

REASONS

Delay

1. Before dealing with the merits of the claim the Employment Judge sends his profound apologies to both parties for the delay in promulgating this decision. It resulted from the originally dictated decision having been lost in the move of building which occurred earlier this year. The Employment Judge was not aware of that fact for many months and accordingly the decision has now had to be re-created which has taken some time for which the Employment Judge apologises to both parties.

Claims / Summary

2. The Claimant has brought claims that she was subjected to disability related harassment contrary to section 26 of The Equality Act 2010; and that she suffered detriments contrary to section 47 of The Employment Rights Act 1996 on the grounds that she made protected disclosures. All of those claims are resisted.

3. The tribunal has considered a large volume of documentary material and has heard from the following primary witnesses (this is not a complete list but those whose evidence is central to the disputes between the parties):
For the claimant:-

- i) The claimant herself;
- ii) Nurse Katie Davies (now Ellis):

For the respondent

- iii) Ward Manager - Pamela Messruther,
- iv) Deputy Ward Manager Cath Thomas;
- v) Senior Nurse, Rosemarie Hazzard
- vi) Head of Nursing – Acute Services - Chris England;
- vii) Senior HR Business Partner – Deborah Porter;
- viii) Healthcare Support Worker - Marilyn Wathan
- ix) Healthcare Support Worker – Ralph Jones

4. The claimant is a registered adult nurse who qualified in 2006 and since then been employed at the Prince Charles Hospital Merthyr Tydfil. Since qualifying she has worked in Acute Medicine, and since 2011 on Ward 10 which has been the designated stroke ward. The claimant's allegations are set out in two Scott Schedules prepared on her behalf when she was

legally represented. However, as is set out in greater detail below the claimant's case as presented before us was in many ways significantly different from that contained in the Scott Schedules.

5. The respondent's case is that some members of staff began to be worried about the claimant's behaviour from approximately late 2014 or early 2015. By way of example Sister Messruther describes her behaviour as "*..starting to deteriorate around February 2015*", and Ms Wathan states "*Before the claimant went off her behaviour became erratic and it would be a nightmare to work alongside her.*" These are representative of the views of many members of staff. This coincided with the claimant becoming the mentor for Katie Davis who was a consolidation student, a student nurse in the last few months of training before qualification. The claimant had successfully mentored a number of previous students but on this occasion the claimant's colleagues began to be concerned that Ms Davies was working exclusively with the claimant, and they formed the impression that the claimant was deliberately restricting her access to other colleagues. A number of colleagues took the view that they were unusually close and that it was not a standard mentor/trainee relationship. The claimant does not accept this, or that her behaviour began to deteriorate or become erratic, and is and was insistent that she was simply providing appropriate training to Ms Davies. The resolution of this issue is unnecessary for our purposes, but for the avoidance of doubt, and whatever the rights and wrongs of this dispute we have no doubt that the respondents witnesses are telling the truth about their concerns, and that they were genuinely of the view that the claimant had effectively begun to detach herself and Ms Davies from her colleagues on the ward at around this time.
6. The claimant's case is that during the period of mentoring Ms Davies she became aware that "*on numerous occasions that patients were becoming dehydrated, overloaded or nutritionally compromised on the ward.*" The respondent's case is that whilst this may on occasion have been true it is no more than part of daily life in a ward where many of the patients are extremely ill. Managing nutrition, hydration and the correct provision of medicines is an essential part of the role of the nurses on the ward, and that standards of care were in effect no different before December 2014 than they were after it. We set out below our concerns as to the claimant's credibility, one aspect of which was the use of the Datix system. In essence the respondent's case is that what the claimant refers to as protected disclosures are (even if made which is in many cases not accepted) no more than the conveyance of ordinary patient information and that if any unusual, dangerous or potentially dangerous incident had occurred the claimant would have reported it using the Datix system. (As is set out below the claimant's explanation for not using the Datix system is that she did not have access to it, evidence which we do not accept.)

