.) This was in contrast to the other 3 partners who were putting in long hours to keep up with the demands from the patients. Dr Surman gave evidence that he was often brought the Claimant's prescriptions to sign as he had already left the surgery. In January Dr Tapping conducted an informal audit which suggested that the Claimant was doing less than half the investigations and referrals compared with each of the other partners. Dr Rowe gave evidence that the Claimant would also be absent for periods during the day when he should have been at the practice as duty doctor. Each day there was a duty doctor who was required to be in the practice to pick up ad hoc queries and to be in charge. In particular practice nurses arrived for booked appointments starting at 8.30 whereas the doctors' appointments started at 9. The duty doctor was required to be on-site from 8.30 but the Claimant

was often not there by 8.30. (As Dr. Tapping usually arrived earlier than his start time, in practice the nurses were able to begin.)

8. In early 2016 there was a complaint about a patient who the Claimant had refused to see and sent to a walk in centre, despite being in pain and passing blood, and further complaints from staff that the Claimant was not keeping proper records or documenting the tasks required to be undertaken by them. These concerns were shared with the Claimant informally. The Claimant accepted that his colleagues had shared their concerns with him and told him that he should write more information, document more tasks but he did not consider that their complaints were justified. He said that the way each doctor works was different and he acted on his own results rather than sending tasks to admin.

9. At a partners meeting on 4th July 3 Significant Event matters were raised (3C, 3-D and 3B) relating to matters that were the Claimant's responsibility. In cross examination the Claimant did not deny these events happened but maintained that in any event these matters did not constitute Significant Events. The GMC describes a Significant Event analysis as a way "to focus on an open and transparent approach to learning from mistakes, a significant review seeks to determine why something has gone wrong rather than attribute blame." The matters raised and documented on 4th July followed this approach and did not name the Claimant, referring only to "a GP". The Claimant also says, based on their "properties" (244-246) that these documents were created or modified after he had sent his solicitor's letter, but we could not draw that conclusion from those documents.

10. Prior to the meeting on 4th July 2016 the Respondent partners had talked to the Claimant informally about his timekeeping and record-keeping but this was kept low-key. Dr. Surman gave evidence that they were aware that the Claimant had a young child and that he wanted to give him the benefit of the doubt.

11. The Claimant alleges that in April 2016 at a partners meeting Dr. Surman forcefully snatched his phone out of his hand following an expletive laden rant, shouting "I am fucking fed up of making fucking money for you."

12. We do not accept that. We preferred Dr Surman's evidence that during the partners meeting the Claimant was continuously on his phone. Ms Young had asked the Claimant a question which he had ignored. Despite her saying "Mas?" 3 times to gain his attention he continued to ignore her. Dr. Surman then reached out and placed his hand over the screen of the Claimant's phone and asked him to put it down for a moment. We note that Dr. Surman's account that the Claimant would continuously be on his phone during meetings is supported by a text exchange in November 2015 (2RR), where the Claimant had been on his phone and to gain his attention Dr. Surman had texted the Claimant "hello". The Claimant looked up and returned to his phone and then, due to the interruption of his phone exchange, erroneously texted Dr. Surman "what are you doing tonight?" (We do not accept the Claimant's, frankly incredible, explanation that that

message was a genuine message to Dr. Surman as he was suggesting that they meet up for a coffee.)

13. In May 2016 Dr. Tapping was told by member of staff that her daughter had seen the Claimant working at a private medical practice in Guildford. A web search showed that the Claimant was listed on the "Meet the Team" page of The Mews practice as one of 3 doctors working there. (One of those other doctors was the Claimant's wife). The Respondent partners also discovered that the Claimant and his wife were the sole shareholders and directors of a company (S&K Partnership Ltd) whose business was described as "general medical practice activities" with a turnover (for the year ended 30th June 2015) of £200,000.(20)

14. The Claimant was not tackled directly about this but at partnership meetings on Monday mornings the Claimant was asked whether he had any outside interests. The Claimant said that he only did some locum work. He and the other partners were however, asked formally to declare any potential conflicts of interests, which was a CCG requirement. On 16th June 2016 the Claimant signed his declaration of potential conflicts of interest by stating that he did "locum GP work", but did not identify any association with The Mews. Dr. Tapping and Dr. Rowe said that they had no other interests and Dr. Surman said that he did the occasional locum.

15. In or around May 2016 the Claimant told the remaining partners that he would need to take 2 weeks sick leave from 1st to 15th July 2016 for an elective eye operation on the 1st July. He did not discuss with the partners the timing or exact nature of the operation or what the limitations would be on his working after that operation. This was an inconvenient time for the practice as Dr. Rowe had booked leave from 27th June to 11th July. In addition Dr. Tapping's wife was undergoing reconstructive surgery following breast cancer. Just before he left to go on leave the administrator asked the Claimant if he would be able to do his afternoon surgery on Wednesday 13th July as they had been unable to find locum cover. The Claimant said he would not do this as his consultant had told him he could not work for 2 weeks.

16. Due no doubt to their suspicions, a friend of Dr. Surman's, a Mr Griffiths, made enquiries about male clinicians working at the Mews Practice. The Mews responded that there were 2 male clinicians at the practice, Dr Kapoor and Dr. Syed. In an email from the Mews practice to Mr Griffiths the Mews practice indicated that the Claimant would be available for appointments on Thursday 7th July from 17.30 to 20.00, on 12th July at various times between 8 am and 8 pm and on the 14th July again from 8 am to 8 pm.

17. The Respondent partners were extremely aggrieved that the Claimant was working at The Mews Practice while off sick and they were so stretched, as well as taking his full drawings from The Vine. They were also upset that he was working, apparently, alongside Dr, Kapoor, who was the senior partner of the neighbouring and competing practice to The Vine.

18. On 11th July Dr Tapping sent a letter to the Claimant on behalf of himself, Dr Surman and Dr Rowe. (4). In that letter the partners expressed in strong terms their frustration that, in their view over the past year and particularly in the last 6 months, the Claimant's performance in the practice had deteriorated. The Claimant was accused of putting in minimal effort regarding the practice and patient care. The letter went on to say that having denied any conflict of interest it had come to their attention that the Claimant was working at the Mews practice and that he ran a company providing medical services with a substantial turnover and that the partners considered that his failure to disclose this was "a serious and unprofessional misjudgment". It continued "*However we are now aware that while you are taking sick leave from The Vine, you are continuing to work in your private practice as confirmed by 2 sources. This, I'm afraid, constitutes gross professional misconduct in the eyes of the partnership. To continue taking drawings, expecting the other partners to cover you at a time when we are critically stretched and allowing the partnership to carry the costs of locums when you continue to work privately is totally unacceptable. In my opinion this could be construed as bordering on fraudulent and is certainly a serious breach of probity. Your close association with the head of our neighbouring practice also leads us to question the confidentiality of our partnerships private affairs. A partnership relies on an equal and fair division of workload and complete trust in your fellow partners. I regret you have let us down on both counts. We now question whether keeping you as a partner in this practice is tenable and feel it is best that you consider your position. With immediate effect we have taken the decision to cover your return with locums. Clearly we need to resolve this matter with expedience and would ask you for an urgent response before the end of this week."* The letter was signed by Dr. Tapping "for and on behalf of the partners."

