



THE EMPLOYMENT TRIBUNALS

Claimant
Ms B.L. Alamba

Respondent
County Durham and Darlington NHS Foundation Trust (the Trust)

RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at Newcastle

On 12 and 13 July 2021

EMPLOYMENT JUDGE GARNON

MEMBERS: Ms D.Winship and Ms S. Mee

Appearances

For the Claimant: in person

For the Respondent: Ms B Clayton of Counsel

JUDGMENT

The unanimous judgment of the Tribunal is the claim of unlawful race discrimination is not well founded and is dismissed.

REASONS (bold print is our emphasis, italics are quotations and numbers in brackets pages in the bundle)

1 Introduction and Issues

1.1. The claim presented on 16 March 2020 originally included unfair dismissal. Not only was employment status disputed, because the claimant was a “bank” Health Care Assistant (HCA), but she lacked the qualifying period of two years to claim. She claims a decision on 6 March 2020 not to continue offering her work was direct race discrimination under the Equality Act 2010 (EqA).

1.2 The issues set out at a preliminary hearing on 29 October 2020 by Employment Judge Johnson, when he did not have all the details we now have, are basically still:

- (i) Did the claimant interfere with the Alaris machine of a patient on ward 16 of the University Hospital of North Durham (UHND), by silencing that machine without permission?
- (ii) Did she fail or refuse to assist a patient on the same ward?
- (iii) Did she leave her shift 10 minutes before she was due to on 14 February 2020?
- (iv) Did she carry out a series of telephone calls, including to Ms Park, Ms Parkin and ward staff during which she used foul, abusive or aggressive language?
- (v) Was she aggressive during the investigation meeting on 6 March 2020?
- (vi) Was decision to remove her from its staff bank in any way whatsoever influenced by her colour?

2 The Relevant Law

2.1. Race, a protected characteristic, includes (a) colour (b) nationality (c) ethnic or national origins. A racial group is a group of persons defined by reference to race into which a person falls and may comprises two or more distinct groups.

2.2. Section 13 defines direct discrimination thus:

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

2.3. Section 39 includes

(2) An employer (A) must not discriminate against an employee of A's (B)—

(c) by dismissing B;

(d) by subjecting B to any other detriment.

Section 109 says an employer is liable for what its employees do, **not for what patients do.**

2.4. Shamoon-v-Royal Ulster Constabulary held the question, in direct discrimination, is the "reason why" the treatment was afforded. Glasgow City Council-v-Zafar held unreasonableness of treatment does not show the reason why something was done, neither does incompetence Quereshi-v-London Borough of Newham. Sir Patrick Elias said in Law Society-v- Bahl

89. *It is important to appreciate that whilst less favourable treatment will usually.., constitute a detriment, the converse is far from true. There will be many acts which an employer or his servant or agent may take towards someone which will be a detriment even although it is not discriminatory in any way. Indeed, it is plain a detriment in the sense of adverse treatment can result even from wholly reasonable and appropriate conduct of the employer. It follows merely to identify detrimental conduct tells us nothing at all about whether it has resulted from discriminatory conduct.*

93. *There is clear authority for the proposition a tribunal is not entitled to draw an inference of discrimination from the mere fact the employer has treated the employee unreasonably. This is the important decision of the House of Lords in Glasgow City Council v Zafar [1998] ICR 120.*

99. *That is not to say the fact an employer has acted unreasonably is of no relevance whatsoever. The fundamental question is why the alleged discriminator acted as he did. If what he does is reasonable then the reason is likely to be non-discriminatory. In general a person has good non-discriminatory reasons for doing what is reasonable...*

100. *By contrast, where the alleged discriminator acts unreasonably then a tribunal will want to know why he has acted in that way. If he gives a non-discriminatory explanation which the tribunal considers to be honestly given, then that is likely to be a full answer to any discrimination claim. It need not be, because it is possible he is subconsciously influenced by unlawful discriminatory considerations...*

101. *The significance of the fact the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given than it would if the treatment were reasonable. In short, it goes to credibility. If the tribunal does not accept the reason given by the alleged discriminator, it may be open to it to infer discrimination. But it will depend upon why it has rejected the reason that he has given, and whether the primary facts it finds provide another and cogent explanation for the conduct. Persons who have not in fact discriminated on the proscribed grounds may nonetheless sometimes give a false reason for the behaviour. They may rightly consider, for example, the true reason casts them in a less favourable light, perhaps because it discloses incompetence or insensitivity. If the findings of the tribunal suggest there is such an explanation, then the fact the*

alleged discriminator has been less than frank in the witness box when giving evidence will provide little, if any, evidence to support a finding of unlawful discrimination itself..”

2.5. Following Bahl, the law changed. Section 136 says

- (1) This section applies to any proceedings relating to a contravention of this Act.*
- (2) If there are facts from which the court **could** decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

2.6. This so called “reversal of the burden of proof” was explained in Igen-v-Wong. A claimant who complains of discrimination must prove on balance of probabilities facts from which the tribunal **could** conclude, in the absence of an adequate explanation, the respondent has committed an act of discrimination. If the claimant does not prove such facts, she will fail. The judgment continues:

- (3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of .. discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be intentional ..”.*
- (4) In deciding whether the claimant has proved such facts, it is important to remember the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.*
- (5) It is important to note the word "could" .. At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.*
- (6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.*

...

- (9) Where the claimant has proved facts from which conclusions could be drawn the respondent has treated the claimant less favourably (on the prohibited ground) the burden of proof moves to the respondent.*
- (10) It is then for the respondent to prove he did not commit, or as the case may be, is not to be treated as having committed, that act.*
- (11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, the treatment was in no sense whatsoever (on the prohibited ground) since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.*
- (12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities (the prohibited ground) was not a ground for the treatment in question.*
- (13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof.*

2.7. In Eagle Place Services Ltd-v- Rudd Judge Serota Q.C. said

“The inference may also be rebutted – and indeed this will, we suspect, be far more common – by the employer leading evidence of a genuine reason which is not discriminatory and which was the ground of his conduct. Employers will often have unjustified albeit genuine reasons for acting as they have. If

*these are accepted and show no discrimination, there is generally no basis for the inference of unlawful discrimination to be made. **Even if they are not accepted, the tribunal's own findings of fact may identify an obvious reason for the treatment in issue, other than a discriminatory reason.***"

2.8. In Ladele-v-London Borough of Islington Lord Justice Elias ("Elias L.J.") gave an excellent summary of the current law :

32. *The concept of direct discrimination is fundamentally a simple one. A claimant suffers some form of detriment (using that term very broadly) and the reason for that detrimental treatment is the prohibited ground. There is implicit in that analysis the fact that someone in a similar position to whom that ground did not apply (the comparator) would not have suffered the detriment. By establishing that the reason for the detrimental treatment is the prohibited reason, the claimant necessarily establishes at one and the same time that he or she is less favourably treated than the comparator who did not share the prohibited characteristic. Accordingly, although the Directive and the Regulations both identify the need for a tribunal to determine how a comparator was or would have been treated, that conclusion is necessarily encompassed in the finding that the claimant suffered the detriment on the prohibited ground. So a finding of discrimination can be made without the tribunal needing specifically to identify the precise characteristics of the comparator at all.*