7. For ease of comprehension the claimant's case falls relatively neatly into three time periods. The first is from December 2014 until 13th April 2015. During this period the claimant asserts that she was harassed for a reason relating to her disability (all of the disability discrimination claims fall within this period). In addition it is during this period that she made most of the discoveries about patient care which form the basis of whistleblowing claim (almost all of the disclosures are alleged to have occurred during this period) and suffered bullying from her workmates.
8. The second is from 14th April 2015 until 18th May 2015. During this period she suffered all of the detriments alleged in her Scott Schedule to have resulted from the disclosures (lies being told about her on 15th April 2015, being placed on special leave and subsequently being medically suspended). In addition the most serious allegations she makes relating to patient care relate to one patient and specifically the events of 14th/15th April 2015. For the reasons set out in greater detail below the claimant does not, and did not in evidence shy away from accepting that she was alleging that a number of senior medical staff conspired to kill a patient in order to cover up the poor care she had been receiving.
9. The third period is from 18th May 2015 onwards. During this period there were a number of investigations and grievance processes. We have an enormous amount of documentary evidence relating to these events and there are disputes as to the processes and outcomes. However none of those centrally affect this claim in that it is not alleged that any of them are related to the disclosures in the sense that any of the subsequent events are alleged to amount to detriments. The rights and wrongs of those events do not therefore fundamentally bear on any of the issues before us.

Credibility

10. One of the central issues in the case is credibility. Having considered all of the evidence in the case the Tribunal has reluctantly come to the conclusion that the Claimant's evidence is fundamentally unreliable. The main areas in which the Tribunal found the Claimant's evidence significantly unreliable and in some cases incapable of belief are set out below.
11. One of the striking features of the case is that the vast majority of those against whom the claimant makes complaint have worked with her for many years without any difficulty until the events with which we are concerned, which appear to have begun in the latter part of 2014. This does not of itself necessarily mean that the claimant's allegations are incorrect or untrue, but in particular it appears to us remarkable either that

standards of care on the ward coincidentally dropped significantly in or about December 2014 at the time the claimant began to mentor Ms Davies, or alternatively that they had been poor prior to that and the claimant had simply not noticed for many years. Neither appears especially plausible.

12. There is a system on the Respondents computer system for reporting clinical incidents known as Datix. The Claimant accepted that in respect of none of the matters for which she now alleges she made protected disclosures did she complete a Datix entry. The Claimant's explanation for that is she did not have access to the Datix system and that she therefore had to make those disclosures orally because she personally could not complete an entry. This contradicts the Scott Schedule in which a number of the disclosures are alleged to have been made via entries on the datix system. The claimant attributes this contradictory position to errors on the part of her solicitor in drafting the Scott Schedule. The Respondents witnesses, whose evidence we accept, state that the claimant's evidence is simply untrue. Any computer on the ward allows any member of staff to make an entry on the Datix system. It does not require an individual password or access to any part of the system other than that which is directly accessible from the particular computer itself. We accept this evidence. It is telling that the Claimant in our judgment was prepared to tell a deliberate untruth about something as fundamental as to how the system for reporting incidents works. Moreover since the claimant's whistleblowing case is based on the proposition that she discovered events and practices which were seriously compromising patient safety the fact that she did not once complete a Datix entry is in our view significant, particularly given that in the Scott Schedule she refers specifically to having done so.
13. One of the allegations of harassment is that she had a nickname "Sick Note". Whilst this is not in dispute the Respondent makes a number of points as to the Claimant's credibility in respect of this part of the claim all of which in our view are well founded. The Claimant lodged a grievance in April 2015 but did not make any reference to the use of the nickname "Sick Note". In addition she accepted in evidence that the name had been used among her colleagues for very many years but that she only complained about it from the period of December 2014 to April 2015. The evidence from Janine Broad is that the Claimant referred to herself as "Sick Note". In addition to this the Respondents evidence we accept is that there was a culture of using nicknames for people, one of whom was Mr Ralph Jones. He said that the claimant referred to him as Ralph La Rue. His evidence was that he understood, (and it is the Respondents case), that this was a reference to Danny La Rue, the comparison being made because he was a gay man. The Claimant denied this in the most unconvincing terms. She alleged that she called Mr Jones "Roo" in