19. There was no immediate response from the Claimant. On Wednesday 13th July, having failed to obtain locum cover for the Claimant's afternoon surgery Dr Tapping stepped in and filled the session leaving his wife alone at home following her discharge the previous evening from hospital. Ms Young sent the Claimant an email at 3 pm on Friday noting that the partners had not heard from him as requested and asking him to confirm that he understood that they were not expecting to see him in the practice on Monday and until the matter was resolved.

20. However the same day (it is not clear at what time) the Respondent partners received a letter from solicitors acting on behalf of the Claimant. The Claimant (or his advisers) clearly took the view that attack was the best form of defence. The partners were accused of attempting to force the Claimant out of the partnership and deprive him of his business and his livelihood. Further the solicitors stated that the 11th July letter was an act of victimisation, harassment and bullying in breach of the Equality Act 2010 and stated they were taking instructions from him in respect of this and "any other acts that may amount to victimisation, harassment and bullying and/or indeed race discrimination." It reiterated that the Claimant remained a full partner at the practice and would return to work on Monday 18th July. It

pointed out that there was no partnership deed, that the Partnership Act made no provision for the expulsion of a partner and if the partners attempted to dissolve the partnership the GMS contract would be forfeit depriving the practice of the source of its income. That letter also sought to reserve the Claimant's position "as to any interest he may have beneficially or otherwise" in respect of the premises of the surgery, and was the start of a concerted attempt to gain an interest in the property.

21. What was notably absent from the solicitors letter was any denial of the fact that the Claimant had been working at the Mews while off sick, any explanation of why he was doing so or any acknowledgement that to be working in one practice while off sick (and obtaining full drawings) from a another practice might be seen as both dishonest and a breach of trust. There was no explanation of his connection with S&K Partnership, of exactly what its business was, and no explanation of the nature and extent of his involvement with The Mews.

22. The Claimant reported for work on Monday 18th July. Dr Tapping asked to see the Claimant after morning surgery. We accept Dr. Tapping's evidence that at this meeting the Claimant refused to comment on any of the matters that had been raised in the 11th July letter. When Dr. Tapping proposed independent mediation through the Local Medical Committee (the LMC) the Claimant refused and responded that they should talk to his solicitor. Dr. Tapping said that if they dealt through solicitors "things will get messy and expensive for all of us" (We do not accept the Claimant's account of that meeting.) Dr Rowe sought to take a conciliatory approach to the Claimant but said that she was cross that he had resorted to a solicitor's letter. She too suggested mediation but the Claimant refused.

23. On 19th July Dr Tapping discovered that the Mews was run through a limited company whose directors were Dr Khan (the Claimant wife) and Mrs. Kapoor (the wife of the senior partner of the neighbouring practice to the Vine.)

24. After that things went rapidly downhill. Dr. Rowe states in her witness statement that after this there "followed a torrent of hostile, disruptive and obstructive behaviour by Dr Syed in which he actively tried to find fault and exaggerate the importance of them." Having heard the evidence and seen the documents we conclude that this is a fair and accurate description of what happened.

25. On 21st July, Stillwells, solicitors instructed by the 3 Respondents responded to the Claimant's solicitor's letter of 15th July. In that letter Stillwells reiterated that the Claimant remained a full partner of the practice. They invited the Claimant to reassure them that he would in future be transparent about his outside business interests and activities and that they would not detract him from making a full contribution to the Vine. They proposed an early roundtable meeting to agree measures to restore harmony. They enclosed the email exchanges and documents which had given rise to their concerns including the response to Mr Griffiths showing

the Claimant's availability during the period that he was off sick and company searches for the Mews practice and S&K Partnership Ltd.

26. The Claimant's solicitors responded on 12th August 2016 (34). It runs to 9 pages and is not a conciliatory letter. Through them the Claimant denied putting in minimal effort to the practice. He denied failing to disclose his outside interests - saying he had signed a declaration that he did GP locum work. He worked as a GP locum at The Mews but was not a business owner or founder. Other partners did locum work and Dr Surman had undertaken internal locum work costing £13,800 in the year ended 30th June 2015. (An internal locum is work done by partners in the practice on their days off for which they would receive remuneration additional to their usual drawings.) In its letter the Claimant's solicitors repeat the allegation that the letter of 11th July "and other actions by his partners" (including Dr Tapping's request that the Claimant view the practice bank statements at the surgery) amounted to victimisation, bullying and harassment, and discrimination contrary to the Equality Act.

27. In relation to his working whilst off sick he says (through his solicitors) the following

> *"I have not as yet been asked to provide a medical certificate for this period. I have a sick note which categorically states that I am not to work in my capacity as a GP partner from 1st July 2016 until 15th July 2016 inclusive due to high-intensity workload, and prolonged exposure to Visual Display Units. However I may be able to work in less intense roles which have less substantial VDU exposure and not as intense. This is why I was able to do light work at the Mews Practice. In the interests of transparency, and notwithstanding it has nothing to do with the affairs of the Partnership, I was not remunerated by the Mews Practice for this period."*

The medical certificate was not, however, enclosed and the Claimant refused to provide a copy until ordered to do so at the case management discussion in December 2016. That certificate, from a private medical practice in Wimbledon (183C), is dated 12th July 2016 states that his illness is "left eye argon laser for lattice degeneration, hypersensitivity from prolonged exposures to VDU, blepharitis, dry eyes and that he is "unable to work in his role as a GP partner due to high-intensity workload and prolonged exposure to VDU's. However, maybe fit to work in less intense roles which have less substantial VDU exposure and not as intense."

28. In that letter the Claimant says that the internal locum work undertaken by Dr Surman had caused him (Dr Surman) to become overly stressed and going forward the Claimant would no longer agree that The Vine should pay for internal locums. If internal locums were engaged without his consent he would have "no option but to inform the bank to withhold selective payments." The letter contains threats about triggering the collapse of the partnership business by dissolving the partnership; a claim that the Claimant had a beneficial interest in the premises; states that there were urgent matters to be addressed, in particular with regards to the property, and goes

on to say that a proper partnership deed should be put in place but that the Claimant "doubted very much that it would be possible to agree such a deed."

29. Stillwells sent a holding letter in response but again proposed mediation through the LMC (46).

30. In the meantime the Claimant embarked on a deliberate campaign to upset the Respondent partners and the Practice Manager Ms Young (against whom he appeared to harbour a particular grudge). Life became increasingly difficult.

31. On 25th July 2016 the Claimant asked Dr Tapping if he could have copies of the partnership bank statements. Dr. Tapping responded (30) that he had no problems with the Claimant seeing the bank statements but that they would only want him to view them on the premises and not take copies as they were private and confidential records belonging to the partnership. The Claimant accepted in cross examination that he had not in fact been refused the last 12 months bank statements.