33. *Sometimes a claimant wishes to support his or her case by identifying an actual comparator who was treated differently to the claimant. In order to be the statutory comparator .. **the relevant circumstances must be the same or at least not materially different** .. In practice there are rarely actual comparators who fall into that category.*

40. *Whilst the basic principles are not difficult to state, there has been extensive case law seeking to assist tribunals in determining whether direct discrimination has occurred. The following propositions with respect to the concept of direct discrimination, potentially relevant to this case, seem to us to be justified by the authorities:*

(1) *In every case the tribunal has to determine the reason why the claimant was treated as he was. As Lord Nicholls put it in Nagarajan v London Regional Transport [1999] ICR 877, 884E – "this is the crucial question". He also observed that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.*

(2) *If the tribunal is satisfied the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient if it is significant in the sense of being more than trivial..*

(3) *As the courts have regularly recognised, direct evidence of discrimination is rare and tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two-stage test which reflects the requirements of the Burden of Proof Directive (97/80/EEC). These are set out in Igen v Wong. That case sets out guidelines in considerable detail, touching on numerous peripheral issues. Whilst accurate, the formulation there adopted perhaps suggests that the exercise is more complex than it really is. The essential guidelines can be simply stated and in truth do no more than reflect the common sense way in which courts would naturally approach an issue of proof of this nature. The first stage places a burden on the claimant to establish a prima facie case of discrimination:*

"Where the applicant has proved facts from which inferences could be drawn that the employer has treated the applicant less favourably [on the prohibited ground], then the burden of proof moves to the employer."

If the claimant proves such facts then the second stage is engaged. At that stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on the prohibited ground. If he fails to establish that, the Tribunal must find that there is discrimination.

(4) The explanation for the less favourable treatment does not have to be a reasonable one; it may be the employee has treated the claimant unreasonably. That is a frequent occurrence quite irrespective of the race, sex, .. of the employee. So the mere fact the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one. As Lord Browne Wilkinson pointed out in Zafar v Glasgow City Council [1998] ICR 120 :

"it cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee that he would have acted reasonably if he had been dealing with another in the same circumstances."

*Of course, in the circumstances of a particular case unreasonable treatment may be evidence of discrimination such as to engage stage two and call for an explanation... and if the employer fails to provide a non-discriminatory explanation for the unreasonable treatment, then the inference of discrimination must be drawn. As Peter Gibson LJ pointed out, the inference is then drawn not from the unreasonable treatment itself .. but from the failure to provide a non-discriminatory explanation for it. But if the employer shows the reason for the less favourable treatment **has nothing to do with the prohibited ground**, that discharges the burden at the second stage, however unreasonable the treatment.*

(5) It is not necessary in every case for a tribunal to go through the two-stage procedure. In some cases it may be appropriate for the Tribunal simply to focus on the reason given by the employer and if it is satisfied this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the Igen test: see .. Brown v Croydon LBC [2007] ICR 897 paras.28-39. The employee is not prejudiced by that approach because in effect the tribunal is acting on the assumption that even if the first hurdle has been crossed by the employee, the case fails because the employer has provided a convincing non-discriminatory explanation for the less favourable treatment.

(6) It is incumbent on a tribunal which seeks to infer (or indeed to decline to infer) discrimination from the surrounding facts to set out in some detail what these relevant factors are: see the observations of Sedley LJ in Anya v University of Oxford [2001] IRLR 377 esp. para. 10.

2.9. Sedley LJ said in Anya a finding an employer would behave as badly to people of all races should not be based on the hypothetical possibility it might, but on evidence it does. If an employer treats an employee of one racial group, eg black or "foreign" people less favourably, than others not in that group (comparators) who, vitally, are in the same or similar circumstances to the others, it is enough to reverse the burden of proof. If we find no actual comparators, we ask how a person sharing the characteristics of the claimant, but for those related to race, would have been treated. If primary facts show that hypothetical person could have been treated better, the burden reverses. The respondent may still show race had nothing whatsoever to do with the treatment.

2.10. Malicious motive towards the claimant, is not a requirement in a case where one is looking for the reason why something is done, provided the necessary causation between race and the subjection to detriment is established, see Amnesty International-v-Ahmed. West Midland Passenger Transport Executive-v-Singh shows if people of the same race as the claimant are as unfavourably treated as he was, that may point towards race discrimination. Such evidence was a

key factor in Rihal-v-London Borough of Ealing, a case about racial “glass ceilings”. In this region there are fewer ethnic minority residents than in many other areas of the country, so in most workplaces, “patterns“ of less favourable treatment are harder to discern. However, if one detects from primary facts the more favourable treatment of some people than of others it may help to look at what the advantaged group have in common and what the disadvantaged group have in common. If all bank workers are treated less favourably than permanent workers , whatever their race , that is a “contra indication” to race being an operative reason for the different treatment.

2.12. Rihal and Anya explained factors not “obviously racist” and **stereotypical assumptions** about races , may point to sub-conscious, but still direct, discrimination particularly when good equal opportunities practice exists is not followed. We note the claimant bases her claim on her colour, not her national origin or other aspects of her ethnicity such as language. Had she put forward a good reason for expanding her claim, we may have allowed her to, but she did not. She said she was French speaking Congolese, but not stupid. She is certainly not stupid and no-one suggested otherwise. She also said it is hard for white people to imagine how black people feel discrimination, but we, and others , have experienced disadvantages due to being in an ethnic, or other, minority and are practised in imagining how all discrimination affects others.

3. Findings of Fact

3.1 We heard the claimant Bibiche (“Bibi”) Luzolo Alamba (“Ms Alamba”) and, for the Trust, Helen Coppock, now a Matron; Ann Park, a Staff Bank Administrator; and Adam Watson, Resourcing Business Partner. We had an agreed document bundle.

3.2. Ms Alamba, born in 1980, is from Congo and speaks French better than English, though her English is good. She started working for the Trust as bank HCA on 6 May 2019. Before she used to work in care and nursing homes. Since she came to the UK, she had always wanted to work for the NHS. She has higher qualifications than many HCA’s (level 6 in health and social care when most have level 2). When Trust hospitals do not have enough staff on a ward, due to increased demand, sickness, or staff shortages, shifts are made available to Staff Bank workers . HCA’s act under the direction of a registered nurse. All bank workers are required to abide the Trust’s Behaviours Framework(176-177) and have access to its Employee Online System (EOS) to book shifts electronically. Ms Alamba was happy and proud to work on various wards at UHND. The work was challenging sometimes but she gave 100% to it as she wanted to build and secure her career in the Trust. She knew there is racial discrimination almost everywhere, and anticipated some, but believed Trust policies would protect her. NHS Trusts often explain publicly how committed they are to tackling discrimination to protect their employees and patients.

3.3. A “Ward Manager” is a senior, band 7, sister. There are also band 6 sisters. Ms Alamba was praised many times by most sisters. A Ward 5 manager said she was good at her job and with patients, and if she would like to become permanent she would help her. A Sister on that ward asked if she wanted a permanent place available, gave her 1 week to think about it but, unfortunately she could not accept because she wanted her son to start school full time before she became permanent. The Sister told her whenever she was ready for it, she would be glad to help. On a shift on that ward a patient sexually assaulted her by grabbing her breasts. Some people said she should sue the ward because it did not follow its procedures, but because the sisters were good to her and she knew the ward was short of staff, she refused to, even though the incident hurt her.