reference to the character from Winnie the Pooh on the basis that he was always skipping and bouncing round the ward. She could give no explanation why in that case she had referred to him as “La” Roo. Put simply in our view the Claimant’s explanation is not capable of belief. Similarly in cross examination she denied entirely using the nickname “Pudding Cup” for Mr Andrew Davies and yet while cross examining him set out the reasons why she used that nickname. In this respect the claimant’s case during one part of the evidence bore no relation to that being asserted at another.

14. It is useful at this stage to consider the contents of the Claimant’s Scott Schedule prepared for her by solicitors when she was legally represented. As will be apparent in dealing with the first 4 allegations there are some very significant errors in it. Allegations 1 and 2 were made against Ms Pamela Messruther but the claims were withdrawn. Allegations 3 and 4 were alleged to be closely related and against Lisa Burns, Andrew Davies and Ralph Jones. Allegation 4 has been withdrawn in its entirety and allegation 3 has been withdrawn against Lisa Burns and Ralph Jones. The Claimant’s explanation for all this is that her solicitors misunderstood her case and she denied allegations put to her in cross examination that the Schedule must have been based upon her instructions and that the allegations therefore must have been made by her otherwise her solicitors would not have included them. Given that she now accepted that a number of those allegations were untrue it must follow that she had made up those allegations in giving her instructions to the solicitors. We do not know whether it would be accepted by the solicitors that there were errors in the preparation of the Scott Schedule. Even if she had the claimant would in our view be bound to have appreciated at some point before cross examination that the Scott Schedule bore in many respects little relation to the claims she was now making. Even making the most generous assumptions in the claimant’s favour this in and of itself causes us grave doubts as to the reliability of the evidence given by the claimant.
15. A large part of the evidence in the case was taken up with an analysis of the case of one particular patient (Mrs X). The Claimant alleges that she disclosed that in response to informing Sister Messruther that Mrs X had been neglected, that Sister Messruther sought a “Not For Resuscitation” Order from the treating doctor (Dr Dewar) and the Claimant did not shy away from the fact that she was alleging that both Sister Messruther and the doctor had conspired to cover up neglect of a patient by causing her death, which is a remarkable allegation in and of itself. However, the fact that an allegation is a remarkable and of the utmost seriousness is not evidence that it is untrue. Having heard from Sister Messruther the allegation that she deliberately sought to kill a patient to cover up neglect seems wholly improbable, but we are conscious that that is a purely subjective impression of the honesty and reliability of the evidence given

by her. Of perhaps more significance is that this allegation, which is by far the most serious made by the claimant, did not appear in her grievance lodged on 29th April 2015, only fourteen days later, at all.

16. In addition there is one specific part of these events which is of considerable significance for the Claimant's credibility. It is alleged that on 15 April 2015 the Claimant told the family of Mrs X that a Sister had told her to remove the oxygen mask. The Claimant denied having said any such thing but however herself called evidence from Mrs Nash, who accepted that the Claimant definitely did say it. In our view it is of fundamental importance that in relation to an allegation of this significance there is direct evidence from the person to whom the claimant spoke that she did make that allegation on 15th April 2015. The claimant now denies that she said any such thing to Mrs Nash. If Mrs Nash's evidence is correct it follows that the allegation that claimant made at the time was untrue. It is difficult to avoid the conclusion that the Claimant has both made up an allegation which she made to the family concerning Sister Messruther and has consistently lied about having made up that allegation. In our judgment it is not possible to draw any conclusion other than that the Claimant has consistently lied about this part of the events.
17. As set out above, whilst the fact that the allegation is extraordinarily serious does not of itself mean that it is untrue, and acknowledging that the subjective perception of the honesty of a witness may be incorrect; where, as here, the claimant has demonstrably lied about one aspect of the events it necessarily calls into question the reliability of the rest of her account.
18. Looked at overall whilst some of the points made above are relatively minor and some very significant, when put together in our view they call into question the reliance we can place on any part of the claimant's evidence.