32. On 12th August the Claimant emailed the Respondent partners and Ms Young, to complain that Dr Tapping and his wife were painting Dr Hamill's old room which it was proposed to use as an office for Ms Young. This was a matter which had been discussed and agreed at the partners meeting of 8th August at which the Claimant was present. He complained that this amounted to a potential breach of Information Governance, as Dr Tapping's wife had been present in areas of the building where sensitive information might be kept. He complained that the CQC required the practice to use "approved subcontractors" for maintenance and that Dr Tapping and his wife did not have adequate insurance. In the October partners meeting the Claimant completed a Significant Event form describing as this as a significant incident on the basis that (i) there was no insurance in place to cover their painting the room (ii) Dr Tapping's wife did not sign in or out of the visitors book and (iii) there was an information governance breach.

33. On 14th August he asked Ms Young to get quotes for painting work and on 18th August the Claimant wrote to Dr Tapping again complaining that his wife had, amongst other things failed to sign the Visitors book. (48)

34. On 19th August, a patient of the Claimant's wrote a handwritten note complaining that the door to the Claimant's door had slammed shut and nearly injured his hand. (The patient wrote that note during his consultation with the Claimant.) The same day the Claimant complained about a whole catalogue of matters (49A) relating to his room, advising Ms Young that he would no longer consult from his room. He complained about the closing mechanism on his door, the air conditioning in his room and inadequate lighting. He refused to allow Dr. Tapping to fix the door insisting on an external contractor. When that contractor arrived to fix the door, the Claimant caused him to be sent away because he did not have his insurance papers on hand. In September the Claimant completed a

Significant Event form stating that his door had slammed on 17th and 19th August. By this time the door closing mechanism had been replaced. After the door mechanism had been fixed the Claimant refused to work in the room until the lighting (which was as it had been for the previous 5 years) had been replaced.

35. On 17th August 2016 the Claimant asked Ms Young to provide him with copies of the last 12 months bank statements and to do so without informing Dr Tapping. Ms Young responded that the established practice had been for partners not to be provided with copies but to view the statements. He could view the statement at his convenience but neither copies nor originals could be removed.

36. On 24th August the Claimant wrote to Dr. Tapping (57) requiring a Schedule of Condition as to the state of their premises which should be paid for by the property owners. There were other letters too, too numerous to set out in detail here.

37. Between 15th July and 25th August the Claimant sent 17 emails to the practice manager including 6 that were sent out of hours. In all cases the tone of the correspondence from the Claimant to the practice manager and to the Respondent partners was unreasonable and inflammatory. Ms Young told Dr Tapping that she felt harassed and vulnerable because of the volume nature and tone of the correspondence.

38. The Claimant also complains in his particulars of complaint about the partnership banking arrangements. He complains that (i) the Respondents discriminated against him because he was not made a signatory to the partnership bank account in 2011, (ii) that in November 2013 and again on 17th August 2016 the Respondent excluded the Claimant from decision-making by attempting to make Ms Young a signatory on the partnership bank account without consultation with him, (iii) that on 24th August 2016 Dr Tapping threatened the Claimant by saying that his becoming a signatory on the partnership bank account was dependent upon the Claimant agreeing to Ms Young also becoming a signatory and (iv) that by letter dated 11th of October 2016 Dr Tapping told the Claimant that the majority of the partners wanted Ms Young to be a signatory on the partnership account and this would be implemented against his will.

39. It is common ground that the Claimant only became a signatory to the partnership bank account in 2016. However, the Claimant's complaints about the banking arrangements are without foundation. While it is true that he did not become a signatory to the bank account when he became a partner, the Claimant did not deal with the banking and did not enquire about the possibility of becoming a signatory. He now says that he believed that he had become a signatory in 2013 yet no issues arose until after 11th July 2016 and at that point he was not aware whether the partnership had one account or more than one account (29).

40. In late 2012 the practice manager who dealt with the routine administration had asked if she could do online banking. Minutes for partners meetings show that it was agreed that she could do so do. In fact she did not become a signatory to the account but used Dr Tapping's login and password for the routine administration of the practice. The Claimant was present on numerous occasions when the practice manager logged into the account to check and informed the partners of the balance and we also accept that he was aware that the practice manager was permitted to take the card reader home and work from home during her husband's terminal illness.

41. In 2013 the Respondents sought to make the practice manager a signatory to the account. A mandate change form to add Ms Young as a signatory was signed by all four partners including the Claimant (2w) and sent to the bank. Unfortunately that mandate was returned by the bank as the bank had sent them the wrong form and they required a new form to be completed. The bank also were at that time unaware that the Claimant was a partner and the partners were asked to add his name and signature to section 2 of the mandate change form to include his name as a signatory. The Claimant says he never saw the letter from the bank (which may be true) but, less credibly, he also says that when he signed the original mandate change form he thought the purpose was to make himself a signatory. He told the tribunal that when he signed the form at section 6, Section 2 (Details of additional authorised persons to be added) was blank. The form had been left in his pigeonhole with a yellow sticky saying "sign here" and he did so. He signed without reading it but knew it was blank. He believes the partners had conspired to make him sign a blank form and that they had then added Ms Young's name into section 2 at a later date in order to do deprive him of the opportunity to be a signatory. He also says that he did not agree that that the practice manager could do online banking, nor did he know that she did so, that he thought Dr Tapping did the banking and that the partnership minutes documenting these matters were false. The Tribunal found that the Claimant's evidence in this regard to be both incredible and untrue.

42. The banking issue arose again in July 2016, after the 11th July letter. The Claimant said that he wished to become a signatory to the partnership bank account and to obtain remote access login (31). Ms Young responded by leaving the bank mandate in the Claimant's in-tray. As there was only one machine for online access she responded that the latter would be a partnership decision. In response the Claimant completed a Significant Event form (33) complaining that Ms Young had been authorised to take the one and only login card reader needed for accessing online banking home and that the Claimant had not consented to this. This was described as a business continuity breach and an information government breach.

43. At the same time as the Claimant was made a signatory to the account, the Respondent partners wished to regularise the situation and to make the practice manager a signatory to the partnership account, rather than her having to use one of the partner's logins to make payments. The Claimant refused to consent to this and Ms Young has never become a signatory to

the account. From that time onwards the bank required 2 signatories to authorise payments.

44. The Claimant alleges that Dr. Tapping threatened the Claimant by saying that his becoming a signatory on the partnership bank account was dependent on the Claimant agreeing to the practice manager becoming a signatory. This is denied by Dr. Tapping. (Disputed notes of a partners meeting of 24th of August 2016 appear at page 90 of the bundle showing the Claimant and Dr Tapping's version of events.) We have preferred Dr. Tapping's evidence, which is supported by the fact that the Claimant has become a signatory and Ms Young has not.

45. At the partnership meeting on 24th August Dr. Tapping requested that the Claimant should stop emailing the practice manager out of hours as the sudden high volume of correspondence to both the partners and the practice manager amounted to harassment. We do not accept that Dr Tapping "falsely accused" the Claimant of harassment. The accusation was appropriate.