3.4. Ms Alamba says some permanent staff treated bank workers of all races less well than their permanent colleagues. One sister told another she was "one of the good ones". On ward 16 one sister asked if she wanted to become permanent. Being a bank HCA is more flexible because she can choose where and when to work. **The disadvantage is when an allegation is made against a permanent member of staff, they may be suspended pending investigation but with pay. A Bank worker may be offered no shifts, and if that happens, be without pay.**

3.5. Ward 16 often had shortages of staff partly because some left in response to alleged disrespect from other staff or patients. Ms Alamba saw bad language, bad practice, disrespect and neglect. Some staff were committed and hard working, others not. Ms Alamba did not judge them on what others said. She is Christian, her father is a Reverend, following the Bible is part of her daily life and as it says in Matthew 7 " *do not judge or you too will be judged, for in the same way you judged others, you will be judged and with the measure you use, it will be measured to you*".

3.6. **Helen Coppock** is now a Matron at another hospital but was Manager of Ward 16, a 23 bed ward with two sides each containing bays of 4 beds and smaller cubicles. At the time there was one other band 6 sister on Ward 16. Ms Alamba generally worked night shifts so had limited interaction with the sisters who did not routinely do so. She sometimes made requests to leave early for childcare purposes and Ms Coppock accommodated this where possible.

3.7. A standard night shift runs from 7.30pm to 8.00am but for 13 February 2020 it had been agreed she could leave early so was scheduled to work only to 7:00am on 14 February 2020. Amy Ridsdale (Registered Nurse in charge) ("Amy"), Vicky Flanagan (Registered Nurse) ("Vicky"), and Ms J. Edgar (JE) an HCA were also on duty. Ms Alamba was working with Vicky on the side with bays 11,12,13 and the cubicles, and Amy was in charge of the other side.

3.8. AP was a patient Ms Alamba cared for on 3 night shifts the week before, when his mental state was bad. She says he was the "*sweetest gentleman*" amongst the four men in bay 10, always said thank you when given something and apologised when he rang his bell. When she was going to the kitchen, she passed bay 10, went inside and had chat with AP. He was less confused mentally and they had a laugh because due to memory loss, she had to re-introduce herself. He talked about his daughter and missing his bungalow. She left bay 10 to start her shift on the other side.

3.9. Ms Alamba finished monitoring her patients (temperature, blood pressure etc) and went to help the other side because there was more to be done there. Bay 10 has four beds, AP was in bed 10.2, bed 10.3 was occupied and bed 10.4. was occupied by patient X. He had an Alaris infusion machine on a drip stand, the drip goes into a patient's cannula and the machine regulates the flow of intravenous fluids. When the flow is interrupted for any reason, the machine will sound an alarm. HCA's are not authorised to silence Alaris alarms and must inform a nurse.

3.10. Patient X's blood sugar was not stable and being checked every two hours. JE had done it before and reported to the nurse in charge for her to add or to reduce the dosage. The next time due was 22:00. Ms Alamba went to the bay, Amy was there and Ms Alamba told her she might not record the data of the Alaris machine because she did not know how to. Amy said that was fine she would do it. When Ms Alamba approached patient X she introduced herself "*my name is Bibi, is it alright for me to take your observations please?*" He did not look at her face, gave her his left hand, turned his face away and said: "*whatever*". When she finished she thanked him, and left. She did not like his attitude but thought he might have a bad day as he had so many fluids going into him, could not stand up and needed to use a urine bottle. His attitude was rude and happened twice, but

with JE, a white, very experienced HCA he was different, so she decided to let her do his next observation. That night Patient X's Alaris machine alarm went off loudly which was disturbing the other patients, so Ms Alamba got Amy to see to it, but did not silence it herself.

3.11. When Ms Alamba came back from her break around 2am, the nurses were in the medication room preparing it for the morning and JE was busy. Ms Alamba sat on the nurse station, after few minutes JE joined her. A patient call bell on bay 10 rang. Ms Alamba told JE she would go. She found AP needed help. He said "sorry, *pet* because it is so late, can you pull me up off my bed, I need to go the toilet". Ms Alamba smiled and replied "you do not need to apologise, I am here for you, that is my job" but she said she would not **pull him up** because she is not allowed to, it is bad practice and she could hurt his shoulder and her back in the process. She lowered his bed to the level he could stand easily and asked him to swing his legs to the side of the bed, but he said he was so tired he would not be able to. She asked if he wanted to use a urine bottle instead but he wanted to go to the toilet. He could not stand on his own because he was unstable on his feet, so she helped him to stand, put her arm around his back and took him to the toilet. She asked him to press the bell in the toilet, not stand on his own. Not having heard a bell, she returned to the toilet and found he had stood on his own, so she helped him back to his bed. The last time, she went into bay 10 was around 6:30 am to record patient X's last blood sugar. He acted the same way towards her but was not really bothered about his attitude as she knew she would be going home soon.

3.12. Ms Coppock says when she returned to the ward at about 7.00am on 14 February 2020, she passed Ms Alamba in the corridor and **although she cannot be certain of the time, she believes it would have been approximately 6.50am**. When she got to the ward, Amy was unaware Ms Alamba had left. Usual practice would be to inform the Registered Nurse in charge, Amy, she was leaving. We accept Ms Alamba, for reasons she fully explained later to Mr Watson told Vicky, with whom Ms Coppock did not check. Before 8 am Ms Coppock was informed by Amy patient X, who had been vomiting frequently following abdominal surgery wished to make a complaint. Patient X told Ms Coppock

- a) Ms Alamba **kept (ie more than once)** silencing his Alaris machine without seeking help.
- b) he had vomited but Ms Alamba walked away from him, took his vomit bowl but failed to replace it, had not pulled the curtains around him or attempted to assist him in any way.
- c) Ms Alamba refused to help AP to stand, crossing her arms and saying she would "hurt her back" so he had to try for himself.

Ms Coppock says Patient X was measured and clear describing Ms Alamba as a "*disgrace to the NHS*" and having no compassion or care. He submitted, following his stay, a 'family and friends questionnaire', saying the care received from every other member of staff was very good but it was a shame it employed Ms Alamba who was in the wrong profession. We have not seen that document. Ms Coppock says AP had dementia so lacked capacity to give his account, but accepted his dementia fluctuates. It is possible Patient X was racially motivated to be so critical of Ms Alamba, though Ms Coppock thought otherwise.