Disability Discrimination

19. It is convenient to deal first with the disability discrimination allegations. They are all of harassment contrary to s26 Equality Act 2010. It is admitted that by reason of her psychiatric condition the claimant was a disabled person during the whole period covered by the allegations. So far as relevant, section 26 provides 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.”

20. One of the respondent's complaints about the claimant's case is the "cavalier" way in which allegations were made and withdrawn. During cross examination it became clear that the Scott Schedule was significantly inaccurate in that it made allegations against people who the claimant freely admitted were not responsible for the harassment alleged. By way of example Sister Pamela Messruther is named as being responsible for disability related harassment in Allegation 1 which is a portmanteau allegation covering the whole of the period from December 2014 to April 2015. In fact that allegation was withdrawn in cross examination, the claimant stating that it was the fault of her solicitor who had drawn up the Scott Schedule and that she had not appreciated that the Scott Schedule was a particularly significant document, or one it was necessary to complete accurately as it set out the claims the respondent had to answer. The respondent submits from this firstly that we should be slow to accept the truth of the claimant's remaining claims when allegations made in the Scott Schedule can be made and withdrawn so casually and that it should give us little confidence in what remains. Both for this reason and the more general concerns as to the claimant's credibility we accept that we should be very cautious in accepting the claimant's evidence. In consequence, and as is set out in our findings below we have sought confirmation from the contemporaneous documentation in respect of the specific allegations. In the absence of any contemporaneous support, for the reasons given above we have such concerns as to the reliability of the claimant's evidence that we take the view that it is unsafe to rely on any unsupported allegations.

Allegation 1

21. As set out above this is a portmanteau allegation covering the period December 2014 to April 2015 and referring to a number of individuals. The

allegation against Ms Messtruther having been withdrawn the remaining allegations relate to Emma Wathan, Marilyn Wathan, Michelle Braithwaite, Andrw Davies an Alyson Williams. The conduct alleged to be harassing being taunted about her psychiatric condition by the use of the nickname "sicknote" and comments such as "go up your meds" and "take a chill pill".

22. Clearly comments which relate to sickness, and specifically apparently mental illness in at least two of the allegations, are capable of being related to disability, and are capable of amounting to unwanted conduct. However the live questions before us is whether the conduct was in fact unwanted, and if so whether it had the purpose or effect of causing one of the statutorily proscribed effects. The first question is best judged against the allegation of the use of the nickname "sicknote". Although not specifically accepted by any of the named harassers except Emma Wathan (from which it follows that the allegation is at least made out in part in any event) in general terms the respondent does not dispute the word was used as a nickname. Its evidence was that it had been in use for at least four years and reflected a number of periods of sickness absence, and the claimant stated that it had been used for some ten years. This reflects the respondent submits a culture that had applied for many years of using apparently derogatory nicknames but which were accepted and even adopted by some members of staff. In this context the respondent relies upon the La Rue nickname and asserts (which we accept for the reasons given above) that the claimant's evidence defies belief. If she is not telling the truth about that (which we accept she was not) how can we accept her evidence that a nickname that had been used about her for many years was unwanted? If we cannot accept her evidence then this part of the claim must fall at the first hurdle. In our judgment this is correct.
23. Different considerations apply to the other comments as there is no suggestion that they had formed any part of regular usage over the years. However, in order to determine whether the comments were unwanted, or to determine the issue within section 26(4) we would need to have a very clear picture of the context in which they were said, and fundamentally to be satisfied that they had been said as alleged by the claimant. One of the difficulties is that adverted to above, which is that the claimant has been extremely casual about the detail of her allegations and against whom they are alleged. The history of the different iterations of the allegations is set out at paragraphs 61 -67 of the respondent's Skeleton Argument. In our judgment that leaves us with a significant evidential difficulty. Before making a finding that a particular comment did or did not fall within the definition of harassment within s26 Equality Act 2010 we have to be able to make findings with reasonable certainty as to who made the comment, what was said and the context in which it was said. Without that we are simply unable to determine the issue. In our judgment both for the reasons of credibility set out above, and because of the vagueness and constant

