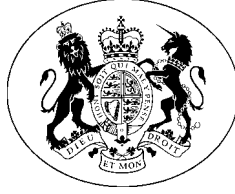


Reserved Judgment



# EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondents

Dr D Angelova-Dimitrova

Royal Free London NHS Foundation Trust

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central

ON: 1-20 June; 21-22 June  
2022 (in chambers)

BEFORE: Employment Judge A M Snelson

MEMBERS: Ms P Breslin  
Mr S Hearn

On hearing the Claimant in person and Ms H McLorinan, counsel, on behalf of the Respondents, the Tribunal unanimously determines that:

- (1) The Claimant's complaints of harassment Under the Equality Act 2010 are not well-founded.
- (2) The Claimant's complaints of victimisation Under the Equality Act 2010 are not well-founded.
- (3) The Claimant's complaints under the Employment Rights Act 1996 of detrimental treatment on public interest disclosure grounds are not well-founded.
- (4) To the extent that any claim was presented outside the three-month time limit prescribed by the Equality Act 2010, s123(1) it fails on the further ground that it is out of time and the Tribunal has no jurisdiction to consider it.
- (5) Accordingly, the proceedings as a whole are dismissed.

### REASONS

#### Introduction

1 The Respondents ('the Trust') are the NHS Foundation Trust through which a number of hospitals including the Royal Free Hospital ('the Royal Free') are run. Their Neurology Department has headquarters at the Royal Free but its services

are delivered across a number of sites, which include the Neurological Rehabilitation Centre ('NRC'), based at Edgware Hospital.

2 Dr Dora Angelova-Dimitrova, the Claimant in these proceedings, who is 57 years of age, is a doctor of medicine of Bulgarian descent<sup>1</sup> with a specialism in Neurorehabilitation. Since she tends to use the surname Dimitrova alone and is content to be so addressed, we will refer to her by that name. She entered the employment of the Trust on 26 June 2017 in the part-time role<sup>2</sup> of Speciality Doctor based at the NRC and, as we will explain, was redeployed in 2020 to another role. She remains in its employment to this day.

3 By her claim form presented on 11 March 2021, Dr Dimitrova brought complaints under the Equality Act 2010 ('the 2010 Act') of sexual harassment, sex-related harassment and victimisation and, under the Employment Rights Act 1996 ('the 1996 Act'), of detrimental treatment on 'whistle-blowing' grounds. All claims were resisted in the response form and grounds of resistance dated 9 July 2021.

4 In the course of case management<sup>3</sup> the claims were particularised, an agreed list of issues prepared and standard directions given.

5 An undated schedule of loss followed in due course, claiming substantial compensation for injury to feelings and damages to be assessed for injury to health. In light of the fact that Dr Dimitrova's employment continued, no claim for monetary losses was pursued.

6 The case came before us on 1 June 2022 for final hearing, with 20 sitting days allowed. Dr Dimitrova appeared in person and Ms Hayley McLorinan, counsel, represented the Trust.

7 By agreement the matter was conducted as a 'hybrid' hearing held mainly face-to-face at Victory House in Kingsway save that three of the Trust's witnesses attended by video conference call (CVP) on days six and seven, as did one member of the Tribunal, Ms Breslin, on day seven. Observers were free to watch the proceedings at Victory House or online.

8 At the start of the hearing we raised a query about the list of issues contained in the agreed bundle of documents. Following discussion it was agreed that the document did not adequately identify the 'whistle-blowing' disclosures referred to in Dr Dimitrova's pleaded case, and an amended draft was produced which, we were told, remedied the defect. Much later in the hearing the list of issues was re-visited and it was eventually agreed that a further amendment was necessary, again relating to the alleged 'whistle-blowing' disclosures. The re-amended, final, agreed list of issues (abbreviated to 'LOI' below) is annexed to these Reasons. For the avoidance of doubt, both amendments were in Dr

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<sup>1</sup> Although it is not her first language, she has an excellent command of English.

<sup>2</sup> She worked a four-day, 32-hour week.

<sup>3</sup> Private preliminary hearings were held by Employment Judge Spencer and Employment Judge Norris on 4 October 2021 and 24 January 2022 respectively. On each occasion both parties were represented by counsel.

Dimitrova's favour, widening the scope of the alleged disclosures on which it was open to her to rely.

9 There was also a discussion at an early stage as to whether we should split liability and remedy or address both together. This led to Dr Dimitrova making it clear that (notwithstanding what was said in her schedule of loss) no claim would be pursued for injury to health and that she would seek compensation for injury to feelings alone. In light of this it was rapidly agreed that there should be a single hearing to determine liability and, if it arose, the claim for injury to feelings.

10 Having read into the case on day one, we heard evidence over days two to nine. We then allowed the parties day 10 for preparation of closing submissions<sup>4</sup>, which we heard on the afternoon of day 11<sup>5</sup>, following which we reserved judgment. Our private deliberations occupied two further sitting days.

11 At several points during the hearing we explained to Dr Dimitrova that, while we could not take her side, we would do anything necessary to mitigate the disadvantage which she faced as an unrepresented litigant by assisting her to understand the nature and purpose of the trial process. In line with this assurance we volunteered assistance at various points. For example, we explained that we could not venture into disagreements on issues of medical analysis or practice, since they were not relevant and in any event we were not competent to adjudicate on them. We also offered help on procedural points, either of our own initiative or in response to queries raised by Dr Dimitrova. This included intervening on a number of occasions to correct her tendency when cross-examining the Trust's witnesses to pose unfair questions based on false premises – typically, that a witness had given a prior answer which she or he had not given. In addition, we took time after the evidence was completed to explain what we would be looking for in closing submissions. We took regular breaks in the morning and afternoon sessions throughout the hearing and reminded Dr Dimitrova more than once that she should not hesitate to request further breaks as required.

## **The Legal Framework**

### ***The 2010 Act claims***

12 The 2010 Act defines harassment in s26, the material subsections being the following:

- (1) A person (A) harasses another (B) if –**
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and**
- (b) the conduct has the purpose or effect of –**
  - (i) violating B's dignity, or**

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<sup>4</sup> After discussion Dr Dimitrova elected not to prepare a brief written outline to support her closing argument. We had encouraged her to consider doing so but stressed that it was entirely her choice whether or not to accept our suggestion.

<sup>5</sup> Monday, 20 June (the parties could not sit on Friday, 17 June because the judge had a prior commitment).

- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) A also harasses B if –
  - (a) A engages in unwanted conduct of a sexual nature, and
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (3) [N/A]
- (4) In deciding whether conduct has the effect referred to in sub-section (1)(b), each of the following must be taken into account –
  - (a) the perception of B;
  - (b) the other circumstances of the case;
  - (c) whether it is reasonable for the conduct to have that effect.

13 In *R (Equal Opportunities Commission) v Secretary of State for Trade & Industry* [2007] ICR 1234 HC, it was accepted on behalf of the Secretary of State that the ‘related to’ wording in the legislation then in force (the Sex Discrimination Act 1975) was satisfied if an ‘associative’ connection was shown between the relevant protected characteristic and the conduct under consideration. Burton J, sitting in the High Court, did not question the concession. The EHRC Code of Practice on Employment (2011) deals with the ‘related to’ link at paras 7.9 to 7.11. It states that the words bear a broad meaning and that the conduct under consideration need not be ‘because of’ the protected characteristic.<sup>6</sup>

14 Despite the ample ‘related to’ formulation, sensible limits on the scope of the harassment protection are set by the other elements of the statutory definition. Two points in particular can be made. First, the conduct must be shown to have been unwanted. Some claims will fail on the Tribunal’s finding that the claimant was a willing participant in the activity complained of or at least indifferent to it.

15 Secondly, the requirement under subsection (4) for the Tribunal to take account of all the circumstances of the case and in particular whether it is reasonable for the conduct to have the stated effect dictates an objective approach – albeit one which takes account of a subjective factor, the perception of the complainant. Here the Tribunal is equipped with the means of weighing all relevant considerations to achieve a just solution.

16 Central to the objective test is the question of gravity. Statutory protection from harassment is intended to create an important jurisdiction. Successful claims may result in very large awards and produce serious consequences for wrongdoers. Some complaints will inevitably fall short of the standard required. To quote from the judgment of Elias LJ in *Land Registry v Grant* [2011] ICR 1390 CA (para 47):

**Furthermore, even if in fact the [conduct] was unwanted, and the Claimant was upset by it, the effect cannot amount to a violation of dignity, nor can it properly be described as creating an intimidating, hostile, degrading, humiliating or offensive environment. Tribunals must not cheapen the significance of these words. They are**

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<sup>6</sup> To similar effect, see *Hartley v Foreign & Commonwealth Office Services* UKEAT/0033/15 (HH Judge Richardson and members), paras 23-24.

**an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. The Claimant was no doubt upset ... but that is far from attracting the epithets required to constitute harassment. In my view, to describe this incident as the Tribunal did as subjecting the Claimant to a 'humiliating environment' ... is a distortion of language which brings discrimination law into disrepute.**

In determining whether actionable harassment has been made out, it may be necessary for the Tribunal to ascertain whether the conduct under challenge was intended to cause offence (*ibid*, para 13). More generally, the context in which the conduct occurred is likely to be crucial (*ibid*, para 43).

17 Employees are protected from harassment by s40(1).

18 By the 2010 Act, s27 victimisation is defined in these terms:

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

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

**(2) Each of the following is a protected act –**

...

- (c) doing any other thing for the purposes of or in connection with this Act;**
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.**

**(3) ... making a false allegation ... is not a protected act if ... the allegation is made ... in bad faith.**

19 When considering whether a claimant has been subjected to particular treatment 'because' he or she has done a protected act, the Tribunal must focus on "the real reason, the core reason" for the treatment; a 'but for' causal test is not appropriate: *Chief Constable of West Yorkshire v Khan* [2001] ICR 1065 HL, para 77 (*per* Lord Scott of Foscote). On the other hand, the fact of the protected act need not be the sole reason: it is enough if it contributed materially to the outcome (see *Nagarajan v London Regional Transport* [2000] 1 A.C. 501 HL).

20 Victimisation is prohibited in the employment field by s39 which, so far as relevant, states:

**(4) An employer (A) must not victimise an employee of A's (B) –**

...

**(d) by subjecting B to any other detriment.**

21 A 'detriment' arises in the employment law context where, by reason of the act(s) complained of a reasonable worker would or might take the view that he or she has been disadvantaged in the workplace. An unjustified sense of grievance cannot amount to a detriment: see *Shamoon v Chief Constable of the RUC* [2003] IRLR 285 HL.

22 2010 Act, by s136, provides:

- (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.

23 On the reversal of the burden of proof we have reminded ourselves of the case-law decided under the pre-2010 legislation<sup>7</sup>, including *Igen Ltd v Wong* [2005] IRLR 258 CA, *Villalba v Merrill Lynch & Co Inc* [2006] IRLR 437 EAT, *Laing v Manchester City Council* [2006] IRLR 748 EAT, *Madarassy v Nomura International plc* [2007] IRLR 246 CA and *Hewage v Grampian Health Board* [2012] IRLR 870 SC. In the last of these, Lord Hope warned that it is possible to exaggerate the importance of the burden of proof provisions, observing (judgment, para 32) that they have “nothing to offer” where the Tribunal is in a position to make positive findings on the evidence.<sup>8</sup> But if and in so far as it is necessary to have recourse to the burden of proof, we take as our principal guide the straightforward language of s136. Where there are facts capable, absent any other explanation, of supporting an inference of unlawful discrimination, the onus shifts formally to the employer to disprove discrimination. All relevant material, other than the employer’s explanation relied upon at the hearing, must be considered.