46. The day after he had been asked not to harass Ms Young by constant emails (see para 37 above) the Claimant sent an email to her at 8 pm demanding to be provided with a copy of her contract of employment, job description and the Staff Handbook. He said he would continue to send emails out of hours although his expectation was that she could deal with them during her contracted hours only. This was followed by an email to Drs Tapping and Rowe (69) saying that any suggestion that he should not email Ms Young during non-office hours would be "discriminatory" as he had discovered that (between them) those partners had sent some 10 emails to Ms Young out of hours over the previous 3 ½ years.

47. On 26 August the Claimant raised another Significant Event about the minutes of a partnership meeting being incomplete. (64)

48. Letters from the Claimant to the Respondent partners and to Ms Young continued to come thick and fast raising a variety of relatively trivial matters. All were demanding, curt and unfriendly. (Mr. Coghlin submits that he Claimant sent 30 letters between 16th August and 30th September and that was not denied.) In a letter on 22nd September he threatened to approach the CQC and whistle blow. (Dr Tapping immediately forwarded that letter to the CQC Inspector and discussed it).

49. On 26th September there was another partners meeting. At that partners meeting Dr. Surman told the meeting that significant event analysis should be non-accusatory and handled in a manner to engender a free, open and non-defensive discussion and not used as weapons to attack an individual or individual and prevent open analysis. This was in the context that the Claimant had raised significant event forms consistently naming the practice manager and the Respondent partners in accusatory terms. The Claimant responded by writing another letter to the Respondent partners complaining about Dr. Surman's statement that he was using significant events as

weapons. At the same meeting Dr. Tapping told the Claimant that he believed the partnership was based on majority rule.

50. On 28th September Stillwells, for the Respondent partners wrote a more substantive reply to the Claimant's solicitor's letter of 12th August. In that letter Stillwell's explained the background to the letter of 11th July and explained why the Respondent partners (from their perspective) had felt it necessary to write to him in those terms. They repeat that there had been a perceived drop in the Claimant's performance and an increasing absence from surgery during his working days. The letter acknowledges that the Claimant was efficient in his appointments and generally ran to time but stated that he had developed a technique for pushing work on until it was inevitably picked up by someone else. They questioned the terms of the medical certificate which had been referred to, and asked for a copy. The Respondent partners were concerned that, in view of the known difficulties at The Vine, the Claimant had not offered such limited services as he could provide to The Vine and instead had done so at The Mews. The partners said that although the Claimant claimed he was on light duties at the Mews the periods of work being offered was not consistent with light duties.

51. The letter does not state at any point (as alleged by the Claimant) that the Respondent partners would continue to victimise the Claimant and not take his views into consideration.

52. On 29th September the Claimant solicitors wrote to Aviva, who had provided the mortgage for the premises of The Vine, saying that the Claimant was "concerned" over a number of matters relating to the property. This included the fact that Dr Hamill's name still appeared on the legal title, that there was no partnership deed, and suggesting impropriety of some kind. None of those matters had been raised or discussed with the partners before the Claimant had caused the letter to be sent to the lender. Aviva declined to respond or to provide any information. (Subsequently in January 2017 the Claimant sought to apply to the Land registry for a restriction on the land. The land registry dismissed his claim.)

53. More letters followed to the partners and Ms Young. On 6th October the Claimant met with the Partnership Business Banking Manager and told her about Ms Young's use of the partners' password and pin for online banking. He said had not given his consent for this to occur and that he would not agree to Ms Young being an authorised 3rd party signatory. A new online pin was issued and the Claimant refused his consent for it to be shared with her.

54. As presaged in the Claimant's solicitor dated 12th August, the Claimant had continued to refuse to allow the partners to cover absent doctors with internal locums. Prior to this, the use of internal locums had been an established practice which the partners had all regarded as cheaper, easier, better for patients (continuity of care) while allowing the partners to earn extra money. The Claimant had undertaken his share of internal locum work as well.

55. At a partners meeting on 7th October locum cover for Dr Tapping's sick leave was discussed. Dr Tapping was planning to take 6 weeks off for an emergency hip operation. The Claimant had annual leave booked from 21st to 28th October and had subsequently asked for an additional day off on 19th October. The administration staff had been unable to find a locum. Dr Surman and Dr Rowe offered to provide some cover for the absence of both Dr Tapping and the Claimant by doing internal locums. The Claimant said that he "forbade" them to do any internal locums when he and Dr Tapping were away. They could only use external locums. Dr Surman said that if the Claimant could forbid the use of internal locums he could forbid the Claimant from taking leave on 19th October. At the same meeting Dr Surman said he believed that the partnership was based on a majority rule.

56. The Claimant's response to the suggestion that majority consent was all that was necessary for ordinary decisions was to threaten to freeze the partnership bank account if they did so. In a letter dated 11th October (one of 4 letters that the Claimant wrote to the Respondent partners or the practice manager that day) he wrote:

> "*Please see an excerpt from an email that I received from our Partnership Business Banking manager:*
>
> *"If there is a dispute between partners, any partner can asked to freeze the account and we would act on it without a 2nd partner's authorisation. On freezing the account, all online banking, telephone banking facilities, cards, direct debits, and standing orders would* be *cancelled and payments would not be allowed from the account."*

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57. On 11th October Dr Tapping wrote to the Claimant (116) expressing frustration at his wish to disrupt the day-to-day running of the practice and stating that *"in future, the Practice is to be run by majority when taking decisions that relate to the day-to-day management of the business."* He explained the difficulties that would be created by the Claimant's refusal to allow internal locums, to allow Ms Young to access online banking or to be a signatory to the account. He proposed that at the next meeting they would resolve by majority that Ms Young became a signatory to the account. In fact the Claimant has continued to refuse to sign the bank mandate to allow her to become a signatory and Ms Young is not a signatory.

58. In fact the Claimant did take leave an additional day's leave on 19th October and his absence was covered by external locums.

59. On 12th October the Claimant reported that the letter of the 11th October had caused him stress and he would not be able to attend work for the rest of the week. His GP had advised him that it would be beneficial if he kept working in other roles as his stress symptoms "are entirely related to the Vine Medical Centre Partnership only". The ET1 was presented the same day. (It was not clear to the Tribunal what assessments had been undertaken by the Claimant's GP to arrive at this rather startling conclusion.)