change to which the allegations have been subject that we cannot on the balance of probabilities make any finding that a particular comment was made by any specific individual and in the absence of being able to do so these claims must fail on a factual basis.

Allegation 2

24. Allegation 2 is that on 28 February 2015 the Claimant was verbally abused and undermined in front of patients. Derogatory comments including “you are mad” and “are you on your tablets” were made to the Claimant. She alleged that these were made by Marilyn Waffin and Pamela Messruther although the allegation that Pamela Messruther made any such comment was again withdrawn in evidence. The allegation is that on 28 February 2015 (which must be incorrect as the Claimant accepts), that Marilyn Waffin used the words alleged.

25. In this instance the claimant’s evidence is supported by Ms Davies who was present at the time but denied by Ms Wathan, whose account is supported by Sister Messruther. As is set out above we were extremely impressed by the, in our view, honesty and reliability of the evidence given by Sister Messruther. In addition, as the Respondent points out, in the Claimant’s grievance there is no mention of Mrs Waffin using any such language, nor in the Claimant’s interview in May and the allegation first appeared in July 2015. In the circumstances although on this occasion the claimant’s allegation does have some evidential support we are not satisfied on the balance of probabilities that the comments were made as alleged and this allegation must therefore be dismissed.

Allegation 3 /(Allegation 4 withdrawn)

26. Allegation 3 is alleged to have occurred on 12 March 2015. It is alleged that Lisa Burns, Andrew Davies and Ralph Jones made comments including “*Super Nurse can handle it, she is on her meds, but is she going to crack?*” This is said to have occurred immediately before allegation 4 of having a packet of tissues thrown at her with threatening looks. In fact allegation 4 was withdrawn as were the allegations against Lisa Burns and Ralph Jones which leaves it as an allegation solely against Andrew Davies for making those comments on 12 March. The incident does not feature in the Claimant’s witness statement nor anywhere in the documentation. For this reason in our judgment there is no proper evidential basis for making any findings as to the facts. Given our concerns as to the credibility of the Claimant’s evidence we could only find this proven if we accepted her

evidence which we do not. Accordingly allegation 3 must be dismissed as well.

Allegation 5

27. Allegation 5 is an allegation that on 15 April 2015 the Claimant was told to name names or admit that she was unwell and that this is alleged against Rose Hazzard a senior nurse. We set out below in greater detail in dealing with the whistleblowing claims how this meeting came about. Ms Hazzard accepts that in the course of the meeting she said words to the effect that if the claimant was making allegations of bullying or harassment she would need names in order for her to be able to address the situation. In addition she had known the claimant a very long time and expressed the opinion that she was not herself and was not well. There is a subtle difference between Ms Hazzard's evidence and that of the claimant in that the claimant seeks to link the two remarks whereas Ms Hazzard asserts that they were separate remarks made in different contexts. There is, however, no real dispute that words very close to those alleged by the claimant were spoken. To the extent that we accept Ms Hazzard's evidence and that there were words spoken very similar to those alleged by the claimant, there is a factual basis to this allegation which we accept.
28. Having accepted Ms Hazzard's evidence about the context of the "naming names" remark, and on the assumption that it was "unwanted", we cannot identify any way in which it could be said to be "related to" the claimant's disability; it was a statement of fact that unless the claimant identified those alleged to have bullied her the allegations could not be investigated. This allegation must be dismissed on this basis.
29. In respect of the second remark the claimant's case is in our view somewhat odd. It is based on the proposition that she was at the relevant time a disabled person by reason of her psychiatric condition, and Ms Hazzard was therefore correct to identify her as being unwell although the claimant did not accept this at the time. In our view Ms Hazzard was correct that both because of the duty owed to the patients and to the claimant herself she was obliged to bring to the claimant's attention her genuine belief that she was unwell. She could do nothing else. It follows that in considering this it is in our view a paradigm case falling within s26(4)(b) and (c). The other circumstances of the case include the fact that Ms Hazzard had a professional duty to raise this with the claimant. In our view it follows that it was not reasonable for the conduct to have the proscribed effect and that this allegation must be dismissed on that ground.