3.13. Ms Coppock emailed the Staff Bank team **at 12:53** to inform them of the concerns and asked Ms Alamba be restricted from working with the Surgical Assessment Unit and Ward 16 (103). In addition to the patient complaint, she explained Ms Alamba had not communicated **to anyone** she was leaving her shift or that the **Alaris Machine required attention, both of which statements are, in our judgment, wrong**. She also stated **no staff** knew Ms Alamba's name but accepts this

was a mistake on her part and should have read no **'patients'** knew her name. Ms Coppock had been informed by someone, Ms Alamba had not been introducing herself to patients when treating them. **Ms Coppock did not discuss anything with Amy, Vicky or JE saying it is not her place to do so, as the Staff Bank team would. That too is wrong to an extent as we explain later. It is possible Ms Coppock was inclined to believe the worst of Ms Alamba without checking her facts because of her race. She denies that and there are other cogent, if mistaken, reasons for her acting as she did, which we accept are true, including that she had many other things to do and thought she could quickly pass the responsibility elsewhere for now.**

3.14. On **Friday 14 February 2020** Ms Alamba missed a call from Ms Maureen Buckle a Staff Bank administrator who left a voice mail asking her to call her back soon as possible, because complaints had been received from ward 16 accusing her of neglect and disrespect of a patient. At 15.11 Ms Buckle emailed her the gist of the complaint. Ms Alamba called her and explained she would never do such things, and Amy would verify she did not silence the Alaris because she did not know how to. Ms Alamba's statement says, and we find, Ms Buckle said :” *Bibi you seem to be very upset and you are crying, you need to calm down because it hard for me to understand everything you are saying to me with all your cries,*” She told her slowly, *“I am going to give you a few seconds to calm down , and you should be with a friend or someone you would be able to talk to “.*Ms Alamba replied her parents were in London, her cousin was in Newcastle, so she was alone in Kelloe, near Durham, with her two young boys. Ms Buckle asked her to explain the events by email and said she would be contacted for an interview as soon as possible. Ms Alamba replied she was going to call ward 16, because according to the complaints, nobody knew her name which she knew was wrong. She was the only black female from bank staff who used to work regularly on that ward at that time. The sisters and nurses knew her. Ms Buckle, who was nice and patient, said she needed to follow the procedure and wait for the meeting.

3.15. Ms Alamba did not follow Ms Buckle's advice. After finishing talking with her, Ms Alamba called ward 16, as she felt she needed to explain this situation was a mistake, or they might have confused her with an agency worker 80% of whom are black. Most staff on Ward 16 were white British, 1 was black and 2 Filipino. The complaint said she was cold, heartless and a “ *disgrace*”. She believes Patient X called her that because of her colour and most of his complaints, eg. she kept turned off his Alaris machine more than once, were made up. Ms Alamba accepts he would have overheard her conversation with AP moving him and picked up some phrases but not the context of her saying she might hurt her back and he should try to stand himself.

3.16. When she called the ward, the first lady who picked up the phone did not have a British accent. It was probably a Filipino nurse, Amah Castillo. Ms Alamba told her about the complaints and said she could not see how staff had said they did not know her. **This we now know to be Ms Coppock's error.** She asked if the “sister” was on shift to speak to her. Ms Castillo did not know about the complaints, **nor should she**, said the “sister” was not on the ward and would be back on Sunday morning, but she could call back later and speak with the ward manager, who was then in a meeting, but there until 18:30 pm. Ms Alamba and Ms Castillo were using the term “sister” about the band 6 sister Ms Alamba cannot name , **not Ms Coppock.**

3.17. Ms Alamba called the bank staff team again. Calls to the Staff Bank team are on a loop and can be answered by any member of the team. We find Ms Alamba initially spoke to Christine Parkins, gave her name, explained the reason for her call and said she had wanted to speak with

the ward manager who was busy so wanted to go to the ward to clarify the situation because for her it was unbelievable. She was advised not to go to the ward because she needed to follow the procedure, wait for a meeting with the staff bank manager and told to calm down as everything would be fine. Ms Parkins told Ms Park, and later Mr Watson, Ms Alamba had been very loud and abrupt, questioned the patient complaint and referred to the sister as a “*dirty bitch*”. **We have not heard from Ms Parkins** or even seen a statement by her.

3.18. Ms Alamba decided to call Ward 16 again to speak with the ward manager. We find it was probably nurse Helen Tomlinson who picked up the call. Ms Alamba introduced herself, explained to her the reason of the call and was told the ward manager was busy with a patient and she should call back later. Ms Alamba said she had read nobody knew her which could not be possible because the week before she had worked there for 36 hours. She told Ms Tomlinson she had heard HCA’s and nurses on different wards, Ward 16 staff have a reputation for being rude and unkind and now she believed that was true and some people were “*getting fun on trying to destroy my life*”. She does not deny she was upset on the phone. **We have not heard from Ms Castillo or Ms. Tomlinson** or even seen a statement by them.

3.19. Ms Alamba had booked 3 night shifts for that week (1 on ward 16, and 2 on ward 14). She decided to look on EOS to check her rota and found she could not have access to it. She discovered all her shifts were cancelled. She had bills to pay. She called Ward 16 asking to speak to the ward manager, and meet the NHS manager earlier to get back to work. She was told the ward manager was still busy but was on shift. She felt the ward manager did not want to speak with her and believes staff might have told her what she said earlier, so was going would make things worse.

3.20. Ms Alamba called the bank staff team again and spoke to Ann Park, who does not recall any prior meeting with Ms Alamba and says she was unaware of her race. Ms Alamba’s name and accent would indicate she came from a French speaking part of Central Africa. Ms Park repeatedly tried to explain to her the procedure for responding to a complaint to provide her account. Ms Alamba was not willing to listen, continued to talk over her and said she had already spoken to Ms Park’s colleague who was rude. Ms Park advised her not to attend the ward whilst the matter was under investigation, told her she was going to put her on hold and escalate the matter to her Line Manager, Georgia Brand. Ms Brand took the call and asked Ms Alamba to calm down explaining there was a process to be followed in dealing with complaints and the Trust would collate all relevant evidence. Ms Park later wrote Ms Brand “*could not get a word in either*”. Eventually, Ms Brand told her she was going to have to end the call. **We have not heard from Ms Brand**. The claimant does not recall speaking to anyone of that name or being told she would end the call.

3.21. Ms Alamba telephoned again to say she could not sit around all day waiting and was going to go to the ward to speak to the sister in the presence of the patient, reiterating the complaint “*was all lies*”. Ms Park says Ms Alamba told her to “*piss off*”. Ms Park, accepts her note at page 161 says that was during the previous call but the note is wrong. Ms Park put her on hold whilst she spoke to Mr Watson who took the call, and told Ms Alamba if she went to the ward she would be escorted from the premises.

3.22. Ms Park contacted the ward to inform them Ms Alamba may try and contact them over the weekend, or attend the ward in person and they should call security or the police if necessary. She cannot recall to whom she spoke. She requested the message be passed on to those responsible over the weekend. Ms Park completed and submitted an incident report form that day (161-162), the

only one she has submitted during her employment at the Trust. Ms Park had no further involvement. It is vitally important both Ms Park and Mr Watson disagreed with Ms Coppock that the staff bank team would ever investigate what happened on the ward. **If Mr Watson had decided it needed to be investigated, he would have asked ward staff to get input from Amy, Vicky and JE, but that point was never reached.**

3.23. Ms Coppock actually finished her shift and left the ward at approximately 16.00. She was then contacted by one of the Nurses on duty to inform her Ms Alamba had called the ward, was furious and demanding to know which patient had complained. Ms Alamba had informed them she was planning to come to the ward to speak to the patient. Ms Castillo and Ms Tomlinson felt it necessary to alert the Matron and Security site manager who said she should not be allowed to come on site and it would not be appropriate for her to speak to the patient. Ms Coppock emailed the Staff Bank team again on 16 February 2020 to provide them with a completed Bank Worker Complaint form and advise Ms Alamba had called the ward on two occasions on 14 February 2020 spoken to Ms Castillo and Ms Tomlinson who both felt she had been aggressive over the phone and had called the patients "liars". Ms Coppock had no further involvement and was not party to the decision to remove Ms Alamba from the Staff Bank. She is not aware of any other Staff Bank worker who displayed the same or similar behaviour to Ms Alamba. Ms Coppock says the manner in which she reported the patient complaint and the subsequent behaviour was in no way motivated by Ms Alamba's race. She would treat any member of staff in exactly the same way.