60. The Claimant remained off sick with stress until the end of October (save for working the morning of 17th October). Since October 2016 the Claimant has been working reduced hours at The Vine. (Initially this was 6 hours a week, then reducing to 3.) In December the Claimant advised that he would work one session a week, 9 am till 12 on Mondays, the 1st 2 hours to see patients with 20 minute consultations and the final hour to be for paperwork. He said that notwithstanding he wanted to attend partnership meetings and would wish to be informed of when they were scheduled. The Claimant has a medical certificate from a private GP practice stating that the cause of his illness is stress at the workplace but that he "works in other roles to aid recovery from GP partnership stress" (142). (As he is able to work elsewhere the practice cannot claim under the practice's locum insurance policy.) The Claimant continues to take full drawings as an equity partner from the Respondent. From mid October 2016 to mid-October 2017 the Claimant has worked 5% of his minimum commitment of 1380 hours. He continues to work elsewhere, to refuse the use of internal locums or to allow Ms Young to be a signatory to the partnership bank account. He has also refused to sign the accounts, unilaterally sacked the accountants and continued to write challenging letters to the Respondent partners. He continues to refuse mediation.

61. In his witness statement the Claimant raises a whole host of factual allegations on which he relies and from which he invites the Tribunal to draw an inference or to conclude that the treatment that he received from the Respondents was influenced by his race. He alleges that:

    a. Prior to joining the partnership in 2011 he met with the partners for an informal chat and was asked by Dr Surman in front of the other partners "you don't belong to a weird religion, or something do you?"
    b. Dr Tapping, after he had been seeing a young Muslim man with an Arab heritage who was suffering from it mental illness told the Claimant "I have just seen that chap you have been looking after, he looks like a suicide bomber to me".
    c. Dr Surman complained to him about the practice's "South African patients being too demanding, and expecting too much".
    d. Dr Surman frequently mocked the accent of a former Bangladeshi patient who had children with genetic disorders.
    e. Dr Surman and Dr Tapping would make jokes about patients, their ethnicity and their accents.
    f. Dr Surman and Dr Tapping effectively created a culturally and ethnically hostile environment. The Claimant was deeply upset and uneasy about it but felt powerless to act for fear of bullying.
    g. At a practice training event on 8th July 2015, pizza was ordered and brought in. When the Claimant commented that the pizza was a bit spicy Dr Surman punched him in the right arm and said "Mas, what kind of in Indian are you? You're supposed to be used to eating spicy food all the time."
    h. On 9th May 2016 Dr Surman had forwarded an email to the Claimant and others with what purported to be a badly translated Beijing hotel brochure. Ms Young commented "very good".

i. Dr Surman would shout and swear and saying "You have prescribed the wrong fucking needles" and "I'm fed up of making fucking money for you".

62. With the exception of h above the Respondents deny all of those allegations. In relation to c above Dr Surman acknowledged that he had complained about one particular white South African patient who was too demanding but denied that he had complained in general about South African patients as, in any event, the practice only had one (white) South African patient. Dr Sekhon who attended the training event at which pizza had been ordered (and who is not engaged by The Vine in any capacity) gave evidence that the incident described by the Claimant did not happen.

63. As regards the badly translated hotel brochure, this was an email which had been sent to Dr Surman by a friend. It was Dr Surman's evidence that he showed this email to the Claimant after a discussion about updating the Practice website and the importance of choosing words carefully. The Claimant said that he thought it was funny and asked for it to be forwarded it to him. Having been sent the email in May, it was not until 13th November that the Claimant wrote to the Respondent partners to say that he found it objectionable.

64. With the exception of (h), the 1st time that any of these allegations (at para 61) had been made was in the Claimant's witness statement. Through his solicitor, and as early as 15th July 2016, the Claimant had made clear allegations of breaches of the Equality Act. After 11th July the Claimant sent innumerable letters to the Respondent partners complaining about all manner of things yet (save for the email in November complaining about the hotel brochure email) none of them referred to the matters now set out in the witness statement. Some of the letters claimed discrimination in clear terms (see for example letter of 25th August accusing Dr Tapping of being aggressive in asking him not to email Ms Young out of hours). We find it odd that the Claimant accepted in evidence that he had trusted his partners "and still did to some extent" with his evidence that doctors Tapping and Surman created a culturally and ethnically hostile environment for him about which he felt powerless to act for fear of bullying. He told us that he had never suggested to the partners that their behaviour was making him uncomfortable because he was "never treated like a partner and felt like an employee." However there was no evidence to suggest that the Claimant was ever treated other than as a full partner.

65. Dr Surman's wife, Dr Nandi, is of South Asian origin and his children are of mixed South Asian and English origin. Dr Nandi did not give evidence but provided a lengthy email detailing Dr Surman's attitudes and behaviours, which was supported by Dr Sekhon. While of course the fact that someone is married to a non white person does not also mean that they cannot act in a discriminatory manner, it may make it less likely.

66. Having heard evidence from the Respondents, Dr Sekhon and the Claimant, we concluded that the Respondents were the more reliable witnesses.

Given the barrage of unpleasant emails sent by the Claimant after 11th July, we found it surprising that Claimant would not have raised matters of discrimination with them until his witness statement. When asked about this in cross examination Claimant said that he had chosen to wait until his witness statement so that he could put it all in writing. We found that explanation difficult given that the Claimant had already put a considerable number of other complaints in writing. Dr Sekhon gave evidence that Dr Surman had not made the alleged comment about the spicy pizza (and that he, Dr Sekhon, had been present in the waiting area where the pizzas were opened and eaten) and we have preferred his evidence to that of the Claimant's.

67. In relation to the email about the Chinese hotel brochure the Claimant said he had not raised it until November because, although he had glanced at it at the time he received it and thought it "looked a bit discriminatory" he did not read it properly until November. We prefer the evidence of Dr Surman that it was the Claimant who had found the email funny and asked for the email to be forwarded.

68. As to credibility generally the Claimant did not emerge well from cross examination. We set out below some of the examples which led us to conclude that the Claimant was not wholly honest. We have already set out the Claimant's response to the bank mandate change form that he signed in 2013. Nor did we accept the Claimant's evidence that the minutes of the partners meeting were falsified and that in previous years he had been "duped" into signing the practice accounts.

69. In cross examination the Claimant was also less than straightforward when asked what he understood by locum work. When it was put to him that working as part of the Team at the Mews Practice could not be described as locum work he disagreed. He did not accept that a locum was someone who filled in for a regular doctor who was absent. He said a locum was anyone who works at a practice and was not an employee. Everyone on at the Mews who was described on its website as being part of the "Team" was a locum, including the nurses. We did not accept that the Claimant genuinely considered that he was "a locum" at the Mews but, even if he did, it does not explain his failure to be open about the level of commitment he had at the Mews.

70. In relation to the complaint by the Respondent partners that the Claimant was working whilst off sick the Claimant maintained that he was not working whilst off sick. He worked at the Vine on Mondays, Wednesdays and Fridays and worked at The Mews on Tuesdays and Thursdays. He was able to work at The Mews but not at The Vine in the period while he was off sick because the private practice was new and very quiet. He felt that he had made full and sufficient disclosure of his work at The Mews by saying that he did locum work. In his witness statement the Claimant says "my corporate arrangements are transparent and have been explained to my partners." That was patently not a true statement. He thought that it was quite unnecessary to disclose to his partners that he was fit enough to work

elsewhere doing "light duties" in the period of his sick leave, because he was only available Tuesdays and Thursdays, non-working days for the Vine, although he also said that he had not told them "because he thought that they would not agree". The Claimant said that in the end he had only worked at the Mews on 5th and 7th and had not worked on the 12th and 14th and, while he had not done anything wrong, he had not been sought payment for his sessions on 5th and 7th as he wanted to "be morally correct."