24 The 2010 Act, s123(1) provides for a jurisdictional limitation period for the presentation of claims in the employment sphere of three months starting with the date of the act or event complained of. The effect of the early conciliation provisions enacted more recently is to extend the period by the time taken up with conciliation. By s123(3)(a) ‘conduct extending over a period’ is to be treated as done at the end of the period. The Tribunal has a discretion under s123(1)(b) to substitute for the three-month period such other period as it thinks just and equitable.

### ***The ‘whistle-blowing’ detriment claims***

25 By the 1996 Act, s43B, it is stipulated that:

- (1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is in the public interest and tends to show one or more of the following –
  - (a) ...
  - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject ...
  - (c) ...
  - (d) that the health or safety of any individual has been, is being or is likely to be endangered ...
  - (e) ...

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<sup>7</sup> The language of s136 was new but did not change the effect of the burden of proof provisions.

<sup>8</sup> See to like effect the judgment of Lord Leggatt JSC in *Efobi v Royal Mail Group Ltd* [2021] ICR 1263 SC, especially at para 38.

- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

26 Qualifying disclosures are protected if made in accordance with ss43C to 43H (see s43A). By s43C, it is provided that:

- (1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –

- (a) to his employer ...

27 By the 1996 Act, s48(1) a worker has the right not to suffer a detriment (which may take the form of an act or a deliberate failure to act) done “on the ground that” he has made a protected disclosure. On such a claim, it is for the employer to show the ground on which the relevant act or failure to act was done (s48(2)).

28 The ‘on the ground that’ test in s48(1) is satisfied if the fact of the disclosure was a material influence behind the detrimental treatment (see *Fecitt v NHS Manchester* [2012] ICR 372 CA).

29 Very often, the outcome of a ‘whistle-blowing’ claim will turn on whether or not the Tribunal infers an unlawful motivation on the part of the employer. In *International Petroleum Ltd & others v Osipov & others* EAT/0058/17 the EAT (Simler J, as she then was) summarised the key principles as follows (para 115)<sup>9</sup>:

- (a) The burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.
- (b) By virtue of s48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them.
- (c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found.

## Oral Evidence and Documents

30 We heard oral evidence from the Claimant and, on the Respondents’ side<sup>10</sup>, Ms Shabinah Fazilahmed, Occupational Therapist at the NRC from February to November 2019, Ms Suman Mathur, Rehabilitation Assistant at the NRC, Ms Stella Mofunanya, Staff Nurse, Ms Marketa Ramsay, Clinical Specialist Physiotherapist and Team Lead for In-patients at the NRC, Ms Joanna Moon, Senior Sister on the NRC from February 2017 to October 2020, Ms Dawn Fricker, Senior Employee Relations Manager, Dr Cherilyn Lewis, Principal Clinical Neuropsychologist at the NRC between June and September 2019, Dr Jonathan Kennedy, Clinical Director for Neurosciences, Ms Elizabeth Benson, Sister Nurse at the NRC, Mrs Nadia Jeffries, Senior Speech and Language Therapist and Neurosciences Clinical Lead

<sup>9</sup> This part of the EAT’s analysis was not questioned on the further appeal to the Court of Appeal.

<sup>10</sup> Save where otherwise stated, the witnesses were employed in the roles stated throughout the period to which the claims relate.

for Rehabilitation and Dr Ann Donnelly, Locum Consultant at the NRC from February 2019 to March 2020 and Consultant Neurologist working at least one day per week at the NRC from March 2020 onwards.

31 All witnesses produced witness statements. Mrs Jeffries produced two, the second (which was very brief) addressing evidence in Dr Dimitrova's witness statement about the alleged 'whistle-blowing' disclosures which went well beyond the scope of the (original) agreed list of issues. There was no discussion about the propriety of producing the second statement. Permission may have been given in pre-trial correspondence. In any event, it was obviously fair to allow the Respondents to deploy it. Indeed, had they not done so, they would have been entitled to adduce the new evidence through oral testimony at the start of Mrs Jeffries's evidence, which would have put Dr Dimitrova at the disadvantage of having to deal with brand new evidence of which she had no prior notice.

32 Besides the testimony of witnesses we read the documents to which we were referred in the agreed bundle, which ran to nearly 800 pages.

33 We also had the benefit of an agreed chronology, an agreed cast list and Ms McLorinan's opening skeleton argument and closing submissions.

### **The Primary Facts**

34 The evidence was extensive. We have had regard to all of it. Some of it could not possibly assist us to decide the claims before us. We have reminded ourselves that it is not our function to recite an exhaustive history or to resolve every evidential conflict. The facts which it is necessary to record, either agreed or proved on a balance of probabilities, we find as follows.

### **Background**

35 The NRC is a small in-patient facility for the care of patients who have experienced life-changing neurological events such as brain or spinal cord injury or severe stroke. It caters for patients who are medically stable and, as its name suggests, specialises in rehabilitation. An important and distinctive feature is the multidisciplinary team ('MDT') model on which it is structured. The central concept is that the MDT, which comprises doctors, therapists,<sup>11</sup> clinical psychologists and nursing staff, works together in an holistic way to ensure that its patients benefit from all the skills and experience which its members bring to their work. The traditional doctor-dominated hierarchy is displaced. Individual patients are discussed in MDT meetings and contributions are invited from all, including staff members who do not possess specialist skills or qualifications. This recognises the fact that an observation by *any* member of the team may add value. Collaboration within the MDT depends on good communication which, in turn, requires mutual respect and courtesy. Informality is encouraged; generally, except in the presence of patients, team members call each other by their first names and titles are dispensed with.<sup>12</sup>

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<sup>11</sup> These include physiotherapists, occupational therapists and speech and language therapists.

<sup>12</sup> As we will explain, Dr Dimitrova insisted on being called by her professional title and surname.



36 The ethos of the MDT model was (and is)<sup>13</sup> reflected in its managerial structure. Mrs Jeffries (already mentioned), who was the senior manager of the NRC, is a speech and language therapist by profession. When she was away, Ms Ramsay (already mentioned), a physiotherapist by profession, deputised for her.

37 There were separate managerial structures within each group of professionals within the NRC. The therapists were led by Ms Ramsay and the nurses by Ms Moon (already mentioned).

38 On the doctors' side, the picture is slightly less clear. Until Dr Dimitrova's arrival in June 2017, medical care at the NRC was delivered by the lead consultant, Dr Gerard Davies, supported by registrars and junior doctors in training or in early years of practice. Dr Davies seems to have attended the NRC around one day per week. The appointment which Dr Dimitrova took up was a new four-days-per-week specialist associate post based entirely at the NRC. It involved collaboration with Dr Davies and the supporting medical staff and with the MDT. Her line manager was Mrs Jeffries to whom, for example, she was required to direct requests for leave. Clinically, however, she was under the supervision of Dr Davies. And when, in 2018 and thereafter, questions arose as to how to manage problems seen as resulting from her behaviour at work, it seems to have been accepted in practice that these were, at least in the first instance, for the consultant assigned to the NRC to deal with.

39 Above Dr Davies in the medical chain of command was Dr Kennedy (already mentioned), Clinical Director for Neurosciences from 2017. Having much wider responsibilities, he was rarely involved with staff or patients at the NRC.

40 In February 2019 Dr Ann Donnelly (already mentioned) replaced Dr Davies as the consultant assigned to the NRC. She started in a locum role and was appointed to the substantive post in March 2020. She worked across the Trust's sites and devoted at least one day per week to the NRC. Her duties included a weekly ward round, teaching medical students, training registrars, taking decisions on patient admissions and holding meetings with members of patients' families. She worked alongside Dr Dimitrova, who had day-to-day responsibility for the unit, and looked to her to apprise her of developments. As a consultant, Dr Donnelly held a position senior to hers, but she was not invested with line management authority over her.

### ***The main narrative***

41 In the summer of 2018 several concerns were raised about Dr Dimitrova's treatment of members of the MDT. It was said that she had behaved rudely and dismissively. A nurse said that she felt undermined. There was also a complaint from a patient. Having attempted unsuccessfully to raise these matters with Dr Dimitrova (she refused to attend the informal meetings proposed), Mrs Jeffries passed them on to Dr Davies and Dr Kennedy. Dr Davies later reported that he had spoken to Dr Dimitrova, who complained that she was being bullied. He voiced

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<sup>13</sup> We will use the past tense in the narrative which follows only because we are concerned with facts at the time to which the claims relate, namely June 2017 to (at the latest) 11 March 2021, when the claim form was presented.

the hope that things would settle down by themselves. Dr Kennedy did not intervene and Dr Davies's hope was, if only partially and temporarily, fulfilled.

42 In or about late 2018 a member of the NRC staff asked Dr Dimitrova if she could supply the telephone number of a particular Healthcare Assistant ('HCA') who occasionally worked 'bank' shifts at the NRC, for the purpose of some work-related query. The HCA was referred to as 'Victor O' and we will use the initials VO for convenience.<sup>14</sup> The question was asked because the staff member understood that Dr Dimitrova shared some accommodation with VO. Dr Dimitrova's account was that the staff member referred to her "living with" VO. We are prepared to accept that that language was used.

43 Dr Dimitrova's position was that she did indeed share accommodation in a conventional house-share arrangement with, among others, VO (although at some later point there were references to the HCA's son living at the relevant address and the HCA merely being an occasional visitor).

44 Either at once or over a period, Dr Dimitrova became unshakeably convinced that the use of the words "living with" were intended to, and did, connote the allegation that she was involved in an intimate relationship with VO and that rumours about such a relationship were circulating around the NRC. We assess the merits of these perceptions below.

45 Fresh concerns were raised about Dr Dimitrova's behaviour in the first half of 2019. By an email of 13 March, Mrs Jeffries informed Dr Kennedy of what she saw as her hostile and disrespectful conduct in the workplace and its harmful effect on the members of the MDT.

46 On 25 April 2019 Dr Dimitrova sent an email to the Trust's "NOBULLYING" email address containing allegations against Ms Ramsay, Ms Moon and VO, in these terms:

**I am writing this to raise a concern with regards to Ms Marketa Ramsay, PT at NRC and Sister Joanna Moon attitude which has led to a campaign of bullying and harassment against me. As well I would like to raise a concern with regards to HCA Victor O. inappropriate and insulting attitude.**

**I would like to apologize to anybody who reads this for an extremely disturbing content I have to expose. I did not have a courage to proceed this complaint long time.**

**I was told by all member of the staff that MR and Sister JM spread a slander that I have an intimated relations with HCA VO.**

**One year ago I relocated to Edgware. I found a room in a house owned by London Property company via Spare rooms. The accommodation is similar to RFH accommodation with shared kitchen and baths. HCA VO was living there before me to move. I never had any kind of interaction or communication with him.**

**After I was informed about the slander, I've met with MR and sister JM separately. I told them that this is a slander and I am not happy.**

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<sup>14</sup> In fact, his surname does not begin with 'O'.

MR was laughing and said that this the way they speak and I cannot do anything.

Sister JM started to laugh as well. She playfully moved her eyebrows up and down, pointed with her eyes to my pelvis and said "Are you doing?" I found her attitude deeply inappropriate. I explained her that this a slander and I am not happy with the conversation at all.

She said "You can do but why they speak." I said "Sister I am not doing anything I don't know this person." She continued to repeat many times "But you can do no problem". I left the conversation. Afterwards Sister JM told the nursing staff that she is not happy they to speak with me.

Shortly after this HCA VO came to NRC as a bank staff. I did not see him before at NRC so it was somehow related to my conversation with MR and Sister JM.

I approached him at NRC and I told him that I am not happy my name to be linked with him in this inappropriate way. I told him that the accommodation doesn't make people family or friends. He was repeating "I don't know anything" but he was laughing.

Shortly after our conversation I was almost to leave NRC when I met HCA VO coming on the corridor. When he saw me he started to laugh and said "Goodbye my dear". I was totally shocked. The conversation at NRC was only the conversation I ever had with HCA VO. How come I am "My dear". I felt deeply embarrassed. I did not reply. He started to be very regular at NRC and if I meet him on the corridor he will laugh. I don't have enough words to express the distress I suffered.

Shortly after my conversation with MR and Sister JM I was insulted by few members of the staff.

The psychologists CL came in MDT room and asked me - am I looking for a man. I was shocked. I said: No I don't. Few days later she was in MDT room. Somebody asked what is the first name of the consultant. She told him and after this laughing she said "Do you know what is the first name of Dr Dimitrova? Her first name is Doctor because she wants us to call her Doctor. All laugh..." I really don't know how to comment on this insult.

Sister S. said that I cannot complain about the slander because its not a patient related.

One day I came to work with a decent under knees dress and transparent tights. Sister JM and nurse St. were at the nursing station. When Nurse St saw me she started to speak to Sister JM "Look at her I can see her legs." I called the nurse in a quite room I told her that that the lady doctors in RFH wear transparent tights and I am not happy with her comment. She said "Really! I was joking." Any remorse.

Few member of the staff started to imitate me how I am walking. Every time I had to face people and to explain that I cannot accept this insulting attitudes.

All HCA started to call me "My dear" once they see me.

Sister B came to MDT room and told me "How are you missy?" Again I spoke and explained that I am not happy being called Missy .She was only one to apologised. I told her that I am not happy from the slander and the situation afterwards. She knew about it .She advised me to complain otherwise it will not stop.

I made a last attempt to solve this incredible, horror situation and I spoke again to Sister JM. She told me that she cannot remember who told her. She told me to be very careful and not to complain because HCA VO could be very angry and to arrange somebody to follow me and attack me on the way to my new house.

**I changed my accommodation after I was told about the slander.**

**I am a resilient person but I feel that I am in Early modern period of burning of witches when an innocent person is executed.**

We deal with the Trust's management of this and other formal complaints below.

47 In May 2019, Ms Ramsay reported to Mrs Jeffries that Dr Dimitrova had been telling nursing staff that she (Ms Ramsay) had been spreading rumours about her (Dr Dimitrova). Ms Ramsay strongly denied spreading any rumours.

48 In an email of 27 June 2019 sent to Mrs Jeffries among others, Ms Moon complained of Dr Dimitrova having intimidated her in a conversation of 21 June in which she had speculated about a former employee at the NRC who had been dismissed returning and "taking her revenge" against Ms Moon, who had been involved in the dismissal.

49 In an email of 28 June 2019 Mrs Jeffries informed Dr Kennedy of two concerns: (a) what she judged to be Dr Dimitrova's dismissive approach to opinions of MDT members and the effect of that attitude on those team members, and (b) Ms Moon's complaint of the day before alleging intimidation.

50 On the morning of 5 July 2019 Ms Ramsay and Ms Moon went to see Mrs Jeffries and reported that they had just been in a very unpleasant meeting with Dr Dimitrova in which the latter had complained about VO being booked to work a 'bank' shift at the NRC that day and accused them of spreading rumours about her private life and that she was consulting lawyers and would be reporting the matter to their regulatory bodies. Both were agitated and distressed. At Mrs Jeffries's request they made contemporary written records of what had happened.

51 Ms Ramsay confirmed that the allegation was of spreading rumours of an intimate relationship between Dr Dimitrova and VO. She said that Dr Dimitrova had spoken to her and Ms Moon "rapidly" and with a "raised voice" and had not been willing to listen to her denials, claiming that she had 47 witnesses who would substantiate the charge.

52 Ms Moon gave a similar account, describing Dr Dimitrova as "shouting". She also referred to her claim to have 47 witnesses. Her note also includes:

**I told her that I had been aware of the relationship but had not spread rumours ...**

Asked about that in evidence she said that she had been upset at the time of writing and had not chosen her words carefully. She had not been aware of any intimate or romantic relationship and had not intended to use language suggesting that she had. The reference to a "relationship" alluded only to the association involved in sharing an address.

53 Later on 5 July Dr Dimitrova told Mrs Jeffries that she had submitted complaints of sexual harassment against VO and bullying and harassment against Ms Ramsay and Ms Moon. Mrs Jeffries undertook to look into the matter. In a

further conversation the same day Dr Dimitrova told Mrs Jeffries that (a) Ms Moon had “confessed” (on an unspecified occasion, but she was probably referring to the confrontation earlier that day) that someone had told her about a “relationship” between her and an HCA and (b) rumours about the supposed relationship had been fabricated by Ms Ramsay and Ms Moon. She also referred to putting Ms Ramsay “in court” and reporting both to their professional bodies.

54 Mrs Jeffries made a full note on 6 July 2019 fairly summarising the main points which had arisen in her conversations of the previous day with Ms Ramsay and Ms Moon and with Dr Dimitrova, and forwarded it to Dr Kennedy and Mr Dayo Ajibola of HR on 9 July.

55 Following intervention by Ms Fricker and members of her Employee Relations team, Dr Dimitrova sent an email on 30 July 2019 to Ms Amy Smith, one member of that team, reporting that the general bullying by NRC staff of which she had complained had stopped. She went on to say that she still wanted her prior complaints of sexual harassment (as she characterised them) against VO, Ms Ramsay and Ms Moon to be investigated. It seems clear (and common ground) that this referred to the allegations, made in the grievance of 25 April 2019 and subsequently, accusing VO of calling her “my dear” and similar conduct and Ms Ramsay and Ms Moon of fabricating the alleged rumours and committing associated acts relating to the same subject.

56 Ms Fricker told us that she recalled seeing an email in response from Ms Smith to Dr Dimitrova asking for further information to enable the investigation to proceed. No such email has emerged. Nor have we been shown any contemporary correspondence referring to it, from Ms Smith, Dr Dimitrova or anyone else. On balance, we are not persuaded that Ms Fricker’s recollection is correct. We do not accept that the investigation was “closed” (before it could begin) on the ground that Dr Dimitrova had failed to reply to a single email from Ms Smith. Rather, we find it much more likely that the outstanding complaints were simply overlooked by Ms Smith and/or other members of the Employee Relations team.

57 On 21 August 2019 Mrs Jeffries wrote to Dr Kennedy asking if he had yet met Dr Dimitrova “as planned” and reporting on fresh concerns about her allegedly divisive behaviour. On the other hand, Mrs Jeffries’s email to Dr Kennedy sent nine days later (30 August) noted several perceived improvements in Dr Dimitrova’s approach to collaboration within the MDT.

58 On 30 August 2019 an informal meeting took place between Dr Kennedy and Dr Dimitrova. The purpose was to share with her concerns about her behaviour raised by NRC staff and to hear her side of the story. The discussion was constructive. Dr Dimitrova said that she felt undermined by some staff but she also acknowledged that her interactions with others may have caused or increased tensions. It was agreed that an informal resolution of the difficulties was desirable. As a practical step, Dr Dimitrova accepted Dr Kennedy’s suggestion that she might benefit from attending a communication course. (She duly did so and later reported that she had found it useful.)

59 Mrs Jeffries had been hopeful that more concrete measures might be taken to tackle the difficulties between Dr Dimitrova and those around her, but was content to wait and see if Dr Kennedy's approach bore fruit. We accept her evidence that there was a temporary improvement in the dynamic within the team.

60 Signs of friction within the NRC resurfaced in late 2019. In November Dr Dimitrova complained on discovering that VO had been booked to work a shift on the unit – his first for some months. And in December Ms Benson complained to Ms Anna-Marie Edwards, Matron, of being subjected to rude and aggressive treatment by Dr Dimitrova and a staff nurse, Ms Olanike Gaji, wrote a lengthy email to Ms Moon alleging that she and others had received similar treatment at the hands of Dr Dimitrova. These concerns were not followed up.

61 On 27 Mar 2020, the NRC closed in response to the Covid-19 lockdown. Staff were dispersed to other duties.

62 On 21 July 2020 the NRC re-opened.

63 By August 2020 the working relationship between Dr Donnelly and Dr Dimitrova was exceedingly difficult. Dr Donnelly told us that the problems stemmed from Dr Dimitrova's behaviour towards her, which was undermining, often menacing (involving threats to report her to the General Medical Council ('GMC')) and at times, bizarre (including unsettling fluctuations between fawning over-friendliness and outright hostility). Dr Dimitrova did not acknowledge any blame but did not appear to dispute that the atmosphere between the two was a problem.

64 On 10 August 2020 an incident occurred which gave rise to a victimisation complaint (LOI, para 11(h), wrongly dated September 2020). In summary, Dr Dimitrova prescribed antibiotics for a male patient as a result of a misunderstanding following a telephone conversation with the brother of another, female patient. The error was detected and the (male) patient did not take the antibiotics. Dr Dimitrova apologised to the patient. Dr Donnelly learned of the error the following day and asked her about it. She responded defensively, attempting to blame the nurses and, having learned that Dr Donnelly had found out about the matter from the patient, immediately confronted him (despite Dr Donnelly begging her not to), berating him in a raised voice for disclosing the mistake despite her (Dr Dimitrova) having apologised to him "three times". By an email to Dr Kennedy of 11 August 2020 Dr Donnelly accurately summarised the entire episode and her many concerns arising out of it.

65 On 11 August 2020 Dr Dimitrova made a further drug error, prescribing certain medication without specifying the maximum dose. This error too was corrected.

66 On 5 September 2020 Dr Dimitrova incorrectly prescribed medication for a patient by failing to specify the correct dose.

67 The errors of 10 and 11 August and 5 September 2020 were duly recorded in the 'DATIX' incident reporting system. The system is not concerned with

attributing blame. It exists to ensure that mistakes are identified and lessons learned.

68 In the first three weeks of September 2020 Dr Kennedy received evidence from numerous sources of a marked deterioration in Dr Dimitrova's behaviour in the workplace and the damaging impact of that deterioration on the NRC staff generally. The evidence took the form of detailed accounts in writing from Mrs Jeffries, Ms Ramsay and Ms Moon. A note by the latter dated 21 September 2020 recorded that Dr Dimitrova had been shouting about DATIX reports being made "against her" and that there had been malpractice at the NRC for three years and she had never "done DATIX" and was going to complain to the GMC.

69 A meeting was arranged between Dr Donnelly, Dr Dimitrova and Mrs Jeffries for 22 September 2020 to discuss the three recent drug errors to which we have referred. On that occasion, Dr Dimitrova dismissed the errors as minor and, for the first time, alleged that Dr Donnelly had injured a patient the year before by rupturing his subscapular tendon and had failed to report the matter. She said that she intended to report the case to the GMC. She also claimed that the therapy team had been involved in a cover-up of the episode. When challenged, she named the patient.

70 In an email to Dr Kennedy sent the same evening, Mrs Jeffries summarised the main events of the meeting of 22 September 2020.

71 On the same day Dr Dimitrova requested a meeting with Dr Kennedy to discuss "constant attacks" by Dr Donnelly, adding that she was considering a "GMC referral."

72 Around this time Dr Dimitrova renewed her complaint about the Trust's failure to investigate the April 2019 allegations of sexual harassment. That complaint was communicated to Dr Kennedy, directly or indirectly, certainly no later than 25 September 2020.

73 On 23 September 2020 at 12:28 Dr Donnelly wrote a long email to Dr Kennedy explaining that, in view of recent developments, including the "unfounded" allegation of injuring a patient and failing to report it, she no longer felt safe under current arrangements working with Dr Dimitrova and that the matter called for urgent resolution in the interests of patient safety.

74 On the same day Dr Kennedy wrote to Dr Dimitrova proposing an informal meeting on 25 September to discuss the concerns she had raised and the concerns which others had raised about her.

75 Also on 23 September 2020 there was a meeting between Dr Dimitrova and Mrs Jeffries in which reference was made to the allegation first made the previous day of Dr Donnelly having injured a patient. This was the first alleged protected disclosure (LOI, para 2(a)) (for some reason the conversation of 22 September was not relied upon as such). Dr Dimitrova's case is that she made further disclosures on this occasion, including the allegation that Ms Ramsay had injured a patient about a year earlier and failed to report it. We do not find it necessary to

make a finding on this. We are satisfied in any event that Dr Dimitrova was speaking in a rapid, agitated monologue and the only disclosure that registered with Mrs Jeffries was the repetition of the allegation about Dr Donnelly causing an injury to a patient and failing to report it.

76 Following this conversation and a separate conversation with Dr Donnelly, Mrs Jeffries sent a further email to Dr Kennedy. On the subject of disclosures, she said nothing (having learned nothing that added to what had been communicated the day before). But she did remark that, having spoken that day to Dr Donnelly, she believed that her working relationship with Dr Dimitrova had broken down.

77 Later on 23 September Dr Dimitrova sent an email to Dr Kennedy containing her second alleged protected disclosure. The material parts read as follows.

**I did not expect that Dr Donnelly did not reflect and reported this. Around one year ago a patient of ours reported that he developed a severe pain in his hemiplegic shoulder after overstretching on examination from Dr Donnelly on the word round. He complained from severe pain afterwards I attended him. I've sent the patient to US which shown a new partial rupture of subscapular tendon. Everybody in the centre knows about this. The relatives were not happy . The patient said that he is not going to complain for his overstretched shoulder. He understands it was unintentional. I did not expect that Dr Donnelly did not report this exercising her duty of candour. It's concerning. I am not happy with her attitude towards this. There are evidence and records what happen. GMC is protecting the patient and I suggest very highly Dr Donnelly to reflect on this.**

78 Before us, Dr Dimitrova did not claim to have witnessed the alleged injury. She produced no documentary evidence to substantiate it. Under cross-examination, Dr Donnelly, who has checked the notes, vehemently denied having injured the patient. We find that the evidence does not come close to substantiating Dr Dimitrova's exceedingly serious allegations. We accept Dr Donnelly's evidence that she did not injure the patient as alleged or at all and that there was no incident involving the patient which ought to have been, but was not, reported. Dr Donnelly told us that the patient, who had suffered a stroke, was found to have sustained a partial muscle tear and that such injuries are common in stroke patients where feeling and control on one side of the body is lost or impaired and may arise as a result of various factors including, for example, sleeping in an awkward position. We accept that evidence. It was put to her in cross-examination that she had apologised to the patient over the injury (Dr Dimitrova did not suggest that she had witnessed the apology). Dr Donnelly denied any apology. We accept her evidence on that point too.

79 We make the same finding in relation to the allegations against Ms Ramsay. Although they are strictly irrelevant in view of our decision as to the information actually communicated by Dr Dimitrova to Mrs Jeffries on 23 September 2020, we think that Ms Ramsay is entitled to be clearly and publicly acquitted of the equally serious allegations made against her.

80 When Dr Dimitrova accused Dr Donnelly on 22 September 2020, the latter pointed out that every practitioner had a duty to report errors and malpractice using



the DATIX tool. In oral and written communications between 23 September and 9 October 2020 Dr Kennedy reminded Dr Dimitrova of the DATIX system and encouraged her to report the allegation against Dr Donnelly (he knew nothing of any allegation against Ms Ramsay). Dr Dimitrova has never availed herself of DATIX to report either of the alleged clinical errors or either of the alleged failures to report. Nor did she tell us why.

81 Later on 23 September 2020 Dr Dimitrova wrote again to Dr Kennedy saying that she needed time to arrange British Medical Association ('BMA') cover for the meeting which he had proposed. She also complained about the fact that her complaint of sexual harassment had not been addressed.

82 In a telephone conversation on 25 September 2020 Dr Kennedy broached with Dr Dimitrova his concern that working relations in the NRC had broken down and suggested as a short-term solution that she be temporarily redeployed. She rejected the suggestion.

83 Eventually, on 9 October 2020 a formal meeting took place to discuss the way ahead. Those present were Dr Dimitrova, her BMA representative, Dr Kennedy and Ms Nicole Myers, Employment Relations Specialist. After considerable discussion, and without Dr Dimitrova acknowledging any wrongdoing on her part, the encounter ended with agreement that she would be temporarily redeployed to a role away from the NRC pending an investigation into the many concerns raised by and about her. It was also agreed that she would be free to seek out a role suited to her professional background and interests.

84 When, on or shortly before 25 September 2020, he arrived at his view that Dr Dimitrova should be redeployed on a temporary basis Dr Kennedy was aware that she had raised the complaint of 25 April 2019. He was never apprised of the detail of the complaint and he was not told of its progress or any outcome. It was not until the meeting of 9 October that he was made aware that Ms Myers believed that it had been "closed" and Dr Dimitrova replied that it had not been resolved.

85 In the event, Dr Dimitrova found and (with the approval of Dr Kennedy) took up a position on a neurology and stroke ward within a fortnight. Her pay and other benefits were unaffected, as were her hours. She did, however, find herself working alongside a team of junior doctors and saw her role and status as somewhat diminished in contrast with that which she had held in the NRC.

86 The investigation which was set up pursuant to the agreed outcome of the meeting of 9 October 2020 was entrusted to a very senior practitioner, Dr Kerrie Whitwell, Consultant and Clinical Director for Acute Medicine, Emergency Department and Elderly Care. It was not envisaged on any side that Dr Dimitrova's redeployment would end until after Dr Whitwell's report had been completed and assessed. In fact, she remained under redeployment up to the hearing before us.

87 Dr Whitwell's investigation commenced on 16 October 2020 and culminated in a 10-page report some five months later, on 17 March 2021, six days after the claim form was presented. She studied 12 pieces of documentary evidence and conducted interviews with five individuals: Dr Dimitrova, Dr Davies, Dr Donnelly,

Mrs Jeffries and Ms Ramsay. Her conclusions and recommendations were as follows:

**Conclusions**

- 86 The bullying and harassment claim appears to have been closed but that was not fed back to DD at the time and has caused resentment to build up.
- 87 The incident involving AD's practice and the basis on which DD is threatening to report AD to the GMC is currently being investigated which shows transparency and fairness.
- 88 There appears to be a breakdown on both the part of AD and DD's working relationship. Both perceived that the other is shouting at them and that they are being attacked.
- 89 DD behaviour in the wake of the incidents appears to be unprofessional and volatile. In normal times her mood often appears to be unstable ranging from detached to impulsive.
- 90 DD exhibits hierarchical behaviour and finds it difficult to work within a team structure.
- 91 DD has strong opinions which she feels should be considered above others in the multi-disciplinary team. DD feels that she is more qualified due to her specific neuro rehab training and she places [emphasis] on age related experience.
- 93 Despite preferring a hierarchical system, she finds it difficult to respond positively to Dr Donnelly's position of authority.

**Recommendations**

- 94 Formal mediation has been requested by all parties so that they can work together as a team.
- 95 Processes to be clarified with regards to job planning, annual leave requests and educational supervision and DD to engage with these processes.
- 96 OH referral should be considered to identify if there are any other support that may be required.
- 97 Root cause problems such as lack of the pharmacy service should be dealt in a systematic way.

88 In the meantime, Dr Dimitrova had continued to voice dissatisfaction with the failure to investigate the harassment allegations contained in the April 2019 complaint. Eventually, on 17 November 2020, she raised an informal grievance on the matter, which was passed to Mr Joe Matthews of Employee Relations. Seven days later she supplied further information containing a great deal of material relating to the original harassment complaints. On 22 January 2021 Mr Matthews wrote to reassure Dr Dimitrova that her grievance was being progressed but had been delayed as a consequence of the Covid-19 surge. At a meeting on 4 February 2021 between Mr Matthews, Mrs Jeffries, Dr Dimitrova and her BMA representative it was clearly established that the grievance was about the failure to investigate the April 2019 complaint, not about the substance of that complaint. On 12 February 2021 Mr Matthews reported that he had been in touch with the Temporary Staffing Department and that there was no sign of an "outcome letter" but VO was no longer working for the Trust. Further correspondence between 15 February and 15 March 2021 appears to evidence a failure by Mr Matthews to grasp the fact that Dr Dimitrova wanted an explanation for *why* her harassment complaints of April 2019 had not been investigated. The trail seems to go cold after 15 March 2021.

89 On 20 April 2021 (after the Tribunal proceedings had been issued) Dr Dimitrova issued a further grievance raising complaints about (1) the failure to investigate her sexual harassment complaints, (2) the redeployment (which she alleged to have been a reaction to her ‘whistle-blowing’ over patient safety) and (3) a concern to do with her job plan. The grievance was passed to Dr Roopinder Gillmore, whose decision was issued on 7 April 2022. The delay is in large part explained by the fact that Dr Dimitrova was signed off sick from 24 July 2021 until April 2022. Dr Gillmore’s central findings were: (1) there had been a failure to progress the sexual harassment complaints but no definitive reason was offered; as to complaint (2), the redeployment was not because of any ‘whistle-blowing’ but because Dr Dimitrova’s removal from the NRC pending Dr Whitwell’s investigation was the least disruptive option available; as to item (3), there was no substance to the complaint as there was no evidence of difficulty in getting Dr Dimitrova’s job plan signed off.

***Facts relevant to specific claims***

*Harassment – LOI para 6(a): spreading rumours of relationship with Victor O*

90 There was no intimate relationship between Dr Dimitrova and VO. Nor did anyone working at the NRC believe that such a relationship existed. Nor did rumours of such a relationship pass around the unit. Talk of such a relationship originated from Dr Dimitrova, who, over an extended period, repeatedly and obsessively complained of “slanderous” rumours about her. We find that her delusion stemmed from the innocent reference to her “living with” VO in the original conversation with the member of staff who needed VO’s telephone number (para 42 above). She cited that use of language in numerous diatribes against the alleged rumours and colleagues strove in vain to persuade her that the phrase had simply reflected the fact that she and VO occupied shared accommodation.<sup>15</sup> She made clear her feeling that the perceived rumours called her decency into question but she also seems to have seen them as a slur upon her status – hence her expressions of revulsion at the idea of her, a doctor, being associated romantically with a mere HCA. We find that her repeated references to the rumours in the NRC became tedious, irritating and eventually upsetting to her colleagues. It would be surprising if they had not prompted private conversations out of her hearing, giving vent to frustration at the subject being raised yet again. But they did not cause any staff member to believe in the supposed rumours or be inclined to spread them to others.

*Harassment – LOI para 6(b): “Are you doing?” etc (JM)*

91 The allegation of Ms Moon staring at Dr Dimitrova’s pelvis and saying, “Are you doing?” is not established in fact. In one of many conversations about the alleged rumours initiated by Dr Dimitrova, which probably took place around November 2018, Ms Moon may have passed a comment to the general effect that people’s private lives were their own affair. She did not state or imply any view or belief about Dr Dimitrova’s private life.

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<sup>15</sup> Her conviction about the rumours has not been weakened by the passage of time or the weight of contrary evidence. In her closing submissions she cited a well-known English dictionary which, as one would expect, notes that “living with” *may* connote an intimate or sexual relationship.

*Harassment – LOI para 6(c): “Yes, you are living with Victor O” (MR)*

92 In one of many similar conversations initiated by Dr Dimitrova, which probably took place around November 2018, Ms Ramsay did respond to her reference to alleged rumours about her “living with” VO with a comment to the effect of, “Yes, you are living with him”. She did so in the course of explaining that the reference to her “living with” VO was likely, in context and as a matter of ordinary English usage, to have simply alluded to the fact that they shared an address. She did not say that that was how she normally spoke and Dr Dimitrova could not stop her.

*Harassment – LOI para 6(d): “Goodbye, my dear” (VO)*

93 We find that, probably in late 2018, at the NRC, VO said to Dr Dimitrova, “Goodbye, my dear”. The exchange may, as Dr Dimitrova says, have happened some hours after she had spoken to him about the alleged rumours and said that she did not want their names to be associated and he had replied that he knew nothing about it.

*Harassment – LOI para 6(e): VO hid his face*

94 We find that, probably in late 2018, VO hid his face when passing Dr Dimitrova in a corridor. It is not impossible that the behaviour was later repeated. We are satisfied that it happened, or first happened, after she told him of the alleged rumours and her wish for their names not to be associated.

*Harassment – LOI para 6(f): “Are you looking for a man?” (CL)*

95 We find that the allegation that, in late 2018, Dr Lewis said to Dr Dimitrova, “Are you looking for a man?” is not established in fact.

*Harassment – LOI para 6(g): “Her first name is ‘Doctor’” (CL)*

96 It is common ground that, in late 2018, when another staff member asked what Dr Dimitrova’s first name was, Dr Lewis responded, “Her first name is ‘Doctor’”. Dr Dimitrova was not present but heard about the remark soon afterwards.

*Harassment – LOI para 6(h): “Everybody knows about her bedroom” (Anisha)*

97 The allegation that, in late 2018, a speech and language therapist called Anisha told Dr Dimitrova that everyone knew about her bedroom is not established in fact.

*Harassment – LOI para 6(i): “How many beds [in room shared with VO]?” (SM)*

98 The allegation that, in late 2018, Ms Mathur asked Dr Dimitrova, “How many beds are there in the room you are sharing with [VO]?” is not established in fact.

*Harassment – LOI para 6(j): “See her legs” (SM)*

99 The allegation that, in late 2018, Ms Mofunanya gestured towards Dr Dimitrova’s legs and said, “See her legs” before laughing at her with colleagues is not established in fact.

*Harassment – LOI para 6(k): Imitating C’s walking style (SM)*

100 The allegation that, in late 2018, Ms Mofunanya attempted to imitate Dr Dimitrov’s walking style and exaggerated the sideways movement of her hips while doing so is not established in fact. It was common ground before us that Dr Dimitrova has an unremarkable gait, which was not imitated by Ms Mofunanya or anyone else. Despite the way in which the allegation is formulated in the LOI, it now appears that the real complaint is of Ms Mofunanya affecting an exaggeratedly hip-swaying style of walking. That too, we find, did not happen.

*Harassment – LOI para 6(l): “Ooh, a doctor with this dress?” (PS)*

101 The allegation that, in late 2018, a colleague called Prima Lassi gestured to Dr Dimitrova by moving her eyebrows up and down and questioned her clothing choice by saying, “Ooh, a doctor with this dress?” is not established in fact.

*Harassment – LOI para 6(m): Gesture and hissing sound (Lisa)*

102 The allegation that, in early 2019, an HCA called Lisa gestured towards Dr Dimitrova by putting one finger in front of her mouth and making a hissing sound is not established in fact.

*Harassment – LOI para 6(n): Imitating C’s walking style (EB)*

103 Our findings in relation to allegation 6(k) are repeated, *mutatis mutandis*.

*Harassment – LOI para 6(o): Comment about Tinder account etc (SF)*

104 The allegations that, in Spring 2019, Ms Fazilahmed said she would create a Tinder account for Dr Dimitrova and that she would get VO to check a patient’s ‘vitals’ are not established in fact.

*Harassment – LOI para 6(p): Threats (JM and MR); “I am harassing you” etc (JM)*

105 The allegation that, in July 2019, Ms Ramsay and Ms Moon threatened to cause problems for Dr Dimitrova is not established in fact. The further allegation that Ms Moon said repeatedly to her, “I am harassing you” is established, but Dr Dimitrova’s account distorts Ms Moon’s meaning.

106 These twin complaints arise out of the encounter on 5 July 2019, on which we have already recorded some findings above. Dr Dimitrova launched a tirade against Mr Ramsay and Ms Moon, repeating the prior allegations of spreading rumours. They found the experience distressing. They resisted as best they could. They did not threaten Dr Dimitrova. They may well have said that they would report

what had happened to Mrs Jeffries, as they did. In the course of the exchanges, Ms Moon probably did say, “I am harassing you?”, with the emphasis on the first and fourth words. This was her response, in the form of an incredulous question, to Dr Dimitrova accusing her of harassment.

*Harassment – LOI para 6(q): Laughing (JM and MR); “Are you OK, honey?” (JM)*

107 The allegation that, in late 2019, Ms Moon, in company with Ms Ramsay and VO, saw Dr Dimitrova, started to laugh, then said, “Are you OK, honey?” and then proceeded to laugh at her is not established in fact.

108 We accept Ms Moon’s evidence that she did not know VO at all.

109 We also accept Ms Moon’s evidence that she often uses ‘honey’ as a term of endearment and that, on a different occasion, she called Dr Dimitrova ‘honey’ and was taken to task by her for doing so.

*Harassment – LOI para 6(r): Imitating C’s walking style etc (EB and SM)*

110 Our findings in relation to allegation 6(k) are repeated, *mutatis mutandis*.

*Harassment – LOI para 6(s): “Your Victor” (EB)*

111 The allegation that, in late 2019, Ms Benson said to Dr Dimitrova, “Your Victor” and then laughed at her is not established in fact.

*Harassment – LOI para 6(t): “You are very, very hot with a bowel chart” (EB)*

112 We find on balance that, perhaps in late 2019, Ms Benson passed a comment in Dr Dimitrova’s hearing about her (or perhaps doctors in general) being “hot” on bowel charts.

*Harassment – LOI para 6(u): “Yes, you are living with [Victor O]” (MR)*

113 We find that, in or around February 2020, there may have been an exchange similar to that identified in para 6(c) between Dr Dimitrova and Ms Ramsay. If so, we are satisfied that the general tenor of the remarks from each were similar to those made in the (probably) November 2018 interchange, Dr Dimitrova complaining of false rumours about an intimate relationship and Ms Ramsay restating that she had misinterpreted the expression “living with”. We do not accept that Ms Ramsay shouted.

*Harassment – LOI para 6(v): “Yes, we know you are approachable” (EB)*

114 The allegation that, in or around September 2020, in response to Dr Dimitrova saying that staff could feel free to approach her, Ms Benson replied, “Yes, we know you’re approachable” is not established in fact.

*Victimisation – LOI para 10: The alleged protected act*

115 The parties agree upon the protected act, namely the written complaint of harassment (including sexual harassment) dated 25 April 2019.

*Victimisation – LOI para 11(a): “temporary redeployment” and/or “demotion”*

116 We have made findings of fact on these matters in our main narrative above and do not need to add to them.

*Victimisation – LOI para 11(b): Attempted removal of duties from job plan (AD)*

117 The allegation that, in July 2019, Dr Donnelly attempted to remove some of Dr Dimitrova’s responsibilities from her job plan is not established in fact. There was no attempt to change the job plan. Dr Donnelly had no authority to make any change to that document and no reason to attempt to do so. The job plan included referral assessments and family meetings among Dr Dimitrova’s duties.

118 In an email of 10 July 2019 Dr Dimitrova complained to Dr Donnelly that she had been “deprived” of a referral assessment (*ie* the work of carrying out the assessment had been taken off her) and that a family meeting (a meeting with a patient’s family) had been cancelled. We find that, soon after she joined the NRC as a locum in February 2019, Dr Donnelly was told by Dr Dimitrova that she was not paid to do referral assessments. Accordingly, Dr Donnelly agreed to take on all referral assessments. Dr Dimitrova was apparently content with this arrangement until she wrote her email of 10 July 2019. As for family meetings, these generally took place at the end of the working day and because her standard hours were 08.30 to 16.30, Dr Dimitrova did not normally attend them.

119 In response to the email of 10 July 2019 Dr Donnelly and Dr Dimitrova met and it was agreed that (despite Dr Dimitrova’s earlier stance) the two would share the referral assessments and family meetings duties equally. In practice, this made no difference so far as family meetings were concerned, given Dr Dimitrova’s working hours.

*Victimisation – LOI para 11(c): Interference with patient etc (AD)*

120 The complaint that, around the summer of 2019, Dr Donnelly wrongfully “interfered” with a patient and incorrectly suggested that his or her injuries were more serious than they were was not pursued. Rather, Dr Dimitrova maintained that she suffered detriment as a result of the way in which Dr Donnelly expressed disagreement with her assessment.

121 We are satisfied that Dr Donnelly’s manner was firm but polite. By contrast, Dr Dimitrova’s reaction to being overruled on the basis of what she now accepts as a legitimate difference of professional opinion was to threaten to report Dr Donnelly to Dr Kennedy.

*Victimisation – LOI para 11(d): Criticism of C over manual evacuation (AD)*

122 The allegation that in around October 2019 Dr Donnelly criticised Dr Dimitrova over a manual evacuation procedure which she had implemented is not established in fact.

*Victimisation – LOI para 11(e): Requirement to re-write a handover (AD)*

123 On 12 August 2020 Dr Dimitrova wrote a handover for a junior doctor which read: “All the patients are well and all jobs done.”

124 Dr Donnelly sent an email to Dr Dimitrova the same day in these terms:

**In line with NICE guidance it would be good to review what a handover involves. We can always improve, and it is important, as [the junior doctor] is a new colleague, to give clear guidance to minimise drug errors and other patient safety issues. It is not enough to rely on us to find everything in the notes.**

**[A link to relevant NICE guidance was provided.]**

**As a baseline, an updated patient list should be attached to each handover. This will allow for clear and helpful communication. This is good practice, and it is an essential part of the job.**

125 Dr Dimitrova replied accusing Dr Donnelly of, among other things, failing to apply good medical practice and threatened to report her to the GMC. Dr Donnelly’s gentle further reply seeking to further explain her action and look to the future was met with a longer and yet more hostile email accusing her of (among many other things) using her status as a consultant to insult colleagues and stating, “I am not your slave.”

*Victimisation – LOI para 11(f): Changes to C’s hours/duties (AD)*

126 This allegation was ultimately pursued only in relation to hours. The only surviving complaint about duties was that considered under LOI, para 11(b).

127 There was no change by Dr Donnelly of Dr Dimitrova’s working hours (in August or at any other time) and the allegation as framed is not established in fact.

128 There was a misunderstanding about Dr Dimitrova’s working hours, which presumably stemmed from the fact that standard hours in the NRC were 09.00 to 17.00. It was established that Dr Dimitrova’s hours were 08.30 to 16.30. There was no attempt by Dr Donnelly to change those hours. She did broach the subject of a move to standard hours and Dr Dimitrova agreed to work 09.00 to 17.00 on Tuesdays, the day Dr Donnelly spent at the NRC, but declined to change her hours on her three other working days.

*Victimisation – LOI para 11(g): Accusation of over-medicating patient etc (AD)*

129 The allegation that, in or around September 2020, Dr Donnelly incorrectly suggested that Dr Dimitrova had over-medicated a patient, shouting, “It’s too much, it’s too much” in front of colleagues and patients and continued to shout this



even after Dr Dimitrova had shown that her prescription was correct is not established in fact.

130 The evidence is too hazy to enable us to make findings save that we are satisfied that, if the episode happened at all, it did not involve Dr Donnelly shouting.

*Victimisation – LOI para 11(h): “What did you do?” etc (AD)*

131 The event here referred to, which took place on 10 August 2020, has already been discussed in our main narrative above (para 64). The conversation between Dr Donnelly and Dr Dimitrova took place in the MDT room, and so was not in the hearing of patients. We find that Dr Donnelly may well have asked, “What did you do?”, and in view of Dr Dimitrova’s defensive response, she may have repeated the question. We reject the assertion that Dr Donnelly shouted.

*Victimisation – LOI para 11(i): C alone reported for incidents involving others*

132 The allegation that in or around September 2020 Dr Dimitrova alone was reported for errors for which others shared responsibility is not established in evidence. In the first place, the DATIX system is not concerned with reporting individuals but events. In that sense, it is erroneous to talk of Dr Dimitrova being ‘reported’. Secondly and more fundamentally, Dr Dimitrova does not identify any other individual who, on her case, ought to have been ‘reported’ in relation to any particular event. Nor does she explain why, if she was aware of any reportable but unreported matters, she did not comply with her duty to report them.

133 Dr Dimitrova did not dispute that, on their face, the errors for which she was responsible were reportable.

134 There was certainly no policy against reporting errors. At around the relevant time, as Ms Moon stated in evidence, the Matron sent out a special instruction emphasising the importance of reporting drug errors in light of the prevalence of anecdotal complaints about prescriptions, which was seen as a consequence of the Covid-19-related reduction in the on-site pharmacy service.

*Victimisation – LOI para 11(j): Interrupting C on multiple occasions (MR)*

135 We find that, in or around September 2020, Dr Dimitrova was discussing a patient with Ms Rebecca Banting, a member of the speech language therapy team, and Ms Ramsay, her line manager, intervened in the conversation. The discussion concerned a patient’s capacity to consent. Dr Dimitrova was treating Ms Banting in an aggressive and dismissive fashion. Ms Ramsay intervened to protect and support Ms Banting and ensure that her view was properly aired. In doing so, she may well have interrupted Dr Dimitrova.

### ***Miscellaneous facts***

136 Dr Donnelly first learned of the complaint of 25 April 2019 in May 2021.

137 Ms Ramsay first learned of the complaint of 25 April 2019 at some point after the launch of these proceedings.

138 The Early Conciliation notification to ACAS was received on 5 January 2021 and accordingly any act or omission occurring before 6 October 2020 is, on its face, outside the primary three-month time limit.

139 Dr Dimitrova was first assisted by the BMA in July 2019. She told us that she was not aware of the time limit for bringing claims in the Tribunal until perhaps October 2020, when she spoke with the GMC. She had the benefit of legal representation (or at least advice) through the BMA by about December 2020. The claim form, as already mentioned, was presented on 11 March 2021.

## **Secondary Findings and Conclusions**

### ***Rationale for primary findings***

140 In our findings on contested issues we have largely, but not wholly, preferred the Trust's evidence to Dr Dimitrova's. There are several reasons for this. First, many of her allegations struck us as inherently implausible and even bizarre. We take two of many examples open to us. The charge that staff affected a peculiar gait to make fun of her when there was nothing unusual about her walking style struck us as deeply puzzling and its credibility did not improve when the reference to her walk being "imitated" was transformed into the suggestion that the supposed hip-swinging gait was intended to label her as a woman of easy virtue. We found this claim fantastical and absurd as an idea and all the more improbable on a unit which cares for patients many of whom have severe difficulties in walking. And the assertion that on one occasion, entirely out of the blue, Ms Benson addressed the senseless two-word sentence to Dr Dimitrova, "Your Victor" was no less unbelievable.

141 Second, overwhelmingly the contemporary documentation (to some of which we have made explicit reference) favoured the Trust's account on the points of conflict and the absence of contemporary documentation often undermined Dr Dimitrova's assertions.

142 Third, Dr Dimitrova's case is undermined by her own conduct. If there was evidence of negligence or malpractice in 2019, why did she not report it then? It is not, to our minds, plausible that she wished to spare Dr Donnelly trouble, as a young consultant new to the unit. The evidence shows compellingly that she is not inhibited in making strong allegations and her relationship with Dr Donnelly was from the start uncomfortable or worse. In any event, she could have had no possible reason to spare Ms Ramsay the discomfort of being reported for her supposed malpractice at the end of 2019, given that the working relationship between the two had reached its nadir in the summer of that year. And what explains the timing of the allegations of September 2020 against Dr Donnelly and Ms Ramsay? We see compelling grounds for inferring that the explanation lies in a tactical decision to attempt to deflect attention from the concerns raised about her practice and behaviour. And that inference itself is supported by Dr Dimitrova's

failure, even in or after September 2020, to make her allegations in writing and in detail so that they could be investigated, as Dr Kennedy invited her to do.

143 Fourth, Dr Dimitrova's presentation of her case was troubling to us. Although we make every allowance for the difficulty which any litigant conducting complex litigation faces, we were struck by the way in which, in her own evidence and when cross-examining the Trust's witnesses, she repeatedly attempted to weave in 'facts' which, on examination, proved illusory, for example by asserting that a document stated something when, on scrutiny, it was shown to say something materially different.

144 Dr Dimitrova's presentation of her case was concerning for the further reason that it exposed her complete lack of insight into her own conduct and its effects on those around her. She sees herself as the wholly innocent victim of a disgraceful campaign of bullying and harassment and refuses to acknowledge any failing whatsoever on her part. These perceptions (and we can understand why Ms McLorinan used the word narcissistic) preclude her from maintaining a balanced or rational view of the sorry history which we have explored and we fear that they may have led her to create for herself a badly distorted narrative. At all events, her skewed view of events makes her a singularly unreliable witness.

145 We have also taken into account the absence of any witness to support or corroborate Dr Dimitrova's claims, but we attach little weight to this consideration. There are often good reasons why a litigant taking on a corporate opponent does so alone.

146 By contrast with Dr Dimitrova, the Trust's witnesses impressed us as straightforward, careful and fair. They acknowledged their own imperfections and gave ground appropriately in places. On the key points they gave evidence which was rational, credible, coherent and consistent with contemporary documents.

147 We have had regard to all points made by Dr Dimitrova with regard to the Trust's evidence. One point of particular interest to us, which has certainly given us pause, was Ms Moon's email of 5 July 2019 from which we have quoted above (para 52). Was her explanation of her use of the word "relationship" correct? Or did she at the time believe that there was a romantic relationship between Dr Dimitrova and VO? In the end, we have decided that Ms Moon's account is true. It is very plain to us that she did not believe that there was any intimate relationship. The overwhelming weight of the evidence is that no-one on the NRC did. There was no sensible ground for holding such a belief. The very idea was hugely improbable. Ms Moon was agitated and distressed, as Mrs Jeffries reported at the time. And it is likely that Dr Dimitrova used the word "relationship" when she confronted Ms Moon and Ms Ramsay, which would have made it natural for Ms Moon to use it too. If she had been a lawyer with a cool head, she would no doubt have said that she was aware, not of a relationship, but of the shared accommodation and the allegations of rumour-mongering about a relationship, but she was not a lawyer and she had anything but a cool head.

148 The alternative view would be that Ms Moon believed that there was an intimate relationship between Dr Dimitrova and VO. That would make her a

thoroughly irrational person whose thinking was entirely out of line with that of everyone else at the NRC, as well as a witness willing to give false evidence to the Tribunal. We see no possible reason to make such findings about her.

149 For completeness, we would add that, had we found that Ms Moon (uniquely) believed that Dr Dimitrova was in an intimate relationship with VO, we would nonetheless have held that she had not spread any rumours about it. She gave entirely convincing evidence that she regarded the private lives of those she worked with as private and in any event matters of no interest to her. This brings us full circle to our settled view that the rumours were a figment of Dr Dimitrova's imagination and she was the only member of staff who talked about them.

150 We have not had recourse to the burden of proof provisions. We have had the evidence carefully explored and tested before us and have been fully equipped with the means to make findings and reach conclusions.

### ***Harassment***

151 Following our primary findings, most of the complaints of harassment have fallen away. Those that survive are to be found in LOI, para 6(c) and (v) (Ms Ramsay saying, "You are living with [VO]"), para 6(d) and (e) (VO saying, "Goodbye, my dear" and hiding his face), para 6(g) (Dr Lewis's remark, "Her first name is 'Doctor'"), para 6(p) (Ms Moon saying, "I am harassing you?") and para 6(t) (Ms Benson's remark about Dr Dimitrova (or perhaps doctors generally) being "hot" on bowel charts). We will also revert very briefly to para 6(q) (the "honey" complaint), although it may be superfluous to do so since we have found that the event on which the allegation rests did not happen.

152 As to LOI, paras 6(c) and (v), has Dr Dimitrova identified any acts amounting to "unwanted conduct of a sexual nature" or "unwanted conduct related to sex"? In context, Ms Ramsay's remarks were about the meaning of language. She was urging Dr Dimitrova to understand that the reference to "living with" VO simply conveyed the notion of two people residing at the same address. It is possible to characterise the comments as "unwanted" because, we fear, Dr Dimitrova probably did not want to hear things said that conflicted with her decided view of matters. But we are quite satisfied that there was no conduct which could sensibly be regarded as having a "sexual nature" or being "related to sex". The claims accordingly fall at that point. In case we are mistaken, however, we further hold that Dr Dimitrova fails entirely on the elements of the statutory test under the 2010 Act, s26(1)(b) read with s26(4). It is plain and obvious that Ms Ramsay had no hostile or negative purpose. She was trying to help. As to effect, Dr Dimitrova may, as already observed, have been dissatisfied on hearing things that she did not wish to hear, but we unhesitatingly reject the idea that Ms Ramsay's comments violated her dignity or created an environment for her satisfying the demanding language of s26(1)(b)(ii). So to hold would be to bring the law into disrepute. If Dr Dimitrova perceived such an effect, her perception was quite unreasonable (see s26(4)).

153 Turning to LOI, paras 6(d) and (e), we accept that VO's conduct was unwelcome. It was certainly not conduct "of a sexual nature" but in the context of

the alleged (albeit illusory) rumours, we find that the necessary (tenuous) link with sex is established in the case of the gesture (hiding the face) and use of “my dear” (although it was not alleged that the words were spoken in a suggestive way) probably satisfies that requirement regardless of context. So these claims depend on whether the language of s26(1)(b)(ii) read with (4) are satisfied. We are quite clear that it is not. On Dr Dimitrova’s account, there is no basis for spelling out any adverse purpose behind VO’s actions. VO had done nothing wrong but found himself the object of Dr Dimitrova’s open hostility. That hostility was bizarre and completely unfair. The gesture was probably his way of expressing his feelings of embarrassment or bewilderment or both. There is nothing in the evidence to suggest aggression on his part. The same goes for the greeting. It is not said that the “Goodbye, my dear” was delivered in, for example, a sarcastic tone. Turning from purpose to effect, we cannot accept that either act complained of came close to causing Dr Dimitrova to experience a violation of her dignity or an environment of the kind which s26(1)(b) requires. If she did have such a perception it was entirely unreasonable.

154 As for Dr Lewis’s comment (LOI, para 6(g)), it was certainly unwanted. But it was obviously not sexual. Nor was it related to sex. It was entirely gender-neutral. The claim falls without more. In any event, the comment was not made with a purpose of a kind envisaged by s26(1)(b) read with (4). It was not delivered with a view to Dr Dimitrova hearing it or learning about it later. It was simply a jocular comment about a colleague who was seen as giving herself airs and not espousing the MDT ethos. Dr Lewis’s purpose came nowhere near to meeting the statutory test. Likewise the effect of the remark. If Dr Dimitrova experienced irritation, her dignity was certainly not violated and an environment of the kind prescribed by s26(1)(b)(ii) was not created for her. As worst, her balloon was popped and she received an uncomfortable lesson about self-importance.

155 Ms Moon’s incredulous question (LOI, para 6(p)) was obviously incapable of amounting to harassment. It may have been unwanted. It did not have a sexual nature. It may perhaps have been related to sex in the sense that it arose in the context of Ms Moon being berated by a person who maintained that she was a victim of sexual harassment. There was no unlawful purpose. Ms Moon’s purpose was simply to defend herself from an unjustified attack and invite Dr Dimitrova to consider the effects of her own behaviour. Nor did her comment violate Dr Dimitrova’s dignity or create a proscribed environment for her. And if (contrary to our view) it did cause her to perceive such an effect, her perception was obviously unreasonable.

156 We turn to the bizarre allegation of harassment in relation to Ms Benson’s comment about bowel charts (LOI, para 6(t)). The suggestion appeared to be that the word “hot” was used in the sense (to borrow from the Cambridge English Dictionary) of “sexually attractive” or “feeling sexually excited”. The complaint is absurd. Obviously, Ms Benson used “hot on” to mean “a stickler for”. And we cannot accept that Dr Dimitrova interpreted her remark in any other way or found it in any way offensive. There was no unlawful purpose or effect. And if she did perceive an effect satisfying s26(1)(b), her perception was quite unreasonable.

157 We have referred to LOI, para 6(q). Although that complaint has fallen on our primary findings, we would add that if Dr Dimitrova's case had rested purely on Ms Moon calling her "honey" on an unspecified occasion (or more than one) it would have failed in any event. Dr Dimitrova might have disliked the familiarity of the term of endearment but it was not sexual or related to sex, Ms Moon's use of it was not motivated by any malign purpose and its effect did not come close to constituting unlawful harassment.

158 For all these reasons, the harassment claims fail.

### ***Victimisation***

159 It is common ground that the only protected act relied upon, namely the complaint of 25 April 2019, satisfied the requirements of the 2010 Act, s27(2)(d).

160 LOI, para 11 lists the detriments relied upon for the purposes of the victimisation claim. We will consider them in turn.

161 LOI, para 11(a) cites the redeployment of Dr Dimitrova following the meeting of 9 October 2020 and the separate contention that her temporary move to the neurology and stroke ward amounted to a demotion. Although these changes were put into effect by agreement, we are prepared to accept that the low threshold for establishing a detriment is crossed. It can fairly be said that Dr Dimitrova had little choice but to accept short-term redeployment and the fact that she chose to move to the neurology and stroke ward does not prevent the transfer, to what could be seen as a role of lower status in a unit less well suited to her as a specialist in Neurorehabilitation, constituting a disadvantage.

162 The claims under LOI, para 11(b), (c) and (d) fall on our primary findings that the acts complained of are not established in fact.

163 As to LOI, para 11(e) (the request to re-write a handover), we are satisfied, on the basis of our primary findings, that no detriment is established. Dr Donnelly made an entirely reasonable request for which she supplied a clear and rational explanation.

164 The complaint under LOI, para 11(f) also falls on our primary findings. There was no imposed change to Dr Dimitrova's working hours. (She did voluntarily change her Tuesday hours but her election to do so cannot stand as an actionable detriment.) Nor did Dr Donnelly attempt to change her hours. She merely raised a query about them.

165 The complaint at LOI, para 11(g) ("It's too much" etc) also falls on our primary findings.

166 As to LOI, para 11(h), we accept that Dr Dimitrova felt discomfort at being asked about the prescribing error, but Dr Donnelly's questions were entirely permissible and unobjectionable. Indeed, failing to inquire into what had happened would have been a dereliction of duty on her part. And Dr Donnelly's manner was also unobjectionable. As we have found, the allegation of shouting is not made out.

In the circumstances, there was no detrimental act: if Dr Dimitrova harbours a genuine sense of grievance about the episode, it is not justified.

167 As for LOI, para 11(i) (singling out for reporting errors), the complaint falls on our primary findings.

168 Finally, the complaint against Ms Ramsay (LOI, para 11(j)) also discloses no actionable detriment. Dr Dimitrova was behaving aggressively towards Ms Banting. Ms Ramsay intervened to protect her and in the interests of patient care. If and to the extent that she interrupted Dr Dimitrova, we find that she reasonably judged it necessary to do so in order to be heard and get her message across. If Dr Dimitrova is genuinely aggrieved, she has no reason to be.

169 To the extent that any detriment is shown, was Dr Dimitrova subjected to it because she had done the protected act? As to LOI, para 11(a) (redeployment and demotion), we will address the reasons below under the parallel 'whistle-blowing' claim (LOI, para 4(a) and (b)). It is sufficient here to say only that we are satisfied that, in reaching his view in September 2020 that it was necessary to redeploy Dr Dimitrova on a temporary basis, Dr Kennedy was not at all influenced by the fact that, some 18 months earlier, she had made a complaint about bullying and harassment. As we have found, Dr Kennedy was not made aware of the details of the complaint or its progress or outcome at any point.

170 If, contrary to our view, Dr Donnelly or Ms Ramsay subjected Dr Dimitrova to any detriment, did either do so because of the protected act? The only possible answer on our primary findings is no. There could have been no connection between their treatment of Dr Dimitrova and the protected act because neither became aware of the protected act until well after these proceedings commenced.

171 For all these reasons, the victimisation claims fail.

### ***'Whistle-blowing' detriment***

172 Did Dr Dimitrova make any protected disclosures? On the strength of our primary findings, we hold that so much of the first alleged disclosure (LOI, para 2(a)) as was said to refer to Ms Ramsay is not established in fact. Whether or not she spoke any words on 23 September 2020 about Ms Ramsay injuring a patient and failing to report it, her delivery was such that no such information was conveyed to, or registered by, Mrs Jeffries.

173 Dr Dimitrova did, however, convey information relating to Dr Donnelly both to Mrs Jeffries and to Dr Kennedy (LOI, paras 2(a) and 2(b) respectively).

174 Did the disclosures relating to Dr Donnelly qualify for protection under the 1996 Act, s43B(1)? We are satisfied that they did not. We are in no doubt that they were made purely for the tactical purpose of distracting attention from the serious concerns raised in September 2020 about Dr Dimitrova's behaviour and clinical practice. We find that she did not believe in the truth of the allegations against Dr Donnelly and knew that she had no evidential basis for raising them. She did not believe that she was making them in the public interest or that they tended to show

any of the matters referred to in s43B(1)(b),(d) or (f).<sup>16</sup> And had she held any such belief, it would have been entirely unreasonable, given that she had no evidence to sustain it.

175 For completeness, we should add that, had we found that the alleged disclosures to Mrs Jeffries concerning Ms Ramsay (LOI, para 2(a)) were in fact made (*ie* that the relevant information was effectively communicated to Mrs Jeffries), we would have held in any event that they did not qualify for protection. For the reasons given in relation to the information conveyed to Mrs Jeffries and Dr Kennedy concerning Dr Donnelly, we would have held that the disclosures about Ms Ramsay were made by Dr Dimitrova in circumstances where she knew that she had no evidential basis for making them, did not believe – certainly did not reasonably believe – that they were made in the public interest and did not believe – certainly did not reasonably believe – that they tended to show a breach of a legal obligation, endangerment of anyone’s health or safety or a risk of deliberate concealment.

176 It follows that the ‘whistle-blowing’ detriment claims fail without more, but we will complete the analysis.

177 Are the detriments relied upon established in fact? The first two (LOI, paras 4(a) and (b)) reproduce as separate items the twin elements of the composite detriment identified in the context of the victimisation claim at LOI, para 11(a). For reasons given above (para 161), we find that detriments are shown in respect of the redeployment and alleged demotion.

178 The third and fourth detriments (LOI, para 4(c) and (d)) seem to us to go together. Dr Dimitrova accepted that the logic of the (ultimately agreed) redeployment was that it would last until after Dr Whitwell’s investigation was completed and the outcome made known. She did not dispute that steps to enable her to return could not be taken until the investigation was at an end. Accordingly, the two alleged detriments are inextricably linked, in the sense that detriment (c) is not said to arise until after the Whitwell report was published. The claims are limited to complaints about events occurring before 11 March 2021, the date on which the claim form was issued, six days before the Whitwell report was sent out. Was there a detrimental delay before 11 March 2021? We find that there was. Dr Dimitrova has a reasonable sense of grievance about a delay of five months in preparing a 10-page report of relatively limited scope. The fact that Dr Whitwell had many exceedingly pressing duties to attend to does not detract from the disadvantage experienced by Dr Dimitrova. Nor does the fact that the NRC was closed for two of those months.

179 Were the detriments which have been established by Dr Dimitrova ‘done on the ground that’ she had made the disclosures relied upon? We start with the first and second detriments (LOI, paras 4(a) and (b)). We are satisfied that Dr Kennedy’s decision to redeploy Dr Dimitrova and her consequential move to the

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<sup>16</sup> We have reminded ourselves of the language of the 1996 Act, s43B. LOI, para 3(a) omits to spell out the fact that the legislation asks whether, *in the reasonable belief of the person making the disclosure*, the relevant information tends to show one or more of the matters specified in subsection (1).



neurology and stroke ward were the result of his judgement that working relationships between her and her colleagues in the NRC, and in particular Dr Donnelly, Ms Ramsay and Ms Moon, had broken down to the extent that it no longer constituted a safe environment for patients. It was the fact of the breakdown that precipitated the decision. No doubt one factor which, on objective analysis, had *contributed* to the breakdown was Dr Dimitrova's allegation against Dr Donnelly made on 22 and repeated on 23 September 2020, but we do not consider that it, or any other individual act or event, operated as a material influence on Dr Kennedy's subjective decision-making. His focus was on the mass of evidence which had accumulated with alarming speed over the entire month of September 2020, persuading him that matters within the NRC had deteriorated to such an extent that removal of Dr Dimitrova, if only on a temporary basis, was the only course open to him to take.

180 As to the third and fourth detriments (LOI, paras 4(c) and (d)), we find that action was not taken to restore Dr Dimitrova to the NRC before the commencement of these proceedings because there was no question of such action until Dr Whitwell's report had been circulated and digested, which did not happen until after the claim was issued. Was the fact or nature of the disclosures relied upon the reason, or a reason, for delay in the production of Dr Whitwell's report? We find nothing whatever in the report itself, or in the surrounding evidence, that could justify such an inference. We heard unchallenged evidence that, during the five months between the commissioning and delivery of her report, she was faced with a very heavy workload greatly exacerbated by numerous added burdens and duties resulting from the Covid-19 pandemic. It seems to us highly likely that these circumstances explain the time taken to produce her report.

181 For all these reasons, we are clear that the 'whistle-blowing' detriment complaints are unsustainable and must be rejected.

### ***Time***

182 It is common ground that no time issue arises in relation to the 'whistle-blowing' detriment claims.

183 On their face, the great majority of the harassment claims and a sizeable proportion of the victimisation claims were presented out of time. Since we have found no merit in any of them, it necessarily follows that no question of 'conduct extending over a period' (see the 2010 Act, s123(3)(a)) can arise (the conduct must be unlawful under the Act and here there was no unlawful conduct at all). It follows that the ostensible out-of-time claims are outside the Tribunal's jurisdiction unless it elects to exercise its discretion (under s123(1)(b)) to substitute a longer time limit than the standard three months. It would plainly be not only idle but perverse to bring within time claims already found to have no merit. Those claims accordingly fail on the additional ground that the Tribunal has no jurisdiction to entertain them.

### **Outcome and Postscript**

184. For the reasons stated, all claims are dismissed.

185. We greatly regret the deplorable waste of time and talent to which this dispute has led. All concerned should learn lessons from it.

186. We hope that Dr Dimitrova will belatedly reflect on the need for insight into her own conduct and its effects on those around her.

187. For the Respondents lessons might usefully be learned in three areas: (a) the need to confront damaging and divisive conduct at an early stage; (b) the crucial importance of ensuring that all workplace grievances and complaints are investigated and disposed of in a competent and timely fashion; (c) particularly where MDTs operate, the value of clarity as to managerial lines and responsibilities.

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EMPLOYMENT JUDGE- Snelson  
02/07/2022

**Judgment entered in the Register and copies sent to the parties on : 04/07/2022**

..... for Office of the Tribunals

**APPENDIX**

**CLAIMANT'S AMENDED LIST OF ISSUES  
(Revised 8 June 2022, agreed by the parties)**

Claims

1. The Claimant brings the following claims:

- a. That she has suffered detriments contrary to section 47B of the Employment Rights Act 1996 ('ERA'); and
- b. That she has been subject to Harassment contrary to section 26 of the Equality Act 2010 ('EqA'); and
- c. That she has been subject to Victimisation contrary to section 27 of the EqA.

Protected Disclosure Claim

2. Did the Claimant in fact make any of the following disclosures:

The Claimant relies on the following alleged disclosures:

- a. On 23 September 2020, the Claimant verbally informed Nadia Jeffries that on one occasion at the end of 2019, Marketa Ramsay luxated a patient's hemiplegic shoulder at a physio session, which was reduced at Barnet General Hospital, and she failed to create an incident report in circumstances where it was appropriate for an incident report to be created AND that on one occasion in early 2019 Dr Ann Donnelly overstretched a patient's hemiplegic shoulder rupturing a tendon and failed to create an incident report in circumstances where it was appropriate for an incident report to be created.
- b. On 23 September 2020, the Claimant informed Dr Jonathan Kennedy by email that on one occasion in spring 2019, Dr Ann Donnelly overstretched a patient's hemiplegic shoulder which led to rupture of the tendon and had failed to create an incident report in circumstances where it was appropriate for an incident report to be created.

3. If the Claimant did make any of the alleged disclosures, did any of them constitute a disclosure of information within the meaning of s.43B(1) ERA:

- a. Did any of the alleged disclosures tend to show that:
  - i. the Respondent had failed, was failing or was likely to fail to comply with a legal obligation to which it was subject; and/or
  - ii. the health and safety of any individual has been, is being or is likely to be endangered; and/or
  - iii. any matter falling within (i) or (ii) above had been or was likely to be deliberately concealed by the Respondent?
- b. Did the Claimant have a reasonable belief that any of the alleged disclosures were made in the public interest?

4. Did the Claimant in fact suffer the following alleged detriments?

The claimant relies on a continuous course of detrimental treatment consisting of the following:

- a. Following a meeting on 09 October 2020, the Claimant was “temporarily redeployed” to the Respondent’s stroke service, pending an investigation of complaints which were purportedly made against the Claimant.
  - b. The Claimant was demoted to a more junior position within the Respondent’s stroke service.
  - c. The Respondent has since failed to take any or any adequate steps which would enable the Claimant to return to her usual deployment and position.
  - d. The Respondent delayed in dealing with the Claimant’s ongoing complaints about harassment and sexual harassment which the Claimant had been subjected to because her colleagues had taken a dislike to her because she had raised the grievance.
5. If the Claimant was subjected to detrimental treatment, was she subjected to such treatment on the ground that she had made the alleged protected disclosures listed above?

Harassment Claim

6. Was the Claimant in fact subject to any of the following conduct:

The Claimant relies on the following alleged conduct:

- a. From 2018 onwards, rumours were regularly spread amongst the Claimant’s colleagues that she was having a sexual relationship with another colleague known as Victor O.
- b. In November 2018, Joanna Moon asked the Claimant “Are you doing?” before staring towards the Claimant’s pelvis. When the Claimant indicated that she was not happy with this, Joanna Moon said: “You can do it, no problem” and laughed at the Claimant.
- c. In November 2018, Marketa Ramsey said to the Claimant “Yes, you are living with HCA Victor O”. Further, she added that this is how she usually speaks, and suggested that the Claimant could not prevent her from speaking in that way.
- d. Towards the end of 2018, Victor O said to the Claimant “Goodbye my dear”.
- e. Towards the end of 2018, Victor O hid his face with his hand when he came across the Claimant in the corridor.
- f. Towards the end of 2018, Psychologist Cherilyn Lewis asked the Claimant “are you looking for a man?” in front of various colleagues.
- g. Towards the end of 2018, Psychologist Lewis stated that the Claimant’s first name is “Doctor” on the basis that the Claimant liked to be called by her proper title. This caused colleagues to laugh at the Claimant.
- h. Towards the end of 2018, a speech language therapist known to the Claimant as Anisha told the Claimant that “everybody knows about her bedroom”.
- i. Towards the end of 2018, a rehabilitation assistant known to the Claimant as Suman Mathur asked the Claimant “how many beds are there in the room that you are sharing with HCA Victor O?”
- j. Towards the end of 2018, a nurse known to the Claimant as Stella Mofunanya gestured towards the Claimant (who was wearing sheer tights) and stated “see her legs”, before laughing at the Claimant with another colleague.
- k. Towards the end of 2018, Stella attempted to imitate the Claimant’s walking style in front of the nursing station and exaggerated the sideways movement in her hips while doing so.

- l. Towards the end of 2018, a colleague known to the Claimant as Prima Slassi gestured to the Claimant by moving her eyebrows up and down and questioned the Claimant's clothing choice by stating "Ooo, a doctor with this dress?". Prima then laughed at the Claimant.
  - m. In early 2019, A healthcare assistant known to the Claimant as Lisa gestured towards the Claimant by putting one finger in front of her mouth and making a hissing sound. This caused colleagues to laugh at the Claimant.
  - n. In early 2019, Elizabeth Benson attempted to imitate the Claimant's walking style in front of the nursing station and exaggerated the sideways movement in her hips while doing so.
  - o. In Spring 2019, a colleague known to the Claimant as Shabinah Fazilahmed stated that she would make a Tinder account for the Claimant before laughing at the Claimant with Marketa Ramsey. Shabina then said "Now I will call Victor to check the vitals of the patient" before continuing to laugh with Marketa Ramsey.
  - p. In July 2019, Marketa Ramsey and Joanna Moon threatened the Claimant by stating that they would create problems for the Claimant. Joanna Moon also repeatedly stated to the Claimant "I am harassing you."
  - q. Towards the end of 2019, Joanna Moon, Marketa Ramsey and Victor O saw the Claimant and started to laugh. Joanna Moon then said to the Claimant "Are you okay honey?", before proceeding to laugh at the Claimant.
  - r. Towards the end of 2019, Elizabeth Benson and Stella saw the Claimant in a corridor, then instantly began attempting to imitate the Claimant's walking style by exaggerating the sideways movement in their hips. They then continued to walk away while laughing at the Claimant.
  - s. Towards the end of 2019, Elizabeth Benson stated to the Claimant "Your Victor" and then laughed at the Claimant.
  - t. Towards the end of 2019, Elizabeth Benson stated to the Claimant "You are very, very hot... with a bowel chart" and then subsequently laughed at the Claimant.
  - u. In or around February 2020, Marketa Ramsey repeatedly shouted at the Claimant "Yes, you are living with him" in reference to Victor O.
  - v. In or around September 2020, the Claimant stated that staff can feel free to approach her for advice on patient care. Elizabeth Benson responded "Yes, we know you are approachable".
7. If the Claimant was subject to any of the alleged conduct, was any of that conduct:
- a. related to her sex; and/or
  - b. of a sexual nature.
8. If the Claimant was subject to any of the alleged conduct, was that conduct unwanted?
9. If the Claimant was subject to any of the alleged conduct and that conduct was unwanted, did the conduct have the purpose or effect of:
- a. violating the Claimant's dignity; and/or
  - b. creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

Victimisation Claim

10. Did the Claimant in fact make an allegation that one or more of her colleagues had contravened the EqA and/or did her colleagues believe that she might bring proceedings under the EqA?

The Claimant relies on the following alleged conduct:

- a. On 25 April 2019, the Claimant made a written complaint, inter alia, about acts of sexual harassment and harassment in the workplace, which she had been subject to. This complaint was acknowledged by the Respondent on 30 May 2019.

11. Did the Claimant in fact suffer the alleged detriments?

The claimant relies on a continuous course of detrimental treatment consisting of the following:

- a. The alleged detriments outlined at paragraph 4(a) and 4(b) above;
- b. In July 2019, Dr Ann Donnelly attempted to remove some of the Claimant's responsibilities in the Claimant's job plan.
- c. In or around the summer of 2019, Dr Ann Donnelly interfered with a patient being cared for the Claimant and incorrectly suggested that the patient had more serious injuries than the Claimant may have realised. This made the Claimant appear to be incompetent and caused the patient distress.
- d. In or around October 2019, Dr Ann Donnelly criticised the Claimant for applying a manual evacuation to a patient in her care.
- e. In August 2020, the Claimant was unreasonably asked to re-write a handover which were already recorded on the hospital's online systems.
- f. In August 2020, Dr Ann Donnelly changed the Claimant's working hours and job activities without discussing this with the Claimant.
- g. In or around September 2020, Dr Ann Donnelly incorrectly suggested that the Claimant had over-medicated a patient by shouting "It's too much, its too much" in front of various colleagues and patients. Dr Ann Donnelly continued to shout this even after the Claimant demonstrated that her prescription was correct.
- h. In or around September 2020, Dr Ann Donnelly repeatedly shouted at the Claimant "what did you do?" in front of patients and other members of staff, following an incident that had occurred related to one of the patients under the Claimant's care.
- i. In or around September 2020, the Claimant was solely reported for multiple incidents which other colleagues were also jointly responsible. Therefore, other colleagues ought to have also been reported on the incident forms.
- j. At the end of September 2020, the Claimant was discussing a patient with a member from the speech language therapy team (Rebecca Banting, Speech Language Therapy team). However, Marketa Ramsey interrupted the Claimant on multiple occasions.

12. Was the Claimant subjected to these detriments because:

- a. she had made an allegation that one or more of her colleagues had contravened the EqA; and/or
- b. her colleagues believed that she might bring proceedings under the EqA.

Time Limits

13. Does the conduct which the Claimant has complained about constitute a continuing act within the meaning of section 123(3) of the EqA?
14. Are there any matters which the Claimant has complained about that are prima facie out of time?
15. If any matters which the Claimant has complained about are prima facie out of time, would it be just and equitable to extend time?