3.24. Ms Alamba's version of when she spoke to Mr Watson on 14 February is he said "*Ms Alamba , you need to follow the procedure , you are not allowed to contact me or any other member of the bank staff team anymore until your meeting*". She replied "*I am innocent about all these accusations, I am calling so much because I do not want to lose my job ,I could not afford to let that happen, that is why I am calling so much*". He again said "*Ms Alamba , you need to follow the procedure and wait for the meeting*". She told him "*I have called the ward because I needed to speak with their sister , but just the ward manager was there until 18.30 pm , and I really wanted to go to see her for to clarify this situation, also I did not understand why all my shifts that have booked in different ward have been cancelled*". Ms Alamba alleges he said more loudly "*Ms Alamba I am the one who asked to cancel all your shifts, until after the meeting and investigation and if you decide to go to the ward you would be escorted outside of the hospital by security*". He ended the call without saying goodbye . After this she believed nothing she could say or do would help her to keep her job, as her statement says", **because I stood up to him. I am asking myself what else I was supposed to say on that time, he threatened me on the phone, like I was a criminal, I could not just let him speak to me that way even if he was my manager. I did not disrespect him , I said what I have because I was innocent and I felt intimidated on that moment. That night I could not sleep, I was up most of the night until 5 am in the morning. It is on that time, that I have decided to write an email to explain all the situation to Mrs Buckle, she was the only NHS manager which demonstrated empathy for me over the phone, and I am thanking her for that... I explained to her I would never hurt my patient I was victim of racial discrimination from my patient that maybe was one cause, he would make up all of it .. , how can you be accused to have abused someone you did not care for?"**

3.25. Ms Alamba sent a long email to Ms Buckle at 3.40 am on Sunday 16 February to explain what happened on the night shift. She began by apologising if she had come across as unprofessional in phone calls, but justified herself doing so by how upset the allegations had made her. She then set out a **good answer** to Patient X's accusations saying he did not like her as a "*foreigner*". Her email explained she knew AP, took care of him the week before in that same bay and gave the names of

other staff present on that shift, Vicky, Amy and JE. It told about the incident on Ward 5 when she was abused by a patient. She thinks any innocent person called as “disgrace” would feel insulted and believes patient X chose her to complain about, just because of her colour. Most staff on this ward knew and appreciated her. On ward 16, a nurse Elisabeth told her:” *I like working with you Bibi, because you are good in your work*”, the same ward always asked her to come back including Vicky. She says some people in the North East judge people because of the colour of their skin, but when they get to know them understand “ *being black does not mean to be bad or worst* “ . She sent a second email at 15.04 adding little but largely repeating her reasons for being innocent.

3.26. Adam Watson, employed by the Trust since 2015 now, among other duties,oversees the Staff Bank team. The Trust has an Equality, Diversity and Human Rights Policy (132-142) and Mr Watson received Equality and Diversity training on 29 August 2017 and 12 October 2020 (208). When Ms Coppock emailed on 14 February 2020 to inform them of a verbal complaint by patient X, adding Ms Alamba finished her shift 10 minutes early and did not inform any staff she was leaving, Ms Coppock asked Ms Alamba be restricted from working in the Surgical Assessment Unit and ward 16. Ms Buckle informed Mr Watson. Where a Ward Manager requests a restriction to a Bank Worker, the decision is escalated to him to consider whether such restriction should be implemented, and, if so, applied to the ward or the whole Trust. Given the serious **allegations**, he decided Ms Alamba should be temporarily restricted from any bank shifts across the Trust and her EOS account temporarily suspended **until the facts had been established**.

3.27. He repeats Ms Park’s evidence about a series of calls to the Staff Bank team the first to Ms Parkins who, personally but only verbally, informed him Ms Alamba had been loud and abrupt and called the sister on the ward a “*dirty bitch*”. He asked if she was sure and she said she was. Ms Park told him Ms Alamba had been abrupt and told her to “piss off”. Ms Park asked him to speak to Ms Alamba as she had said she was going to go to the ward to speak to the sister and patient. He spoke to Ms Alamba and tried to de-escalate the situation, informing her of the Trust’s process for dealing with complaints and that it would not be appropriate for her to attend the ward. He says she was “*aggressive*” on the call so he informed her if she did attend the ward, police would be called. Ms Park submitted an incident complaint saying Ms Alamba’s behaviour was verbal abuse.

3.28. He read Ms Alamba’s written response by emails dated 16 February 2020 (107-117) that the accusations against her were false saying

- a) she never touched the Alaris machine, when she heard the beep from the machine, she told Amy told her the machine was beeping when other patients were still trying to sleep and Amy said she would look at it as soon as she finished what she was doing.
- b) AP had asked to be pulled up to go to the toilet, Ms Alamba said she would help but not **pull** him up because that is not safe for him or her (Ms Coppock confirmed to us Ms Alamba moved AP in the correct way)
- c) she disputed staff did not know her name and that she did not introduce herself to patients.
- d) if a patient had been sick, she would get rid of the sick bowl and she, or someone else, replace it
- e) she went to the toilet at around 6.50 and left the ward around 7.00 am but denied she had not spoken to anyone to tell them she would.

3.29. Ms Alamba went to London to see her family for few days. When there, she received a call from Ms Buckle , asking which day she might be able to come for interview . Mr Watson wrote to

Ms Alamba on **17 February 2020** to invite her to a meeting on 24 February to discuss the complaint and her subsequent behaviour (118). He would be accompanied by Alison Laidler (HR Manager) and she was entitled to be accompanied by a Trade Union Representative or work colleague. She was not a union member at the time. She would not be offered any bank work pending the meeting which could result in her removal from the Staff Bank. **Mr Watson acted with commendable speed because he was aware Ms Alamba would be without pay and it is his job to have as many bank staff available as possible.**

3.30. Ms Alamba was unable to attend due to snow so he wrote on 24 February rescheduling it to 2.00 pm on 4 March . Ms Buckle informed him on 24 February Ms Alamba was unable to attend due to needing to collect her children from school so he wrote again on 25 February to rearrange it to the earlier time of 12.00 noon on 6 March. Ms Alamba emailed on 25 February saying the complaint had caused her stress, financial hardship and she had been the victim of discrimination.

3.31. The meeting went ahead on 6 March 2020, attended by Mr Watson Ms Laidler and Ms Alamba, with her two young sons They located a room with a glass window where Ms Alamba was able to keep an eye on her children. Mr Watson says he explained the meeting had originally been arranged to discuss a patient complaint but he had further concerns regarding her behaviour and attitude after its receipt, which he wished to discuss **first**. He had received statements from members of staff who stated she had sworn at them, used abusive language and been aggressive over the telephone. He read out the accounts of Ms Park and Ms Coppock. Ms Alamba denied she had spoken in that way or called the ward sister abusive names or the patients 'liars'. He said he felt she had been aggressive on 14 February, which she denied. He questioned what motive staff would have for making such allegations, given they had been received from individuals in completely different teams. Ms Alamba repeatedly stated she was being discriminated against and asked whether the telephone calls had been recorded which they had not.

3.32. Ms Alamba's version is longer but not substantially different. She says Mr Watson put his elbows on the table started by thanking her for coming then said "*.. we will not talk about the complaints of the patient **but rather** about your behaviour when you received that complaint, your behaviours of that time were unacceptable*". The only difference is her view that what happened on the ward would not be discussed **at all**, and Mr Watson saying it would be if she adequately explained her behaviour. He says had she acknowledged she had been out of order during the phone calls but realised now she should have waited for the procedure to run its course and wanted him to deal with the patient complaint, he gladly would have. It is not in his interests to lose bank staff. We do not **disbelieve** either witness. This is the one of many genuine misunderstandings.

3.33. Ms Alamba asked "*what did I do?*" He replied he has received numerous complaints about her behaviour on that day from the bank team and Ward 16 staff. He read from a paper and on the claimant's version said "*one of the staff of ward 16 said that you called their sister " a Dirty Cow Bitch"*". Ms Alamba laughed and said "*Oh my God! Is that a joke, it is unbelievable?..Can you tell me what " a Dirty Cow Bitch " means because all these words don't make sense to me*" Ms Alamba tried to translate these words in French in her mind but they did not make sense other than she knew they were insulting. She said "*I would never call that sister or any other woman that way*". Mr Watson asked:" *Are you saying the staff who said you used these words against their sister are lying ?*" Ms Alamba replied, without hesitation, "*yes!*". She told Mr Watson she is a respectful woman

and “*how can you tell me I dared to call her that way?*” He replied staff said she did. Ms Alamba told him;” *I do not drink, I do not smoke, I do not swear at all. I cannot stand swearing people that why I have broken up with the father of my boys, not just because I could not stand his smoking habit but also because he had a very bad habit “swearing” I could not stand that, and you are saying to me that I called someone by this despicable way. He was quiet, just looking at me, I said again I have kids, I believe that swearing can become an addiction that why I do my absolute best to avoid it*”.

3.34. Mr Watson says he did not use the phrase “*Dirty Cow Bitch* “ and we do not think he would, because it makes no sense in any language. He may have said “*Dirty Cow or Bitch* “ which shows the problem of not having any written note made at the time by Ms Parkins and raises the distinct likelihood she was not certain what Ms Alamba said over the phone in her accent while crying .

3.35. Mr Watson said” *I have read the emails you sent to Mrs Buckle to explain what happened on that ward on 13/02/2020. It appeared you are calling the patient a liar*”. Ms Alamba replied:” *yes, that patient lied* “. He asked “*why do you think that patient lied* “. She replied ” *first of all, like I explained to you in the email, I did not care for the patient , that patient was in the other side of the ward*”. She had explained the moving procedure she used on AP in the email to Ms Buckle.

3.36. Next Mr Watson said:” *it has been reported you left the ward at 6:50 instead of 7:00 am*”. Ms Alamba’s statement says she told him she had a “*bellyache*”, did not go home at 6:50 am but to the toilet and when she finished there it was near 7:00 am and because she did want to miss her bus, knew the morning observations and her other work were done, decided to go. He asked:” *why you did not tell the nurse in charge you were going home*”? She replied:” *after I finished to take the observation of the patient of the bay 10 , I met with Vicky nurse of my side, she was outside bay 8 , she came to help Amy .., and after asking me if I would back that night , I told her I will not be back to work in the night, but I am waiting for 7 am to go home. It was around 6:40 am , I remember that time because I was coming from bay 10. After talking to her, I .. cleaned. the observation machine, and I put it back in it usual place near between bay 7 and the cubicle. I stand for few minutes at the nurse station around 6:50 am. I went to the toilet. After I finished using the toilet it was already time to go, and because I knew I had told Vicky I would leave at 7:00am, I just decided to go and I did not want to go back inside the ward after using the toilet.*” The times Ms Alamba gives make perfectly good sense, as does her comment that if she had a stomach bug she should not risk passing in on to patients by returning to the ward. We have not heard from Amy or Vicky or seen any statement from them and neither did Mr Watson.

3.37. Next Mr Watson asked” *why your version of the facts was different from the ones I have got?*” She replied she did not know, but had heard some of Ward 16 staff had bad reputation of getting people in trouble for nothing and told him once she was working on a night shift in that ward when , at the end of the shift, Elizabeth a bank nurse bank told her” *Bibi, please make sure that you checked everything before you go because , people like make up things in here*” .

3.38. Ms Alamba believed nothing she was saying was being believed and says she could see that by Mr Watson’s manner. Her statement says she asked him “*did you hear the voice call I have made that day? He said to me: no, the NHS do not record their call. I replied ” how? Everyone knows NHS England and any other company private or governmental record their calls for training purpose? He said again: “the NHS do not recall their calls”. And I said: if you did not hear all the call*

*I have made that date how can you establish I am guilty, nothing is proofing I was telling lies like nothing was proofing the staff who said I have called their sister a " Dirty Cow Bitch"? was telling the truth?. Ms Alamba's statement shows (i) her challenging Mr Watson's truthfulness about calls being recorded, when the fact is some are and some, for reasons such as patient confidentiality, are not, (ii) her belief a person should not be even **accused** without proof when most investigations involve putting accusations to get a response. Ms Alamba even went as far as saying he should have **asked** her what she said, rather than putting to her what other people said she had.*

3.39. Ms Alamba's statement continues (with minor corrections to punctuation and grammar) *" I started to tell them about the unfortunate incident that happened to me at ward 5 on my night shift. When I started to relate that incident , Mr Adam Watson, started to check his paper. He said to me: yes, I have heard about that incident. Ms Alamba explained what had happened, that the sister had asked her if she did not want to take care that patient anymore but because they were short of staff and because he apologised, she agreed she would. One HCA said to her, using bad language, if it was her she would have told the patient what she thought of him and left him on his soiled sheets ,he deserved it for what he had done. The claimant replied she was not happy about it but doing that was not nice either. She looked straight into Ms Laidler's eyes and asked her:" as a woman how do you feel or react, if someone grabbed your breast without your consent?" She did not reply. Ms Alamba said to Mr Watson " I am the same person that felt violated, hurt by my patient that day, but I did not insult him, I did not punish that man by let him sleep on his soiled sheets and clothes, au contrary I had empathy for him that why I helped him , how can I be the same person who insulted that sister? ...Ms Alamba's statement on this point shows her belief that she, as an honest person previously valued by her colleagues, should not even be **accused** of what was alleged against her. There are many examples of situations where authorities, delegated with receiving complaints, have brushed them aside because they are against persons of high repute and previous good character, on the basis "a person like him or her **could not** be guilty of something like that " and subsequent events have shown the person was guilty. That is why all complaints have to be taken seriously to begin with and not dismissed, especially by others close to the accused person. **What happens on the ward should NOT stay on the ward but be handled in accordance with processes designed to do justice to the accuser and the accused.***

3.40. Ms Alamba's statement continues: *"When I called that day that sister was not on that shift, the staff told me she would be back on Sunday. I was calling the bank staff team and that ward because I needed to clarify that situation, I could not lose my job, I had a good, a future career progression. Why on earth, am I going to insult her ? Everyone was quiet for few seconds, and Mr Adam Watson said to me "that is what the report said you done ". I looked straight into his eyes and I told him without hesitation " I am victim of racial discrimination , sir, because I do not understand why people would make up something like that just to put me in trouble."*

3.41. Ms Alamba says Mr Watson became furious, his face red and he changed the tone of his voice which became threatening *"Are you saying **my staff** and the patient are racist?" Her statement says she replied, **fixing his eyes**, "yes, they are racist. That might explain why that patient said I have touched his Alaris machine , when I did not do it, and maybe that was one of the reasons he was acting so weird with me when I came to take his observations, and, for the staff, I believe they are racist as well, because I did not see why someone who go make up such lies by*

wrote down inside the report that :*"nobody knew my name because I do not speak to anyone" which was wrong, it was not the first time that I have booked my shift there, I was there the previous week"*

3.42. Mr Watson said: *"Ms Alamba why are you denying **all** you have done?" Ms Alamba's statement says " I did not deny the fact I have called so many times the ward and the bank staff team, I did not deny I was crying and very upset , hurt about the all situation , and I apologised for my calls , I should wait, follow the procedure, **but I could not because I knew I would lose my job** that why I made all these calls because I needed to be heard , I needed to clarify everything , I heard before, how some of the staff of that ward were bad and I knew between their side of the story I might not stand the chance for so many reason, that why I have called, but I did not neglect my patient by refusing him assistance when he asked me, I did not touch that Alaris machine , because I am not trained for it, I did not insult the staff over the phone. Yes upset, but I have told them the truth about their sneaky behaviours, and I did not insult anyone on the phone, I did not disrespect you on the phone Mr Adam. Sorry if you felt that way but I was talking and explaining myself, I did not insult that sister "*

3.43. Mr Watson says Ms Alamba's attitude and behaviour "escalated" during the meeting and her tone and manner again became aggressive. She raised her voice and kept interrupting. He accepts her emotions may have been elevated but found her responses unprofessional and contrary to the Trust's Behaviours Framework(176-177), which states staff should not 'be rude, abrupt, shout or insult people'. He does not recall her apologising during the meeting. She continually denied she had acted inappropriately or unprofessionally. He does not recall using the phrase *"are you saying that my staff are racist"* but may have used "my staff" with reference to the staff bank team.

3.44. Mr Watson told Ms Alamba to leave the room as he needed few minutes to decide. She went to sit in the waiting area with her sons. Mr Watson says he felt there had been a consistent pattern of concerning behaviour displayed by Ms Alamba, witnessed by him, Ms Laidler, colleagues in the Staff Bank and on Ward 16. He concluded there was no conspiracy to remove Ms Alamba as a Bank Worker by making up all such allegations and no evidence to suggest any discriminatory motive. He reconvened the meeting and explained Ms Alamba had failed to take any responsibility for her actions or behaviour, or how they may be perceived. He felt there had been an irretrievable breakdown of the working relationship and was not confident Ms Alamba would not display the same attitude and behaviour in the future so **based on her behaviour displayed alone** told her she would be removed from the Staff Bank and the Trust would not be offering her any more shifts with immediate effect. They did not get to the point of considering any other complaint.

3.45. Ms Alamba's statement says after less than 5 minutes , she was called back into that room and Mr Watson said *" Ms Alamba because you did not accept all your wrong , you are no longer part of the County Durham and Darlington NHS trust. You may leave the room."* Ms Alamba says she stood up, went near the door, came back to sit and said to him she knew at the start she would lose her job, when he said it was about her behaviour on 14 February not patient X's complaint. She told him she knew it would be *"like a pay back , I bet you did not like the way, I stood up to you when we talked on the phone."* He said, louder, she should leave. She replied *"when you asked me, if I was calling "your" Staff racist I knew on that time, Mr Adam, you had already made your choice, and this meeting was just something to demonstrate that you followed the procedure"*, She says his response was *"you are fired because of your attitude; you are refusing to accept you have done*

something wrong” . She replied “how can I accept something I did not do, why are you forcing me to do that, I did not do it and I will not accept that”. At one point she told him she “ was not white enough for my manager to believe me”.

3.46. The contents of the meeting were confirmed by letter dated 6 March 2020(127-128). Mr Watson says his decision was in no way influenced by race. He would have taken the same action for any Staff Bank worker had they exhibited the same attitude and behaviour. When the claimant says she “stood up “to him she was in effect standing up to and defying the entire process for dealing with patient complaints. We agree she was, even though she did not see it as such because she was focussed only on the injustice she perceived had been done to her

3.47. Ms Alamba sent a further email to the Staff Bank team on 10 March 2020, seeking to appeal his decision, maintaining she was the victim of discrimination (129). He responded by email on 11 March 2020, advising that as she was a Bank Worker and not an employee of the Trust, there was no right of appeal (130).

3.48. Ms Alamba has referred to two individuals whom she alleges, in the same or similar circumstance, were not removed from the Staff Bank. She described one as a white HCA, with short blonde mixed with grey hair, mid-fifties and a little bit chubby. Mr Watson does not know to whom she is referring but is not aware of anyone matching this description who has exhibited the same or similar behaviour. She refers to a “Michelle W”, who may be Michelle Whyte on the Staff Bank , but he is not aware of any complaints received about her behaviour. Ms Alamba’s evidence to us shows neither in remotely similar circumstances anyway. Both had disagreements with permanent staff on the ward and were allowed to work on other wards. Neither were accused of anything like the calls Ms Alamba made or her defiant behaviour at a meeting.

4. Conclusions

4.1. Respecting people is an important part of Ms Alamba’s values and she was accused of doing something against everything she believes. Her father once told her something she will never forget “ *when you know you are in the right **never stop screaming** your innocence, even people would use false assumption for to hide the truth , the truth is like a light hiding under the table in the dark , it always ends in triumph*”. We differ in our view to an extent, as did Mr Watson.

4.2. The time and place for her to show her innocence of the allegations made by Patient X was at a meeting with Mr Watson. No properly run hospital would contemplate dealing with them on the ward on the day after it happened by allowing the ward manager to put to Patient X Ms Alamba’s version of events in her presence , which is what she accepts she wanted and demanded repeatedly on 14 February in a series of telephone calls. Our Employment Judge asked her if she could see that if the ward manager accepted her version as opposed to that of Patient X in that way , it would be likely he would say it was a “cover up” and evidence of the nursing profession “sticking up for each other”. **She agreed it could look like that.**

4.3. She never grasped the points we covered at 3.39 above. An analogy may help. Imagine a white man makes an untrue allegation to the police about a black neighbour who is a well respected pillar of the community. A policeman visits the black man’s home to put it to him and ask for his

explanation, which will be reviewed by a senior officer to decide what to do next. At that point, the black man says “ *the allegation is ridiculous, it is not the type of thing a man like me would do*” If the policeman had just left when he realised the black man was a person of previous good character, that would be wrong. The black man then says he is going to go to his white neighbour to “sort it out” and the police officer tells him that would not be sensible, may result in a breach of the peace, someone being injured and if he does not co-operate with the investigation voluntarily, he may be arrested. Out of a feeling of righteous indignation the black man, says he is going to see his neighbour anyway and resists when the policeman tries to arrest him by assaulting the policeman. Even if it is subsequently proved the white man’s allegation was made maliciously, it will not prevent the black man being convicted of assaulting a police officer in the execution of his duty. Unless there is some basis for finding the white man’s allegation was so transparently false no one could possibly have believed it, there would be no basis upon which to find the police had been influenced to act as they did by the race of the accuser or the accused.