71. In evidence the Claimant continued to maintain that all of the letters that he wrote to the Respondent partners and to Ms Young after 11th July 2016 raised genuine matters of concern. The Tribunal cannot accept that the Claimant was genuinely concerned that Mrs Tapping had not signed into the visitors' book, or that the reason that he was concerned that Dr. Tapping was painting Dr Hammill's own room was because he was concerned for Dr Tapping's health given his hip problem and/or afraid he would fall off the stepladder onto a patient. (In December 2015 Dr Tapping's wife had helped the Claimant clear a room prior to a CQC visit and had painted a toilet at the practice and the Claimant had made no objection.) We do not accept that the reason that the Claimant refused to allow the practice to use internal locums was because, as he maintained, he was genuinely concerned about the stress that the additional work was putting on Dr Surman. We reject the Claimant's evidence that while he did not believe that the clinical issues raised by others in relation to his conduct were Significant Events, he genuinely believed that the numerous non clinical issues which he had raised, such as not signing the visitors' book and the painting of a room at the practice were.

Relevant law

72. Section 39 of the Equality Act 2010 prohibits an employer discriminating against its employees by dismissing them or subjecting them to any other detriment. Section 40 prohibits an employer from harassing its employees.

73. Section 13 defines direct discrimination as follows:-

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

Race is a protected characteristic.

74. In every case the tribunal has to determine the reason why the Claimant was treated as she was. In most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial. Direct evidence of discrimination is rare and tribunals frequently have to infer discrimination from all the material facts.

75. Section 40 prohibits an employer from harassing its employees. Section 26 defines harassment as follows

(1) A person (A) harasses another (B) if—

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

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

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

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

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

76. In Richmond Pharmacology v Dhaliwal (2009 ICR 724)the EAT stressed that the Tribunal should identify the three elements that must be satisfied to find and employer liable for harassment

Did the employer engage in unwanted conduct?

Did the conduct in question have the purpose or effect of violating the employee's dignity or creating an adverse environment for him?

Was that conduct on the grounds of the employee's protected characteristic?

77. The essential characteristic of harassment is that it is unwanted by the recipient. Behaviour that may be acceptable if the recipient welcomes it can be harassment if the recipient indicates that that the approach is unwelcome. It does not need to be deliberate. Behaviour can amount to harassment if the effect of the behaviour is to create an intimidating, hostile, degrading, humiliating or offensive environment for a person, provided that, having regard to the individual's perception and the other circumstances, it was reasonable for the individual to have experienced that effect.

78. It is not enough for an individual to feel uncomfortable to be said to have had their dignity violated or the necessary environment created. (Grant v Land Registry 2011 IRLR 748). Even if there is conduct which is sufficient to attract the necessary epithets, the conduct must still be related to the protected characteristic. Although isolated acts may be regarded as harassment, they must reach a degree of seriousness before doing so.

79. The burden of proof, is set out at Section 136.

"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) has contravened [the Equality Act] the Tribunal must hold that the contravention occurred.

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

It is for the Tribunal to determine those facts on the balance of probability, based on all the evidence and any inferences that may be drawn from that evidence (or lack of it.)

80. In **Madarassy v Nomura International** [2007] ICR 867 Mummery LJ held that "could conclude", (or could decide as the wording now states) in the context of the burden of proof provisions, meant that a reasonable Tribunal could properly conclude from all the evidence before it, including the evidence adduced by the complainant in support of the allegations, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. However, the bare facts of a difference in status and a difference in treatment are not without more sufficient to amount to a *prima facie* case of unlawful discrimination.

81. **In Hewage v Grampian Health Board** [2012] ICR 1054 Lord Hope addressed the role of the burden of proof provisions. At paragraph 32 he recognised that:"… They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other. …"

Conclusions

82. It is the Claimant's case that the Respondent treated him less favourably and/or harassed him for reason related to race by the actions set out in paragraph 3 of the list of issues. Many of the acts relied on are disputed on the facts and we have to establish on the balance of probabilities what those facts were. Those findings are set out above. Once the facts are established we have to determine whether the Claimant received less favourable treatment than other (actual or hypothetical) individuals in comparable circumstances and, if so, whether the reason for that was influenced by his race. Also was the treatment he received unwanted conduct related to race which had the purpose of effect set out in section 26 of the Equality Act.

83. The Claimant complains that 3(a) from the start of his partnership in 2011 he was not made a signatory to the partnership bank account. It is correct that the Claimant was not made a signatory to the bank account when he joined the partnership. This could be said to be less favourable treatment as the other partners were signatories, but there was no evidence which would suggest that the reason he was not made a signatory was in any way influenced by his race. The Claimant did not ask to be a signatory or raise the issue before 2016 and he had no practical need to be one. As Mr Coghlin submits, it is implausible that at the very same time that the Respondents made the Claimant a fixed income partner they also choose not to make him a signatory because of his race and yet made him an equity partner a year later.

3 (b) On 26 November 2013 the Respondents excluded the Claimant from decision-making by attempting to make Ms Young a signatory on the partnership bank account without consulting with the Claimant.

84. We have set out our findings of fact in relation to this incident at paragraph 41. The Claimant signed a bank mandate form to authorise Ms Young to be a signatory which indicates that he had agreed. We do not accept that he signed a blank form and that the Respondent partners subsequently added Ms Young's name. The factual basis of this allegation is not established

    3(c) At a partnership meeting which the Claimant believes was in April 2016 Dr Surman behaved aggressively towards the claimant and snatched his phone.

85. Again we have set out our findings of fact in relation to this incident at paragraph 12. We accept Dr Surman's evidence that he lent over and put his hand over the Claimant's phone. He did so because the Claimant was not concentrating on the business of the meeting and it was discourteous to his partners not to do so and was nothing to do with his race.

    3 (d) The letter of 11th July 2016 made unsubstantiated allegations against the Claim and purported to expel him from the partnership.

86. The Claimant made much of the fact that the letter of 11th July was signed by Dr Tapping "on behalf of the partners" when it was patently not sent on his behalf. He says that this indicates that the other partners did not treat him as an equal and did not regard him as a partner. We reject this proposition. The letter acknowledges the Claimant's status but accuses him not shouldering an equal share of the work or being open and transparent. What Dr Tapping meant was on behalf of the Claimant's partners or on behalf of himself, Drs Surman and Rowe.

87. Secondly the letter did not purport to expel him from the partnership. It did suggest that the Respondent partners questioned whether they wished the Claimant to continue as a partner and asked that he consider his position. It was also effectively akin to a letter of suspension - as the Respondent partners said that they would cover his return with locums. It would undoubtedly have been a shock to the Claimant and an unpleasant letter to receive. Some of the allegations were vague and to some extent unsubstantiated in that there was no detailed evidence of the particular issues raised in the 1st paragraph of that letter. (The Claimant would already have been aware that there were some concerns about his performance – even if he was not aware of how seriously his partners viewed them.)