Public Interest Disclosures

30. There are disputes as to whether many of the claimant's alleged disclosures were made; and disputes as to whether even if made they fulfill the statutory definition. In addition there are disclosures apparently relied on by the claimant which do not appear in the Scott Schedule at all. However, the primary dispute between the parties is whether (on the assumption that at least one of the alleged disclosures occurred and is last capable of amounting to a protected disclosure) the claimant suffered any detriment in consequence of making a protected disclosure.
31. Although not put quite in this way, in effect in its written submissions the respondent invites us to consider first the question of detriment. If there is no causal link between the acts said to be detriments and any disclosure then the claimant's claims fail irrespective of any findings as to other elements of the statutory test. This appears to us to be sensible. Firstly almost any disclosure of information relating to a patient is in theory capable of amounting to a protected disclosure; and secondly a number of decisions taken in relation to the claimant, such as placing her on special leave, then medically suspending her, and refusing to allow her to return to the ward are capable of amounting to detriments. It follows that in our judgment the respondent is correct to identify the causal link or lack of it as the crucial factual issue in this case.
32. There are two elements to causation under s47B; the first is whether the claimant was subjected to a detriment; and the second is whether that was because he or she had made a protected disclosure. Given that for these purposes we are assuming at this stage that the claimant has made out the other elements of the statutory test we must also assume that the burden of proving the grounds for the action taken has shifted to the respondent (s48(2) ERA 1996) has shifted. This requires the employer to show that the detrimental treatment was "in no sense whatsoever" on the ground of the protected disclosure (*Fecitt v NHS Manchester 2012 CA*).
33. There are twelve allegations containing combinations of six detriments as a consequence of whistle blowing set out in the Scott Schedule. The detriments alleged are as follows:-
- 1) The decision to place the Claimant on special leave taken on 17 April 2015
 - 2) The decision to place the Claimant on medical suspension on 23 April 2015

- 3) The refusal to return the Claimant to work on ward 10 when she was considered fit to work after the occupational health assessment on 12 May 2015
- 4) The loss of continuing knowledge development and progression opportunities
- 5) Unfounded allegations made against her in relation to incidents on 15 April 2015 which are said to have occurred during the meeting with Senior Nurse Hazzard on 15 April 2015.
- 6) Subjecting the Claimant to verbal aggression, threatening behaviour and belittling remarks during the meeting with Senior Nurse Hazzard on 15 April.

Special Leave

34. The decision to place the Claimant on Special Leave was taken by Ms Chris England the Head of Nursing Services on 17 April 2015. In order to understand the decision it is necessary to give some detail about the events of the 14th/15th April 2015 which centre on the treatment of Mrs X referred to above. These events formed a very large part of the evidence before the tribunal but it is not necessary to give more than an outline to understand the dispute between the parties.
35. In outline the claimant's case is that the first occasion on which she treated Mrs X was on 14th April 2015. At about 6.40pm the patients family approached concerned that she had not been fed by a nasogastric tube for twenty days. On checking the notes she discovered they were correct and that no fluids had been administered for five days She inserted a nasogastric tube and gave instructions for overnight treatment. At 7.am the following morning she discovered that her instructions had not been followed. She then provided treatment together with Dr Hannah Dix. When Sister Messruther arrived on the ward she said "Stop fussing she is clearly dying". The claimant informed her that the patient was for active care. Instead of assisting the claimant, she alleges that Sister Messruther went to find Dr Dewar to get him to sign a Do Not Attempt Resuscitation order, which he did without seeing the patient. The claimant refused to sign the order and said "I'll be taking this further, higher than you".
36. The Scott Schedule asserts that the disclosure about the absence of nutrition and fluids and the fact that the patient was for active care are the protected disclosures in relation to this incident.