4.4. Mr Watson says Ms Alamba’s attitude and behaviour “escalated” during the meeting with him and her tone and manner again became aggressive. She raised her voice and kept interrupting. He accepts her emotions may have been elevated but found her response unprofessional and contrary to the Trust’s Behaviours Framework. We accept that, though the word aggressive is not one we would choose. What Mr Watson alleges happened before us too. Ms Alamba interrupted and talked loudly over Ms Clayton and witnesses. “Aggressive” is a subjective, but permissible, description. On the basis of her tone, volume and rapidity of speech before us, “over animated, argumentative and/or confrontational ” would be our choice.

4.5. Ms Alamba is not saying she was treated less favourably because of her accent or that her mannerisms are a characteristic of race. We find they are not anyway , still less linked to her colour. We have seen countless people of all races demanding to take short cuts over procedures. All those who made reports critical of the claimant genuinely and reasonably believed the evidence of their own ears, and did not make stereotypical assumptions based on race.

4.6. Processes are designed to do justice to the accuser and the accused. Ms Alamba’s statement says “ *I started to believe that was done on purpose, and all of it just brought up my depression and my stress level on that time. It seems like a kind of punishment because that was not acceptable, I know the NHS were fighting that new pandemic but they still hired new staff and I have told them I needed that money because I could afford anything because I did not have the money*”. She sees it all entirely from her own point of view. Mr Watson says he felt there had been a consistent pattern of concerning behaviour displayed by Ms Alamba, witnessed by him ,Ms Laidler, colleagues on the Staff Bank and Ward 16, which were likely to be repeated if she felt wrongly accused again. We agree it probably would. Ms Alamba still thinks she has been done a great injustice because the allegations against her should never have got as far as they did. We have explained at length why what she wanted, which was that the allegations made by Patient X should have been “quashed” by Ms Coppock on the ward, based on an investigation conducted by her and her acceptance of the claimant’s previous good work, could not be allowed to happen in any sensibly run NHS Trust

4.7. The saddest feature of this case is that had Ms Alamba got to the point of answering the complaints, rather than using attack as her main method of defence, which it rarely is, she had many good answers. The Trust has come nowhere close to showing Patient X’s allegations of

silencing his Alaris machine, not replacing his vomit bowl etc are correct, and it would be inconsistent with Ms Alamba's previous record of patient care if they were. She did not fail or refuse to assist AP, she assisted him in the correct way. It is possible patient X was racially motivated to allege otherwise but the Trust is not liable for him. We cannot find Ms Alamba left her shift 10 minutes early on 14 February 2020, because Ms Coppock admits she is not sure of the time. There is no evidence she did not tell Vicky she was going to leave after she used the toilet. Had they got to the point of asking Amy, Vicky and JE what they knew, it would probably have helped Ms Alamba.

4.7. We do not find she called anyone "dirty cow bitch" or "dirty bitch". Ms Parkins told Mr Watson she had and he asked if she was sure, which she said she was. The problem of "hearsay", one person telling another what someone else said, if that the more versions are passed on the less reliable they become. Although it was not in her statement, Ms Alamba accepted she may have said in a call she was "*pissed off*". When she gave evidence, her accent made the phrase sound like "*piss off*". **Throughout this case, the claimant spoke loudly and very quickly, more so when she was upset. Over the telephone the scope for mishearing her would be even greater.** Of a series of telephone calls, to Ms Park, Mr Watson, Ms Parkin, Ms Brand, Nurses Castillo and Tomlinson, we have heard only the first two and have not even a written statement from the others. We do not say anyone "lied" but the scope for misunderstanding was huge. As Lord Justice Sedley said in Anya, people may be credible and honest but still mistaken.

4.8. Using the method approved in the emboldened subparagraph 5 from Ladele-v-London Borough of Islington quoted at 2.8. above, we are absolutely satisfied the Trust's decision to remove the claimant from its staff bank and the various reports made about her was in no way whatsoever influenced by her colour or race. It is very hurtful for anyone to be wrongly accused especially if it is done to her because of race, but no-one for whose acts the Trust are liable treated her any differently because of race. We hope she will return to being an HCA somewhere, but she was the author of her own misfortune by allowing the process to run its course and thereby not getting to the point of defending herself against the initial allegations.

5. Postscript

5.1. An email was received by the Tribunal from the claimant the day after the hearing ended which included "*Yesterday ,I was not myself there is so many things that I wanted to say I forgot , because I could not make up my mind about what Mrs Helen said about how she has deal with the complaints, I have felt sad , I felt that all this time that I was thinking that was the only way could demonstrated how good employee.. The one I thought to be my salvation was in fact the one would trigger all my reaction from the way she handled it in the first place , that was hard for me to understand .. Please your honour I would like to allow to add this last documents and my diploma into my case before starting to review*" The main attachment ran to 10 pages, the others being certificates of qualification which were never in dispute. Our Employment Judge has read it. It includes the word "victimisation" That apart, it repeats the points Ms Alamba made at the hearing.

5.2. Chapman-v-Simon held we cannot find in favour of a claimant on a ground which has not been put forward in her claim ("pleaded") or added as an amendment. Victimisation is not pleaded in this case. Section 27 EqA says a person victimises another if he subjects her to a detriment because she does a "protected act" which includes making an allegation (whether or not express) that he or

another person has contravened the EqA. Where a protected act is preceded, accompanied or followed by behaviour on the part of the employee which is unacceptable to the employer Martin v Devonshires Solicitors held a Tribunal's finding that a firm of solicitors did not victimise an employee by dismissing her because she had made allegations of sex discrimination against various partners. A number of **related and separable** features of the allegations, not the allegations themselves, were the reason for the dismissal including that similar behaviour was likely to occur in future.

5.3. In Selkent Bus Co-v-Moore Sir John Mummery said an application to amend can, in theory, be made after a hearing but added “ **Whenever** the discretion to grant an amendment is invoked, the tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it”. In Woodhouse-v-Hampshire Hospitals HH Judge McMullen said “ It is true in the assessment of the balance of hardship and balance of prejudice there may in all the circumstances include an examination of the merits – in other words, there is no point in allowing an amendment to add an utterly hopeless case.” Our Employment Judge has no doubt that an application to amend, even if made, should be refused.

EMPLOYMENT JUDGE T M GARNON

JUDGMENT AUTHORISED BY THE EMPLOYMENT JUDGE ON 15 JULY 2021