88. Nonetheless we are quite satisfied that the trigger for the letter was the discovery that the Claimant was working elsewhere while off sick from the Vine and that the concerns raised were genuine. The Claimant accepted in cross examination that the Mews website indicated that the Claimant was a permanent member of the team at the Mews and that it was reasonable for the Respondent partners to conclude that this was in fact the case, especially as the Claimant had not disclosed or discussed, even in general day to day conversation, his commitment to the Mews to the partners. The Claimant also accepted that, in the light of his refusal to cover the afternoon

of 13th July, his apparent availability for work at the Mews on 12th and 14th July might be seen to be a betrayal.

89. The Claimant now says that he worked at the Mews on Tuesday 5th and Thursday 7th July (days which you would not normally be at the Vine) is but "in the interests of transparency" did not charge for his services. His witness statement is silent about the 12th and 14th, but in cross examination said that he did not in fact work those dates. He accepted however that he had never told the partners that he had not worked on those dates, saying that "they never asked". He also accepted that he had never told the partners that he was fit, whilst of sick to do "less intense non-VDU work" or offered to do light duties at the Vine.

90. While the letter was strongly worded and did suggest that the Claimant should consider leaving the practice, there was no evidence to suggest that a similar letter would not have been sent to a white partner in comparable circumstances. (The Claimant repeatedly refers to this letter as an expulsion letter but it does not expel him.) We accept that the Respondent partners felt betrayed by the Claimant's apparent availability for work elsewhere when unable to work at the Vine, and his failure to discuss his health, the timing of his operation, and his situation with them. The tribunal finds that the reason for the letter sent to the Claimant on 11th July was that the Respondent partners felt that the Claimant's loyalties lay elsewhere. He had not been honest with them, had refused to work on 13th July to help out when he was offering 12 hour days on the 12th and 14th July at the Mews. It was not influenced by race.

<u>3(e) On 25th July 2016 Dr Tapping told the Claimant he could not have the last 12 months bank statements. Ms Young was allowed the bank statements.</u>

91. It was plain, as accepted by the Claimant in cross examination, that he was not refused access to the bank statements. He was told that he could not take copies home and should view them on the premises. None of the other partners had taken copies home and the Claimant had not indicated why he needed to do so. Ms Young who, to his knowledge, did online banking, was able to take the card reader home in order to work from home during a period of sick leave so that she view the bank statements at home. The reason for this was that Ms Young administered the payments and the Claimant did not. There was no evidence that such action was in any way influenced by race.

<u>3(f) On 17th August 2016 the Respondent excluded the Claimant from decision-making by attempting to make Ms Young a signatory on the partnership bank account without consultation with the Claimant</u>.

92. The Claimant's witness statement does not provide any evidence of an attempt on 17th August to make Ms Young a signatory on the partnership bank account. (From that statement he only attended that day in the afternoon.) It is beyond dispute that the Respondent partners did wish to make Ms Young a signatory to the partnership bank account and

subsequently threatened to do so by majority decision but there is no evidence that they attempted to make Ms Young a signatory without consulting him.

3(g) On 24th August Dr. Tapping threatened the Claimant saying that his becoming a signatory on the partnership bank account was dependent on the Claimant agreeing to Ms Young also becoming a signatory.

93. We have dealt with this in our findings of fact (para 44). We do not accept that Dr Tapping said that his becoming a signatory on the partnership account was dependent on the Claimant agreeing to the practice manager becoming a signatory. The fact is that the Claimant was made a signatory and Ms Young was not.

3(h) On 24th August 2016 Dr Tapping behaved aggressively towards the Claimant and falsely accused him of harassing Ms Young.
3(i) On 24th August Dr Tapping told the Claimant not to email Ms Young at times when she was not working. The Claimant relies on the other Respondents as comparators

94. Dr Tapping told the Claimant to stop emailing Ms Young out of hours as he viewed the sudden high volume of correspondence to the Respondents and to Ms Young as being harassment. It was not a false accusation. This was a reasonable view in the circumstances. If there was aggression, this was because the Claimant's behaviour was hostile The Claimant had sent 17 emails to Ms Young in 6 weeks 6 of which were out of hours. All of the emails were curt demanding and unfriendly. In the 6 months before 11th July he had sent 4 emails to her. The Claimant says that Dr Tapping treated him differently to the other partners as, having performed an email audit, the three Respondent partners had (between them) sent 10 out of hours emails to Ms Young over the previous 3 ½ years. The numbers speak for themselves. The volume of the Claimant's emails to her were of a wholly different order.

95. At that time, Ms Young was coming up to the 1st anniversary of her husband's death and was facing health issues of her own. She told Dr Tapping that she was feeling harassed and vulnerable. Dr Tapping's instruction to the Claimant was motivated by sympathy for Ms Young and was not influenced by race. The Claimant's suggestion that a proper comparison can be made between his behaviour and the 10 out of hours emails sent over the previous 3 years is disingenuous.

3(j) On the 26th September Dr Surman said the Claimant was using Significant Events as "weapons".

96. Again we have dealt with this in the facts. Dr Surman did suggest that the Claimant was using significant events as weapons and that this was not the proper purpose of significant events. He was right. Dr Surman said that he made that statement because it was true and not because the Claimant was

South Asian. In our view the Claimant was raising issues that were trivial (not signing the visitors' book) and non clinical, as Significant Events as weapons in his campaign against the Respondent's. The Claimant had not raised a single significant event in the 18 months before the partnership conflict began in July 2016.

3(k) On 26 September 2016 Dr Tapping said he believed the partnership was based on majority rule.

97. This allegation is not denied. It was a statement of fact and neither less favourable treatment nor conduct meeting the definition of harassment. There was no partnership deed and the Partnership Act 1890 at section 24(8) says that: " any difference arising as to ordinary matters connected with the partnership business may be decided by majority of the partners, but no change may be made in the nature of the partnership business without the consent of all the existing partners."

3(l) On 28 September 2016 the Respondents, through their solicitor, made allegations that there was a perceived drop in the Claimant's performance and that he had developed a technique of pushing work on until it is picked up by someone else, and stated that the Respondents would continue to victimise the Claimant and not take his views into consideration.

98. The allegations about performance were made because there was a genuinely perceived drop in the Claimant's performance. They repeated the views set out in the 11th July letter and the Claimant had refused to discuss this issue with then, save through his solicitors. He had made no attempt to discuss these matters to persuade the otherwise. Those were genuine views, not influenced by race. As to the latter part of the allegation, he Respondents letter did not say that they would continue to victimise the Claimant and not take his views into consideration.

3(m) On 7th October 2016 Dr Surman said that he forbade the Claimant from taking a day of leave on 19th October 2016 the Claimant relies on Dr Tapping as a comparator.

