



EMPLOYMENT TRIBUNALS

Claimant: Mrs. B. Harrison

Respondent: St George's University Hospitals NHS Foundation Trust (1)
Ms. Brewer (2)

Heard at: London South, Croydon

On: 7 November -15 November 2017 and the 17-18 January 2018 (in chambers) and the 27-28 February 2018 (in chambers).

Before: Employment Judge Sage

Members: Ms. J. Forecast
Ms. C. Oldfield

Representation

Claimant: In person

Respondent: Ms. Patterson of Counsel

RESERVED JUDGMENT

The unanimous decision of the Tribunal is as follows:

1. The claim for unfair dismissal is not well founded and is dismissed
2. The claim for direct discrimination because of race and/or religion and belief is not well founded and is dismissed
3. The claim for direct discrimination because of disability is not well founded and is dismissed.
4. The Claimant's claim for failure to make reasonable adjustments is not well founded and is dismissed
5. The Claimant's claim for victimisation is not well founded and is dismissed.
6. The claim for wrongful dismissal is not well founded and is dismissed
7. The claim for holiday pay is not well founded and is dismissed.
8. The claim for breach of contract is not well founded and is dismissed.
9. The claims against the Second Respondent are not well founded and are dismissed.

REASONS

1. By a claim form presented on the 19 September 2016 the Claimant pursued claims for constructive unfair dismissal, direct race and religious discrimination, breach of contract, wrongful dismissal, holiday pay, failure to make reasonable adjustments and victimization. The Claimant also asked for an uplift to any compensation awarded due to a failure to comply with the ACAS Code of Practice due to their failure to consider her grievance.
2. The Respondent resisted all claims.

The Issues.

These were agreed at the commencement of the hearing as follows:

The bold numbers in square brackets refer to paragraphs in the Details of Claim.

CONSTRUCTIVE UNFAIR DISMISSAL (ERA 1996 s95(1)(c))

3. Was there a breach of C's contract of employment by R? C alleges breach of the implied duty of trust and confidence based on the final straw doctrine [98]. Contributing factors included:
 - a. Falsely accusing C of misconduct;
 - b. Abusing C under the investigatory and disciplinary procedure;
 - c. Demoting C for something she did not do;
 - d. Failing to resolve the grievance submitted by C in September 2015;
 - e. Failing to address the grievance submitted by C on 24 April 2016;
 - f. Jenny Hall making the excuse for inaction, "*I'm afraid I'm unclear from your letter about what exactly constitutes your original grievance and your second grievance*" in her letter of 9 May 2016;
 - g. Jacqueline McCulloch narrowly construing C's grievance and informing C she could not bring it in a letter dated 6 June 2016;
 - h. Stonewalling C's legitimate concerns as set out in her grievances.The continued and complete rejection of C's grievances in the last days was the "*final straw*" following the letter sent on 27 July 2016 as a reminder that C had written on 13 June 2016 about her outstanding grievance of 23 September 2015 [97].
4. If so, was the breach/es so fundamental so as to entitle C to resign from her employment with R?
5. If so, did C affirm the breach?
6. If there was a fundamental breach of contract, and the breach was not affirmed, did C resign in response to that fundamental breach of her contract of employment with R?

WRONGFUL DISMISSAL

7. Viewed objectively, was R entitled not to pay C in lieu of notice?

HOLIDAY PAY

8. What, if any, payment is the C owed in respect of holiday pay?

DISABILITY DISCRIMINATION

9. Does C have a disability within the meaning of section 6(1) of EqA 2010? The disability relied upon is clinical depression requiring medication and associated symptoms including headaches and dizziness, loss of appetite,

insomnia, weight loss and severe feelings of stress and anxiety [19]. R has confirmed that R concedes that C fell within the statutory definition of disabled at the relevant times.

10. If so, was R aware, or ought reasonably to have been aware, that C was so disabled?

Direct disability discrimination (EqA ss 13(1) and 39(2))

11. Did Rs treat C less favourably than they treated or would have treated other persons because of C's disability? C relies on a hypothetical comparator [58 & 101].

12. C relies on the following as acts of discrimination by Rs:

- a. failing to hear C's grievances [58];
- b. conducting an appeal process that was substantively and procedurally unfair [60];
- c. Ms Hall claiming that she did not understand C's grievances when that was obviously untrue [93];
- d. claiming that C's grievances could not be heard when that was untrue [95];
- e. failing to address properly or at all the issues in C's grievances [99].

Reasonable adjustments (EqA 2010 ss20(2), 21 and 39(2))

13. Did R apply a provision, criterion or practice ('PCP') to C, namely operating a grievance procedure which was obstructive and more onerous than the Trust's published grievance procedure and which was not in accordance with the ACAS Code. Specific examples of the PCP being applied to C include R:

- f. failing to hear any of C's grievances [58];
- g. creating obstructions and hurdles to prevent C's grievances being heard [59];
- h. requiring C to re-write and re-submit her grievances [75];
- i. telling C to leave her grievances unaddressed and put them aside [83];
- j. telling C she should not raise a grievance about the disciplinary action taken against her [91];
- k. failing to address properly or at all the issues raised in C's grievances [99].

14. Did the PCPs put C at a substantial disadvantage in comparison with persons who are not disabled, namely suffering from depression? C avers that they did because at a time when she was most vulnerable she was least able to cope with these obstacles which in themselves contributed to and exacerbated her depression and feelings of injustice and disempowerment.

15. Did R take such steps as it was reasonable to have to take to avoid that disadvantage? C contends that R should have taken the following steps:

- l. ensured that that Rs complied with the ACAS Code;
- m. ensured that Rs complied with the Trust's grievance procedure;

- n. ensured that as a bare minimum C was given a meeting with R to explain her concerns and how she thought they might be resolved.

RELIGION / RACE DISCRIMINATION

Direct religion/ race discrimination (EqA ss 13(1) and 39(2))

16. Did Rs treat C less favourably than they treated or would have treated other persons because of C's race and/or religion? C is a practicing Christian [17] and she is Black Ghanaian [16]. C relies on a hypothetical comparator in respect of her claim for religious discrimination [100]. C relies on Mrs Sheffron, Mrs Cronin and Ms Sweeny (all white Irish) as actual comparators in respect of her claim for race discrimination [16].

17. C relies on the following as acts of discrimination by Rs:

- a. taking the disciplinary action that Rs took against C [15];
- b. refusing to admit C's evidence (photographs and statements) for the disciplinary hearing [24];
- c. failure to assess critically and investigate the evidence at the disciplinary hearing and appeal [33];
- d. the outcome of the disciplinary process including from the appeal [39];
- e. superficially and negligently investigating the disciplinary concerns [46];
- f. taking an excessively long time to complete the disciplinary appeal process [47];
- g. allowing the appeal to proceed when serious allegations of unlawful discrimination remained unaddressed [57];
- h. obstructing the grievance process and requiring C to re-submit her grievances [59];
- i. conducting an appeal process that was substantively and procedurally unfair [60];
- j. Mr Wall failing to address the outstanding grievances by making excuses and asking C to rewrite and re-submit them [75];
- k. Wendy Brewer failing to ensure that the grievance process was conducted satisfactorily and failing in her professional duty to ensure that the process was properly monitored and operated by staff [79];
- l. repeatedly ignoring C's complaints of unlawful discrimination [85];
- m. Ms Hall claiming that she did not understand C's grievances when that was obviously untrue [93];
- n. claiming that C's grievances could not be heard when that was untrue [95];
- o. failing to address properly or at all the issues in C's grievances [99].

Victimisation (EqA s27)

18. C contends that she did a series of protected acts, namely complaining of discrimination contrary to EqA 2010 in inter alia the disciplinary hearing of 5 June 2015 [702]; in C's letter of 7 June 2015 [720]; in C's letter to Ms Brewer of 23 September 2015 [797 + 799]; in C's letters of 24 April 2016 to Ms Hall [946-947], Ms Brewer [943-944] and Ms Vasco-Knight [949-950]; and in her resignation letter to Mr Wall dated 28 July 2016 [1002]. Do some or all of those acts amount to protected acts?

R concedes that the following amount to protected acts: the disciplinary hearing of 5 June 2015 [702]; in C's letter to Ms Brewer of 23 September 2015 [797 + 799]; in C's letters of 24 April 2016 to Ms Hall [946-947], Ms Brewer [943-944] and Ms Vasco-Knight [949-950].

R does not concede that the following amount to protected acts: C's letter of 7 June 2015 [720] and C's resignation letter to Mr Wall dated 28 July 2016 [1002].

19. If so, did R victimise C because of one or more of those protected acts by:
- a. failing to investigate allegations of race discrimination made at meeting on 5 June 2016 or to take account of them in the outcome and failure to investigate subsequent grievances [26,28];
 - b. failing at the disciplinary hearing and appeal to assess critically what C avers were uncorroborated allegations against her [33];
 - c. providing an unacceptable outcome to the disciplinary appeal [39];
 - d. taking an excessively long time (9 months) to provide the combined grievance and disciplinary appeal outcome [47];
 - e. allowing an appeal hearing to proceed without addressing outstanding allegations of unlawful discrimination [57];
 - f. obstructing C's grievances by creating unnecessary obstacles [59];
 - g. conducting an unfair disciplinary appeal and giving an unreasonable and unfair outcome [60];
 - h. failing to respond at all to C's letter of 13 March 2016 [69];
 - i. Mr Wall failing to address the outstanding grievances by making excuses and asking C to rewrite and re-submit them [75];
 - j. Wendy Brewer failing to ensure that the grievance process was conducted satisfactorily and failing in her professional duty to ensure that the process was properly monitored and operated by staff [79];
 - k. repeatedly ignoring C's complains of unlawful discrimination [85];
 - l. Ms Hall claiming that she did not understand C's grievances when that was obviously untrue [93];
 - m. claiming that C's grievances could not be heard when that was untrue [95];
 - n. failing to address properly or at all the issues in C's grievances [99].

TIME LIMITS

20. In relation to alleged omissions, when did Rs decide not to act? (section 123(3)(b) EqA 2010)

21. Does the conduct of either R as set out in paragraphs 9 to 19 above, or any part of that conduct, amount to "*conduct extending over a period*" within the meaning of section 123(3) of EqA 2010?

22. Were any of C's complaints brought outside the relevant time limit specified in section 123 of EqA 2010?

23. If so, would it be just and equitable for the ET to extend time?

AGGRAVATED DAMAGES

24. Has R behaved in a high-handed, malicious, insulting or oppressive manner?

25. Should aggravated damages be awarded [6]?

ACAS CODE ON GRIEVANCE AND DISCIPLINARY PROCEDURES

26. Did R breach the ACAS Code on Disciplinary and Grievance procedures by failing to hold a timely investigation, disciplinary process, outcome and appeal; failing to hear C's grievances within a reasonable time and failing to investigate or hear C's grievances at all [31, 43, 44dd and Remedies Sought 7]?

Witnesses

27. For the Claimant, we heard from Ms. Rochester, Ms. Timilsina and Ms. Nunoo and the statement from Ms. Afful was accepted into evidence without challenge.

28. For the Respondent, we heard from:

Ms. L. Dillon Matron

Ms. H. Anderson Divisional Director of Nursing

Ms. J. Haworth Divisional Director of Nursing and Governance

Mr. J. Wall Divisional HR manager

Ms. W. Brewer Director of Workforce and Organisational Development

Ms. J. Hall Chief Nurse.

Findings of Fact

The findings of fact which were agreed or on the balance of probabilities we find to be are as follows:

29. The Claimant commenced employment on the 18 February 2001 as a Staff Nurse and at the relevant time had been promoted to a Band 6 Nurse (page 286 of the bundle).

30. The Tribunal were taken to the disciplinary policy in the bundle at pages 137-158; we were specifically taken to page 141 which covered the role of Investigating Officer whose role was defined as "to carry out an investigation to establish the facts. The Investigating officer will not be responsible for deciding that the matter should be referred to a formal disciplinary hearing, but can decide that an informal warning should be issued". It also defined that role of the Designated Officer as follows "[to] examine the investigation carried out by the Investigation Officer and decide whether or not the case should be considered at a formal disciplinary hearing. The Designated Officer is responsible for ensuring that the disciplinary hearing is conducted in accordance with this procedure..". At page 142 of the bundle at paragraph 7 it confirmed that employees have the right to be accompanied by a trade union, professional organisation or work colleague; "professional organisation" is not further defined in the policy.

31. The Tribunal noted that 7 days' notice was required in respect of calling the disciplinary hearing (page 146) and the sanctions available to a Designated Officer in a disciplinary hearing included what was described as Alternative Action which included "demotion, transfer or other such action as the Designated Officer deems appropriate in all the circumstances of the case". It was also noted that the procedure stated

that if the employee did not accept the alternative action "*their employment will be terminated*".

32. The Tribunal were taken to the grievance procedure in the bundle. At pages 192-200 at paragraph 4 of the procedure dealing with the scope of the policy, it stated that "*the policy may also be used to raise concerns about the application of other employment policies unless those policies have their own appeals procedure*"; the Tribunal noted that the disciplinary policy had its own appeals procedure. The policy also went on to clarify the situation in respect of where the two policies overlapped and where a grievance was raised during a disciplinary procedure, the disciplinary procedure will "normally" be completed but in some circumstances the disciplinary procedure may be suspended to deal with the grievance (page 198). Stage 1 in the grievance procedure required the employee to explain the nature of the grievance in writing (page 197).
33. The Tribunal were taken to the procedure for booking Bank and Agency Nursing Staff at page 170 of the bundle. The policy confirmed that Bank and Agency staff were used to cover temporary staff shortages and to ensure adequate staffing numbers in order to provide an acceptable and safe level of care. We were also taken to page 173 in the policy where it stated, "*Patient safety is the key factor of determining the level of the vacancy factor covered and should be discussed with the Matron or manager of the area*".
34. The Claimant's substantive role was Senior Staff Nurse band 6 working on Gray Ward which was a 32-bedded mixed general surgical department which specialised in colorectal and upper gastrointestinal surgery. The Claimant also worked bank shifts and her evidence to the Tribunal was that she needed to work these additional Bank Shifts to support her family. She told the Tribunal in answers to cross examination that she worked bank shifts to pay her children's private tuition.
35. On the 3 December 2014 the Claimant had booked to work a Long Day bank shift, which was a 12 hour shift from 8-8 (although there was some dispute as to whether the shift ended at 8.30pm). It was not disputed that the Claimant left a number of hours before the end of the shift. The Claimant's evidence was that she told Ms. Santamaria-Woods, the manager in charge, at 11-11.30 that she was "unable to complete the long day and would finish at 3.30" and she claimed that her manager agreed to this (by saying "OK" and indicating she would try and arrange cover) - see paragraph 6 of the Claimant's statement. It was put to the Claimant in cross examination that to be safe the ward needed to be staffed by 7 nurses and 3 HCA's and the Claimant stated that this was "supposed to be but the ward mostly operated with 5 or 4". It was put to the Claimant that the evidence of Ms Sweeney and Ms Santamaria Woods was that 7 nurses were required and she described this as the "proposed" number of staff. It was put to the Claimant that on this particular day she was the sixth nurse and providing bank cover. Although the Claimant's responses in cross examination included in the number of nurses on duty the role of the manager, it was put to her that the manager would not ordinarily be involved in clinical practice; the Claimant disagreed with this. The Tribunal find as a fact and on the balance of probabilities that the evidence

produced by the Respondent's witnesses in relation to safe staffing ratios was considered and is consistent and was preferred to that of the Claimant; the Respondent expected the ward needed to be staffed by 7 nurses and that figure did not include the manager.

36. It was not disputed that the Claimant's decision to leave the shift early created an operational difficulty which resulted in the manager of the ward trying to locate someone who could be redeployed from a different ward; thus leaving the other ward short of staff. The Trust Policy provided for nursing staff to be reallocated on the basis of priority need. It was the Claimant's case that she was not told she could not leave and as a result she concluded she could leave. The Claimant did not agree that her actions caused operational difficulties or compromised patient safety (although she conceded in cross examination that patients and staff relied on her turning up for her shift and working it). She told the Tribunal that she was "*doing them a favour*" offering to do Bank work (page 380 of the bundle) and she confirmed in cross examination that she did not feel she had done anything wrong by leaving 5 hours early (page 474-475). The Claimant was taken to the notes of the investigatory meeting (paragraph 24 of her statement and page 421 of the bundle) and she accepted that she still believed that the Respondent should be thankful to her for accepting the shift and should have thanked her for turning up that day. She stated that on the day in question she was the "6th or 7th nurse on duty". This evidence was not credible the Tribunal having accepted the consistent evidence of the Respondent's witnesses on safe staffing levels in the ward and those who were working on the ward that day.
37. It was put to the Claimant in cross examination that she did not indicate to the Respondent that she would be unable to complete the shift in advance of commencing her shift and the Claimant replied "*things happen and I needed the money more than anyone else to educate my children. I had to leave*". It was put to the Claimant that she could only leave in the event of an emergency and she disputed this saying she could leave for any reason as long as she told them the reason. It was put to the Claimant that going to Primark was not an emergency (page 394 paragraph 2) she replied, "*it was a school jumper I needed to get, an emergency as a mother, I needed the money to educate them and I was travelling the next day...it was a domestic emergency*". She again stated that, to her, it was an emergency. The Claimant could not see why the Respondent felt that her actions that day were inappropriate. The Claimant conceded in cross examination that this allegation was not false as she accepted that she had left the shift early. The Tribunal therefore find as a fact that the Claimant had not been falsely accused of leaving early, the allegation was factually correct.
38. Ms. Sweeney called the Claimant to a meeting on the 8 December to discuss her decision to leave the shift early and it was alleged that there was shouting (which the Claimant denied). The Tribunal were taken to page 375 of the bundle which was an email dated the 8 December 2014 from Ms. Sweeney to the Claimant informing her that she would be temporarily suspended from Bank duties due to her actions and she was invited for an informal meeting. It also referred to the Claimant raising her voice to an unacceptable level in their meeting held on that day. It was noted by the Tribunal that the reason recorded for leaving early by the

Claimant was a “surprise holiday for your husband”. The Claimant was taken in cross examination to page 385 of the bundle which was a statement produced by Ms. McCourt who also referred to the Claimant going away on holiday with her husband; the Claimant denied that this was the reason she needed to leave early.

The Initial Interview.

39. The Claimant attended a meeting on the 16 December 2014 with Ms. Sweeney and her manager Ms. Santamaria-Woods. The minutes were at page 380 of the bundle. The minutes reflected that the events of the 3 December were discussed as well as the meeting on the 8 December 2014. The Claimant gave a number of reasons as to why she left the shift early including having to leave to buy her daughter a blazer/jumper and her son having locked himself out of the house. She said she was unaware the ward was unsafe when she left. She stated in this meeting that she was “*doing the ward a favour*” by doing the shift. The minutes then recorded her recollection of the meeting on the 8 December 2014, Ms Sweeney stated that the meeting was difficult because the Claimant was shouting and the minutes reflected that the Claimant “*confirmed that she was shouting but that this was because she (sic) shocked she was stopped from doing bank duties*”. The Claimant was taken to this quote in cross examination and she stated that she declined to sign the minutes because she had said that she “*raised her voice because [Ms Sweeney] was shouting at me; I apologized for raising my voice but I was frustrated*”. The Tribunal noted that the Claimant accepted in the meeting that she raised her voice which corroborated that emotions and voices had been raised.
40. The letter calling the Claimant to an investigatory meeting was seen in the bundle at page 384 dated the 17 December 2014. The purpose of the meeting was to discuss the Claimant’s failure to complete the bank shift on the 3 December, what was described as her unprofessional conduct as well as shouting at Matron Sweeney during a discussion on the 8 December and her alleged behaviour at the nursing station on the 8 December 2014. Although Ms Sweeney was to be the Investigations Officer, this was changed to Ms Dillon at the request of her RCN full time representative Ms Smith (page 391) on the 12 January 2015. The Claimant accepted that Ms Dillon was independent. The statements gathered prior to this meeting were from Ms. Cronin (page 386), Ms Santamaria-Woods (page 389), Ms Sheffron (page 390). The Claimant’s statement was at pages 393-399 and was dated the 13 January 2015.

The Investigatory Meeting.

41. The minutes of the meeting with the Claimant were at pages 418-425; the Claimant was represented by Ms Smith of the RCN. These minutes were not agreed and the Claimant sent to Ms Dillon a summary of her recollection of events at pages 483-8 of the bundle (sent on the 12 February 2015 page 482). In relation to the second allegation the Claimant accepted in cross examination that she raised her voice (page 421) and stated that “I apologised and explained my frustration” as she raised her voice in order to be heard. The Claimant maintained that the allegation was false because she did not shout, she only raised her voice.

42. The meeting also dealt with the allegation that the Claimant had acted unprofessionally when telephoning the manager of Bank staff, Ms Richards-Wright. Ms McCourt provided a statement to the investigation and was interviewed (see below). Ms. Sweeney in her statement to the investigation advised (page 429) that Ms. Cronin and Ms. Sheffron had allegedly witnessed the Claimant acting unprofessionally at the nursing station in the way she was talking about Ms. Sweeney (saying “she had no idea who I was messing with..” and she hoped that “something bad happens on the ward so ward manager Karen and [Matron Sweeney] would have to answer for it”). The Claimant accepted that she felt “outraged, victimised and upset” and upset by the actions of Ms Sweeney.
43. Staff Nurse Sheffron was interviewed on the 5 February 2015 - see pages 451-453. In this interview, it was alleged that the Claimant wrote religious messages on the board such as “God will judge you if you are not working hard or you are talking behind someone’s back” (paragraph 451). She felt that Claimant was being “nasty” and “passive aggressive” and this conduct had been on-going for the two years they had been working together (page 453 paragraph 11). She alleged in this meeting that the Claimant would “deliberately call her Lorna” when her name was Laura and felt that the Claimant “*put her down in front of patients and would make lists of things that she hadn’t done and list them in front of patients*” (page 452 paragraph 9). Ms. Sheffron also alleged at paragraph 10 of the notes that the Claimant would give junior nurses wrong advice about patient care. At paragraph 11 of the interview notes Ms. Sheffron referred to a comment made by the Claimant on her Facebook page where she stated that she hoped Ms. Sheffron was having a good time on holiday “*because she will make LS work until she drops when she returns*”. The Claimant in cross examination said that this comment was a joke. The Claimant also stated that Ms. Sheffron was lying which was why she appeared uncomfortable at the internal hearing.
44. Ms. Dillon interviewed Staff Nurse Cronin on the 5 February 2015 and the minutes of the meeting were at pages 459-462. The evidence given by Ms Cronin was that on the 8 December 2014 she overheard the Claimant on the phone to the bank manager “getting irate” (paragraph 2) and she heard the Claimant shout during the meeting with Matron Sweeney (but did not hear Matron Sweeney shout). She also reported that later on the 8 December the Claimant stated that “she doesn’t know who she is messing with, I am getting my union and I am going to take her to Court”. Ms Cronin reported that the Claimant asked those on shift to provide statements for her. Ms Cronin alleged that the Claimant’s behaviour to the student nurses was appalling and described her behaviour as ‘literally spitting venom’ (paragraph 9). Ms Cronin said that she could not work with the Claimant and if the Claimant returned to the ward she wished to move. It was noted by the Tribunal that Ms Cronin had reported the matter before to Ms Santamaria-Woods who had arranged a facilitation meeting, which did not resolve the issues raised. The Claimant told the Tribunal that there were concerns about Ms Cronin’s clinical practice but there was no corroborative evidence that this was the case before the Tribunal. It was also noted by the Tribunal that Ms Cronin had since the date of this interview been promoted to a band 7 Nurse.

45. Ms. Santamaria-Woods was interviewed on the 5 February 2015 (pages 467-470). She confirmed at paragraph 4 of the notes that she had not challenged the Claimant who was her subordinate in the past because “she didn’t want the confrontations” and that the Claimant “could be difficult”. She confirmed in the meeting that safe staffing levels were 7 nurses and 3 HCA’s. She confirmed that 5 qualified nurses would not be adequate on the ward and that is why they had to source another nurse from a different ward. If they had not sourced another person she would have had to cover for the rest of the shift. This evidence corroborated the Respondent’s claim that 7 nurses were required to safely staff the ward. She stated at paragraph 21 of the notes that she felt that she had let Nurse Cronin down. The Claimant in cross examination felt that there was not a problem between them but this ran counter to the evidence before the Tribunal that a mediation meeting was arranged to sort out the difficulties in their relationship (see above).
46. Ms Richards-Wright was interviewed on the 6 February 2015 (pages 473-4). She confirmed that on the 3 December she had asked the Claimant to elaborate on the reason for needing to leave early and she stated that the Claimant told her that she was “going away and it was a surprise for her husband”. She told the Claimant that she should have cancelled her shift earlier and that is when she was told that the Claimant felt that she was doing her a favour having agreed to do the shift.
47. Ms Dillon interviewed Ms McCourt on the 11 February 2015 (pages 479-481). She confirmed that the Claimant told her that she had to leave early “to get clothes or do shopping for her trip to Paris”. Ms. McCourt stated that the Claimant makes lists and is “teacher like and dominating” and felt that younger nurses may take it the wrong way. The Tribunal noted that this evidence partly corroborated the witness evidence of Ms Sheffron. She also suggested that Ms Santamaria-Woods has what she describes as her “new girls” who are “young and ambitious”. She described Ms. Santamaria-Woods conduct as being aggressive and abrupt and she “just screams at staff”.
48. The Claimant was called to a second investigatory meeting by a letter dated the 23 February 2015 (page 490-1 of the bundle) to answer a new allegation in relation to “alleged inappropriate behaviour towards staff” and to allow the Claimant an opportunity to respond to the evidence that had been disclosed by Nurse Cronin and Sheffron.
49. During the investigatory process, the Respondent received 5 anonymous letters from what appeared to be from the same author; it was also noted that they had become “more frequent in recent months”. The Claimant was called to a meeting to discuss the contents of these letters on the 12 March 2015 (page 492-3). The Claimant was advised of her right to be accompanied to the reconvened investigatory meeting and to the meeting to discuss the contents of the anonymous letters.
50. The investigatory meeting to consider the new fourth allegation was seen in the bundle at pages 510-6 on the 11 March 2015. The Claimant accepted that she made the Facebook comment but stated it was a ‘joke’ and also agreed that she made lists of things that needed to be done. She

could find no reason why Ms. Cronin or Ms. Shaffron should have made these allegations and felt that she got along with all staff (including Ms Santamaria-Woods). She denied the specifics of all allegations against her. The Claimant suggested that Ms. Dillon speak to other doctors and staff to get a more complete picture. The Claimant stated in the meeting that she felt 'bullied and victimised' by the allegations. It was noted that a referral had already been made to OHS and Ms. Dillon had advised the Claimant of the Trust Support Services. The Tribunal find as a fact that the Respondent was taking all reasonable steps to support the Claimant during this stressful time. It was put to the Claimant in cross examination that she did not mention at this stage that she felt it was discriminatory because of race and she stated that "I think I was beginning to think along these lines". The Tribunal find as a fact that the Claimant made no mention that she suspected that the allegations against her were acts of discrimination at the time. The Tribunal find as a fact that delay caused in finalising the disciplinary investigations was due to the need to carry out further investigations, this was reasonable and could not amount to an abuse of process.

51. The meeting to discuss the anonymous letters was conducted by Ms. Lennon a General Manager, which took place on the 12 March and the minutes were on pages 525-531. The Tribunal were taken to paragraph 45 of the minutes where Ms. Lennon stated that one of the letters was dated the 19 January 2015 and stated that members of Gray Ward were "*not happy about what was going on at the present and the letter specifically mentioned [the Claimant]*". The author of the letter asked that all staff on the Ward be interviewed "*to get a good picture of [the Claimant]*". The Tribunal noted that this suggestion was also made by the Claimant in the second investigatory meeting therefore the Respondent's reasoning that the Claimant may in some way be linked to the sending of these letters was understandable. Ms. Lennon said that the letter could be perceived as supporting the Claimant. Ms. Lennon wrote to the Claimant on the 19 March 2015 (pages 537-9) to state that the investigation into the letters was inconclusive and no further action would be taken. The issues above at paragraphs 3-26 which were agreed at the start of the hearing, made no complaint about the process followed by the Respondent to investigate the matter.
52. Ms Dillon sent the Claimant a copy of the investigation report under cover of a letter dated the 25 March 2016 (see page 542 of the bundle). In this letter, she apologised for the time it had taken to complete the investigation and she also referred the Claimant to the Staff Support Services. A copy of the investigation report was at pages 545-573.
53. The Claimant wrote to her union representative Ms Smith enquiring whether she was now able to return to carrying out bank shifts; this was escalated by the union and the reply received from Ms Dillon on the 15 May 2016 (page 587) was that this would have to be discussed with the Claimant's line manager. In this same letter Ms Dillon informed the Claimant that having concluded the investigation, she would submit her report to the Designated Officer to determine if there was a case to answer.

54. Ms. Anderson the Designated Officer wrote to the Claimant on the 21 May 2016 (page 590), calling the Claimant to a disciplinary hearing on the 5 June 2016. The Claimant was advised to inform Ms. Dillon if she was aware of any witnesses who have not been interviewed and who could provide pertinent information. The Claimant was advised that it was her responsibility to require the attendance of any witnesses. It was noted that the letter identified those who the Respondent intended to call to give evidence. The Claimant was advised of her right to be accompanied. The Claimant was also advised of the right to provide a written response. A copy was also provided to her trade union representative. Ms Anderson provided the correct notice required under the disciplinary process to convene a disciplinary hearing.
55. The Claimant replied on the 28 May 2015 (page 592) requesting an extension to time due to short notice as she stated she had not received the letter until the 26 May 2016. She did not indicate in this letter that she wished to call any witnesses to the hearing. It was put to the Claimant in cross examination that she did not indicate in her letter that she wanted Ms McCourt to attend the hearing and she replied (on three occasions) "I thought she would be there". Ms. Anderson replied refusing the request for an extension of time on the 1 June 2015 (page 593) as the Claimant had received 10 days' notice, which was more than the required notice under the policy. The Claimant was again advised of the Employee Support Services. The Claimant conceded in answers given in cross examination that even if she had received the invitation to the disciplinary hearing on the 26 May 2015, she had still received more notice than was provided in the Respondent's disciplinary policy at page 146 (7 calendar days).

The Disciplinary Hearing.

56. The Claimant attended the disciplinary hearing with her union representative Ms Smith, Ms Anderson was supported by Mr Wall, Divisional HR manager and the management case was presented by Ms Dillon who was supported by Ms Painter of HR. The Claimant attended the hearing with a large number of character witness statements which the panel adjourned to read before the hearing (see paragraph 12 of her statement and documents at page 604 onwards). It was the Claimant's evidence to the Tribunal that when these were handed to Ms Anderson at the start of the hearing she "*threw it down and said they will not influence my decision*". When the Claimant was taken in cross examination to paragraph 12 of Ms Anderson's statement where she stated that at the start of the hearing she adjourned to read the character references, the Claimant conceded that she "*took the statements somewhere*" but she did not see her read them. It was put to the Claimant in cross examination that Ms Anderson read and took into consideration the character references in support of the Claimant and included them in her outcome letter (page 731 and page 750) but the Claimant did not accept that she took them into account. The Tribunal find as a fact that Ms Anderson's evidence was clear that she read the character references and the decision letter made reference to them, reflecting that they had been read and taken into account.
57. All the witnesses who gave evidence to the investigatory hearing were called to the hearing by Ms Dillon save for Ms. McCourt. The Claimant did

not indicate to the Respondent in advance of the hearing that she wished her to be called and was aware in advance of those who the Respondent intended to call. During the hearing, the Claimant via her representative indicated that she wished to call Ms McCourt but she was on annual leave at the time. Ms Anderson did not consider the evidence relevant to the specific allegations however she took into account the contents of Ms McCourt's two statements. The Tribunal looked at the minutes of the hearing (page 701) where the issue was discussed and it was noted that although Ms Smith commented that the failure to call Ms McCourt "looked biased", no application was made to adjourn to call her and it was not stated that her attendance was critical to the presentation of the Claimant's case. The Tribunal note that the Claimant was assisted by her union representative at this hearing.

58. It was the Claimant's case that the disciplinary hearing was discriminatory and unfair but she accepted in cross examination that the hearing last for one full day. The Claimant alleged that Mr Wall prevented her speaking and she "couldn't ask any questions" but conceded in cross examination that her union representative asked questions on her behalf and made no criticism about the conduct of the hearing. The Claimant alleged that the minutes of the disciplinary were inaccurate and "anything that they want to say is in the minutes". She stated that she "did not believe what was written" however this was not an allegation the Claimant pursued at the time.

59. The Tribunal saw on page 702 the minutes of the hearing where the Claimant stated that Ms Cronin and Ms Sheffron "*are white and young and I am black and old*" and said she had been "*harassed and bullied*" and commented that "*this is racially motivated*". The Claimant accepted in cross examination that all she identified was the difference of race and age and accepted she did not provide any details or evidence of her claim for discrimination. The Claimant told the Tribunal that her claim for discrimination "*is just obvious, all white Irish girls have concocted and colluded, with higher management to fabricate stories about me, it is not true. They are friends and they came together to fabricate stories about me. Ms Cronin is very ambitious, to make sure I am moved*". The Claimant also added that Ms Cronin "*struggled to take instructions from a Black woman*". The Claimant went further to allege that they were "*all in it together*" and that included the disciplinary panel, however there was no evidence before the Tribunal to suggest that this was the case and this was not put to Ms Anderson in cross examination. It was the evidence of Ms Dillon that the Claimant had not raised this at the investigatory hearings and in response to a specific question of why the two nurses would make things up she responded that she did not know. This was first time the Claimant had made an allegation of race or religious discrimination to the Respondent; however no factual details were provided to support the allegations.

60. The Claimant made an admission in the hearing (see page 702) that on reflection she should not have made the telephone call to the Bank on the ward on the 8 December 2015.

61. The Claimant raised a grievance on the 7 June 2015 (page 720). In this brief letter she stated that she was raising a grievance "*Ref: Equality*

and Human Rights sections 13 (Race Colour Discrimination)". The Claimant accepted that she failed to provide any details of her complaint at this time even though she had the assistance of her union representative. She told the Tribunal that she submitted the letter to Mr Wall and expected HR to give her guidance "on the appropriate format".

62. The decision of the disciplinary panel was communicated to the Claimant in person at a meeting on the 16 June 2015. It was concluded that the conduct in respect of all combined allegations amounted to gross misconduct. Although dismissal was a possible sanction open to Ms Anderson, after taking into account mitigation, it was decided to give her a final warning live for a year and to demote her (to a band 5 Staff Nurse) and transfer her to a different ward. If she failed to accept the demotion she would be dismissed. It was put to the Claimant that she had the option of demotion or dismissal and the Claimant replied that it was on the basis of "*false allegations which were unfounded and on no evidence*". The Claimant confirmed that it was her belief that they had no right to impose any disciplinary sanction on her she maintained this position throughout the process and in the Tribunal.
63. The Claimant alleged that she was only given from the 16-19 June 2015 to decide whether to accept demotion and she maintained that this did not give her enough time. However, she was taken in cross examination to page 722 which was a request for an extension of time until the 22 June. The Claimant then went off sick from the 17 June 2015. The outline decision was sent to the Claimant under cover of an email dated the 19 June 2015 (page 729) at the request of union representative and the report was seen at pages 730-1. Although the Claimant criticised the fact that the letter did not have her name on it and bore no signature, the Tribunal note that this outline decision was sent to the Claimant at the request of her union representative. The Claimant's criticism of this communication was that the Respondent "*should do things formally and properly*" and did not accept that the manner in which this letter was conveyed to her was appropriate. There was no evidence that this was an act of less favourable treatment because of race or religion and no evidence that it was an act that was tantamount to a breach of contract. The outline decision was only sent to the Claimant because her representative had requested it.
64. As the Claimant was off sick she was referred to OHS on the 29 June 2015. The report was seen at pages 741-2, it concluded that the Claimant was not medically fit to consider the options put to her in the meeting at that time and an extension of time was granted to the Claimant to make a decision as to whether she would accept demotion as an alternative to dismissal. The Claimant on the facts therefore was not required to make a decision on this matter in four days as alleged, this allegation is not supported on the facts.
65. The final outcome letter was sent to the Claimant on the 1 July 2015 seen at pages 743-751. It was put to the Claimant in cross examination that in relation to allegation 1 (leaving the ward part way through the shift) that she had admitted leaving the ward but it was for Ms Anderson to assess how serious this was and the Claimant did not accept this. She denied that she left the ward unsafe. The Claimant did not accept that Ms.

Anderson critically assessed the evidence in relation to allegation 1. It was the Claimant's evidence that even if they had failed to replace her when she left the shift, the ward would still have 5 staff, which was sufficient in her view. The Tribunal find as a fact that the charge was proven on the facts that she had left her shift early and this was a conclusion that Ms Anderson was entitled to reach on all the facts (and taking into account the Claimant's admission).

66. It was the Claimant's evidence to the Tribunal that Ms Anderson failed to critically assess the evidence in relation to allegation 2 (unprofessional behaviour which included shouting at Matron Sweeney on the 8 December) and 3 (unprofessional behaviour at the nursing station on Grey Ward) because she believed those who gave evidence against her "because they are more senior". The Claimant also stated that the tears of Ms Cronin and Sheffron were "*crocodile tears and they actually committed the crime*" and she did not feel that they were genuinely distressed. The Claimant told the Tribunal that during the hearing they were given tissues whereas she was not, as an example of how she was treated less favourably. She told the Tribunal that "*I feel I am still in prison, I will clear my name, I am fighting for justice, I can never give up on the case*". It was put to the Claimant in cross examination that Ms Anderson preferred the evidence of Ms Cronin and Sheffron to that of the Claimant however she questioned how Ms Anderson arrived at that conclusion asking "*what did she use, there was no documented factual evidence, there were no documents, there was no issue with patient safety. What evidence to 100% believe what they were saying?*"
67. The Claimant was taken in cross examination to page 750 in the outcome letter where it stated that no evidence was provided of what was described as a racist conspiracy and the Claimant replied "*I did, I said I am a Black woman. I have always given up everything for everybody..either you are trying to victimize me to get me off the ward, they didn't want my presence there. Perhaps they did not like my style of management*".
68. In respect of the disciplinary outcome the Tribunal find as a fact that the Respondent was entitled to conclude, on all the evidence and on the balance of probabilities that the charges against the Claimant were proven. The Tribunal noted that the Claimant had conceded that in evidence that she was frustrated in the meeting and confirmed to the Tribunal that she had raised her voice (see above at paragraph 41). The letter went into some detail and recorded the findings and evidence in respect of each allegation especially in respect of allegation 4 which was considered to be the most serious and was considered itself to be an act of gross misconduct. The letter appeared to provide a clear and detailed analysis of all the evidence given by all the staff including the Claimant's allegation that the evidence was a fabrication which was part of a "racist conspiracy". The decision letter also included the evidence that was considered in mitigation, including the conclusion reached that the Claimant had not been managed "as robustly as was necessary". The letter referred to what was described as the Claimant's lack of insight and concern that her behaviour showed that "she was unsuitable to be in charge of a ward or to have a position of responsibility". This is why demotion was suggested as an alternative to dismissal. It was noted that

the letters in support were taken as mitigation and her long service was taken into account. The letter stated that Ms Anderson was considering referring the Claimant to the NMC, but no action was taken.

69. The Claimant appealed on the 13 July 2015 page 753 and the RCN submitted an appeal to Ms Brewer dated the 16 July 2015 (see page 761)
70. There was an OHS appointment arranged for the Claimant dated the 6 August 2015. A report produced on the 11 August 2015 confirmed that the Claimant was now fit to make a decision on the options available to her as a result of the disciplinary hearing. The OHS professional also recorded that the Claimant did not agree with his view. In the light of this report, the Respondent wrote to the Claimant on the 13 August 2015 asking for a response by the 24 August 2015 (two weeks after she was determined to be fit to consider this). The Claimant accepted in answers given in cross examination that she was given two months to make a decision on whether to accept the demotion (or be dismissed).
71. The Claimant accepted the demotion under duress on the 21 August 2015 and stated that she “*maintained [her] innocence with the allegations with no proven evidence*” (see page 777 of the bundle). The Claimant then submitted a 16-page appeal/grievance dated the 23 September (see page 786) this document was acknowledged on the same day (see page 801). It was noted by the Tribunal from the first line of the document that the Claimant was appealing the outcome of the disciplinary and was also raising a grievance. The letter therefore had two distinct purposes. Even though the Claimant referred to the two specific purposes of the letter (by calling them (a) and (b)), she did not break down the extremely detailed contents of the letter to differentiate the appeal from the grievance points. The Tribunal having read the document carefully, considered that the penultimate paragraph on page 800 encapsulated the tenor of the document where she stated “the heart of my complaint is simply I believe that the process was biased against (sic) and that the outcome had already been predetermined possibly since March in relation to the other investigation I was called on to answer (mentioned above – Lesley Law). I believe that they did not accept my genuine innocence in that matter and have used this case to punish me”. The Tribunal concluded that the Claimant was attempting to challenge and/or overturn the conclusions reached by the Dismissal Manager by introducing new evidence and perspectives. The Claimant openly accused those who gave evidence against her as lying (for example at page 793) where she stated that “these women have been given enough time and space to concoct these lies in the form of allegations”. She added that those who gave evidence against her (who were white) were believed over her and she believed this was evidence of race discrimination. The Claimant specifically stated that her complaint of race discrimination that was raised in the hearing was not considered and was “used against her” and she stated that it was her belief that Ms Anderson “drew a negative inference about her” (see page 799A). The Claimant accused the Trust of fabricating the issue in relation to the anonymised letters saying “the matter was conducted in a spiteful spirit” (see page 796).
72. The Claimant’s appeal was put on the basis that the case against her had been “built on a fabrication” (see page 797). The points in relation to

her appeal in broad terms were that the decision had been predetermined, there had been delay in the investigation and the time she had been given to prepare her case and to discuss the preparation of her case with her representative prior to the hearing had been too short. The Claimant stated that this had been done with the sole intention of “causing me frustration”. The Claimant also stated that the investigation was not sufficiently thorough and more people should have been interviewed who worked on the Ward. These were appropriate grounds of appeal within the Respondent’s disciplinary process. Ms Howarth told the Tribunal that she felt the long appeal letter was “difficult to extrapolate” to identify the main points being pursued by the Claimant on appeal (as distinct from any other points outside of the appeals procedure). She therefore sought advice from HR. In order to identify the main points of appeal Ms Howarth focused only on matters relevant to the appeal and advised the Claimant in the hearing (and in the outcome letter) to seek advice from the union or HR in relation to pursuing a separate grievance. This advice was consistent with what she had been told by Mr Wall of HR.

73. Mr Wall wrote to the Claimant on the 27 August 2015 acknowledging the appeal submitted by the RCN but asked the Claimant to clarify whether she wished to proceed with the appeal as she had now accepted the sanction of demotion. He stated that if she wished to appeal she was to provide “dates in late September and October” when she and her representative were available. The Claimant replied to confirm on the 24 September that she would be available on the 16 October for the “appeal/grievance meeting”. In this same email, she confirmed that she wished to be accompanied by a new representative Ms Nunoo, who was described as an “HR professional”. It was Mr Wall’s view (page 807 dated the 25 September 2015 and page 142) that Ms Nunoo was not considered to be a trade union representative or from a professional organisation under the terms of the disciplinary policy. He also stated that although they had acknowledged receipt of the Claimant’s appeal/grievance document dated the 23 September, he questioned whether it was in time as the disciplinary procedure required appeals to be submitted within 21 days.

74. It was put to the Claimant in cross examination that her letter of grievance/appeal was not ignored and the Claimant replied: “*to me it was*”. It was also put to the Claimant that although the grievance letter on the 23 September 2015 was sent to Ms. Brewer, she did not deal with grievances personally because that was not her role but the Claimant told the Tribunal that she “*expected her to*”. The Claimant maintained that Ms Brewer’s failure to deal with it personally was discriminatory because of race and religion. There was no evidence before the Tribunal to suggest that Ms Brewer’s failure to deal with the Claimant personally was an act of direct race or religious discrimination. Ms Brewer’s evidence was that her role as Director of Workforce and Organisational Development was strategic and she did not consider individual cases in the disciplinary and grievance process. When she received the communication from the Claimant she passed it on to the person with responsibility for such matters (which was Mr Wall). Ms Brewer denied that she had any knowledge of the Claimant’s disability. It was put to Ms Brewer in cross examination that if the Claimant had been white she would have acted differently, which she denied; she stated that she received between 200-300 emails per day and her role was to ensure that due process was

followed and stated that the actions she took “had nothing to do with the Claimant’s race or religion”. The Tribunal accepted the explanation that Ms Brewer gave about the strategic nature of her role and the delegation of individual disciplinary and grievance processes; this was consistent with a role at that level of seniority. The Tribunal find as a fact that there was no evidence to suggest that the Ms Brewer treated the Claimant less favourably because of race, religion and belief or disability.

75. The Tribunal were taken to the letter from Mr Wall to the Claimant dated the 1 October 2015 which dealt with the arrangements for hearing the appeal (page 813 of the bundle). It confirmed that the appeal would not be heard on the 16 October 2015 and asked for alternative dates. He confirmed that Ms Nanoo could not represent her at the hearing because “she is not considered to be a representative of a professional organisation”. He then made reference to the Claimant’s 16 page letter document stating that the hearing would only consider the appeal against the decision made by Ms Anderson. He suggested that the Claimant may “wish to amend your appeal grounds”; this particular letter did not address the process the Claimant should follow for submitting her grievance. The Claimant confirmed in cross examination that she did not amend her grounds of appeal.
76. The appeal was scheduled to proceed on the 23 November (page 831 of the bundle). A copy of Ms Anderson’s report to the panel was seen on pages 831-844. The Claimant wrote to Ms Liu on the 12 November 2015 asking for 31 people to be interviewed and also asked for disclosure of Ward diaries for the years 2011-15 (page 851). The Claimant did not feel that these requests were unreasonable. The Claimant conceded that the letters of support she handed up at the start of the hearing were read. The Claimant also conceded that they allowed Ms Nunoo to accompany the Claimant at the hearing (but not to speak).
77. The appeal hearing was conducted by Ms Howarth and proceeded on the 23 November 2015. Although the Claimant maintained that she had provided names to HR of those she stated would be “able to attend” the appeal that day, there was no contemporaneous record that the Claimant asked them to attend. Ms. Nunoo also confirmed to the Tribunal in cross examination that she did not make the panel aware that witnesses had been asked to attend to give evidence.
78. In paragraph 13 of Ms Howarth’s witness statement she asserted that at the start of the hearing she told the Claimant that if she wished to raise a grievance she was to follow the Trust’s procedure and “it was not the remit of the appeal panel to hear her grievance concerns”. The Claimant denied this was said and stated that she was told “something different”. Ms Howarth’s views which she said she expressed at the start of the hearing appeared to be consistent with the policy which stated that the grievance procedure did not apply where there was a right of appeal and the disciplinary procedure itself had a distinct right of appeal (see above at paragraph 32). These views were also consistent with the written advice the Claimant had received from Mr Wall and the Tribunal therefore finds as a fact that Ms Howarth did make this statement.

79. It was the Claimant's evidence that Ms Howarth did not give detailed consideration to the appeal and did not go into detail about how she made the decision. The Claimant conceded that Ms Howarth "possibly" took her concerns seriously and that she understood some of her case. The Claimant confirmed that she provided a large number of documents to the appeal panel during the break (at pages 874-889).
80. The appeal hearing was reconvened on the 22 January 2016 and Ms. Dillon attended to give evidence. The Claimant complained that she attended with witnesses but they were not called. Ms. Howarth's evidence to the Tribunal was that she was not aware that the Claimant had brought witnesses to give evidence. The Tribunal noted that the Claimant was represented by Mr Kay of Unite at this hearing. Mr Kay was 5 minutes late to this meeting and was refused admission for the first hour and a half of the meeting. The notes of the hearing reflected that the Claimant was asked if she was happy to proceed without him and she indicated that she was, this evidence was not challenged by the Claimant. Although the Tribunal were concerned about this exclusion it was not an issue before the Tribunal and it was not put to Ms Howarth in cross examination that this was an act of discrimination.
81. The Claimant was taken in cross examination to the appeal outcome at page 903. The Claimant did not accept that her appeal/grievance letter was difficult to understand and did not accept responsibility for setting out her grounds of appeal. The Claimant's consistent evidence to the Tribunal reflected that she failed to follow the advice she had been given by Mr Wall and Ms Howarth about separating the grievance from her appeal grounds; the Claimant's consistent view was that she had already set down the terms of her grievance and was not prepared to address their concerns by redrafting her grievance. The Tribunal noted that page 903 suggested that the Claimant seek advice from her Unite representative. The Claimant felt the appeal was handled inappropriately due to her race and religion but provided no evidence to explain on what basis she held this view.
82. The Tribunal note that the appeal hearing was lengthy and detailed. The panel made clear to the Claimant that they would not deal with any grievance points that were outside of the appeals process. If she wished to raise a grievance she was advised to do so "in line with the Trust procedures" (page 903). The Claimant produced additional documents at the start of the appeal hearing which the panel adjourned to read.
83. The lengthy and detailed outcome letter dealt with all the substantive matters of appeal raised by the Claimant. The appeal panel took into account the Claimant's work history and all supportive references and testimonials she produced. The panels' conclusions were as follows (see page 906-7) *"...in all 4 allegations you repeatedly displayed unprofessional and unacceptable behaviour. The panel found that you admitted leaving the shift early, at a meeting with Stephanie Sweeney on 8 December 2014, you were loud and confrontational and the panel discussed that you knew your behaviour was unacceptable because you had apologised during the meeting on the 16 December 2014. Karyn Richards-Wright had also stated that you were angry and argumentative during the phone call from the nurses' station on 8 December 2014. The*

panel concluded that your behaviour was unprofessional and unacceptable and in serious breach of a number of Trust policies – The Trust Disciplinary Rules, Trust Values and Behaviour Policy, Trust Dignity at Work Policy and the NMC code of conduct”.

84. The letter went on to state on page 907 that *“the panel considered whether a fair process had been followed and concluded that ideally they would have liked to have seen a more robust investigation but agreed that it did not diminish the negative impact of your behaviour on the witnesses who felt intimidated, bullied and harassed by you”.*
85. The Tribunal concluded that the appeal panel was thorough both in terms of the process followed and in terms of their detailed consideration of the facts before them in relation to the points of appeal raised. The appeal panel were able to extract the key points from the appeal letter and reached a balanced and fair conclusion on each point. The conclusions were explained in detail. The appeal panel were direct in their conclusions regarding a preference for a more robust investigation in this matter but concluded on the balance of evidence and probabilities that the decision reached was a correct one.
86. It was put to the Claimant in cross examination that her letter at page 910 dated the 13 March 2016 was a direct attempt to appeal the outcome of the appeal and she replied “possibly”. In this letter, the Claimant asked to raise a grievance because she “fundamentally disagreed with the [appeal] panel” and she could provide evidence to contradict the allegations against her. The Tribunal find as a fact that this was an attempt to appeal the appeal outcome contrary to the Respondent’s appeal policy which provides that there are no further levels of appeal (see page 136G). It was put to the Claimant in cross examination that she was looking for a different outcome and the Claimant replied that she was “looking for the truth”. The Tribunal find as a fact that the Claimant was attempting to challenge the appeal outcome by using the grievance procedure to overcome the prohibition of further appeals after the conclusion of the appeals process. This was a misuse of the grievance process and one which the Respondent was attempting to clarify with the Claimant by asking her to set out her points of grievance separately. Even though she was asked to do this a number of times, she refused to do so.
87. Mr Wall replied to the Claimant’s letter on the 23 March 2016 (see page 912 of the bundle) confirming that the appeal outcome was final and there were no further stages of appeal. She was also informed that she could not raise a grievance against the decision of the appeal panel. The letter went on to advise the Claimant that she was permitted to raise a grievance “about other aspects of your employment” and she was provided with a copy of the grievance policy. The Claimant was advised that she needed to be “clear about the exact nature of [her] grievance” and Mr Wall advised her to discuss it with her union. It was put to the Claimant in cross examination that it was incorrect to suggest (as she did in paragraph 61 of her statement) that attempts were made to stifle her grievance as Mr Wall was trying to be helpful; the Claimant disagreed with this and felt that the requirement to lodge a new grievance was a detriment on the grounds of her race or religion. She again stated that she

had submitted a grievance already, reflecting her refusal to accept advice and guidance on the correct process to follow. There was no evidence before the Tribunal that requiring the Claimant to set out her grounds of grievance was a detriment; it was a reasonable request to enable the Respondent to understand the points of grievance (as distinct from her attempts to appeal the final decision under the disciplinary process).

88. Mr Wall again wrote to the Claimant on the 14 April 2016 (in response to her letter dated the 6 April 2016) again asking her to “succinctly outline the nature of her grievance” but the Claimant did not do so and told the Tribunal that she had already submitted one. The Claimant did not think that her actions in this regard could be described as obstructive.
89. It was put to the Claimant that at this stage she started to send letters to others not associated with the case but she denied that her approach was confused or chaotic (pages 945, 948,951). The Claimant accepted that she complained about Ms Brewer but conceded that Ms Brewer had no involvement with her case. Ms Brewer’s only involvement was to pass one letter to the HR person responsible for handling the case, the Tribunal conclude that there was no evidence to suggest that she treated the Claimant less favourably because of race or religion by not overseeing the Claimant’s case or by failing to monitor HR’s actions.
90. The Claimant wrote to Ms Hall on the 24 April 2016 (see pages 945-7) requesting that her ‘original grievance’ be heard; the letter also referred to race and religious discrimination, the impact that the failure to consider her grievance was having on her health, she also referred to whistle blowing and failure to make reasonable adjustments. This letter was also sent at the same time to Ms Brewer, Ms Vasco Knight and Ms Wilton. Ms Hall replied to the Claimant on the 9 May 2016 (page 985). She attempted to answer the Claimant’s concerns after discussing them with Mr Wall. She confirmed in her response that *“I have been informed that you cannot challenge the decision of the appeal panel and you cannot raise a grievance about their decision”*. Ms Hall also confirmed that she had considered the contents of the Claimant’s letter and advised that *“I am afraid I am unclear from your letter about what exactly constitutes your original grievance and your second grievance. I have spoken to John Wall about your letter and he is equally unclear”*; Ms Hall’s oral evidence to the Tribunal was consistent with this. The letter went on to address the Claimant’s accusations of discrimination and she commented that *“from my reading of your letter, I can see no evidence of discrimination against you”*.
91. Despite further correspondence produced by the Claimant she did not particularise her grievance or her claims of discrimination. Although it was put to the Claimant that she had received a response to her letter the Claimant denied that she had received a substantive response. The Claimant accepted in cross examination that her letter on page 987 dated the 12 May 2016 was a further attempt to appeal the outcome of the disciplinary appeal which she did not feel was fair and she did not accept that the decision of the appeal panel was final. The Tribunal conclude that this reflected the Claimant’s entrenched view that the only acceptable outcome for her was for the Respondent to hear her appeal against the Respondent’s appeal outcome, even though she had reached the end of

the disciplinary process. The Claimant could not accept what she was being told and she therefore escalated the matter to a number of different senior people within the organisation.

92. The Claimant resigned and the letter was seen on page 1001 dated the 28 July 2016. She accepted in answer to cross examination that she resigned because she could not accept the outcome of the disciplinary hearing. The Claimant told the Tribunal during cross examination that she “[could] not move forward until I clear my name. I will not leave this case. I have been put in prison”. This evidence showed clearly to the Tribunal that her focus was solely on overturning the disciplinary outcome which was why she was pursuing a grievance to challenge the conclusions of the appeal panel. This was not a procedure open to the Claimant. The Claimant confirmed that she resigned “with immediate effect”. The Tribunal find as a fact that the reason the Claimant resigned was not due to a fundamental breach committed by the Respondent but because she could not accept that the appeal decision was final. Her evidence to the Respondent and in the Tribunal, was that in her view, she had done nothing wrong.
93. The Claimant was asked about the Respondent’s alleged practice of operating the grievance procedure in an obstructive way and she accepted that there was no evidence that it was operated in this way with anyone else. The Tribunal therefore find as a fact that this was not a practice that was applied generally by the Respondent. It was the Claimant’s personal view that this was how it had been applied in her case however there was no evidence to suggest that the Respondent was being obstructive generally in applying the grievance procedure and towards the Claimant personally. They had taken a neutral course of action by directing the Claimant to seek advice from her union and had provided her with a copy of the procedures. The Tribunal therefore find that the practice was not applied to the Claimant.
94. It was put to the Claimant in cross examination that she was capable of seeking advice and drafting a grievance letter that complied with the Respondent’s grievance policy and she replied, “*why should I?*” and she further added “*I didn’t choose to, I had already submitted one, they were aware but they chose not to consider my grievance*”. This response illustrated the intransigence showed by the Claimant; despite all attempts by the Respondent to encourage the Claimant to make clear the exact nature of her grievance (one which did not amount to an attempt to lodge a second appeal). The Tribunal find as a fact that the Claimant refused to submit a grievance that complied with the Respondent’s grievance procedure and there was no evidence that she was placed at a substantial disadvantage by this request or that she was unable to so because of her disability. The Claimant was able to correspond with the Respondent often in great detail therefore a request for her to clarify her grievance in writing was something she was able to do but chose not to.
95. It was put to the Claimant in cross examination that she had been paid all her outstanding holiday (page 1003) and 59 days annual leave was paid to her together with a further 22 hours due and owing. The Claimant produced no evidence to show that she was due more annual leave than was paid to her on termination.

The Law

Equality Act 2010

Section 13 Direct discrimination

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

Section 20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

Section 21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

Section 27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because--

- (a) B does a protected act, or
- (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act--

- (a) bringing proceedings under this Act;
- (b) giving evidence or information in connection with proceedings under this Act;
- (c) doing any other thing for the purposes of or in connection with this Act;
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.

Employment Rights Act 1996

Section 95 Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) ..., only if)--

- (a) the contract under which he is employed is terminated by the employer (whether with or without notice),
- [(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or]
- (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

Cases Referred to by the Respondent:

Western Excavating Ltd v Sharp [1978] IRLR 27
Gogay v Hertfordshire County Council [2000] IRLR 703
Mallik v BCCI [1998] AC 20
W E Cox Toner (international) Ltd v Crook [1981] IRLR 443
Morriott v Oxford Co-operative Society [1970] 1 QB 186
Buckland v Bournemouth University Higher Education Corporation [2010] EWCA Civ 121
Glasgow City Council v Zafar [1998] IRLR 36
Igen v Wong [2005] ICR and Efobi v Royal Mail Group Limited
Environment Agency v Rowan [2008] IRLR 20
Smith v Churchills Stairlifts PLC [2006] IRLR 41
Noor v Foreign and Commonwealth Office UKEAT/0470/10
Romec v Rudham [2007] All ER
St Helens Borough Council v Derbyshire and others [2007] IRLR 540
Nottingham City Transport Ltd v Harvey UKEAT/0032/12
Bexley Community Care (t/a Leisure Link) v Robertson [2003] EWCA Civ 576
Department of Constitutional Affairs v Jones [2008] IRLR 128

Submissions

Both the Claimant and Respondent produced written and oral submissions to the Tribunal during the Hearing. The Claimant confirmed to the Tribunal that she had been given a sufficient opportunity to present her submissions.

However the Claimant submitted further written representations to the Tribunal dated the 17 January 2018 (to be placed before the Tribunal at the start of our chambers hearing). The Claimant stated that her reason for adding to her submissions was stated to be "due to lack of time", this appeared to run counter to what the Tribunal had been told at the end of the hearing. These written submissions were sent to the Respondent for their comments, which were received on the 29 January. The Respondent urged caution in accepting the written representations of the Claimant as they added new evidence which had not been presented at the hearing. Having considered both representations and the fact that the Claimant

was self-represented, we felt it was appropriate to read and consider her new submissions and the Respondents comments. The Tribunal also discounted any reference to evidence that had not been presented during the hearing.

The Respondent's submissions, which were in writing but in outline were as follows:

96. In paragraphs 3 to 10 of the submissions the Respondent dealt with the credibility of the witness evidence stating that the Claimant when cross-examining the Respondent's witnesses became stuck in a spiral, regularly repeating questions which had already been answered. Referred to the fact that the Claimant was unable to accept an answer or disagreeing with it. She treated it as if it had not been answered. The Claimant had a distorted perception of events which led her to believe she had done nothing wrong, which led to her sense of injustice. The Respondent submitted that the Claimant's view of the many factual matters which are before the Tribunal were unsupported by evidence and her perception unreliable. The Respondent stated that the Claimant's evidence in cross examination was evasive and she failed to answer straightforward questions and was often confused and inconsistent. The Respondent referred to the evidence given by the Claimant's witness Ms Nunoo, who was described as being prone to hyperbole, producing a witness statement that was exaggerated/embellished. The Respondent stated that their witnesses in contrast were consistent, candid and gave comprehensive responses to questions and willing to make concessions where appropriate. The Respondent asked the Tribunal prefer the evidence of the Respondent's witnesses in the event of a dispute of fact.
97. The Respondent dealt with the claim for constructive unfair dismissal at paragraphs 11 to 30. The Respondent denied they breached the implied duty of trust and confidence and responded to each of the factual allegations. They submitted that the investigatory process was carried out fairly and the Claimant was treated well throughout, the Claimant's witnesses were interviewed and all the facts were gathered. The Respondent accepted that there was a delay between the final investigatory meeting on 11 March 2015 and the invitation to a disciplinary meeting on 21 May 2015, however the Respondent kept the Claimant informed that the matter had been referred to the Designated Officer. The Respondent denied that the delay amounted to abuse.
98. The Respondent denied that the Claimant was abused during the disciplinary process and the Claimant was given an appropriate time to prepare. The Claimant was informed that she could bring any witnesses she wished to the disciplinary hearing. The Claimant failed to call her witness Ms McCourt and it was entirely reasonable for the Respondent to proceed in the witness's absence and this was not evidence of abuse. The disciplinary hearing lasted a full day and the Claimant was represented and given a full opportunity to put her case and to question witnesses. The Respondent denied that Mr Wall cut the Claimant off and the Tribunal was invited to prefer Mr Wall's evidence to that of the Claimant.
99. The Respondent noted that the Claimant did not put to Ms. Anderson in cross examination that she failed to deal with allegations of race discrimination made during the disciplinary hearing, and noted that in the

minutes of that hearing the Claimant only made a sweeping statement about being discriminated against, highlighting the difference in age and race. The comments do not go beyond that. It was therefore reasonable for Ms Anderson to conclude that the Claimant had provided no evidence in support of her case that the allegations against her were racially motivated. The Claimant was demoted in line with the Respondent's disciplinary policy and the Claimant was given sufficient time to decide whether to accept this sanction, which the Claimant ultimately did on 21 August 2015. The Claimant was provided with a summary of the disciplinary meeting on 16 June and the outcome letter. The Claimant was also provided with support of occupational health; it was only when they confirmed that the Claimant was medically fit to make a decision that she was required to confirm whether she wished to accept the demotion rather than dismissal. The Respondent stated that it acted reasonably in all circumstances and they submit that it would not have mattered what period she was given to decide, her issue was with the outcome itself. The Respondent stated that their actions were reasonable and no evidence that the Claimant was abused at any time. The Respondent also stated that there was sufficient evidence before Ms Anderson to enable her to reach a conclusion that the Claimant acted as alleged. (The Respondent dealt with the four allegations against the Claimant and the evidence in relation to these allegations in paragraph 29, they were taken into account, but will not be replicated in this decision).

100. The Respondent then referred to the Claimant's allegation that the it failed to resolve the grievance submitted by the Claimant; the Respondent stated that the grievance/appeal submitted on 23 September 2015 was 16 pages long and unclear and conflated the issues in relation to her appeal against the disciplinary and other matters which were unrelated. The Claimant accepted in cross examination that despite being invited to amend her grounds of appeal, she failed to do this. The Respondent submits that Miss Howarth made it clear to the Claimant in the appeal meeting that she would need to raise a separate grievance to comply with grievance procedure. The Claimant submitted a further grievance in March 2016, which was an attempt to challenge the appeal decision, she was informed that this was clearly contrary to policy. The Respondent denied they prevented or discourage the Claimant for raising a grievance. The Claimant accepted in cross examination that she ignored the advice given by Mr Wall in his letter because she felt there was no need to follow this advice as she had already set out her grievance and did not feel she should have to clarify it. The Respondent stated that as the Claimant failed to clarify or attempt to clarify her grievance, the Respondent could not resolve it. The Respondent stated that this did not amount to a breach of contract.

101. The Respondent then dealt with the Claimant's allegation that the Respondent failed to address the grievance submitted by the Claimant on 24 April 2016, which was sent to the Second Respondent Ms Hall, Chief Nurse and the Chief Executive and a Non-Executive Director. The Claimant had stated that this conduct was chaotic and obstructive and the she escalated these matters to random senior individuals rather than simply seeking advice from her union or drafting a short document confirming the outstanding issues she wished to appeal. The Claimant received a response from Ms Hall, who replied on behalf of the executives

and she placed the matter back in the hands of Mr Wall. The Respondent therefore submits that Ms Hall did her best to respond to the Claimant. The reason the grievance remained outstanding was because of the Claimant's continued refusal to take on board Mr. Wall's advice and her refusal to seek help from HR or her trade union to clarify and particularise her grievance. The Respondent stated they acted reasonably and it was denied the failure to hear the grievance was a breach of contract.

102. The Respondent stated further that Ms. Hall's comment that she was unclear what constituted the Claimant's original and second grievance in her letter of 9 May 2016 was a genuine and entirely reasonable comment as it was unclear what amounted to a grievance from her 23rd of September letter. Both Ms Hall and Mr Wall were unclear what the Claimant's grievance was about and the Claimant refused to clarify it. The Respondent stated that this was again the Claimant falling into a spiral pattern because if she does not agree with something she ignores it and then can't understand why she received the same answer or response over and over again. The Respondent submitted that Ms Hall was a frank and candid witness and the Tribunal can be satisfied that she was genuinely confused by the Claimant's letter and her comments were entirely reasonable and it was denied that this amounted to a breach of contract.
103. The Respondent denied that the Claimant's grievance was stonewalled and that it acted reasonably and there was no breach contract.
104. The Claimant stated that the continued and complete rejection of her grievance in the last days were the final straw following the letter of 27 July 2016. It was the Respondent's case that the Claimant continued to deliberately ignore everything she had been told, she showed no recognition of the explanation that she had exhausted the right of appeal under the disciplinary process and she continued to ignore the need to clarify the grievance -related issues.
105. The Respondent denied any breach of contract and stated that there was no fundamental breach sufficient to destroy trust and confidence. The Claimant confirmed in cross examination that she resigned because she could not accept the disciplinary outcome and this was sole reason for her resignation. The Claimant perceived this to be an unfair disciplinary sanction stemming from her inability to accept that she had done anything wrong. The Respondent submissions as to contributory fault were at paragraphs 58-9.
106. The Respondent noted that the Claimant confirmed the resignation was with immediate effect, it had acted reasonably. It did not fundamentally breach the Claimant's contract and her resignation did not amount to a dismissal. The Claimant is therefore not entitled to notice pay.
107. The Respondent's submissions as to holiday pay were at paragraphs 62-4. In essence, they submit that there was no evidence that any annual leave pay is due therefore the claim should fail.

108. The submissions as to disability were at paragraphs 65-91. They submit that there was no evidence before the Tribunal to suggest that the grievance was not heard because the Claimant had a disability and the Respondent relies upon the non-discriminatory explanation given for why the grievance was not heard. There was no evidence to suggest that Ms Howarth conducted the appeal unfairly because the Claimant was disabled and her evidence was that she was unaware the Claimant was disabled and there was no evidence to suggest that she should have known about disability. The Respondent submits that the appeal process carried out in a fair manner.
109. The Claimant attended the appeal hearing over two days and was represented at the first hearing by Mr Nunoo; Miss Howarth, exercising her discretion to allow her to attend. Although the Claimant attended with witnesses, neither the Claimant or her representative pointed this out to the appeals manager. The Respondent submitted that the process over the two days was conducted reasonably and fairly. The Claimant was given the opportunity of clarifying her grounds of appeal by Mr Wall and she failed do this, however, she had full opportunity to clarify the grounds of her appeal in the two meetings. The Respondent submitted that there was no evidence of a causative link between the Claimant's disability and the conduct of the appeal.
110. The Respondent submitted that there was no evidence to suggest that Ms Hall claiming she did not understand her grievance, was because the Claimant was disabled. Ms Hall confirmed in evidence that at the relevant time she did not know the Claimant suffered from a disability and had no previous involvement with the Claimant and no operational responsibility for her. Miss Hall had oversight of 3500 members of staff there was no reason she would have any detailed knowledge of the Claimant's medical condition. The Claimant did not challenge Ms Hall's knowledge of her disability.
111. The Claimant alleged that her grievances were not be heard because she was disabled. However, this allegation was not put to the Respondent's witnesses and it was factually inaccurate as the Respondent had informed the Claimant that the grievance against the appeal outcome could not be heard because the Respondent's policy did not allow for it. There is also no evidence of the Claimant's disability playing any part. The Tribunal is asked to dismiss the allegations of direct disability discrimination.
112. The Respondent then dealt with the Claimant's claim for failing to make reasonable adjustments at paragraphs 92-100. The Claimant submitted that the practice complained of was operating a grievance procedure which was more obstructive than that in the Trust's published grievance procedure and more onerous than that set out in the ACAS code. The Respondent denied it had such a practice and this evidence was given by Mr Wall. The Respondent also relied on the Claimant's admission during cross examination where she stated that she was singled out, not that the Respondent was generally obstructive. The Respondent stated that in the absence of a practice, the claim for failing to make a reasonable adjustment must fail. The Respondent also stated that the Claimant accepted that she was capable of clarifying her grievance but made a

choice not to do so, therefore, on the Claimant's own admissions, she was as capable as a nondisabled person of clarifying her grievance but made a choice not to do so. Therefore, she was not at a substantial disadvantage by being asked to clarify her grievance. As there was no disadvantage, there was nothing for the Respondent to take steps to avoid. The Respondent therefore invites the Tribunal to dismiss the claims for failing to make reasonable adjustments.

113. The submissions then turned to the Claimant's claims for direct religious and race discrimination (paragraph 101-125), the only allegation of religious discrimination was the Claimant's comments written the whiteboard on the Ward. Ms Anderson believed the allegations and concluded it was not appropriate conduct, but there was no evidence that this conclusion was biased against the Claimant due to her religion or belief, and no evidence that the Respondent took disciplinary action because of her race or religion and belief. It was noted that many of the allegations were not disputed by the Claimant and it was necessary to investigate and determine if disciplinary action was appropriate. The outcome of the disciplinary hearing was that the allegations were well-founded and disciplinary action was appropriate. Ms Anderson was a credible and genuine witness and the Respondent invites the Tribunal to accept her evidence that her conduct was in no way influenced by the Claimant's religion or race. The Claimant has also submitted that the Respondent refused to admit the Claimant's evidence to the disciplinary hearing, however, this was factually inaccurate. Ms Anderson confirmed that she accepted the letters of support and adjourned the hearing to consider and these are referred to in the document in the bundle.
114. The Claimant alleged that Ms Anderson failed to critically assess the evidence before her and she did this because of the Claimant's race and religion and belief. The Respondent submitted that the disciplinary and appeal letter both demonstrate that the evidence was analysed. The Claimant also alleged that the outcome of the disciplinary hearing and appeal hearing were unfair because of her religion and belief and race, however the Respondent stated that the pertinent question is not whether the outcome was unacceptable to the Claimant but whether the Respondent had reasonable grounds to uphold the allegations which the Respondent asserts it did, and whether the sanction was reasonable, which the Respondent asserts it was given the nature of the allegations and whether the appeal was fair.
115. The Claimant alleged that the investigations manager Ms Dillon carried out a negligent investigation because of the Claimant's race and or religion and belief, however the Respondent denied this stating that although it may not have been a work of perfection, it was reasonable and she spoke with the key witnesses. The Respondent also states that Ms Dillon was independent. The Respondent submitted that there was no evidence of less favourable treatment because of race or religion and belief and any procedural shortcomings that may be found were not related to religion or belief. The Claimant also alleged that taking an "excessively long time to complete the appeal" was on the grounds of race and religion, however the Respondent has already dealt with the reasons for the delay which was in no sense related to race or religion.

116. The Claimant also alleged that allowing the appeal to proceed “when serious allegations of unlawful discrimination remained unaddressed” was on the grounds of race and or religion or belief, the Respondent responded that this allegation was factually inaccurate. The Claimant was informed of the remit of the appeal process in a letter from Mr Wall dated 1 October 2015 and was invited to clarify grounds of her appeal which she failed to do so in advance of the hearing. The Claimant confirmed in answers to cross examination that the appeal outcome dealt with all the issues she had raised at the appeal. It was the Claimant’s responsibility to highlight any issues of discrimination to the panel, which she wanted them to consider. If there were matters that were unrelated to the disciplinary process, this did not prevent the Claimant from raising a grievance in respect of other matters to be resolved separately. There was no evidence that requiring the Claimant to resubmit her grievance was conduct that was on the grounds of race and religion. Although the Claimant alleged was substantively and procedurally unfair this was unsupported by the evidence and the Respondent denied it created unnecessary obstacles.
117. Turning to the issue of comparators, the Claimant relied upon Ms. Sheffron, Ms. Sweeney and Ms. Cronin; the Respondent stated that the comparators were not in a comparable position and the complaints from the comparators were not in the form of grievances; they came out during the course of an investigation. They were therefore materially different to the position in which the Claimant found herself.
118. Turning to the Claimant’s complaint of victimisation (paragraphs 126-131) the Respondent does not concede that the Claimant’s letter of 7 June 2015, and her resignation letter, 28 July 2016 amount to protected acts, and in any event, the Claimant’s resignation letter post-dated all alleged detriments so cannot be the cause of them. The Respondent states that there is no causative link between the outcome of the disciplinary appeal and any complaints that she raised. The Respondent also submits it is the Claimant’s responsibility to highlight any issues of discrimination to the appeal panel that she wanted them to consider. If the outstanding allegations were unrelated to the disciplinary process, the Respondent submitted there was no reason to stop the appeal due to unrelated matters. The Claimant was informed that she could raise a grievance in line with the Trust’s grievance policy in respect of other issues outside of the disciplinary process and they could be resolved separately. The Respondent denied that this amounted to a detriment. The Claimant has failed to provide evidence of a causative link between this approach and any complaint raised.
119. In relation to the other outstanding claims the Respondent made some additional points orally. In relation to paragraph 124, first bullet point in relation to the Second Respondent, the Respondent submitted that Ms Brewer was a credible witness. She was responsible for Workforce planning for 3500 people and would not be expected to deal with each grievance. Her evidence was reasonable and one would not expect her to deal with this matter personally; it is not her role and her failure to do so was not on the grounds of race and religion and belief, and this was not put to her in evidence. The Respondent asked the Tribunal to refer to their own notes.

120. The relation to paragraph 124 second bullet points and paragraphs 26 and 80 of the submission, the Respondent's position was that the allegations of unlawful discrimination were not ignored. When the Claimant raised them at the disciplinary hearing they were mere sweeping statements. The summary letter and the full outcome letter both stated no evidence had been provided. The Tribunal is asked to consider that together with Ms Anderson's evidence given to the Tribunal.
121. In relation to the appeal, the Claimant was invited to clarify her appeal and she failed to do so. The Claimant was also invited to raise any issues on 21 December and in the January hearing. She conceded in cross examination that all issues raised were dealt with in the appeal, they were not ignored. The discrimination matters were outside the disciplinary were not ignored. The Claimant was invited to put them in writing and she refused to clarify.
122. Turning to the third bullet points and paragraphs 31 to 49 of the submission, this is not factually correct. The Claimant was told that a grievance could not be raised where an appeal was provided for in the policy. This was true and there was a good reason for it, the Claimant was provided with a response but she did not accept the answer. The Claimant was not told that other aspects could not be heard, she was repeatedly asked to clarify her grievance and she was signposted where to take that advice but she ignored it. It was her mindset that prevented it being heard.
123. At paragraph 126 and paragraph 21 of the submissions, the reason for the delay between the final investigatory meeting on the 11 March 2015 and being invited to a disciplinary hearing on the 21 May was for a reasonable and proper cause. The Claimant provided no evidence of a causative link with her grievances and there was no evidence that the witnesses acted as they did because the Claimant made general or specific complaints.
124. In relation to paragraph 131 which is the allegation of failing to respond to the letter of 13 March at page 910, this is factually incorrect. There was a response at page 912. This is another incident of the Claimant getting a response in writing and not liking it and saying that there has been no response. The response was appropriate, that the Claimant could not raise a grievance about an appeal outcome. There is no detriment. There was a response but no causative link to this matter.
125. The allegation that Mr Wall failed to deal with the grievance is dealt with in the submission at paragraphs 31 to 49 and the Respondent will state that this was not a detriment.
126. The submissions in relation to the Second Respondent echoed the submissions already made in relation to the race and religion and beliefs submissions. The Second Respondent's assistant wrote to the Claimant the same day that the letter was received to inform her that Mr Wall was dealing with it and he was arranging the appeal hearing. Ms Howarth advised that a separate grievance had to be raised and informed the Claimant how to deal with it; the Respondent referred to their submissions at paragraph 131. The Respondent states that there is no causative link with any of the complaints raised by the Claimant.

127. The Respondent also submitted that the Claimant's claim may be out of time, she contacted ACAS on 17 August 2016 and therefore any act or omission that took place before 22 March 2016 is out of time. They submitted that is not just and equitable to extend time and the burden of proof is on the Claimant. The Claimant has provided no explanation for the delay. The Respondent states that she has failed to discharge the burden.

The Claimant's Submissions

128. The Claimant's submissions which were oral and in writing were as follows:

129. The Claimant stated that since 2001 she had shown dedication and hard work to an exemplary standard, up to a band 6 position which she proudly held from 2003. Her attendance and sickness record were good and she had a clean disciplinary record. She stated that the Tribunal should find in her favour and she seeks compensation for unfair and wrongful dismissal, disability discrimination, race and religious belief, discrimination and victimisation as well as disability discrimination and holiday pay, together with an uplift for failure to hold a grievance. She also indicated that she was asking for compensation from the time she was demoted.

130. The Claimant asserted that during the disciplinary there was a lack of impartiality which led to unfairness and an unfair dismissal. There was a lack of impartiality and the Claimant was forced to leave her job against her will. It is for the employee to show that there is a serious breach of contract and by looking at the patterns of behaviour. The Claimant stated that there has been a lack of consistency right up until now. In Mr Wall's statement, he stated that his role was to ensure consistency and fairness and a sense of balance. Why did Ms Laws attempt to interfere with statements and of the witnesses Ms Cronin, Ms Sheffron and Miss Santamaria-Wood, Ms McCourt wrote another statement to show that she was under pressure, this shows the procedure was fundamentally flawed. The Claimant stated she was being framed and set up. The Claimant submitted that she was viewed in a positive light by consultants who felt she acted professionally, but they were ignored. The hearing was not postponed to allow her witness to attend. Only Ms Anderson's evidence was seem to be credible in order to get a postponement. The Claimant said the Respondent was sluggish, but then they were unprepared to wait for a short time for her witness to return from holiday. The Claimant stated that "the facts speak for themselves".

131. The Claimant added next point was striking; all nurses are bound by the NMC code of conduct, there was an allegation of patient care being put at risk, but why wasn't a satisfactory response made by the panel? Why weren't Ms Cronin and Miss Sheffron questioned? The Claimant made reference to the code of conduct in the written submission (which will not be reproduced in this decision). The Claimant then stated that in failing to report safety concern she had breached this code. The Claimant referred the Tribunal to page 140 of the disciplinary procedure of the Trust and stated that the two nurses should have been referred to the NMC and disciplined. The Claimant stated that this was in contrast to herself where unfounded allegations were made which were based on race and religion

and belief. The Claimant stated there were so many questions with so little [response] from the Trust.

132. The Claimant stated that Mr Wall and the HR Department continually made excuses as to why her lengthy grievance was not dealt with, which they stated was “long”, “hard to understand” and at times it was described as “comprehensive”, however, she was never invited to grievance meeting. The Claimant stated this was clear breach of contract. Ms Hall in a letter confirmed her grievance was comprehensive, however, Mr Wall asking the Claimant to resubmit the grievance was an act of discrimination. The Claimant stated that there was a provision, criterion or practice and measures in place, but she stated that no support was put in place. The Claimant submitted that the Respondent required her to rewrite her grievance because she was a disabled person and this was a failure to make a reasonable adjustment.
133. The Claimant stated that the whole process took so long and Ms Dillon only interviewed two witnesses. The Claimant asked the Tribunal to find in her favour in respect of her claim for wrongful dismissal and confirmed that her resignation was with immediate effect.
134. The Claimant refers her claim holiday pay and stated that the effects of the unfounded allegations and distress caused to her by the Respondent’s conduct caused her to be entitled to be paid holiday pay.
135. In relation to the Claimant’s claim of religious discrimination which was using a whiteboard on the ward to post motivational messages. The Claimant again referred to the NMC code of conduct and stated that the motivational words were used and which helped you build up your business. She stated that every worker wants a motivational leader. The Claimant stated that there was no photographic evidence of the messages on the board and as a result to be demoted was unfair and discriminatory.
136. The Claimant stated she was treated less favourably than her comparator of Ms Cronin and Ms Sheffron, who had their grievances heard and they were promoted quickly. The Claimant stated that she asked why only three years after qualifying they had been promoted and Mr Wall said that the number of years was not a factor. The Claimant stated that she was convinced that her race was a factor in way she was treated as compared to her comparators.
137. The Claimant stated that the disciplinary process included clear flaws which had been magnified and brought to light and the NMC code of conduct was breached. The Claimant also stated that the process was negligently approached and was reflected in the sluggish way the appeal was handled. The Claimant referred to her grievance submitted on 1 July 2016, which stated that there was an excessive nine-month delay until the disciplinary outcome was sent to her. The Claimant stated this was clear discrimination on the grounds of race and religion and belief.
138. In relation to the claim for victimisation, the Claimant stated that the Respondent made a choice of not listening to her by using words to describe her grievance such as “not clear” it was “complex” as

“comprehensive”. The Claimant stated that the trust had persistently and constructively decided not to listen to her grievance. The Claimant stated that she was repeatedly ignored as compared to others who made allegations against her. The Claimant stated she was victimised because she felt the punishment did not fit the crime and there was no evidence against her. Two other women in the disciplinary hearing were given tissues and checked on when the Claimant was upset. She was ignored, then stated that this was clear victimisation.

139. With regard to comparator evidence, the Claimant referred to the incident where the Claimant alleged there was an incident where the Ward Manager gave an overdose but was never demoted and her seniority was protected. The Claimant stated that the ratio of patient to nurse is 1 to 8 and with low acuity that ratio is safe. The Claimant stated that there was an assumption against her formed out of bias. The Claimant stated that due to the colour of her skin, they took into account the evidence of the two other women who were white. For not completing the bank shift they could have given her an oral warning, but by dealing with the complaint of the two women against her they could give her a more serious warning. The Claimant stated that they could have spoken to others, but they did not.

140. The Claimant stated she was demoted and given a one-year warning and moved to a new specialty with no evidence to justify this; this was a breach of contract. The Claimant submitted that due process was not followed; a person ought to be heard. The Claimant asked for a ruling in her favour.

141. The Claimant stated that since December 2014 until now it has impacted adversely upon her health and went on into detail to show how this had affected her emotionally and financially. However, as the Tribunal were not dealing with the issue of remedy the submissions were not relevant to the issues before the Tribunal.

The Respondent's response

142. The Claimant stated that she had been subjected to a serious disadvantage, that she could not write a grievance. The Tribunal is referred to her evidence on day three at approximately midday and to paragraph 97 of the Respondent's written submissions. This is also the first time in these proceedings that the Claimant referred to her allegations of bullying that she states was not challenged at all, this was at page 688 in the bundle which shows that this was discussed.

143. The Claimant said the Respondent should act without delay in relation to patient safety, however, see Mr Wall's statement, he said it was inappropriate conduct and page 750 of the bundle which was part of the disciplinary outcome letter, the witness felt they had been given misinformation had been given by the Claimant on this matter: there was no immediate risk.

Decision.

The unanimous decision of the Tribunal is as follows:

144. The Tribunal will firstly deal with our observations on the credibility of the witness evidence. The Claimant's evidence was occasionally evasive failing to answer questions or responding with a question (such as "what did I do that was wrong?" and "how can you have two people in a room and believe one of them?"). However, having looked at our notes of the Hearing, the Claimant appeared to answer most questions put to her in a direct fashion. We found the Claimant to be a generally straightforward witness who maintained her conviction that she had done nothing wrong and was looking to be exonerated; this was her position throughout the hearing namely that there was no evidence to justify the finding of gross misconduct. The Tribunal also found the Respondent's witnesses credible. Their evidence was consistent internally as well as in connection with the documents in the bundle.
145. The Tribunal now turn to the first issue of constructive unfair dismissal and ask whether the Claimant has shown that the Respondent committed a fundamental breach of the implied duty of trust and confidence based on the final straw doctrine. We consider the contributing cumulative factors in turn starting with the allegation that the Respondent "falsely" accused the Claimant of misconduct. We refer to our above findings of fact and note that the Claimant accepted that she left her shift early providing a number of different reasons for needing to do so, there was no evidence that she sought prior permission to do so and the evidence before us was that she informed the manager that she would be leaving several hours early (see above at paragraphs 36-8 of our findings of fact).
146. The Claimant left the ward without cover having previously being arranged. We heard consistent evidence from the Respondent's witnesses that the Claimant's decision to leave early left the ward without what they described as a safe staffing level and it was not disputed that they needed to draft another person in from a different ward at short notice to cover and at the expense of staffing levels in the other ward. The Tribunal accepted the Respondent's evidence that this caused operational difficulties and could have put patients at risk as the department that provided the nurse cover was left short of staff. The Claimant also accepted that she raised her voice in a meeting with Ms Sweeney and others overheard her telephone conversation with the Bank Staff manager. The Claimant's corroboration that these events occurred justified the Respondent's decision to investigate the matter further. The facts therefore show that these were not false allegations, some of the conduct was admitted by the Claimant therefore this issue is not borne out by the facts before us.
147. The second issue is that the Claimant maintained that she had been abused under the investigatory and disciplinary procedure. Our findings of fact above show that the Respondent followed a fair investigation and disciplinary process, there was no evidence to show that the Claimant had been subjected to abuse during the process. The Tribunal note that the process followed was lengthy but there was no evidence to suggest that the delay was either deliberate or to frustrate her; there was also no evidence that this was done in a malicious or wilful manner. The delay in completing the investigation was due to further allegations arising out of the interviews which required further investigation.

148. The third matter the Claimant alleged was a contributing factor to the fundamental breach was that she was demoted “for something she did not do”. This is similar to the first matter dealt with above and we have found as a fact that the conduct in relation to allegations 1-3 was largely admitted by the Claimant. The Respondent, on the balance of probabilities were obligated on the evidence before them to investigate the further allegation of “alleged inappropriate behaviour towards staff” (see above in our findings of fact at paragraph 48). We also refer to our conclusion at paragraph 68 where the Respondent was found to have investigated thoroughly and carried out a detailed analysis of all the evidence. We conclude therefore that the Claimant was not demoted for something she did not do, there was ample evidence before the Respondent to justify the decision to give the Claimant a final warning. We conclude therefore that this head of claim is not on its facts found to be proven.
149. In relation to the allegations in respect of the Respondent’s failure to deal with the Claimant’s grievance, we have made detailed findings of fact about this matter. The Claimant had professional advice throughout (via the RCN, her Union and Ms Nunoo, an independent professional HR adviser) and the Respondent had made it clear that it was prepared to address her grievances provided they were set out in accordance with the terms of their policy in a clear and appropriate manner. As the Respondent remained open to considering a grievance from the Claimant as stated in their written communications with her, there was no “continued and complete rejection” of her grievance, only continuing requests over a number of months for her to comply with their request for the grievance to be set out clearly and entirely distinct from her appeal against the disciplinary warning. This approach was consistent with their policy and was a reasonable request. It could not be considered to be a breach of the duty of trust and confidence either on its own or cumulatively with the above factual scenarios, in fact their actions were entirely consistent with their policies and procedures and reinforced the contractual obligations between the parties. The Claimant having failed to show that the Respondent’s conduct amounted to a fundamental breach or that it was unreasonable, the Claimant’s claim for constructive unfair dismissal is not well founded and is dismissed.
150. The Claimant’s claim for wrongful dismissal is not well founded on the basis that we have concluded that the termination of employment was not as a result of a fundamental breach. The Claimant resigned from her employment with immediate effect therefore she is not entitled to claim for notice pay.
151. There was no evidence before the Tribunal as to how the Claimant put her claim for holiday pay despite a request by the Tribunal for the Claimant to provide details of how much she was owed and on what basis. In the absence of any evidence to support this head of claim this claim is dismissed.
152. The Tribunal now turn to the Claimant’s claim for direct disability discrimination. The Respondent conceded at the start of the hearing that the Claimant was disabled by reason of her depression at the relevant time, within the meaning of the Equality Act. The Tribunal noted that the

Claimant claimed that the acts of less favourable treatment were in relation to the conduct of the grievance and disciplinary process and the specific allegations are set out above at paragraph 12 (a) to (e), we will consider these in turn. The first act relied upon was failing to hear the grievance, we also deal with 12(d) and (e) at the same time as all three allegations relate to the handling of the Claimant's written grievances. We refer to our findings of fact particularly to paragraphs 81 and 87-9 where we conclude that there was a clear willingness by the Respondent to hear the grievance provided the Claimant set out her grievance distinctly from the points she was pursuing as part of her appeal. It was reasonable for the Respondent to request that this be done and this request was consistent with their policies and procedures. This was not unfavourable treatment nor was it less favourable treatment because of her disability. The Claimant was able to comply with this request but confirmed in evidence that she chose not to (paragraph 92). We conclude that the Claimant has failed to show primary facts for us to conclude that she has been treated less favourably therefore the burden of proof does not shift to the Respondent in respect of 12 (a), (d) or (e).

153. The second allegation at paragraph 12 (b) was that the appeal process was unfair. We refer to our findings of fact at paragraphs 80, 82, 83 and 85. We noted at paragraph 80 that the reconvened appeal hearing began without the attendance of her trade union representative, who was running late. Although the Tribunal felt that this was not good practice, there was no evidence to suggest this was done because of the Claimant's disability. Furthermore, it was done with the Claimant's consent and did not render the appeal process unfair. It was also noted that the union representative joined the meeting later and was able to assist the Claimant. Although the Claimant raised a concern before the Tribunal that her witnesses were not called to give evidence, our findings on this issue are detailed above at paragraph 77 in relation to the first day of the appeal (in November) and Ms Nunoo confirmed to the Tribunal in evidence that she did not make the panel aware that the witnesses were outside. We conclude on the facts that the reason they were not called to give evidence was because the panel were not informed they were there. We found as a fact above at paragraphs 82-3 that the appeal hearing and outcome were detailed and thorough and considered all the relevant evidence. On the facts we do not find that the conduct of the appeal was unfair (substantively or procedurally) and there was no evidence that had the Claimant not been disabled a different or more thorough process would have been conducted. This allegation is not made out on the facts.

154. There was no evidence presented to the Tribunal and no evidence in the bundle or in correspondence to suggest that the Claimant had been subjected to less favourable treatment as compared to a hypothetical comparator who was not disabled. There was no evidence to suggest that a hypothetical comparator who had submitted a 16-page document in the same format as that submitted by the Claimant (which combined issues relating to the grievance and appeal) would have been treated more favourably. We conclude that in the absence of any evidence to suggest that the Claimant has been treated less favourably in connection with her grievance these claims are dismissed. The Claimant also alleged that the appeals process was "substantively and procedurally unfair" but there was

no evidence before the Tribunal to suggest that this was because of the Claimant's disability. For the avoidance of doubt the Tribunal found no evidence that the appeals process was unfair.

155. The Claimant alleged above at paragraph 12(c) that it was an act of less favourable treatment for Ms Hall to claim that she did not understand the Claimant's grievance. It was noted that Ms Hall stated in her evidence in chief that she found the Claimant's grievance "long and not easy to follow" in the format in which it was presented. The Tribunal had some sympathy with this view.
156. At paragraph 88 of our findings of fact we concluded that Ms Hall replied to the Claimant's letters and confirmed that she found it difficult to understand the nature of the grievance and this was a view shared by Mr Wall. There was no evidence to suggest that this view was not genuinely held and the Tribunal having seen the relevant documents conclude that that she was entitled to form this view. There was no evidence to show that had a non-disabled employee sent the same 16-page grievance with a mix of grievance and appeal points combined, they would have been treated more favourably. On that basis the allegation against Ms Hall of less favourable treatment because of disability is not supported on the facts.
157. Turning to the Claimant's claim for failing to make reasonable adjustments, the PCP is stated to be "operating a grievance procedure which was more obstructive and more onerous than the Trust's published grievance procedure and which was not in accordance with the ACAS Code". We conclude that the operation of the grievance process was not more obstructive and more onerous than their stated policy; their interpretation of the policy was consistent and we refer to the policy above at paragraph 32; the Respondent applied this policy consistently and there was no evidence that the Claimant was put at a substantial disadvantage as a result. There was no evidence to suggest that the Respondent applied the PCP to everyone or to the Claimant individually and there was no evidence to suggest that the Claimant was subjected to a substantial disadvantage, the Claimant's evidence was clear that she was able to amend her grievance but she chose not to. We conclude that this head of claim is not supported on the facts.
158. We now turn to the Claimant's complaints of race and religious discrimination referred to above at paragraph 16-17. The allegation of race discrimination is formed on the basis of the Claimant being of Black Ghanaian race (and nationality) and she compared herself to Ms Sheffron, Cronin and Sweeney who are all White Irish. We conclude on the facts that these are not appropriate comparators. Although they are all White Irish the factual matrixes for each are not the same and are materially different. The three comparators had not left work early and were not being investigated under the disciplinary process. Their complaints about the Claimant's conduct arose out of the disciplinary investigation; no grievances were raised by the comparators. We do not find that these were appropriate comparators and even if we are wrong on this matter, the Claimant produced no evidence to suggest that the handling of the disciplinary process and the interpretation of the grievance process were acts of less favourable treatment because of race and we refer to our

finding of fact and conclusion at paragraph 59 where the Claimant accepted in cross examination that she had produced no evidence to support this allegation apart from pointing out a difference in race.

159. The Claimant claims direct religious discrimination and relies on a hypothetical comparator. Our findings of fact above reflect that Ms. Cronin and Ms. Sheffron informed the investigation that the Claimant had allegedly written religious messages on the white board but there was no specific finding or conclusion reached on this factual issue by the Respondent and we accept that the matter was not key to its findings, and the Tribunal accept Ms Anderson's evidence in her statement at paragraph 58. There was no evidence to suggest that a person of a different faith (or no faith) who was facing a disciplinary hearing on the specific allegations before the Claimant, would have been treated more favourably in respect of the process followed or the conclusions reached by the Respondent in the handling of the disciplinary or grievance process. In the absence of any evidence to support the Claimant's claim that she has been treated less favourably because of her religion and belief, this claim is dismissed.

160. The Tribunal noted that the Respondent conceded that a number of the letters from the Claimant amounted to protected acts. Having looked at the resignation letter, this post-dated all the detriments so could not have resulted in the Claimant being subjected to victimisation. The issue of whether the document at page 720 is a protected act need not be resolved by the Tribunal due to the large number of documents accepted to be protected acts. The next issue for the Tribunal is whether or not the Claimant was subjected to a detriment because she had done a protected act. The Tribunal do not intend to repeat our conclusions in relation to the complaints the Claimant makes about the conduct and any conclusions of the disciplinary and grievance process, having concluded that that Respondent was entitled to act as it did and there was no evidence of less favourable treatment and no evidence to suggest that the Respondent acted as it did because the Claimant had raised any complaint of discrimination. We conclude that the heads of claim at paragraph 19(b), (c), (d), (f), (g), (h), (i), (l), (m) and (n) are not well founded and are dismissed.

161. We now deal with the outstanding allegations of victimisation firstly at paragraph 19(a) where the Claimant alleged that it was an act of victimisation not to investigate the allegations of race discrimination made at the meeting of the 5 June 2016. The Tribunal believe that this was a typographical error and should refer to 2015. It was accepted that the Claimant raised a concern that she felt she had been discriminated against during the disciplinary hearing (see above at paragraph 59). Ms Anderson referred to the fact that the Claimant had raised this in the hearing but no details were provided and the Claimant did not raise it independently or provide any facts to support the mere allegations. The Tribunal conclude on the facts that the Claimant had provided no facts of her allegation of discrimination; there was also no evidence that she was subjected to a detriment because she raised this matter.

162. The next allegation of victimisation is at paragraph 19(e) which was allowing the appeal to proceed without dealing with the Claimant's

allegation of unlawful discrimination. This again is similar to the previous head of claim. The evidence before the Tribunal was consistent that the Claimant failed to provide any clarification of the facts relied upon to support the allegation; the complaints in the disciplinary hearing were bald assertions (page 702 “LS and AC are white and young, I am [black] and old”). There was no evidence to suggest that failing to investigate these bald assertions was an act of victimisation because she had done a protected act. The Tribunal accept the Respondent’s position that they were unable to investigate until they had details of the allegations of discrimination; all they had was accusations which were unsupported by any evidence.

163. We again make the same comment in relation to the head of claim at paragraph 19(k), as there were no details of any allegations they could not be investigated. This is also not well founded and is dismissed for the same reasons at the above two heads of claim.

164. There was a complaint against Ms Brewer as Second Respondent in the list of issues at paragraph 17K and 19J where the Claimant complains that Ms Brewer failed to ensure that the grievance was satisfactorily conducted and her failure to do so was an act of direct discrimination and victimisation. There was no evidence that Ms Brewer did anything but pass on her letter to the appropriate department dealing with the matter and we note that the Claimant conceded in cross examination that Ms Brewer had no involvement with her case. Her limited involvement was consistent and appropriate taking into account her senior status and remit within the organisation. Ms Brewer was in a strategic role and did not have conduct of individual disciplinary and grievance cases. Her decision to delegate this matter was appropriate; there was no evidence to suggest that her conduct was discriminatory in any way or a failure to carry out her professional duties as alleged by the Claimant. This claim against the Second Respondent is not well founded and is dismissed.

165. Lastly in relation to the Claimant’s claim for outstanding holiday pay, as the Claimant has failed to produce any evidence to support her claim for holiday pay, the Tribunal conclude that this claim will be dismissed for lack of evidence.

Employment Judge **Sage**

Date 9 March 2018