



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Ms S Duhulow

Imperial College Healthcare NHS Trust

Heard at: By CVP

on 11 to 19 February 2021

Before: Employment Judge Nicolle

Members: Mr D Schofield and Mr I McLaughlin

Representations

For the Claimant: in person

For the Respondent: Mr B Jones of counsel

Judgement

All claims brought by the Claimant under the above case number for direct discrimination because of religion or belief pursuant to sections 13 and 39 (2) (b)-(d) of the Equality Act 2010 (the EQA), direct discrimination because of age pursuant to sections 13 and 39 (2) (b)-(d) of the EQA, harassment pursuant to section 26 of the EQA and victimisation pursuant to section 27 of the EQA fail and are dismissed.

Reasons

1. Oral reasons were given to the parties on 19 February 2021. The claimant originally requested written reasons on 23 February 2021 but unfortunately the Tribunal administrative staff did not forward this to Employment Judge Nicolle until 11 May 2021.
2. The hearing was heard by CVP that is the cloud video platform under Rule 46. The parties agreed to the hearing being conducted in this way. In accordance with Rule 46 the Tribunal ensured that members of the public could

attend and observe the hearing. This was done via a notice published on Court Serve Net. Members of the public did not attend the hearing.

3. The parties were able to hear what the Tribunal heard and see the witnesses as seen by the Tribunal. From a technical perspective there were no significant difficulties.

4. The participants were told that it is an offence to record the proceedings. The Tribunal ensured that each of the witnesses had access to the relevant written materials which were unmarked. I was satisfied that none of the witnesses were being coached or assisted by any unseen third party while giving evidence.

5. The Tribunal had a bundle comprising of 543 pages. There was one additional document added to the bundle during the hearing which was a scan of a birthday card given to Natalie Williams on her 50th birthday in August 2017.

6. Both parties provided chronologies and proposed reading lists. There was a short cast list.

7. The Tribunal heard witness evidence from the Claimant and on behalf of the Respondent from Natalie Williams, Reception Supervisor (Ms Williams), Rhona Buxton, Clinical Service Manager (Imaging) (Mrs Buxton), Nicola Torr, Core Services Lead Radiographer (Ms Torr), a Madeleine Lynch, Senior Sonographer for Imaging (Hammersmith Hospital) (Ms Lynch) and Catriona Todd, General Manager (Imaging Department) (Mrs Todd).

8. Mr Jones provided the Tribunal with a 57 page and 166 paragraph closing submissions and the Claimant provided the Tribunal with an 8-page closing submission and in respect of both the Tribunal was grateful.

The Issues

9. The Tribunal was provided with a detailed draft list of issues. Whilst there were some areas of dispute the list was largely agreed and given its length is appended rather than set out within the Judgement albeit the individual allegations and the Tribunal's conclusions are set out later.

10. At the commencement of the hearing further clarification was provided by the Claimant as to a named actual comparator for her religion and belief claim, namely Zukena Kerr-Graham a fellow administrative and clerical coordinator within reception of the Imaging Department (Ms Kerr-Graham).

11. It was also clarified that for the purpose of the age discrimination complaint the Claimant was making a comparison between herself as an employee in her 20s and a group of employees aged 50 and above.

The Pleadings

12. The original ET1 was issued on 23 June 2019. There was an Amended Particulars of Claim on 30 January 2020, a second Amended Particulars of Claim on 25 May 2020 to which the Respondent filed a consolidated Amended Grounds of Resistance on 8 June 2020.

Findings of Fact

The Claimant

13. The Claimant commenced employment with the Respondent on 28 November 2016 as an administrator and clerical coordinator within the reception team of the Respondent's Imaging Department (the Department). She remains employed by the Respondent.

14. The Claimant is a practising Muslim of the Sunni denomination with Somalian heritage.

The Respondent

15. The Respondent is a large NHS Hospital. The Department has approximately 580 members of staff. The Claimant is one of approximately 12 staff members in the reception team to the Department (the Reception Team).

Ethnic diversity

The Reception Team

16. The Tribunal heard evidence as to what clearly constitutes a diverse ethnic and religious profile amongst staff within the Reception Team. Ms Williams says that it comprised the Claimant of Somalian heritage, someone from Nigeria, two from Bangladesh, both are whom she believes to be Muslims, two from the Philippines, both she believes to be Christians, two West Indians, both she believes to be Christians, one from Venezuela, religion not known, one mixed race and half Scottish she believes to be Christian and three British but of West Indian descent.

The Radiography Department

17. Ms Torr says that the Radiography Department comprises approximately 40 employees of whom she believes approximately 15 are Muslims.

Reporting lines

18. The immediate reporting line for staff such as the Claimant in the Reception Team is to Ms Williams, and then in ascending order Ms Torr, Mrs Buxton and Mrs Todd.

Grievance policy

19. This is not a case which turns significantly on policies, but it is relevant to refer to the Respondent's grievance procedure and in particular clause 4.1.1. This provides for an informal stage as the initiating element of a grievance to include in the first instance that the problem should be discussed in a one-to-one meeting with the immediate manager/supervisor. The manager may advise to hold a voluntary mediation meeting with a neutral party through referral to Contact or a facilitated meeting between both parties may be arranged.

Chronology of relevant events

20. In setting this out and making findings of fact the Tribunal's focus is on matters which are of direct relevance to the issues which need to be determined and will not, unless otherwise necessary, extend to matters upon which evidence was heard which the Tribunal does not consider had direct relevance to the issues it needs to determine.

21. The Claimant commenced employment with the Respondent on 26 November 2016.

22. The Respondent's witnesses all gave evidence that during the initial year to 18 months of the Claimant's employment there were no issues. Matters deteriorated during 2018.

Ms Williams' 50th birthday card August 2017

23. The Claimant signed a birthday card for Ms Williams' 50th birthday in August 2017. This is relevant in the context of subsequent matters. The Claimant's evidence was that she felt pressurised to sign this birthday card as she was a "new" employee. However, the Tribunal considers that she had been employed by that stage for approximately nine months. There is no evidence that she protested that it was contrary to her religious faith to sign the card.

2018

24. Ms Williams says that in 2018 she started to experience difficulties in her supervision of the Claimant. This resulted in her commencing making entries in a word document which was included in the Tribunal bundle. Ms Williams says that the document was compiled contemporaneously, and it includes a series of dated entries in respect of her interactions with the Claimant. Some of these are minor matters such as not saying hello in the morning, but we highlight a particular entry on 19 September 2018 when Ms Williams records that the Claimant had refused to open an office door leaving her locked in when the digital lock was not working.

Broken digital lock incident.

25. The Tribunal heard evidence on the incident when Ms Williams was shut in an office when the digital lock was not working. The Claimant's explanation was that the door was left open, but she did not deny that such an incident may have

taken place. The Tribunal finds that the evidence from Ms Williams was unequivocal on this point and finds on the balance of probabilities that there was such an incident, that the Claimant would have been aware that Ms Williams was seeking assistance, but for whatever reason declined to provide immediate assistance necessitating another colleague having to let her out.

5 November 2018

26. A further relevant entry in Ms Williams' chronology of events concerns 5 November 2018 when she records that the Claimant had been "rude, nasty and manipulative" as well as making little digs to certain staff members.

6 November 2018

27. On 6 November 2018 Ms Williams records that the Claimant was always questioning staff on what they are doing, questioning about the rota.

13 November 2018

28. On 13 November 2018 Ms Williams records "very rude" to Ms Sheron Griffiths (Ms Griffiths) this morning, talking about her when she is not in the office and in goading other staff members to join in.

Email from Prem Mukkamalla of 20 December 2018

29. On 20 December 2018, an email was sent by Prem Mukkamalla, Senior I MRI Radiographer (Mr Mukkamalla) to Ms Torr concerning the Claimant's conduct on 15 December 2018. The Claimant disputes it was a genuine email. Ms Williams says why he fabricate such an email. It included him saying the lists are not done properly, are not updated, the Claimant arrived 10 minutes late, went on a break without checking with any senior staff member, a patient arrived late, asked to go home early.

30. The Claimant disputes the events set out in Mr Mukkamalla's email. It is not the Tribunal's intention to make findings as to exactly what happened on 15 December 2018, it is sufficient to record the fact that a Senior Radiographer felt sufficiently concerned to send an email reporting those concerns at a time when Ms Williams already had a chronology of concerns regarding the Claimant's conduct in her relationship with her.

2019

February 2019

31. The circumstances giving rise to this claim were precipitated by the events of the first week of February 2019. The immediate background to this is that there was a degree of contention between the Claimant and Ms Kerr-Graham regarding responsibility for completing the list for the week. The Claimant had been at work over the preceding weekend, was off work on Tuesday 5

November, and there was then an issue with the list not having been completed for the 7th and 8th.

32. The Tribunal was taken to extensive evidence regarding responsibility for completion of the list and weekend working including an email from 4 July 2018. The Tribunal does not make detailed findings of fact on who had responsibility for the list. It may well be that there was a degree of ambiguity about who had direct responsibility for individual parts of the list.

33. The relevant point, however, in the context of the claim is the exchange which took place on the Respondent's Soliton communication system which is set out at pages 203-204 in the bundle. This involved an exchange between the Claimant and Ms Kerr-Graham. On 6 February Ms Kerr-Graham stated, "Hi Samira, you left us day list 7 + 8 when all had been done when it has been rotated for you, everyone has helped but yet you still left it for".

34. Ms Kerr-Graham said on 11 February "Dear Samira what I advise is that you come correctly with the way you speak to me". The Claimant responded in a message as follows:

"I am happy to discuss any issues relating to my work however, since you are not the supervisor, and this is above your pay grade I suggest you leave any reprimanding to senior management. I would ask that in future you are a check you have all the facts before jumping to conclusions".

Meeting of 11 February 2019

35. The Claimant was then invited to a meeting in a message via Soliton. Ms Williams 9:30am on 11 February said "good morning ladies we need to talk. I suggest we meet in the MDT room after the late shift have arrived".

36. The Claimant's expectation, or she says it was her expectation, was that this would constitute a mediation meeting. The Claimant said she was told it was going to be a mediation meeting, this is denied by Ms Williams and the Respondent's other witnesses. The Tribunal accepts that there may have been a degree of uncertainty regarding the meeting, but it finds that there was no direct reference to mediation. The meeting took place later that day.

37. The Claimant covertly recorded the meeting on her phone. Her explanation for doing so was that she had no trust in the Respondent. The Tribunal finds it significant that she clearly came with the intention of recording the meeting, even if her expectation that it was a mediation were to be upheld, which we have found it not to be. It is also relevant that the Claimant then proceeded to covertly record all subsequent meetings, including those with Mrs Buxton and even her personal performance review meeting, and we will return to that later in our decision.

38. The meeting was attended by Ms Torr as well as Ms Williams. The reason for Ms Torr's attendance was that Ms Williams had expressed discomfort about conducting the meeting one to one with the Claimant given the difficulties in their working relationship.

39. Ms Williams says that she was taking active steps to minimise direct in person contact with the Claimant to include sitting in the back office rather than in more immediate proximity to the Claimant.

40. We find that by this stage that there had been a serious breakdown in that working relationship between the Claimant and Ms Williams.

41. Further, it is apparent that during the meeting the Claimant's body language and attitude would appear to have been ones showing a degree of dismissiveness, possibility hostility, towards Ms Williams.

42. The meeting commenced by Ms Torr saying that she had been notified about some areas of concern revolving around the Claimant's behaviour and attitude towards the workload and team. She labelled the meeting as a legal conversation of concern. She accepted in evidence that that was a mislabelling and that the word "legal" had been incorrectly included. She went to say it was an informal meeting and there was a need to address issues which had arisen.

43. The note of the meeting runs for 23 pages and there is no need to refer to it in any detail. A few points which are relevant:

44. On page 221, there is a reference by Ms Torr to the way the Claimant was addressing people being an issue. The Claimant referred to an issue involving Ms Griffiths and her saying she was embarrassed in front of one of the radiographers in respect of an incomplete GP referral form.

45. At page 223 Ms Torr referred to what she had perceived to be confrontation with every single member of staff,

46. Also, on page 223 Ms Williams made comments to the effect that the Claimant was not pulling her weight, there was a perception of walking on eggshells around her, a bad vibe and referred to Wendy Murray's (Ms Murray) birthday when Ms Williams described the Claimant as having been very rude and blank because of not signing a collective birthday card.

47. She went on to refer to an incident where the Claimant had refused to scan a document even though she says she was not busy, referenced the digital lock incident with Ms Williams when she was locked in a room, but the Claimant did not assist her.

48. There was further discussion regarding the Ms Murray birthday card issue. The Claimant stated: "It's not about collections and cards it is the fact that there are certain people whose birthdays are being celebrated and others who aren't". The Claimant said, "my reason for not participating in Wendy's birthday is primarily because I don't celebrate birthdays". Ms Williams responded by saying "Oh you are being petty, oh come on grow up, you're being petty".

49. Ms Williams accepts that she said this, but her evidence is it had nothing to do with the Claimant's age. She also accepts that during the meeting she

scoffed or possibly laughed but she said that this was not by way of demeaning or humiliating the Claimant but as result of her being incredulous as to some of the responses the Claimant had given.

50. Ms Torr said that the Claimant's voice and body language was incredibly confrontational and that she was not taking account of how people were feeling. Ms Williams said that she felt uncomfortable with the Claimant because she made her feel that she could not do her job, that she was always questioning her and making her feel very small. Ms Torr described the Claimant as being the common vector for the interpersonal issues which had arisen in the Reception Team.

Letter to the Claimant dated 11 February 2019.

51. A letter was sent to the Claimant by Ms Torr following the meeting on 11 February 2019 (pages 210-211 in the bundle). It said the purpose of the meeting had been to discuss the Claimant's behaviour towards the rest of the Admin and Clerical Team and a recent message sent on Soliton. It referred to it being explained that the Claimant's response to Ms Kerr-Graham was seen as inappropriate. Reference was made to her being confrontational and was illustrated by reference to various incidents to include the failure to scan a document, the digital lock incident, the email from radiography and more generally what was seen as negative behaviour.

52. Ms Torr advised the Claimant that she would be speaking to Ms Kerr-Graham regarding their original exchange of messages and bluntness of their tone and concluded by saying there would be a follow up meeting in a month to discuss whether things had improved.

Claimant's meeting with Mrs Buxton on 13 February 2019

53. The Claimant attended a meeting with Mrs Buxton on 13 February 2019. Once again, the Claimant made a covert recording. It clearly was a long meeting as the transcript runs to 19 pages. It is labelled as grievance meeting, but the Tribunal finds that whilst there may have been discussion of a grievance it did not constitute a formal grievance meeting.

54. At page 248 the Claimant says: "I was accused of being extremely rude for not celebrating Wendy's birthday, but I have just explained it is my personal preference that I don't celebrate birthdays". There was then further discussion about the celebration of birthdays.

55. At page 255 Mrs Buxton said, "from what you have told me this feels almost like that you're raising a grievance" and the Claimant responded, "what is a grievance?". There was then a discussion about various issues relating to the situation which had arisen.

56. It is very clear from transcript of this meeting and subsequent conversations as recorded between the Claimant and Mrs Buxton, that Mrs Buxton was spending significant time seeking to discuss the issues which had arisen.

57. Mrs Buxton has been employed by the Respondent for over 30 years and the sense the Tribunal takes from those communications is she was using her best endeavours with a view to deescalating the situation which had arisen, without unless necessary, embarking on a formal process.

Mrs Buxton's note of 13 February 2019

58. Mrs Buxton made a note merely for her own reference on or about 13 February 2019 (in the bundle at pages 283-286). It is labelled as a file note, the Claimant's name (grievance). In effect it repeats the concerns the Claimant had addressed in summary form. There is no need for us to set those out in detail save to say the Tribunal does not accept the Claimant's contention that this represented a partially and selectively edited version. The Tribunal finds that the note is broadly consistent with what had been said during the previous meetings. Of course, in circumstances where Mrs Buxton would not have been aware that those meetings had been recorded by the Claimant.

Claimant's email to Mrs Buxton of 14 February 2019

59. The Claimant sent an email to Mrs Buxton on 14 February (pages 261-262 in the bundle). This includes her referring to being criticised for not celebrating birthdays. She says the judgment of her for being "rude and petty" was unnecessary and personal. She said: "I have the right to choose what celebrations I partake in and expecting me to celebrate birthdays infringes on this right". She referred to previous issues with overtime payments that had arisen in 2018. She said that she felt ambushed at the meeting and that it was unfair and biased against her.

Claimant's email to Mrs Buxton on 19 February 2019

60. The Claimant sent a further email to Mrs Buxton on 19 February 2019. The email is, in anyone's reasonable interpretation, extremely combative. She starts by saying that the letter from Ms Torr of 11 February is littered with lies designed to paint a negative image of me. She refers to numerous fabrications made in the letter and refers to Ms Torr having lied. She concludes by stating that the letter from Ms Torr contradicted what was said in the meeting and therefore contained lies. She says that Ms Williams and Ms Torr colluded against her to cover for Ms Kerr-Graham and refers to a fabrication of events, a lack of ethics and morality in the way things had been conducted and concludes by saying she would like a formal written apology from Ms Williams and Ms Torr for their discriminatory, unfair and altogether ill treatment of her.

Claimant's meeting with Mrs Buxton on 21 February 2019

61. The Claimant attended a further meeting with Mrs Buxton on 21 February. Again, it was recorded covertly the Claimant. It was self-evidently a relatively long meeting as the transcript runs for 16 pages. The meeting took place in two separate instalments as Mrs Buxton had to attend other premises and then return to the meeting later that day.

62. At page 272 Mrs Buxton is recorded as stating to the Claimant “you’re a very clever young lady but you fixate on certain things, the rules the rules what are these rules”. The Claimant contends that this constituted mocking language. In response to a question from the Tribunal Mrs Buxton explained that her reference to the Claimant being a clever young lady, which she accepts she said, was in the context of the Claimant’s educational background and possible career aspirations. It was not intended to be a mocking remark and was not intended pejoratively.

63. At page 274 of the note the Claimant is recorded as stating it was unfair and discriminatory. Mrs Buxton says that she construed this as referring to bias rather than any form of discrimination on account of a protected characteristic.

64. There was a discussion at page 275 regarding the meaning of the term gross misconduct in the context of allegations made by the Claimant against Ms Torr and Ms Williams.

65. There was lengthy discussion about Mrs Buxton’s desire that there should be a process of mediation.

Meeting between the Claimant and Mrs Buxton on 26 February 2019

66. There was a further meeting between the Claimant and Mrs Buxton on 26 February 2019, once again covertly recorded and self-evidently a long meeting as the transcript runs for 18 pages.

67. Mrs Buxton started by saying basically what the Trust endeavours to make sure that every effort has been made to resolve things informally before matters are escalated. At page 302 of the note the Claimant stated, “I definitely still want a formal grievance raised”. Mrs Buxton responded by saying that she was going to send the invite for a mediation via the Contact service, the Claimant could ultimately refuse.

Mrs Buxton email to the Claimant of 1 March 2019

68. Mrs Buxton sent the Claimant an email on 1 March 2019. It constituted a summary of previous exchanges so there is no need to make detailed reference. It referred to the proposed mediation with Contact and that the Claimant had said she was not happy to do this but nevertheless that Mrs Buxton would be referring her to Contact for mediation and concluded by saying “if after mediation you felt that the problem had not been resolved you could of course raise you concerns under the formal process”.

Claimant email to Employee Relations Team of 7 March 2019

69. The Claimant sent an email to the Respondent’s Employee Relations Team on 7 March 2019. It referred to her having raised a grievance against Ms Williams and Ms Torr alleging that she had experienced mistreatment in the form of unfairness, abuse of power, discrimination and bias. She goes on to say I have been mistreated and want a formal investigation. She says the case

warrants a formal investigation and that mediation under the Trust's grievance procedure was intended to be voluntary.

70. On 13 March Employee Relations forwarded that email to Margaret Effar (Ms Effar) in the Employee Relations Advisory Service (ERAS). On 13 March Ms Effar sent an email to the Claimant asking what outcomes she would like to come out of the formal procedure.

71. The Claimant responded by attaching a summary referring to the fact that she would like action taken against Ms Kerr-Graham on the basis that she put her colleagues under undue pressure or undue supervision, and she wanted a formal written apology from both Ms Williams and Ms Torr for their ill treatment of her.

72. On 19 March Ms Effar sent a further email to the Claimant stating that under the grievance policy a formal grievance must be raised with the next line of management, in this case Mrs Buxton, I would therefore request that you raise your grievance with Mrs Buxton. The Tribunal heard evidence and accepted that it was not part of Ms Effar's role to conduct formal grievances but rather her role was to provide advice and undertake mediation via the Respondent's Contact service so there had been an initial error by Ms Effar.

Claimant's email to Mrs Buxton of 20 March 2019

73. On 20 March 2019, the Claimant sent an email to Mrs Buxton with the subject "request for a formal grievance hearing". She said that she would like action to be taken in accordance with the Trust policy to prevent future reoccurrence of the ill treatment i.e., unfairness, discrimination, abuse of power and bias I have received from both Natalie and Nicola. I would also like action against Ms Kerr-Graham and a formal apology from Ms Williams and Ms Torr.

74. Mrs Buxton says that she never received this email. Evidence was given by both her and Mrs Todd that there had been problems with the Respondent's email system at this time. The Claimant says that this is all very convenient. We accept the evidence of Mrs Buxton that the email was not received. We reach this finding based on not just the problems with emails at that time but also the fact that there was no evidence that the Claimant had directly approached Mrs Buxton afterwards or sent a follow up email as one would have anticipated if she had wanted to challenge why things were not being undertaken.

Claimant's email to Jen Simpson of 10 April 2019

75. On 10 April 2019, the Claimant sent an email to Jen Simpson on the basis that she did not believe the grievance policy was being followed, that the manager is not able to be impartial because I have a grievance against her friends and asked for help to be provided in the matter.

Calculation of Claimant's annual leave

76. A dispute then took place regarding the calculation of annual leave. This was referred to by the Claimant in an email of 12 April 2019 to Mrs Buxton. The Claimant says that she was accused of short-changing the NHS. This is denied by the Respondent's witnesses and in particular Ms Williams. The Respondent says that there had been a computer glitch with a new system having been introduced for the booking of holidays which incorrectly did not take proper account of bank holidays.

77. We find on the balance of probabilities, no evidence to support the Claimant's contention that she was publicly criticised by Ms Williams for short-changing the NHS. In any event this is a matter which was quickly resolved.

78. The Claimant in connection with this matter complains at the email sent by Ms Williams to her and a colleague called Femi, who is a non-Muslim and over the age of 50, involving the issue of annual leave and the confusion which had arisen. The Claimant complained that this involved confidential information being shared inappropriately. She sent an email to Mrs Buxton to this effect on 24 April complaining at the way this had been handled by Ms Williams referring to being accused of short-changing the NHS and not being fair that incorrect information was shared with the rest of the team.

79. Ms Williams accepted that she had been at fault in sending a single Soliton message relating to two separate employees. Nevertheless, we find that this was a minor error, was not directed at the Claimant and could not reasonably have been interpreted by her as a deliberate offence or attempt to embarrass her.

80. The situation gave rise to a further meeting between the Claimant and Mrs Buxton on 26 April 2019, once again recorded by the Claimant. This meeting was relatively short and there is no need to record its contents.

Email from Ms Griffith to the Claimant of 2 May 2019

81. On 2 May 2019 Ms Griffith sent an email to Ms Torr and copied to Ms Williams. She said that she was struggling to make headway with the Claimant. She referred to the Claimant sending her messages via Soliton even when sitting next to her and that she had responded in a condescending manner. She concluded by saying: "sorry for the vent but she has a knack of getting under your skin".

Email from Ms Williams to the Claimant of 7 May 2019

82. The Claimant spent significant time giving evidence on an email sent to her by Ms Williams in relation to the computer glitch and annual leave which appears at pages 353-354 in the bundle. Ms Williams said that whilst I understand your feelings and realise that on reflection, I could have handled the matter more tactfully, I realise that I should have sent an email to you and Femi separately. She denied having made a comment to the effect that the Claimant had been short-changing the NHS. She apologised and hoped the matter could be put behind them.

83. The Claimant disputes the genuineness of the email. There was some confusion in terms of the heading of that email and whether it had been forwarded. The Claimant alleged it had been fabricated. We find no grounds to infer that there had been any fabrication in this email or indeed any other documents put before the Tribunal. There may have been some uncertainty regarding the heading, subject matter and the forwarding of the email but we do not find it anything other than a genuine attempt by Ms Williams to apologise for the confusion which had arisen.

Email from the Claimant to Mrs Buxton of 23 May 2019

84. On the 23 May 2019, the Claimant sent an email to Mrs Buxton raising another complaint about Ms Williams.

Meeting between the Claimant and Mrs Buxton on 29 May 2019

85. There was a further meeting between the Claimant and Mrs Buxton on 29 May, again recorded by the Claimant, but it is not necessary to set out any matters arising.

Email from the Claimant to Mrs Buxton of 17 June 2019

86. On 17 June 2019, the Claimant sent a further email to Mrs Buxton concerning the mediation offered and she said on reflection I would still like my grievance to be upheld and there to be accountability for the issues she had raised on 11 February 2019. She said that she would like there to be a formal investigation before attending mediation.

Email from the Claimant to Ms Williams of 5 October 2019

87. On 5 October 2019, the Claimant sent an email to Ms Williams involving the allocation of late shifts on Thursdays. She commented I understand that you have personal issues with me, I hope I can rely on you to honour your word and promises.

Involvement of Mrs Todd

88. The Claimant had initiated Employment Tribunal proceedings on 23 June 2019. This led to the involvement of Mrs Todd. She said that as of November 2019 she was aware of the fact, but not the detail, of the Tribunal complaint.

89. She sent an email to the Claimant on 2 November 2019 which in summary sought to start a process of dialogue with a view to seeing if issues could be resolved.

90. The Claimant was reluctant to engage. She stated in an email to Mrs Todd on 18 December 2019 since I am still unclear, I will not be attending the meeting with you and Ms Simpson.

91. Ultimately no such formal meeting took place. The Claimant took exception to Mrs Todd approaching her in the corridor with a view to starting a conversation. The Claimant says that constituted an ambush and was embarrassing to her. We find that this was a reasonable attempt made by Mrs Todd to engage the Claimant to explore whether matters could be resolved on an informal basis.

92. Mrs Todd sent a further email to the Claimant on 20 February 2020 to which she attached attaching information and said it would be helpful to talk through these documents about the issues that the Claimant had raised.

Email from the Claimant to Ms Torr and Ms Williams of 30 March 2020

93. On 30 March 2020, the Claimant sent an email to Ms Torr and Ms Williams with the subject “workplace bullying”. She complained specifically about Ms. Griffiths and what she described as appalling conduct towards her that morning. It related to the Claimant having been self isolating for seven days.

Email from Ms Griffiths to Ms Williams and Ms Torr of 11 July 2020

94. On 11 July 2020, an email was sent by Ms Griffiths to Ms Williams and Ms Torr in which she referred to the atmosphere having become increasingly toxic, that she felt like a prisoner on death row all because of one member of staff (the Claimant). She goes on to say: “I would say she actually gets a kick from making us all miserable I am fed up tip toeing around her, what really angers me she will never apologise, will never assess a trivial matter for what it is, she has no ability to move on, holds grudges to the extent where it becomes personal, we are all under extreme pressure, the last thing we need is Simira and her antics I am at an age where I want to come to work do what is required and head home but every day its wonder what drama is in store she needs to go”.

95. We do not find that Ms Griffiths’ email constituted a reference to any form of predetermined decision by the Respondent, or pressure from the Respondent’s management, that the Claimant’s employment needed to be terminated. Nor do we find that Ms Griffiths was induced to send such a communication by any member of the Respondent’s management.

Email from Raquel Trujillo of 9 November 2020

96. On 9 November 2020, Raquel Trujillo, a fellow clerical coordinator in the Department, sent an email to Ms Williams regarding what she described as three minor incidents involving the Claimant which she saw as work disagreements. She referred to an uncomfortable atmosphere and that she would hence forth try to limit contact with the Claimant in the workplace.

The Law

Religion and belief and age and the burden of proof

97. Under s13(1) of the EQA read with s.9, direct discrimination takes place where a person treats the claimant less favourably because of the protected characteristic than that person treats or would treat others. Under s.23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case.

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

99. Under s136, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless a respondent can show that it did not contravene the provision.

100. Guidelines on the burden of proof were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258. The tribunal can take into account the respondent's explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA.) The Court of Appeal in Madarassy, a case brought under the then Sex Discrimination Act 1975, held that the burden of proof does not shift to the employer simply on the Claimant establishing a difference in status (e.g., race) and a difference in treatment. LJ Mummery stated at paragraph 56:

"Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

Further, it is important to recognise the limits of the burden of proof provisions. As Lord Hope stated in Hewage v Grampian Health Board [2012] IRLR 870.

"They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."

101. The Tribunal directed itself as to relevant case law including what constitutes less favourable treatment being an objective matter, the difference in treatment alone is not less favourable without more as per the decision in Chief Constable of West Yorkshire v Khan [2001] ICR 1065. It also looked at what constitutes less favourable treatment both in the context of an actual and a

hypothetical comparator and that such treatment would need to be on the grounds of a claimant's protected characteristic.

102. We considered s.23(1) of the EQA that there must be no material difference between the circumstances relating to each case, the comparator must not share the claimant's protected characteristic. The circumstances of the comparators must not be materially different.

Age discrimination

103. Section 5(1) EQA states that a reference in the Act to a person who has the protected characteristic of age is 'a reference to a person of a particular age group', and a reference to persons who share that characteristic is 'a reference to persons of the same age group'. An 'age group' is a group of persons defined by reference to age, whether to a particular age or to a range of ages — S.5(2). In other words, whenever the EQA refers to the protected characteristic of age, it means a person belonging to a particular age group.

104. The definition of 'age group' in S.5(2) EQA allows the claimant to define the disadvantaged age group as he or she wishes. The Explanatory Notes accompanying the EQA state that an 'age group' would include, for example, 'over-50s' or '21-year-olds'. While a person aged 21 does not share the characteristic of age with 'people in their 40s', the Notes state that a person aged 21 and people in their 40s can share the characteristic of being in the 'under-50' age range (see para 37). According to the Code of Practice on Employment issued by the Equality and Human Rights Commission an age group can also be relative, consisting, for example, of people who are 'older than me'.

Harassment

105. Under s26, EQA, a person harasses the claimant if he or she engages in unwanted conduct related to age, and the conduct has the purpose or effect of (i) violating the claimant's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether conduct has such an effect, each of the following must be taken into account: (a) the claimant's perception; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.

106. In Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336, EAT, where Mr Justice Underhill (as he then was) gave this guidance:

"An employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or

perceptions, it was reasonable for her to do so. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other discriminatory grounds) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'

107. General Municipal and Boilermakers Union v Henderson [2015] IRLR 451 provides that a single incident is unlikely to be sufficient to create an environment sufficient to give rise to an offence of harassment.

Victimisation

108. Under s27 EQA, it is victimisation for a respondent to subject a claimant to a detriment because she had done a protected act. A 'protected act' includes making an allegation (whether or not express) that someone has contravened the EQA.

109. For the test that needs to be applied useful guidance is provided in the case of Shamoon v Chief Constable of Royal Ulster Constabulary [2003] IRLR 285 and that an unjustified sense of grievance cannot amount to a detriment. The test to be applied in determining whether a detriment exists is if a reasonable worker would, or might, take the view that the treatment was in the circumstances to his or her detriment. This must be applied by considering the issue from the point of view of the victim. While an unjustified sense of grievance about an alleged discriminatory decision cannot constitute detriment a justified and reasonable sense of grievance about the decision may do so.

Time Limits EQA

110. S123 provides:

- (1) Proceedings on a complaint within section 120 may not be brought after the end of—
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.
- (3) For the purposes of this section

- (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
- (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

111. For acts extending over a period, it is relevant to consider whether a discriminatory regime, rule, practice or principle, which had a clear and adverse effect on a complainant, existed. There is a distinction between a continuing state of affairs and a one-off act with ongoing consequences.

112. Guidance was provided in analysing what constitutes conduct extending over a period in Hendricks v. Metropolitan Police Commissioner [2003] IRLR 96 to include per Mummery LJ in the Court of Appeal at paragraph 48:

“the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs, by the concept of an act extending over a period”.

113. Extension of time under s123(3) is the exception rather than the rule Robertson v. Bexley Community Centre [2003] IRLR 434. The factors that may be taken into account are broad as in s33 Limitation Act and include:

- a) the length and reason for delay;
- b) the extent to which the cogency of the evidence is affected;
- c) promptness with which Claimant acted; and
- d) steps taken to obtain advice.

114. The checklist of factors in s.33 of the Limitation Act 1980 is a useful guide of factors likely to be relevant, but a tribunal will not make an error of law by failing to consider the matters listed in s.33 provided that no materially relevant consideration is left out of account: Neary v Governing Body of St Albans Girls' School [2010] ICR 473.

115. Prejudice is a relevant factor. A respondent may be prejudiced by having to meet a claim they would not otherwise have to do so but they may also suffer forensic prejudice due to fading memories, lack of witnesses and lost documents.

116. The onus is on a claimant to put forward potential reasons to explain why there was a delay and why a tribunal's discretion should be exercised to enable an otherwise out of time claim to proceed. Ultimately time limits are strict, it is a

matter of discretion and it is not a right to allow a claim to proceed when it is outside the primary time limit.

117. Whilst discretion is greater for a tribunal in a discrimination claim that does not mean to say there is any automatic expectation that it will be exercised. It involves a fact sensitive enquiry regarding the circumstances, the reasons for the delay, the promptness of action and the potential prejudice to the respondent of a long period of delay in terms of the cogency of the evidence and their ability to defend allegations which have become increasingly stale.

Conclusions

118. We have considered each of the allegations in the list of issues and address them in the order which they appear in the list of issues and the numbering. The allegations in the list of issues are set out in bold below with our findings below.

119. In the interests of brevity, and given the number of individual allegations, we do not in all instances state that the burden of proof has not reverted to the Respondent, on the basis there was no evidence to infer that any treatment was on account of religion or age but where not so stated it should be taken as read.

120. When this judgement was delivered orally cross reference was made to findings in respect of earlier numbered allegations from the list of issues but in the interests of the numerical formatting the issues are set out below without being numbered. To avoid potential confusion there are instances where the judgement refers to "as set out above" without cross-referencing the specific issue to which it relates but nevertheless it is considered that when read in its entirety the totality of the conclusions based on the evidence will be readily apparent.

Jurisdiction

The Claimant presented her claim to the Tribunal on 23 June 2019. In respect of any act or omission that is alleged to constitute unlawful discrimination that occurred before 2 February 2019:

Do such acts/ omissions constitute part of conduct extending over a period for the purposes of EQA10 s 123(3)(a) which ended on or after 2 February 2019?

121. This concerns whether acts or omissions relied on which predate 2 February 2019 are in time. We find that all matters prior to 2 February 2019 are out of time. We reach this decision on the basis that there was no continuing course of conduct. The earlier matters referred to constitute individual incidents which did not have a common cause with matters subsequently referred to, for example, a dispute regarding overtime payments during 2018.

122. It is also relevant that the Claimant's claims for harassment and victimisation could not have arisen by that stage because the first of the alleged protected acts was after that date.

If not, would it be just and equitable to extend time in respect of such acts or omissions pursuant to EQA, s 123(1)(b)?

123. We do not consider that it would be just and equitable to extend time to allow those earlier matters to be considered as individual heads of claim. Case law places an onus on a claimant to put forward evidence or submissions as to why such discretion should be exercised. None were provided.

124. We consider that the Respondent would be potentially prejudiced by the admission of these earlier matters given the passage of time and the consequential risk to the cogency of the evidence.

125. We, nevertheless, consider that it would still be appropriate to consider these earlier matters as background matters given that they have some contextual and chronological relevance to subsequent events.

Direct Religion/ Belief Discrimination (sections 13 and 39(2)(b) -(d) Equality Act 2010)

Did the Claimant suffer the following alleged less favourable treatment? For the Claimant's allegations of direct discrimination, the Claimant relies on Ms Kerr-Graham as a direct comparator. In the alternative, the Claimant relies on a hypothetical comparator:

126. The first question we consider is whether Ms Kerr-Graham constitutes an appropriate direct comparator to the Claimant. We find that she does not. We consider that her circumstances were materially different as per s.23 of the EQA. We reach this decision for the reasons set out below.

127. Whilst she may have had arguable culpability in the Soliton exchange in early February 2019 there was no suggestion that there had been previous performance or interpersonal issues in respect of Ms Kerr-Graham. There had, however, been a significant number of such issues relating to the Claimant to include the matters set out in Ms Williams' contemporaneous word document, the issue with the digital lock and the complaint concerning the Claimant in the email from Mr Mukkamalla, the radiographer, of 20 December 2018.

128. Therefore, their circumstances were materially different.

Ms Kerr-Graham (also a clerical coordinator) putting deliberate undue supervision and pressure on the Claimant by instructing the claimant on 6 February 2019 to complete the ultrasound list for 7 and 8 February 2019 in advance and ahead of time, on top of the daily list due for that day (6 February 2019) and various other tasks assigned to the claimant, as shown in the rota for that week. Ms Kerr-Graham then sent a Soliton message to reprimand the Claimant for not completing the task she set.

129. As previously indicated, it is not our intention to make detailed findings of fact regarding work allocation and rostering arrangements. Whilst there may

have been a degree of uncertainty about who had specific responsibility for completing the lists ultimately that was not the issue. There was no suggestion that the Claimant was being disciplined for not completing allocated work.

130. We do not find that the Claimant was placed on undue pressure by Ms Kerr-Graham nor that she was inappropriately assuming the role of her supervisor. We find that Ms Kerr-Graham was engaged in a normal day to day interaction with a colleague regarding work rostering and completion and who had responsibility for the daily lists in the Department.

131. In any event we find that there is absolutely nothing to infer that this matter had anything to do with the Claimant's religion and belief so therefore the burden of proof does not revert to the Respondent.

A mediation meeting being set up via Soliton message by Ms Williams between the Claimant and Ms Kerr-Graham on 11 February 2019. However, the meeting attended by Claimant was not a mediation meeting, but conversation of concern meeting attended by Ms Torr and Ms Williams. The Claimant was deliberately misled by management (Mrs Buxton, Ms Torr and Ms Williams) about the nature of the meeting and no prior meeting was held with the Claimant to establish facts before it was decided by management that the Claimant was of concern.

132. This concerns whether a mediation meeting had been set up, and a conversation of concern meeting subsequently substituted, and that the Claimant was deliberately misled. We do not find that this is what happened. No mediation meeting was ever formally arranged. It is acknowledged that there may have been an element of uncertainty from the Claimant's perspective. She may have genuinely thought that Ms Kerr-Graham would attend the meeting, however, having reviewed the Claimant's own transcript from her recording of the meeting there is no evidence that she expressed surprise or concern that the meeting took the format it did. Further, we find no evidence to infer that any such confusion was in any way attributable to the Claimant's religion or belief.

Mrs Buxton refusing to investigate the Claimant's complaints.

133. We set out the background to the allegation, and there are several allegations in the list of issues to which it is relevant. It is apparent from reading the totality of the transcripts from the meetings between the Claimant and Mrs Buxton that on the one hand the Claimant wanted action taken, a formal investigation, various apologies and so forth, whereas Mrs Buxton was keen that mediation should be explored to resolve matters informally.

134. We find this to have been consistent with the Respondent's grievance procedure. We also find it to have been consistent with normal and desirable workplace dispute resolution processes, where as far as possible informal rather than formal processes are used where there are relationship issues between colleagues working alongside each other. In any event, we find that the Claimant's religion and belief had absolutely nothing to do with Mrs Buxton's approach. We find that she would have adopted the same approach in relation to

any other employee regardless of their religion or other protected characteristics and the burden of proof therefore does not shift.

Being reprimanded, ridiculed and told that she was rude for not celebrating birthdays as part of her religious belief by Ms Williams and Ms Torr during conversation of concern meeting on 11 February 2019.

135. This relates to discussion concerning the celebration of birthdays during the conversation of concern meeting. It is acknowledged that the Claimant was seen as rude in relation to Ms Murray's birthday card. However, it is important to put this into context. The Claimant has, perhaps understandably, focussed on this element of the meeting. We consider the reference made to the Claimant's refusal to sign Ms Murray's birthday card birthday as being illustrative, rather than the substantive issue, giving rise to the meeting. It was an example of perceived lack of integration and relationship issues with staff members. It was not in itself the catalyst for the meeting.

136. Further, we do not accept the Claimant's evidence that she had explained her refusal to celebrate birthdays as being part of her religious beliefs. It is significant that in the recordings of the various meetings the Claimant does not explain her refusal to celebrate birthdays as being because of her faith. She does, however, refer to inconsistencies with birthdays being celebrated, including a failure to celebrate an apprentice's birthday some 10 months earlier. The Claimant refers to her preference being not to celebrate birthdays but does not refer to this being for religious reasons.

137. The Claimant says that she told Ms Griffiths of this, but we find no evidence of this, and do not consider that if she had told Ms Griffiths that she would necessarily have told others. We accept that the Respondent's employees at the relevant time had no indication that the Claimant not celebrating birthdays was on account of a religious practice.

138. In any event, all the Respondent's witnesses said they had no awareness that not celebrating birthdays constituted part of an observant Muslim's faith. We find this to have been a reasonable position to adopt. It was not a case of the Respondent's managers wilfully, or ignorantly, disregarding the manifestations of faith but rather that they simply did not know. It was reasonable for them to take the view that as the Claimant had previously signed a birthday card, without protesting, in circumstances where it would have been easy for her to apologise that she would not be signing the birthday card for religious reasons. We do not accept that the Claimant was reprimanded, or ridiculed, for not celebrating birthdays. Further, the reference to not signing Ms Murray's birthday card was not connected to the Claimant's religion and belief.

By setting up a review of the conversation of concern meeting in one month, when the Claimant would still not be able to celebrate birthdays.

139. First, this meeting did not actually take place and secondly the conversation of concern meeting had not arisen primarily because of the birthday issue. It was merely referred to as an illustration of the concerns. Therefore, the proposed

meeting would have taken place in any event as part of that concern. We find nothing to infer that religion had anything to do with it.

By setting up a review of the conversation of concern meeting in one month, which in turn set the Claimant up for failure since she would still be considered by management as having not 'integrated'. All the actions taken against the Claimant were geared towards her dismissal.

140. We have found that there were issues with the Claimant's integration and interpersonal relationships with Ms Williams and others. We do not find any evidence that the Respondent had a predetermined strategy of trying to manufacture the dismissal of the Claimant. Indeed, we find that Mrs Buxton, and other members of the Respondent's management, were using their best endeavours to re-establish a reasonably cordial working relationship between the Claimant, Ms Williams and others.

The lack of apology from Ms Williams and Ms Torr during the conversation of concern meeting when it was re-iterated to them that the Claimant did not celebrate anyone's birthday due to her religious beliefs.

141. For the reasons set out above the issue relating to the Claimant's religious beliefs in not celebrating birthdays is not made out so the contention that there should be an apology from them because of that simply does not apply. We do not consider that there were any material reasons why Ms Williams and Ms Torr should have apologised and in any event no reasons which could be inferred as pertaining to the Claimant's religion and belief.

By Ms Williams refusing to celebrate Maryam Alibhai's birthday despite being made aware by the Claimant at the meeting on 11 February 2019 that she was upset to receive an e-mail celebrating Ms Kerr-Graham's birthday on 21 February 2018 and not hers.

142. First, this issue to the extent to which it forms a free-standing allegation, is out of time. Secondly, we consider this allegation to be inconsistent. We find it contrary to the Claimant's pleaded case, because in effect she is saying all birthdays should be celebrated equally but complains that she has been reprimanded for not celebrating birthdays on account on her religion and belief. Therefore, this allegation is not made out.

By Ms Torr asking the Claimant why she did not celebrate Ms Murray's birthday and by Ms Torr stating that she only cares about Ms Murray's birthday. Given that not all birthdays are celebrated in the office; it is not reasonable nor fair to then class only the Claimant as being rude or unreasonable for choosing not to celebrate birthdays because of her religious belief.

143. We find no evidence that Ms Torr stated that she only cares about Ms Murray's birthday. The birthday issue was, as previously stated merely an example, and not a particularly important one, in the context of the concerns raised. This allegation is therefore not made out.

By Ms Torr not wanting to hear the Claimant's response during the conversation of concern meeting and telling the Claimant that she was being negative for responding.

144. It is accepted that Ms Torr stated that the Claimant was being negative. This is in the note of the meeting. However, there is nothing to suggest that this comment was in anyway attributable to the Claimant's religion. It was rather Ms Torr's perception of the tone of the conversation and the responses given by the Claimant.

By Ms Torr not investigating the allegations raised against the Claimant by Ms Williams and Ms Kerr-Graham and deciding that the Claimant was guilty.

145. We do not find that Ms Torr reached a finding that the Claimant was guilty. We consider that the fundamental point of this allegation is the Claimant's perception that she was found culpable, and that Ms Kerr Graham was exonerated.

146. We do not accept that there was no investigation regarding Ms Kerr-Graham. Whilst there may not have been a formal investigation, we find there was a conversation during which Ms Kerr-Graham was mildly chastised for the bluntness of her communication and acknowledged that she had been at fault. There was no need for a further investigation and nor in relation to any allegations concerning Ms Williams. Further, the matters regarding Ms Kerr-Graham were an exchange between colleagues and nothing to do with Ms Murray's, or anyone else's birthday or religious beliefs. Therefore, this allegation is not made out, and in any event, there is nothing to infer it was in anyway related to the Claimant's religion and belief.

By Ms Torr lying in her written summary of the conversation of concern meeting to paint a negative image of the Claimant.

147. This is a repetition of the point above (paragraph 144) about the Claimant's perceived negativity and for the reasons set out above is not upheld.

By Ms Williams, during the conversation of concern meeting, accusing the Claimant of not integrating, specifically by not celebrating birthdays.

148. We have found (see paragraph 140) there were issues with the Claimant's lack of integration and that these did not relate specifically to birthdays, so again not made out.

By Ms Williams stating to the Claimant in late 2018 that she feels uncomfortable toward her and admitting again during the conversation of concern meeting that she feels uncomfortable towards the Claimant.

149. We find this to be an independent allegation, and not part of a continuing course of conduct, and out of time as it is in late 2018. Nevertheless, we consider

it to be part of the relevant background chronology as it contributed to the circumstances of the conversation of concern meeting and Ms Williams having genuine concerns regarding the Claimant's conduct towards her and others.

By Ms Torr only acting against the Claimant and not holding a conversation of concern meeting or any other meeting with Ms Kerr-Graham.

150. This has already been answered above (see paragraph 146) and we do not repeat those reasons.

Claimant's version: by Ms Kerr-Graham being given full protection by management are not being held to account for actions (e.g., harassment, implied violence, undue supervision and pressure) but instead being praised by Ms Torr.

Respondent's version: by Ms Kerr Graham being given full protection by management are not being held to account for errors in the working arrangements for the daily list despite being copied into Soliton on messages on 6 and 11 February 2019 but instead being praised by Ms Torr.

151. We do not accept that Ms Kerr-Graham was given full protection by management and, in any event, do not accept the Claimant's contentions that Ms Kerr-Graham was guilty of harassment, implied violence, undue supervision and pressure. Indeed, the suggestion of implied violence is entirely without foundation as it was attributable to a suggestion that they should meet to discuss in a private room. No one could reasonably construe that as being a suggestion that the purpose of such a meeting would be the threat of physical violence. In any event it had been accepted by Ms Torr and Ms Kerr Graham that the tone of her message was blunt. In all other respects there is no acceptance by the Respondent, nor findings by the Tribunal, that any of those matters took place or could reasonably have been interpreted as being intended to take place, on an objective reading of the relevant communications.

By the Claimant being blamed by Ms Kerr-Graham, Ms Torr and Ms Williams for a daily list that should have been completed for the week, over the weekend of 2 and 3 February 2019 by Ms Williams and Ednalyn Abayon who worked on those days, in accordance with instructions set by the reception supervisor (Ms Williams) to all staff.

152. As already indicated the apportionment of responsibility for completion of the daily list is not something on which we will be making findings. The suggestion that there was differential treatment of Ms Abayon is not what we consider to be the crux of the issue. The issue was not about the allocation of the list, or the responsibility for it, but rather the way the Claimant had interacted with colleagues. Again, this allegation is not made out.

By Ms Williams not acting against Ms Kerr-Graham and Raquel Trujillo who worked the weekend on 9 December 2019 and failed to complete the daily list for the week in the same way that Ms Williams took actions against the Claimant following Ms Kerr-Graham's allegations that the Claimant failed to

complete a daily list due on 6 February 2019. Ms Williams is only concerned with escalating allegations against the Claimant.

153. This involves an attempt by the Claimant to make a comparison with what she says is Ms Williams's differential treatment of Ms Kerr-Graham and Racquel Trujillo in December 2019 with responsibility for the daily list. We accept that there may occasionally have been inconsistencies in work allocation. Nevertheless, we adopt a holistic approach in considering work allocation. There will be occasions when some individuals have a greater workload than others, but it remains within the reasonable work expectations of employees within the Department. We find no evidence that there had been a disproportionate allocation of work to the Claimant, and further still, no evidence to infer that allocation of work was in anyway influenced by the Claimant's religion and belief.

If the less favourable treatment did occur, was the Claimant treated this way because of her religion/ belief?

154. We do not find, for the reasons set out above, that the Claimant was in any way treated less favourably on account of her religion and belief.

Direct Age Discrimination (sections 13 and 39(2)(b) -(d) Equality Act 2010)

Did the Claimant suffer the following alleged less favourable treatment? The Claimant does not rely on a direct comparator, albeit she notes that her colleagues are over 50. The Claimant relies on a hypothetical comparator:

Ms Williams and Ms Torr using "belittling" language to describe the Claimant's response to Ms Kerr-Graham's correspondence and the Claimant's responses to the allegations raised against her, during the conversation of concern meeting. In particular, the Claimant alleges that Ms Torr and Ms Williams used words such as "throwing a tantrum", "being petty" and needing to "grow up" towards the Claimant and that Ms Torr described Ms Kerr-Graham's message as "faultless", "diplomatic" and "controlled".

155. It is not disputed by Ms Torr that she used phrases such as throwing a tantrum, being petty, and needing to grow up in her conversation with the Claimant. However, we find that they were made in context during a conversation which had been covertly recorded by the Claimant. In any event, they are not age specific terms. Being petty and throwing a tantrum are phrases which can be used to employees of all ages. We consider that Ms Torr's use of the above phrases and "needing to grow up" evidence a degree of frustration, but are not in our view, reasonably capable, on an objective interpretation, as being seen as specific to the Claimant's age. In reaching this decision we considered and applied the guidance in Shamoon and other relevant cases.

Ms Williams and Ms Torr defending Ms Griffith in respect of an incident where the Claimant alleges that Ms Griffith tried to embarrass her in front of colleagues on account of a clinical related issues, she alleges she was neither trained for nor expected to know. The Claimant alleges that Ms Torr

twisted the Claimant's words to achieve her defence of Ms Griffith on the 11 February 2019 during conversation of concern meeting.

156. We do not find any evidence to support the contention that Ms Griffiths had acted in a way to deliberately embarrass the Claimant relating to a clinical issue. This was a minor day to day workplace issue and not a case of Ms Williams and Ms Torr being influenced by the Claimant's age. There are no grounds to infer that age was the reason for any alleged differential of treatment, or any failure to act, against Ms Griffiths.

By being made to feel that she was the guilty party always by Ms Williams and Ms Torr during a conversation of concern meeting on the 11 February 2019 and by Mrs Buxton during the Claimant's meetings with her on 13, 21 and 26 February 2019 and because of their attempts to defend against the claims made by the Claimant to Mrs Buxton during these meetings without prior investigation or knowledge on the matter at hand.

157. We consider that the Respondent had legitimate grounds to have such concerns and to commence such a meeting. We have found it was not a precursor to disciplinary proceedings. Further, we have found that Mrs Buxton took all reasonable steps to facilitate matters with a view to resolution and without recourse to a formal grievance meeting. We find Mrs Buxton exhibited considerable patience and spoke informally in these meetings with a view to aiding the Claimant. She did not know the meetings were being recorded. It is likely that had she realised that the Claimant was recording the meetings she would have been more guarded in some of the comments she made. However, none of those comments were antagonistic towards the Claimant, and less still, ones which could objectively be regarded as discriminatory on account of her age.

By Ms Torr informing the Claimant during the conversation of concern meeting that she was being negative by responding to the allegations raised against her. The Claimant alleges that her response had no value in the conversation of concern meeting.

158. With many of these individual allegations they fall between both religion and belief and age and in effect the reference to being negative repeats the allegation in respect of religion and belief (see paragraph 144) and again is not made out.

By Madeleine Lynch ignoring the Claimant, sending the Claimant work she was not assigned and/or Ms Lynch's "blind support of Ms Williams" without enquiring why the Claimant believed it was correct to pass the GP query to Ms Murray.

159. Ms Lynch says that the primary factors in work allocation were patient and clinical considerations. Which member of the hospital's administrative staff completed a particular task was less important. The line of demarcation between the Reception Team's staff member with responsibility for a modality, as opposed to GP referrals, was not one which Ms Lynch was particularly familiar with. Her concern was that matters were progressed, whether it was Ms Murray or the

Claimant, was probably of limited concern for her. We find no evidence that Ms Lynch acted unfairly, and further still, no suggestion to support an inference that she was allocating tasks to the Claimant, as opposed to Ms Murray, because of the differential in their ages.

By Ms Torr in her written summary of the conversation of concern meeting incorrectly referring to Ms Williams bringing up an allegation of the Claimant saying to another colleague “no, I’m busy” when it was Ms Torr who asserted in the meeting that she saw the claimant say this to another colleague. Ms Torr made this alteration once again to deliberately and unfairly paint a negative image of the Claimant and give basis to the unfounded allegation that the Claimant is poorly behaved.

160. We assume that this allegation relates to the Claimant’s failure to scan a document. To a large extent this is a trivial incident as the scanning of a document would have taken seconds. The contention concerns how matters were recorded. We find no grounds to infer that an incorrect recording of this incident was because of the Claimant’s age. It is one amongst many examples of the Claimant taking a very prescriptive approach to what we consider to be minor discrepancies in the way things were recorded between different meetings, and in summary notes of meetings, in circumstances where she had the benefit of a covert recording to scrutinise and highlight potential inconsistencies. We find that any such inconsistencies were entirely normal given a recording being compared against a summary written note and not indicative of the Respondent having manipulated evidence or sought to present a selective interpretation of what was stated.

By Ms Torr being “prepared to construct and manipulate what was said or done” in the conversation of concern meeting to “paint an image of the Claimant as a poorly behaved child without etiquette so that the Claimant would subsequently be taken less seriously by Mrs Buxton or whoever else read the summary letter filed in her records.

161. Again, we see this as an incredibly minor issue and again a case of recording and transcribing what was said and its subjective interpretation by the Claimant.

By Mrs Buxton, in meetings with the Claimant, allegedly referring to the Claimant as a “clever girl” who was “fixating on the rules”. These statements were made by Mrs Buxton to patronise and discredit the Claimant. The double standard applied by Mrs Buxton is unfair to the Claimant as it means that when the Claimant follows expectations for carrying out work in accordance to rules set out by the reception supervisor (i.e. Ms Williams) the rules are insignificant (e.g. the Claimant is ‘fixating ‘); however when the Claimant is alleged to have failed to carry out the instructions contained in the rules as alleged by Ms Williams then it is significant enough for escalation.

162. We do not accept that the words could be construed as referring to the claimant as a “poorly behaved child without etiquette”. The Claimant may

subjectively have formed this interpretation but for reasons set out above we do not consider that objective grounds exist to reasonably perceive this to be discrimination on account of the Claimant's age.

163. We anticipate that in retrospect Mrs Buxton may accept the reference to the Claimant as a "clever girl" might have been best avoided but nevertheless we need to consider this in context. It was made during a lengthy informal discussion which was covertly recorded. We accept Mrs Buxton's explanation that she made the comment in the context of the Claimant's education. We also recognise that the Claimant, in her conduct of these proceedings, is self-evidently a very intelligent, articulate and organised individual with a forensic attention to detail. We consider that the comment was intended as complementary rather than pejorative and it could not objectively be interpreted by the Claimant as less favourable treatment on account of her age.

By the Claimant being made to feel by Mrs Buxton that the rules did not apply to everyone but only a few.

164. We do not find this made out on the facts. We interpret the Claimant's reference to "rules" as her interpretation of emails regarding matters such as work allocation, who completed the list over weekends and the demarcation between modalities and GP referrals. These matters did not directly precipitate the conversation for concern meeting. They may have been background matters which gave rise to the exchange with Ms Kerr-Graham, and others subsequently, but they were not the issue in themselves. We find no evidence of an unfairly selective approach being taken to some employees, to the Claimant's disadvantage, and less still is there any evidence to infer that this had anything to do with her age.

By Mrs Buxton being defensive of Ms Williams and Ms Torr when the Claimant referred to their treatment of her as gross misconduct. Mrs Buxton further undermined the Claimant by stating that the Claimant did not know what the words she was using (gross misconduct) meant.

165. Again, we do not find this made out. The Claimant was in effect demanding that Ms Williams and Ms Torr should make a formal apology in circumstances where they had raised legitimate concerns regarding her conduct. Mrs Buxton therefore could not reasonably have sought such apologies. We find no grounds to infer that Mrs Buxton was adopting preferential treatment between colleagues but rather that she was seeking, in fraught circumstances, to act as an arbiter to resolve matters.

By Mrs Buxton threatening the Claimant with disciplinary action if she continued to use the word gross misconduct to describe Ms Williams and Ms Torr.

166. We have already found that there were no reasonable grounds for the Claimant to infer that she was going to be subject to disciplinary action. The reference to gross misconduct was simply a discussion in the context of the

Claimant's complaints regarding Ms Williams and Ms Torr and in any event, there is nothing to infer it had anything to do with the Claimant's age.

By Mrs Buxton not being “equally defensive of the Claimant for the unfair treatment she received from Ms Torr and Ms Williams”.

167. For the reasons already set out (see paragraph 141) we find this not to be made out.

By Mrs Buxton believing the allegations against the Claimant but not the allegations the Claimant raised against Ms Torr and Ms Williams.

168. As set out above (see paragraph 145) there were no direct allegations against the Claimant, but rather matters which caused an informal cause for concern meeting. The allegations raised by the Claimant against Ms Torr and Ms Williams, as per her email of 13 February 2019, included that they had lied, fabricated and breached integrity and we find no grounds to support any of these allegations. As such there was no basis for Mrs Buxton to take any action in respect of those allegations.

By Mrs Buxton “deliberately failing to objectively investigate the Claimant's complaints raised in accordance with Imperial College Healthcare NHS Trust and ACAS Grievance Policy.

169. We do to a degree find that the Respondent could have been more proactive in seeking to progress matters once it became apparent that the Claimant was unwilling to engage in mediation. Nevertheless, we find that the Respondent's initial approach was consistent with its grievance procedure. We find that from an early stage the Claimant set out demands which were not reasonably capable of being fulfilled, to include that there should be apologies from her supervisor and her supervisor's manager, where we have found that there was no basis for such apologies.

170. An impasse had been reached. From our perspective the Claimant was seeking a full investigation of a raft of matters such as work allocation, overtime payments and Ms Williams' management of the Reception Team. These were not the direct matters which had given rise to the cause for concern meeting. In any event we find no grounds to infer this had anything to do with the Claimant's age.

By Mrs Buxton stating that she did not question Ms Torr but nonetheless informed the Claimant that Ms Torr denied the allegations.

171. We do not find this made out. We accept Mrs Buxton's evidence that she had spoken with Ms Torr.

By Mrs Buxton manipulating the situation to give a favourable outcome to Ms Williams and Ms Torr.

172. We find no evidence that Mrs Buxton manipulated the situation. She was acting with a view to mediating and resolving and not protecting the position of any individual employee. We find nothing to infer that this was on account of the Claimant's age or the disparity between her age and that of Ms Williams and Ms Torr.

By Mrs Buxton constructing the findings within her email to the Claimant dated 1 March 2019.

173. We construe the Claimant's reference to "constructing the findings" as the Claimant saying that there was a misleading, partial or pejorative interpretation of events. We do not accept this. We read the email in the context of the transcripts and find it to be a reasonable summary and in any event, nothing to do with age.

By Ms Lynch and Ms Williams adjusting expectations for work for Ms Murray on 21 May 2019 and expecting the Claimant to do her work and the work set for Ms Murray as reflected in the rota for that week, thereby putting undue pressure on the Claimant.

174. This relates to work allocation and the division between modalities and GP referrals. We find that there was no undue pressure being deliberately applied on the Claimant and, in any event, nothing to do with the Claimant's age.

By Ms Lynch and Ms Williams sending the Claimant soliton messages on 21 May 2019 requesting that she deal with GP queries in addition to managing bookings for the ultrasound department and HSG scans for interventional radiology despite both ladies having full knowledge that Ms Murray was tasked with GP queries for that week and is reflected in the rota produced by Ms Williams. The Claimant also wrote to both ladies to remind them of the schedule of work set for that week but was ignored by both Ms Lynch and Ms Williams.

175. We find this not made out. There may well have been occasional inconsistencies, and perceptions of disparities, in work allocation but there is nothing to infer that this had any connection with the Claimant's age.

If the less favourable treatment did occur, was the Claimant treated this way because of her age?

176. We do not find that the Claimant was subject to less favourable treatment on account of her age.

Harassment related to Age and/or Religion/ Belief (s. 26(1)) the EQA

Was the Claimant subjected to the following unwanted treatment?

177. We will address many of these points relatively briefly because they have already been covered.

Ms Kerr-Graham unduly supervising and pressurising the Claimant on 6 February 2019.

178. For reasons already set out (see paragraph 151) we do not find that Ms Kerr-Graham unduly supervised and pressurised the Claimant.

Claimant's wording as follows: By Mrs Todd emailing the Claimant on 3 and 17 December 2019 and 2 January 2020 requesting that the Claimant meet with her to have a chat. Mrs Todd continued to omit from her e-mail to claimant the reason for offering to chat/support the Claimant only after the issue has been accepted by the employment tribunal and was previously ignored. Mrs Todd later resorted to threaten the Claimant with future problems if claimant did not meet with her and further added that the Claimant's claim would not be accepted by the tribunal. Mrs Todd had no interest in supporting claimant but was interested in supporting her management team.

The Respondent's wording brings this allegation in line with 77 of the Amended Particulars of Claim: By Mrs Todd emailing the Claimant on 3 and 17 December 2019 and 2 January 2020 requesting that the Claimant meet with her to have a chat, only providing a reason for offering to meet with the Claimant after she had submitted a Tribunal claim. In the email 2 January 2020 Mrs Todd threatened the Claimant with future problems.

179. We do not find that any reasonable objective employee could interpret the attempts made by Mrs Todd to discuss the Claimant's issues with her to constitute harassment. We do not consider that the Claimant could reasonably have read Mrs Todd's email of 2 January 2020 as threatening her with future problems. Quite the contrary, Mrs Todd was referring to seeking a resolution of matters. We find that, as throughout, the Claimant was resistant to any attempts at mediation but rather created a situation where an impasse existed because she was making demands and refusing to accept any level personal culpability for the work relationship issues which had arisen.

Ms Williams calling the Claimant names for example 'petty' and laughing continuously in a mocking and taunting fashion in the conversation of concern meeting.

180. We have previously addressed the use of the word petty (see paragraph 155). Ms Williams accepts that laughing or scoffing during the meeting was inappropriate and she was reprimanded by Ms Torr. We accept that she was not deliberately seeking to undermine, or belittle, the Claimant but rather was showing incredulity at comments or answers given and again nothing to do with the Claimant's age.

Errors in calculations of the Claimant's working hours. In particular, when the Claimant was scheduled to work 39 hours on 15 February 2019 and 21 May 2019.

181. We find this to be a de minimis matter. The Claimant accepts that she received all payments to which she was entitled. Ms Williams says that there were frequently occasions, including her being adversely affected, where errors could be made, but they were all rectified. We find this to be normal where there are variations in individual pay based on hours worked and certainly nothing to infer it had anything to do with protected characteristics and certainly not capable of constituting harassment in any event.

The Claimant receiving negative treatment from Ms Williams such as: rolling her eyes at the Claimant; ignoring the Claimant, and implying the Claimant is untrustworthy by stating she needs to verify with staff the completion of the Claimant's overtime hours from Ms Williams when attempting to get overtime errors corrected from 15 April 2018, 20 April 2018, 23 April 2018, 10 May 2018, 14 May 2018, 18 May 2018 and 24 May 2018. The Claimant's position is that she received the negative treatment outlined above whenever she asked Ms Williams to correct the overtime errors. All overtime payments omitted by Ms Williams were always proved to be fully completed and paid to the Claimant later than her colleagues; nonetheless Ms Williams continued to subject the Claimant to unnecessary humiliation and distrust to the Claimant.

182. We repeat our findings as above in relation to agreed annual leave. We find for reasons previously set out that matters from 2018 are out of time and nor are they relevant even as background matters as they were not directly linked to what subsequently happened. In any event we heard no evidence to support the Claimant's assertion that Ms Williams rolled her eyes at such meetings and nor to infer that it was in any way to do with the Claimant's age or religious belief.

Ms Williams lying to the team about the Claimant "short-changing the NHS" when the Claimant had paid extra annual leave back and not safeguarding the Claimant's confidentiality when she included another member of staff (Oluwafemi lawole) in a Soliton message discussing annual leave overtaken and Ms Williams deliberately omitting from the message that this was due to a computer glitch. This was done to further humiliate the Claimant despite the error not being her fault.

183. We do not accept the Claimant's evidence that Ms Williams had said that she was short-changing the NHS.

If so, was this treatment related to the Claimant's age and/or religion/ belief?

184. We do not find that any of the matters relied on constitute harassment on account of protected characteristics. They are de minimis matters which could not objectively be seen as constituting harassment, so the claims of harassment fail and are dismissed.

In circumstances where the treatment was related to the Claimant's age and/or religion/ belief did this treatment have the purpose of violating the

Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

If not, did the treatment have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, taking into account:

The perception of the Claimant;

The other circumstances of this case; and

Whether it is reasonable for the conduct to have that effect?

185. Given our findings above is not necessary for us to further address the above points.

Victimisation (s. 27 EQA)

Has the Claimant carried out a protected act for the purposes of s. 27 of the EQA? The Claimant relies on the following protected acts:

Grievance dated 13 February 2019 (actually dated 11 February) to Mrs Buxton.

186. First, we need to consider which of the alleged acts constituted protected acts. We find that the grievance of 11 February 2019, whilst labelled as a grievance, did not in fact constitute a grievance and did not constitute a protected act. We reach that decision based on a detailed reading of the transcript of 11 February 2019, and subsequent communications including the letter of 11 February 2019. None of them make any direct reference to a protected characteristic. Further, the question relating to the celebration of birthdays, in respect of which the Claimant seeks to rely, was not linked by her to her religious belief.

Formal grievance to ERAS on 7 March 2019 (page 331 of the Bundle).

187. We find this more difficult. Whilst there was no direct reference to protected characteristics, we consider that on balance, that the reference to discrimination in the context of complaints being raised was sufficient to give rise to a protected act.

Employment Tribunal claim dated 23 June 2019.

188. The Respondent rightly acknowledges that the Tribunal claim dated 23 June 2019 constitutes a protected act.

Did the Respondent subject the Claimant to a detriment or detriments because she carried out the protected act or acts?

The detriments relied upon by the Claimant are as follows:

Claimant's wording: On 21 May 2019, Ms Lynch sent a Soliton message to the Claimant stating that GP queries are always handled by the person booking the Ultrasound scans which at the time was the Claimant and not Ms Murray who was tasked with GP queries as the rota for that week will confirm.

Then on 24 October 2019, when the Claimant was tasked with GP queries and Ms Kerr-Graham was tasked with booking the ultrasound scans, Ms Lynch did not send the GP queries to Ms Kerr-Graham but instead again to the Claimant. Thereby contradicting herself to give the Claimant unfavourable treatment. No issue was taken with Ms Kerr-Graham's requests to pass GP queries onto the person tasked with GP requests, but an issue was taken when the Claimant made the same request on 21 May 2019.

Respondent's wording: On 24 October 2019 Ms Lynch tasking the Claimant with the GP queries rather than Ms Kerr-Graham who was tasked with booking the ultrasound scans, in contradiction of Ms Lynch's Soliton message to the Claimant on 21 May 2019 stating that GP queries are always handled by the person booking the Ultrasound scans. Ms Lynch took no issue with Ms Kerr-Grahams requests to pass GP queries onto the person tasked with GP requests on 24 October 2019, but an issue was taken when the Claimant made the same request on 21 May 2019.

189. We accept that Ms Lynch did not have any awareness of the complaint via ERAS of 7 March 2019, and this predated the Tribunal complaint. Therefore, she could not have been in any way influenced by a protected act when allocating work. We have already set out our findings regarding work allocation and therefore do not consider it could constitute a detriment on account of a protected act. In any event, we do not consider that the allocation of work which the Claimant was employed to undertake during her contracted working hours, capable of constituting a detriment.

Ms Williams giving Ms Murray a reduced workload to ease pressure from her and put more pressure onto the Claimant.

190. We find that Ms Williams was not at that time aware of the 7 March 2019 email and for reasons already set out the Tribunal does not accept that there was any adverse differential treatment of the Claimant vis a vis Ms Murray in work allocation.

Ms Williams seeking to embarrass the Claimant by relating incorrect information to the group over the Claimant taking extra annual leave days due to a computer error in April 2019.

191. We do not consider this to constitute a detriment for reasons previously set out because Ms Williams was not aware of a protected act and we do not accept that the Claimant was so embarrassed as she contends in respect of taking an extra day's leave and the alleged comment of short-changing the NHS.

Ms Williams scheduling the Claimant to do late shifts on days other than the one agreed (specifically on 9 September 2019 (page 424), 26 August 2019 (page 423) and 7 October 2019 (page 426)), for three weeks to deliberately inconvenience the Claimant who had scheduled driving lessons on Thursday mornings. This occurred prior to 5 October 2019.

192. We do not find this made out. Whilst the Claimant had agreed with Ms Williams to leave early, or come in late, one day a week to undertake driving lessons this had continued for a considerable period. In any event once the Claimant raised the concern Ms Williams immediately shifted work arrangements to facilitate her being able to attend lessons. Further, the change to what had previously been arranged was because of staff shortages and could in no way be construed as a detriment.

Ms Effah from ERAS initially offering to conduct a formal investigation in an e-mail received on 16 March 2019 then retracting her offer to conduct a formal investigation in an e-mail received on 19 March 2019 when she realised that the Claimant was Muslim. Ms Effah wrote back she only helps managers (i.e., Mrs Buxton who was working with her at the time) and so aided in discrimination.

193. We do not accept this is creditable. As previously found Ms Effah wrongly said that she could be involved in a grievance process. She then realised her error. There are no grounds to infer that it was because the Claimant was a Muslim. In any event it would have been reasonable to assume that the Claimant's name would have been sufficient to alert Ms Effah to the Claimant's likely religious affiliation. So again, this does not constitute a detriment.

Mrs Todd threatening the Claimant with problems in the future in an email sent on 2 January 2020 when she realised that the Claimant had lodged a claim to the Employment Tribunal.

194. As we have already found this did not constitute threatening future problems but rather an attempt to resolve matters. We find that Mrs Todd would have been aware of the Tribunal proceedings, whether she had read them is a matter of conjecture, but even if she had, she was seeking to resolve matters, and not threatening the Claimant.

Mrs Buxton threatening to take disciplinary action against the Claimant during the meeting of 21 February 2019.

195. For reasons previously set out (see paragraph 166) we do not find that Mrs Buxton was threatening to take disciplinary action.

Claimant's version: On 31 July 2019 during the Claimant's Personal Development Review meeting, Ms Williams admitted to receiving some time ago plaudits for the Claimant from patients who attended the MRI department via PALS. However, the Claimant recalls this was for a make a difference award a patient nominated for the Claimant a while back. The

nomination was not sent and there was no award received because the nomination was discarded as the Claimant receiving an award would further proof the allegations made against the Claimant on 11 February 2019 were untrue.

Respondent's version: On 31 July 2019 during the Claimant's Personal Development Review meeting, Ms Williams admitting to receiving plaudits for the Claimant. However, the nomination was not sent, and no award received.

196. We consider this to be a minor issue. Ms Williams says that she was not aware of the Claimant receiving a make a difference award. There may have been a possible misunderstanding on that point. Nevertheless, the Claimant says that at the performance review she was given considerable plaudits by Ms Williams. Further, there is no reason that Ms Williams would have been aware of a protected act. We have not heard evidence as to whether she had or had not been provided with a copy of the Tribunal complaint by that point in time. Even if she was aware of the protected act there can be no reasonable basis for finding that any detriment, which we have found not made out, was causatively connected with it.

Ms Torr sending the Claimant an email instruction on 13 February 2020 to carry out a disproportionate amount of work during the weekend of 15 - 16 February 2020.

197. For reasons previously set out we do not accept that in relation to this, or any other incident, that the Claimant was allocated a disproportionate amount of work. Further, that the allocation of work related to any protected act. The Claimant was often busy but within the scope of her normal duties.

Ms Williams only scheduling two people to work over the weekend of 15 16 February 2020, when three people should have covered this weekend.

198. There would be occasions when only two people worked over a weekend rather than three. There is no evidence to infer that that was in any way specific to the Claimant. When she worked a weekend with one other employee, they would be in the same position, and would almost certainly not have shared the same circumstances as the Claimant.

Mrs Todd sending the Claimant an email on 20 February 2020 inviting her to attend a meeting on 27 February 2020 to discuss issues the Claimant had raised regarding Ms Williams and Ms Torr putting undue pressure on her.

199. This is in effect an extension of the earlier points already considered. We find that the email communications from Mrs Todd were entirely appropriate, did not apply undue pressure but were an attempt to explore if an amicable resolution were possible.

Mrs Todd and Ms Simpson giving Ms Williams the heads up that the Claimant had alleged that she was putting undue pressure on the Claimant.

200. We heard no direct evidence on this point. We find that there was no such undue pressure so what may, or may not, have been communicated is not made out and not in any event not connected with any protected act.

Ms Williams scheduling two people to work on 29 February 2020 and 1 March 2020. The Claimant has confirmed that she does not contend that 3 people should have been working this weekend.

201. Again, in terms of work allocation it is a repeat of matters previously referred to and do not repeat our previous findings.

202. We therefore find that the claims of victimisation are not made out.

Concluding remarks

203. We consider that the Claimant undoubtedly had/has many unresolved grievances relating to her work. The Claimant has in our view attempted to shoehorn these individual grievances into allegations of discrimination on account of age and/or religion often on a somewhat scattergun approach as to the line of demarcation between those two separate protected characteristics. We find that whilst the Claimant genuinely believed these matters that there are no grounds to infer from the evidence that the issues of concern were in any way related to her age or religion and belief.

204. All the claims therefore fail and are dismissed.

Employment Judge Nicolle

Date 21 May 2021

JUDGMENT SENT TO THE PARTIES ON

24th May 2021..

FOR THE TRIBUNAL OFFICE