99. We have set out our findings of fact at paragraph 53 above. Dr Surman was not forbidding the Claimant from taking a days leave but commenting on the un-helpfulness of the Claimant's position about internal locums.

3(n) On 7th 2016 October Dr Surman said he believed the partnership was based on majority rule basis

100. This was an accurate statement of fact. It was not less favourable treatment, or harassment and had nothing to do with race. The Claimant accepted in cross examination that the reason the Dr Surman said this was because it was true and not because of the Claimant's race.

3(o). By letter dated 11th October 2016 Dr Tapping told the Claimant the majority rule would be implemented against his will, and the majority wanted Ms Young to be signatory on the partnership account.

101. It was a comment designed to try and move the business of the partnership forward in the light of the Claimant's continuing intransigence and unreasonable behaviour. It related to the ongoing dispute and was unrelated to race.

Conclusions on the whole

102. Taking the whole chain of events into consideration and looking at the whole, there are no facts from which we could decide that the matters complained of, taken singly or as a whole, were influenced by race. Some of the allegations made simply did not happen (for example, attempting to make Ms Young a signatory to the bank account without consulting the Claimant). Others occurred but were in response to the Claimant's behavior. The Claimant was clearly aggrieved by the 11th July letter but there was no less favourable treatment. None of the other partners had been working while off sick and been less than open about their commitments and were therefore not in comparable circumstances. A hypothetical white partner would have been dealt with in the same way. We are clear that the letter was motivated by what appeared to the Respondents to have been a gross betrayal of trust. Whatever the state of the Claimant's health that allowed him to work at The Mews and not at The Vine, he had not been open with his partners about his interests or his capacity. Save for the translation email, we do not accept as true the incidents which the Claimant set out, for the first time, in his witness statement in support of his discrimination complaint (see para 60 above). The Claimant found the "translation email" funny at the time and did not regard it as a detriment and his subsequent change of heart did not have the ring of truth. In any event this was an email sent to Dr Surman which sought to make a play on words and is not something from which, by itself, we would draw an adverse inference.

103. This has been a sad case. However unpleasant it was to receive the letter of 11th July 2016, the allegations in this claim appear to us to have been made as part of the Claimant's ongoing campaign against the practice. The Claimant is a professional, and is intelligent and articulate. Yet he has not been straightforward or truthful in his evidence to the Tribunal. He appears to be intent on causing maximum disruption to the practice and distress to his fellow partners and to Ms Young, while refusing mediation or to talk constructively and continuing to benefit from his full drawings. He continues to insist that he has done nothing wrong and refuses to acknowledge any responsibility for the chain of events.

104. The Tribunal cannot comment on the difficulties or otherwise which would be caused by the dissolution of the partnership and the consequent loss of the GMS contract, but it would in our view be a shame if difficulties imposed by those responsible for GP contracts resulted in having to continue in a

partnership where the relationships are so manifestly broken.

Employment Judge F Spencer
31st October 2017

SCHEDULE A

(The Issues)

References:

EqA	Equality Act 2010
GOR	Grounds of Resistance
POC	C's particulars of claim, set out in the rider to the ET1 (numbering is as per the numbered version found at Appendix 1 to the GOR

Claims

1. C brings claims for:

    a. direct race discrimination; and

    b. harassment related to race.

2. For the purpose of these claims C describes his race as South Asian.

Common factual allegations

3. C makes the following allegations:

    a. from the start of his partnership in 2011 onwards C was not made a signatory to the partnership bank account (POC para 13);

    b. on 26.11.13 Rs excluded C from decision-making by attempting to make Ms Young a signatory on the partnership bank account without consultation with C (POC para 14);

    c. at a partnership meeting which C believes was in April 2016 Dr Surman behaved very aggressively towards C and snatched his phone (POC paras 16 and 19);

    d. by Dr Tapping's letter of 11.7.16, Rs made unsubstantiated allegations against C and purported to expel him from the partnership (POC paras 3-7);

    e. on 25.7.16 Dr Tapping told C that he could not have the last 12 months' bank statements (POC paras 21-22). C relies on Ms Young as a comparator;

    f. on 17.8.16 Rs again excluded C from decision-making by attempting to make Ms Young a signatory on the partnership bank account without consultation with C (POC para 14);

g. on 24.8.16 Dr Tapping threatened C by saying that his becoming a signatory on the partnership bank account was dependent on C agreeing to Ms Young also becoming a signatory (POC para 15);

h. on 24.8.16 Dr Tapping behaved aggressively towards C and falsely accused him of harassing Ms Young (POC para 16);

i. on 24.8.16 Dr Tapping told C not to email Ms Young at times when she was not working (POC para 18). C relies on each of the Rs as comparators;

j. on 26.9.16 Dr Surman said C was using Significant Events as "weapons" (POC para 23);

k. on 26.9.16 Dr Tapping said he believed the partnership was based on a majority rule basis (POC para 25);

l. on 28.9.16 Rs, through their solicitor, made allegations that there was a perceived drop in C's performance and that he had developed a technique of pushing work on until it is picked up by someone else, and stated that Rs would continue to victimise C and not take his views into consideration (POC paras 30-34);

m. on 7.10.16 Dr Surman said that he forbade C from taking a day of leave on 19.10.16 (POC para 24). C relies on Dr Tapping as a comparator;

n. on 7.10.16 Dr Surman said he believed the partnership was based on a majority rule basis (POC para 25);

o. by letter dated 11.10.16, Dr Tapping told C that majority rule would be implemented against his will, and the majority wanted Ms Young to be a signatory on the partnership account (POC para 35).

Direct discrimination (s13 and s44(2) EqA)

4. Did Rs act (or deliberately fail to act) as set out in paragraph 3 above?

5. Who is the appropriate comparator? C relies on:

   a. actual comparators as referred to in paragraphs 3.e3.i and 3.m above. In each case, were the circumstances relating to the comparator materially different from the circumstances relating to C?

   b. alternatively a hypothetical white comparator.

6. Was C treated less favourably than the comparator was or would have been treated?

7. Was C's race a significant cause of the act (or deliberate failure to act)?

8. Was C thereby -

    a. expelled (in the case of the allegation at paragraph 3.d above), or

    b. subjected to a detriment?

Harassment related to race (s26 and s44(3) EqA)

9. Did Rs engage in conduct as described in paragraph 3 above?

10. Was such conduct unwanted?

11. Was the conduct related to race?

12. Did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for C (taking into account C's perception, the other circumstances of the case, and whether it is reasonable for the alleged conduct to have that effect)?

Time limits (s123 EqA)

13. To the extent that any claim relates to a matter which occurred before 30 June 2016, does the tribunal have jurisdiction to consider it, having regard to the following questions:

    a. Did the matter form part of conduct extending over a period, and if so when did the period end?

    b. Is it just and equitable to extend time?

Remedy

14. The following questions will be relevant to the question of what award of compensation, if any, should be made:

    a. What loss, if any, has C suffered?

    b. Should any award be reduced, and if so by how much, on the basis of C's own contributory conduct?