37. Detriments 5 and 6 above are intimately linked to what happened next. Ms Hazzard is a Senior Nurse and had known the claimant for some seven years. Her evidence is that Ms Messruther had raised concerns about what appeared to be increasingly erratic behaviour on the part of the claimant and this concern was shared by Cath Thomas the Deputy Ward Manager. Ms Messruther spoke to Ms Hazzard on 15th April because she was concerned that the claimant's behaviour was "over the top", in that she had been touching patient X on the face saying, "you can do it, you can make it". As Ms Hazzard was concerned the claimant may be suffering from stress she invited her to a meeting to fill in a Stress Questionnaire. The claimant asserted that she was not stressed, would not fill in the questionnaire and began to allege that she was unsupported on the ward and was the victim of bullying. Ms Hazzard accepts that she raised her voice and expressed the view that the claimant was not herself and appeared to be unwell. The meeting went on for over an hour when at the claimant's request Cath Thomas joined. The meeting concluded with Ms Hazzard saying that she would contact Ms England for advice.
38. On 17th April 2015 M Hazzard was contacted by the Concerns Department who had been contacted by the daughter of patient X (Mrs Nash). Ms Hazzard spoke to her later and she stated that she had been told by an unnamed nurse (there is no dispute that this was the claimant) that an unnamed Sister (this can only have been a reference to Sister Messruther) had stopped oxygen and food to her mother. She was concerned that her mother had not received appropriate care.
39. Ms Hazzard contacted Ms England and taken together with the events of 15th April 2015 both agreed that it was not safe for the claimant to be in work and it was agreed that she be placed on Special Leave. Ms England's evidence is that following the information provided by Ms Hazzard on 15th April she had been intending to seek advice from the Assistant Director of Nursing. This was not possible on Friday 17th so she took the decision to place the claimant on Special Leave. She contacted Claire Bevan, the Senior Manager on call who agreed with the decision.
40. We accept that Sister Hazzard had genuine concerns as to the claimant's mental health and well being on 15th April 2015. Indeed she was sufficiently concerned to make contemporaneous notes of the meeting and to make a referral to Occupational Health on the 16th April. This she marked "urgent" and e-mailed to Occupational Health. The latter is in our judgment only explicable on the basis the concerns were genuine and arose from her perception of the claimant's conduct in the meeting. This formed the background to the decision taken by Ms England on 17th April to place the claimant on special leave, the specific trigger for which was the complaint from Mrs Nash. We accept the respondent's evidence and it follows that in our judgment there is no causal link (within the Fecitt

meaning) between any protected disclosure and the decision to place the claimant on special leave.

Medical Suspension

41. The medical suspension displaced special leave from 22nd April 2017. The evidence of Deborah Porter is that Ms Hazzard contacted Occupational Health, in a telephone call witnessed by Kate Evans, a member of the HR team, and was advised by Occupational Health that a member of staff could be medically suspended. On 22nd April 2015 Ms England had a meeting with the claimant and her Unison representative.
42. Ms England's evidence which we accept is that she, in effect wished to preserve the status quo. She had been placed on Special Leave for the reasons outlined above and Ms England took the view that she should not return to work until an Occupational Health review had taken place. At that time an appointment was due to take place the following day, the 23rd April, which unfortunately was cancelled and re-arranged for 12th May 2015. Given the sequence of events described above, and having heard from all the relevant witnesses, we have no doubt that the claimant was placed on special leave/medically suspended because of genuine concerns as to her mental health. Indeed it is difficult see that any other reason or explanation is plausible or tenable given that (as is set out below) on receiving confirmation that the claimant was fit for work she was allowed to return, although she did not in fact do so.
43. An appointment for the claimant to see Occupational Health was made for 23rd April, which in fact was cancelled and a further appointment made for 12th May 2017. The Occupational Health Report, which concluded that the claimant was fit for work was received by Ms Hazzard on 15th May 2015 and she read it to Ms Porter. In consequence Ms Porter took the decision to lift the medical suspension and allow the claimant to return to work on 18th May 2015. This was confirmed by e-mail.
44. (Before dealing with the terms of the return to work, which is also said, at least in the Scott Schedule, to be a further detriment, we accept all of the respondent's evidence as to the reasons why the claimant was placed firstly on special leave and secondly on medical suspension. It follows that we accept that there is no causal link between any disclosure and either of those decisions.

Refusal to allow the Claimant to return to Ward 10

45. The fourth detriment is the refusal to return the Claimant to the stroke ward. The evidence of Ms Porter is that she took the view that the claimant should not return to Ward 10 firstly in order to allow for the completion of the investigation into her complaints of bullying and, given those complaints, her own safety. It was accepted in cross examination by the Claimant that this was a reasonable decision given that she had allegedly been bullied whilst on that ward and not supported. In the light of those allegations it was clearly appropriate not to return her to the stroke ward. This appears to have been accepted by the Claimant. It is not entirely clear whether in the light of those concessions this allegation is still being pursued. However once again we accept that the respondents reasoning is genuinely as set out above, and is not causally linked to any protected disclosure.

Loss of Continuing Knowledge/Professional Development

46. The loss of continuing knowledge, professional development, and progression appears to be in reality not a separate detriment but a consequence of being removed from the stroke ward. If as the Claimant appeared to accept that was a reasonable decision it follows that this was not a detriment that flowed from any protected disclosure.

Unfounded Allegations Against the Claimant/Aggression/ Belittling Remarks

47. This first “unfounded allegation” appears as part of disclosure 6 which itself relates to events between 15th January 2015 and 14th April 2015. It is said that unfounded allegations were made “including unjustifiably apportioning blame (specifically in relation to incidents on 15th January)”. It is extremely difficult to understand the factual basis of this alleged detriment. None of the respondent’s witnesses were cross examined about anything relating to 15th January 2015 and nor is there anything set out in the claimant’s witness statement. This allegation has to be dismissed on the simple basis that there is no evidential support for it at all.

48. In relation to allegations 7 and 11 it was clarified in evidence that the “unfounded allegations” is a reference to what was said at the meeting with Ms England on 22nd April 2015. The unfounded allegations appear to be references to the reasons for the meeting on the 15th April, and the special leave, in other words the suggestion in broad terms that the claimant was not well, which she did not and does not accept were

genuine. As is set out above we are entirely satisfied and accept the respondent's evidence that the reasons those concerns were expressed and acted upon is that they were genuinely held beliefs. The claimant's contention that they were manufactured in order to punish her for having made public interest disclosures is not one we accept, nor one for which there is in fact any evidence.

49. The allegations of aggression and/or belittling remarks relate to Ms Hazzard and the meeting on 15th April 2015. As set out above Ms Hazzard accepts that this was a heated meeting at which she raised her voice. Again, however, as set out above we are entirely satisfied that Ms Hazzard had genuine concerns as to the claimant's mental health and that the comments to which the claimant takes exception (which have been set out above in relation to the harassment claims) reflected that belief and were not causally linked to any disclosure.
50. It follows that even making the most favourable assumptions on the claimant's behalf in relation to the disclosures that on our findings there is no causal link between them and the detriments set out above; and that the claimant's claims must be dismissed.

Employment Judge P Cadney
Dated: 11 September 2017

JUDGMENT SENT TO THE PARTIES ON

14 September 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS