



EMPLOYMENT TRIBUNALS

Claimant

Miss N Millwood

Respondent

**London Ambulance Service NHS
Trust**

Heard at: London Central

On: 19, 20, 23 January 2023
In chambers: 24 January 2023

Before: Employment Judge Lewis
Mr G Bishop
Mr J Carroll

Representation

For the Claimant: Represented herself

For the Respondent: Miss D Van den Berg, Counsel

RESERVED JUDGMENT ON LIABILITY

The unanimous decision of the tribunal is that

1. The claims of sexual harassment under section 26(2) of the Equality Act 2010 are not upheld.
2. The claim of rejection or submission harassment under section 26(3) of the Equality Act 2010 is not upheld.

REASONS

Claims and issues

1. The claim was for sexual harassment (unwanted conduct of a sexual nature) contrary to s26(2) and for rejection / submission harassment contrary to s26(3) of the Equality Act 2010.

2. The claim is brought against the respondent as an Employment Service Provider pursuant to s55(3). The respondent accepted that s55(3) applied.

3. An agreed list of issues was at page 52 – 54 of the main trial bundle and confirmed at the outset of the hearing. It had already been decided at a preliminary hearing that it was just and equitable to allow the claims to be presented out of time. The issues before us were therefore as follows:

3.1. Did Joshua Buist-Bainbridge engage in conduct as follows:

3.1.1. On 11 October 2021, saying to the claimant, 'Hopefully we can maybe be friends'

3.1.2. On 15 October 2021, addressing the claimant as 'Hun' and 'sweetheart' and touching her lower back

3.1.3. On 29 October 2021, while the claimant was cannulating a patient, coming up behind her and wrapping his arms around her

3.1.4. On other occasions standing too close to the claimant and invading her personal space

3.1.5. On 6 November 2021, saying to the claimant, 'Don't you care about me?' and when the claimant did not respond, then saying, 'Oh you just want your PAD document signed'.

3.1.6. On 19 November 2021, saying to the claimant, 'You're like my slave. I should call you my slave. The only thing I'm missing is a whip'. And when the claimant responded saying 'Keep your kinky thoughts to yourself', saying 'I am going to make you my slave and get a whip'

3.1.7. On 19 November 2021, accusing the claimant of flirting with a patient who told the claimant he liked her, and slamming the ambulance door

3.1.8. On 19 November 2021, repeatedly saying to the claimant that her reasons for not being in a relationship were selfish

3.1.9. On 21 November 2021, making vulgar comments to the claimant such as, 'If you had sucked dick instead of fucking, then maybe you would not have had a child' and 'Clearly you are not very good at it'

3.1.10. On 21 November 2021, when the claimant was waiting for him to sign her off as having completed her placement, saying to her, 'I need to be careful not to write anything sexual in your PAD document'.

During the hearing, the claimant corrected the dates of the last two incidents to 19 November 2021.

3.2. If so, was that unwanted conduct of a sexual nature?

3.3. Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

- 3.4. If so, because of the claimant's rejection of or submission to the conduct, did Mr Buist-Bainbridge, in not signing the claimant as having successfully completed her placement with the respondent in the Summative Assessment of Performance submitted by him to the University of West London, treat the claimant less favourably than he would treat the claimant if the claimant had not rejected or submitted to the conduct?
- 3.5. If the claimant succeeds, remedy.

Procedure

4. The hearing was conducted over CVP except that the claimant, who was afraid of difficulties connecting with Wi-Fi, attended at Victory House and communicated via video link. She was provided with hard copies of the papers.
5. The claimant had previously raised a need for additional breaks as she has been diagnosed with ADHD. The tribunal asked her at what intervals she would like breaks. She suggested an hour to one and a half hours. The tribunal offered 45 minutes, which was agreed and applied throughout.
6. The claimant was also permitted to sit with a person in support next to her.
7. The tribunal heard from the claimant, Joshua Buist-Bainbridge and Peter Rhodes. Each provided a witness statement. There was the main agreed trial bundle of 504 pages, an additional bundle of 30 pages, 'C1' (a daily posting sheet for 12 October 2021), a cast list and chronology, and the respondent provided written closing submissions on the law.
8. The claimant was not represented. She only asked Mr Buist-Bainbridge three or four questions by way of cross-examination. With Ms Van den Berg's permission, the tribunal asked Mr Buist-Bainbridge some further questions.

Fact findings

9. In January 2021, the claimant started a two year Masters course at the University of West London in Paramedic Science. The University has a partnership with the respondent Trust which provides a series of practical placements for students during the course. The claimant's second placement was from 11 October 2021 – 21 November 2021.
10. A student is assigned a paramedic as mentor for the duration of the placement. The paramedic mentor has to sign off the student and assess them as competent on a range of skills and techniques. The student must maintain a skills log (called a 'PAD') which records the different competencies which must be completed as part of the placement. The mentor must sign off each competency and add any comments. This is usually done at the time. At

the end of the placement, the mentor must do a final signature. The majority of the competencies must be met on the road, but that is not always possible as call outs are random. Any gaps are filled in class by university tutors.

11. The claimant was assigned Joshua Buist-Bainbridge as mentor. Mr Buist-Bainbridge is a band 6 paramedic who had worked for the respondent since March 2020. This was the second time that Mr Buist-Bainbridge had mentored a student.

Sign-off

12. Mr Buist-Bainbridge would enter his comments on a competency and sign it off in the claimant's PAD 2 as soon as it had been covered on a call-out. Though technically students are responsible for ensuring the entries are made, Mr Buist-Bainbridge ensured he always did it on the spot because he hated having to do things later.
13. On 2 November 2021, the claimant's PAD was stolen. She had left it in a rucksack in her car and the rucksack was stolen. This meant the claimant had to ask Mr Buist-Bainbridge to redo her entries. The claimant asked Mr Buist-Bainbridge to do this on 19 November 2021, their last shift together. Mr Buist-Bainbridge was unhappy to be asked at the last minute. He started completing the document with the claimant but then finished it later that evening and left it in a colleague's drawer for the next shift. It took Mr Buist-Bainbridge one and a half hours. He made 33 entries. All the entries were positive. These entries referred to elements of practice.
14. On 21 November 2021, the claimant texted Mr Buist-Bainbridge on WhatsApp asking him to email her the 'summary of my progress'. She said it should be the initial and final assessment. She emailed him the bottom half of the page where it has a box for 'Summary of student progress'. Mr Buist-Bainbridge asked when the due date was. The claimant said it was 'tomorrow' but it was just that paragraph to complete. Mr Buist-Bainbridge said fine, he would sort it. The next day, the claimant asked for the document by 12 for the deadline. Mr Buist-Bainbridge returned it. He had written that multiple sign offs had not been obtained due to the nature of the job and not being exposed to particular scenarios. The claimant queried why he had referred to multiple sign offs. She then told him he had signed the wrong document (ie he was thinking of PAD 2). She then sent him the full page, which included a section on the top with Learning Outcomes, the first of which stated 'Act in accordance with the HCPC Guidance on Conduct and Ethics for Students (2016)(summative)'. Mr Buist-Bainbridge said next time she should send him the whole document. He asked her to delete his previous blurb. She did that and returned the blank form to him with the signatures. She also sent him the full PAD 3 booklet.
15. Mr Buist-Bainbridge was upset because he thought that meant he had to work through the whole booklet and he felt it should already have been done during the placement. He said, 'I already did you the favour by signing the last thing but this is taking the Mick. At no point have I been made aware of this. I

won't have this signed for you by tomorrow as I'm nights and busy over the weekend.' The claimant clarified that it was the same page. 'I thought you want to write a summary, but that's fine, I will take the signature'.

16. Mr Buist-Bainbridge went on holiday shortly after and he did not intend to write anything on the summary form.
17. On 11 November 2021, Mr Bowler, the LAS link tutor for the University of West London, emailed Mr Buist-Bainbridge to thank him for supporting the placement and to ask for some feedback regarding how the claimant had progressed. Mr Buist-Bainbridge responded on 24 November 2021 to say that the claimant 'has been relatively good throughout and when she applies herself is good with patients and staff. In saying that, on her first two shifts with me she was late by 30+ minutes and throughout placement was quick to withdraw from work related tasks and very disorganised which led to me having to stay late after work, by 1.5 hours to sign and comment on each of the points in her PAD because she lost the original.' He added that he had been informed by a colleague that she was over an hour late for a shift and even now, the claimant was messaging him at late hours to get things signed off which were past their due date and urgent. He concluded 'Naturally, neither you nor myself would get away with this behaviour in our work environments so I don't think that Nadine should get off lightly either'.
18. On 28 November 2021, the claimant submitted the summary form which was blank save for the electronic signature of Mr Buist-Bainbridge and herself and which marked her as 'achieved' on 'Act in accordance with the HCPC Guidance on Conduct and Ethics for Students'.
19. Mr Bowler emailed Mr Buist-Bainbridge the next day to say he was concerned that this did not match Mr Buist-Bainbridge's summary of her conduct, specifically about timekeeping and being quick to withdraw from work related tasks. He asked Mr Buist-Bainbridge to review the summary form which the claimant had submitted and provide a brief narrative.
20. On 1st December 2021, Mr Buist-Bainbridge completed and emailed back the final summary sheet. He would not have formalised his comments in this way had he not been asked to by Mr Bowler.
21. Mr Buist-Bainbridge had marked that the claimant had not achieved 'acting in accordance with the HCPC Guidance on Conduct and Ethics for Students 2016'. This was the only 'summative' learning outcome. It is particularly serious if a student does not meet a summative objective. Then where it says 'summary of student progress', Mr Buist-Bainbridge wrote that the claimant had been late on multiple occasions with both himself and other colleagues. He said 'This impacts staff and patient care and is in discordance with the HCPC guidance on conduct and ethics under section 9 bullet point 6'.
22. The HCPC guidance says under section 9 bullet point 6 'You should follow your education provider's or practice placement provider's policy on

attendance'. The claimant told the tribunal that she considers 'attendance' to refer to whether she attended at all and not to refer to timekeeping.

23. Mr Buist-Bainbridge noted a second way in which he contended the claimant had breached HCPC guidance in his summary. He said she had contacted him for signing various documents after the expiry of the mentorship without full disclosure of what those documents were for, ie 'sending partial pieces of documents and stating that it is for something else'. He said this was a breach of section 9 bullet point 8.
24. The HCPC guidance at bullet 8 says, 'You should make sure that all attendance, achievement and assessment records are completed accurately and truthfully'. Mr Buist-Bainbridge was referring to the fact that the claimant had initially only sent him part of the final summary form. He thought that was serious because it was a final sign off document.
25. Mr Buist-Bainbridge concluded: 'I am unsure of any issues in Nadine's life that would cause these two points, but if there were any issues that she needed help with then she should have contacted the university in concordance with HCPC guidance Section 6 bullet point 5'. Mr Buist-Bainbridge told the tribunal he had in mind the claimant's recent diagnosis of ADHD.
26. Mr Buist-Bainbridge did not know the exact consequences of his having marked 'not achieved' on the HCPC question.
27. Mr Buist-Bainbridge did not send the claimant a copy of the summary form, so she did not at that point know that she had failed.
28. On 6 December 2021, Mr Larman, Professional Lead for Paramedic Science at the University, met the claimant. He was Module Lead, Course Lead and the claimant's personal tutor. He wanted to discuss that she had failed her PAD 3 and they would need to arrange a recovery placement before January to recover this. He also wanted to discuss the fact that there were significant differences between the Summative Assessment of Performance submitted by her as the work of Mr Buist-Bainbridge and the Assessment which he had submitted directly to the University. He wanted to tell her that they would be instigating an informal investigation into this aspect.
29. The claimant was very upset that she had not passed PAD 3 and cried. She told Mr Larman that she had continually felt uncomfortable during the placement. She said Mr Buist-Bainbridge had called her 'bitch' and that she was his 'slave'. Mr Larman was supportive but he deliberately did not probe, letting the claimant speak. The claimant, who is of black ethnicity, told Mr Larman that she had experience prior to joining the University of racist and sexist behaviour which she had raised and not been addressed. He reassured her of the University's commitment to addressing such allegations.
30. On 9 December 2021, Mr Larman met and discussed her allegations further with the claimant. The claimant agreed to write down her concerns

and was given a form. Mr Larman immediately alerted the University Head of Practice Education, Investigations, and the CNMH School within which the Paramedic Science department sits.

31. 6 December 2021 was the first time the claimant had complained to anyone about Mr Buist-Bainbridge's behaviour.
32. Mr Larman received the claimant's statement of 10 December 2021 on 11 December 2021. He referred again to the availability of Wellbeing Services.
33. The claimant made these allegations in her 10 December 2021 statement:
 - 33.1. That on 19 November 2021, Mr Buist-Bainbridge had called her a bitch during a conversation about birds. After the claimant mentioned that a gold badge of a bird looked 'glam', Mr Buist-Bainbridge said 'This is the national bird of New Zealand' and showed her picture on his phone. The claimant looked at it and replied, 'I can see you enjoy that'. Mr Buist-Bainbridge responded, 'You are such a bitch', shaking his head. When the claimant said to Mr Buist-Bainbridge the next morning that she thought his comment unnecessary, he said it was the claimant's tone when she had made her comment. We will call this 'the bitch comment'. It is not one of the pleaded acts of sexual harassment.
 - 33.2. There was a discussion about racism between the claimant, Mr Buist-Bainbridge (who is from New Zealand) and another member of staff from New Zealand. Mr Buist-Bainbridge said he could not be racist because he was of mixed race. He and the crew mate both said racism did not exist and they hated all people the same. Mr Buist-Bainbridge identified himself as 'half caste'. Later that shift, Mr Buist-Bainbridge said to the claimant, 'You're like my slave. I should call you my slave. The only thing I am missing is a whip'. The claimant responded, 'Keep your kinky thoughts to yourself'. Mr Buist-Bainbridge repeated inside the ambulance, 'I am going to make you my slave and get a whip'. The claimant did not respond. We will call this 'the slave comment'. It is issue 3.1.6.
 - 33.3. After the last job, Mr Buist-Bainbridge said 'My ancestors are better than yours because we were able to fight our oppressors. The claimant responded that her name was 'Millwood' so she had white ancestors too. The topic changed, and while Mr Buist-Bainbridge was writing in the claimant's PAD 2 document, he said, 'If you had suck dick instead of fucking, then maybe you wouldn't have had a child'. The claimant replied, 'I suck dick and fuck, so that's why I do have a child'. Mr Buist-Bainbridge responded, 'Well clearly you are not very good at it'. We will call this 'the vulgar comment'. He paused, went back to writing in her PAD 2, then said 'I need to be careful not to write anything sexual in your PAD document'. These are issues 3.1.9 and 3.1.10 respectively.
34. The claimant concluded by saying that the statement had been difficult to write. She would have found it easier to forget the comments. During her time

on placement, Mr Buist-Bainbridge's language towards her had made her feel worthless and out of place.

The Investigation

35. Joshua Ryan was appointed investigating officer. He met and interviewed the claimant on 31 January 2022. A follow-up meeting was arranged for 9 February 2022 because the claimant had to leave. On 6 February 2022, the claimant provided a 'supporting information' statement. This was in a diary form with contextual narration which is not always clearly an allegation as opposed to a description. It contained the following allegations which are now part of the allegations in this case, as well as a general dissatisfaction with Mr Buist-Bainbridge as a mentor:
36. On 3 March 2021, the claimant was emailed the draft non verbatim notes for agreement. On 6 March 2022, the claimant emailed Mr Ryan and Ms Ofusu-Appiah in HR to say:
- 'I have read the notes, I don't agree with them but I am withdrawing my participation from this investigation moving forward. I have provided enough documentation of the incident, and this investigation is not only affecting my mental health, but my ability to concentrate efficiently on my studies'.
37. Ms Ofusu-Appiah replied sympathetically. She said they would like to make the process less stressful. The notes were not verbatim but were meant to capture the key points. If the notes completely changed the context of what was said, the claimant should note this. The claimant should say if she needed more time. She could withdraw if she wanted to.
38. The claimant also spoke to Ms Ofusu-Appiah on the telephone. She appeared to be in a fragile mental health state. She explained that she had a lot of personal issues in addition to the investigative process and was finding everything overwhelming. She felt the process was intrusive and a bit interrogative. Ms Ofusu-Appiah explained the intention was not to make the claimant feel that she had done something wrong.
39. After thinking about it, the claimant did send the notes back with her amendments and she indicated that she did want to proceed.
40. Mr Ryan interviewed Mr Buist-Bainbridge on 2 March 2022 and 10 other members of staff chosen at random whose shifts had coincided with Mr Buist-Bainbridge's including Emma Ballard, Eliza Nagle, Tony Hudson and Verity Ironmonger. None of these witnesses said they had seen any inappropriate behaviour by Mr Buist-Bainbridge towards the claimant or anyone else. Some of them made comments about the claimant's manner being disinterested, detached or even rude.
41. The final report was completed and submitted to Mr Rhodes on 14 April 2022. It did not recommend any formal action against Mr Buist-Bainbridge because 'the evidence on the balance of probability does not substantiate the

allegations made by' the claimant. However he recommended Mr Buist-Bainbridge had a discussion with his assigned Clinical Team Manager about (i) using the term 'half caste' which can be deemed offensive in the UK; and (ii) staff perception, as although it was not proven he had done anything wrong, it was how the claimant had perceived his comments / actions.

ADHD diagnosis

42. On 26 October 2021, the claimant received a diagnosis of ADHD from a Chartered Psychologist. The report noted that the claimant displays difficulties with concentration and attention consistent with ADHD. It said that the claimant presented as an intelligent, serious-minded and well-motivated individual. She had deployed a number of coping strategies but she continued to find a range of learning tasks more challenging than they should be given her high measured ability, obvious intelligence and motivation. The report stated that in common with many high ability individuals who have Special Learning Difficulties, the claimant relies heavily on overworking.
43. During her assessment, the claimant identified difficulties including remembering information she reads eg she needs to read information many times in order to remember it; understanding and remembering verbal information; remembering verbal instructions; difficulty expressing herself verbally; easily distracted by noises, environmental features and her own thoughts; poor concentration when working; losing personal belongings; difficulty explaining her ideas and thoughts in writing; poor time management; difficulty meeting deadlines.
44. The claimant told her assessor that she excelled in her jobs but did not build positive work-colleague connections. 'I find it hard to connect with people, I am overly emotional and do not know how to express myself'. She does not have many social friendships because people do not understand her and get offended. She has regular counselling sessions to process her emotions because she feels safer speaking to a counsellor.
45. The claimant told the tribunal that she had started counselling prior to the placement in this case because of her issues with low esteem. She increased her counselling as a result of the issues.

The supporting information statement (6 February 2022)

46. The supporting information statement is in a roughly diary form with a great deal of peripheral detail. It contained the following key allegations.
 - 46.1. On her first shift, after she had arrived late, had a discussion about timekeeping, and broken her glass water bottle, Mr Buist-Bainbridge had said, 'Hopefully we can have a positive relationship and maybe be friends'. The claimant responded, 'I am fine with not being friends'. We shall call this 'the friends comment'. It is issue 3.1.1.

- 46.2. The next day, 12 October 2021, the claimant had arrived late again due to traffic. Mr Buist-Bainbridge asked her where she lived. When she told him, he searched it on google maps. He said it was only an hour and a half away without traffic. When the claimant apologised, he said that was not good enough and she should maybe find another mentor or a different rota would be better. The claimant said she was fine, she would leave earlier.
- 46.3. The claimant said in the statement that Mr Buist-Bainbridge had told her he could see she was very anxious because she had been late twice in a row, but she should relax and put it behind her and be early the next day. She said he was less nit-picky for the rest of the day. However she also said, 'My mentor showed an obvious dislike for me, he was either not attentive with my learning or highly critical ... and it felt like we were not able to get along'.
- 46.4. Towards the end of the shift, the claimant told Mr Buist-Bainbridge she had had a diagnostic screening which showed positive for ADHD, autism and dyspraxia and she was upset that they did not appear to be understanding each other. Mr Buist-Bainbridge said the diagnosis was not the end of the world and he thought he may be on the spectrum too. On the next shift, 15 October 2021, in the Ealing hospital ambulance corridor, Mr Buist-Bainbridge began addressing the claimant as 'hun' and 'sweetheart' and touching her lower back at the same time'. But he was more positive and less critical when teaching her and this made her feel happier. This is the subject of issue 3.1.2. The claimant received her formal diagnosis of ADHD on 24 October 2022.
- 46.5. On 28 October 2021, 'the bitch comment', described in the 10 December 2021 statement, although the date given there was 19 November 2021. The claimant also said that returning to the ambulance after the exchange, she showed him a photo of Jamaica's national bird and he replied 'cool'.
- 46.6. The claimant said that on 29 October 2021, she went with Mr Buist-Bainbridge and a crewmate who Mr Buist-Bainbridge described as his best friend, to see a patient who needed to be cannulated. Mr Buist-Bainbridge suggested that the claimant attempt the procedure. She said that while she was cannulating the patient, Mr Buist-Bainbridge came up behind her very close and wrapped his arms around her while she inserted the cannula. She said this was witnessed by the Occupational Therapist and the other paramedic crew member. We shall call this 'the cannula incident'. It is issue 3.1.3.
- 46.7. The claimant said that Mr Buist-Bainbridge often invaded her personal space in the ambulance. At times he was close enough to rub against her from behind. After this happened a few times, she decided that if the ambulance was crowded with too many people, she would remove herself by saying 'It is crowded in here' and leave. She noted this

under the date 2 November 2021. We shall call this 'the personal space allegation'. It is issue 3.1.4.

- 46.8. On 2 November 2021, the claimant and Mr Buist-Bainbridge were discussing Halloween parties. In previous conversations, they had discussed dressing up for the parties and the claimant had said she would be dressing up as a sexy unicorn which got shot in the head. Mr Buist-Bainbridge asked if the claimant had dressed up as a sexy unicorn. She corrected him: 'A sexy unicorn which got shot in the head'. Mr Buist-Bainbridge showed the claimant a photo of his Halloween outfit and she showed him a photo of hers. Then they began work.
- 46.9. On 6 November 2021, the claimant says that the first time Mr Buist-Bainbridge talked about the risk of stabbing, Mr Buist-Bainbridge said, 'Oh so you do care about me?' The claimant says she did not respond, there was a silence, and Mr Buist-Bainbridge then said, 'Oh you just want your PAD signed'. The claimant laughed and said 'That's true'. We shall call this the 'Don't you care' comment. It is issue 3.1.5. By way of context, the claimant said that Mr Buist-Bainbridge regularly spoke about how he would respond if someone stabbed him. Sometimes she responded with, 'I'm sure that won't happen' and at other times she would jokily say, 'Are you going to sing to them when they do?'. This was to lighten the mood because Mr Buist-Bainbridge regularly sang in the ambulance.
- 46.10. On 19 November 2021, 'the slave comment'. The claimant's version of this was first given in her 10 December 2021 statement and is summarised above. It is issue 3.1.6. Also set out above is the conversation earlier that shift about racism. The claimant said that after the discussion about their ancestors, she discussed the origin of her name. Mr Buist-Bainbridge said the story was boring. The claimant said that once on Facebook in the comments section, a man responded saying 'You can suck my mil wood'. She said he didn't find it funny. Mr Buist-Bainbridge said 'It is funny'.
- 46.11. The claimant said that on 19 November 2021, a drunk patient in the ambulance told her he liked her in a flirtatious way when he regained consciousness. Mr Buist-Bainbridge looked at the claimant and raised his eyebrows. Later Mr Buist-Bainbridge said to the claimant, sounding annoyed, that she had flirted with the patient; he then walked out the ambulance and slammed the door. We shall call this 'the flirting accusation'. This is issue 3.1.7.
- 46.12. The claimant said that later on 19 November 2021, the other crew member asked her if she was seeing anyone and asked why not. The claimant said that she did not like sharing her bed and she did not want to waste her 20s in a relationship. She said she had been working on herself with a counsellor. The crewmate asked the claimant what her body goals were. The claimant said she wanted the BBL look. BBL is social media slang for Brazilian Butt Lift. The claimant says that Mr Buist-Bainbridge remarked that her reasons for not being in a relationship were selfish.

She said he kept repeating that. We shall call this 'the selfish comments'. It is issue 3.1.8. [194]

46.13. The claimant said that on her last shift, while completing her PAD 2 document, Mr Buist-Bainbridge said, 'If you suck dick instead of fucking then maybe you wouldn't have had a child.' The claimant said it felt random and she was tired of being insulted all day, so she said, 'I suck dick and fuck so that why I do have a child'. Mr Buist-Bainbridge responded, 'Well clearly you are not very good at it'. We shall call this the 'vulgar' comment. It is issue 3.1.9. The claimant says that Mr Buist-Bainbridge paused, went back to writing in her PAD and then said, 'I need to be careful to not write anything sexual in your PAD document'. She says she did not respond. This is issue 3.1.10. Mr Buist-Bainbridge went on to say he could not finish completing the PAD that night and she should have given it to him earlier. The claimant explained it was only recently replaced having been stolen from her car. Mr Buist-Bainbridge said this was not good enough and he would put it in the drawer of the paramedic she was working with the next day.

Other evidence on the key incidents

47. We cannot summarise all the evidence we were given on the key issues in this decision but we have considered it all. We note here some of the key points.

Issue 3.1.1 The friends comment

48. When the claimant arrived on her first day and saw Mr Buist-Bainbridge for the same time, she said 'Hi, you look more orange than in your picture'. That was because he had a tan. Mr Buist-Bainbridge walked off. The Clinical Team Manager came to the ambulance. The claimant apologised. She said she had not intended to offend Mr Buist-Bainbridge. This added to the stress the claimant felt at having been late.

The bitch comment

49. The claimant's description of this is set out above. Mr Buist-Bainbridge told the tribunal that he used to wear a brooch with a gold kiwi bird which is the national bird of New Zealand. The claimant described it as a kangaroo and said something about Mr Buist-Bainbridge being Australian. She did this about four times and each time Mr Buist-Bainbridge corrected her and said he was from New Zealand and it was the kiwi bird. The fourth time, he felt it was becoming monotonous and he told her not to mention it again. He says he used no profanities.

Issue 3.1.2: On 15 October 2021, addressing the claimant as 'Hun' and 'sweetheart' and touching her lower back

50. What the claimant said in her February 2022 statement is described above. In the tribunal, she said Mr Buist-Bainbridge had only touched her lower back on one occasion that day.

51. Mr Bainbridge says he does not use the terms 'hun' and 'sweetheart' even to close family. He sometimes calls elderly patients 'my dear'. He denies he touched her lower back. He says physical boundaries are important so no one feels uncomfortable.

Issue 3.1.3: The cannula incident

52. This allegation is described above. Mr Buist-Bainbridge says that he would not stand behind someone while they were cannulating a patient because he would not be able to see properly. He would also not be able to reach to guide their hand if that was needed.

Issue 3.1.4: On other occasions standing too close to the claimant

53. This allegation is described above. The claimant also mentioned an occasion in her evidence when they were attending a patient who was drunk and homeless. She said she, Mr Buist-Bainbridge and Eliza Nagle were in the ambulance having a discussion. The claimant says she felt Mr Buist-Bainbridge coming closer and then touching her. She then said it was crowded and she would wait outside. Mr Bainbridge followed her out and said that sometimes it would be crowded in the ambulance, she could not just walk out. The claimant says she said, 'I don't want you touching me'. Mr Buist-Bainbridge said 'Fine'. They made eye contact, there was a pause, and they went back in.

54. Mr Buist-Bainbridge denies ever standing deliberately close to the claimant. He points out, which we accept, that the ambulance is a small space and can be crowded when three crew members are in there at the same time.

Issue 3.1.5: The 'don't you care' comment

55. This allegation is described above. In her witness statement, the claimant put it slightly differently to how she wrote it during the investigation in that she says Mr Buist-Bainbridge said, 'Don't you care about me'. Mr Buist-Bainbridge does not recall making the comment and says if he did, it would not be in order to harass her. Anyway he was not at work that day

Issue 3.1.6: The slave comments

56. This allegation is described above. Mr Buist-Bainbridge denies ever making such a comment. When the tribunal asked him whether he may have made a joke, he said that from what he knew of the UK it would be very untoward; he did not know the claimant well enough to make a joke like that.

57. Mr Buist-Bainbridge also denies having any earlier conversation with the claimant on that day or any other about racism. He says that the claimant had overheard him using the expression 'half-caste' when talking to a paramedic colleague who was also from New Zealand. He says the claimant had a quick conversation with his colleague when she said as a joke, 'You should call him Australian', and he took it as a joke.
58. During the investigation, Emma Ballard was asked to confirm whether she had worked with the claimant and Mr Buist-Bainbridge on the shift (as the claimant had indicated) and whether Mr Buist-Bainbridge had made any negative comments or used insulting words towards the claimant. Ms Ballard said she had worked the shift. She did not witness any negative comments or insulting words; this was something Mr Buist-Bainbridge would never do. She felt the claimant was very disinterested in her learning and did not want to have anything to do with their general conversations.

Issue 3.1.7: The flirting accusation

59. This allegation is described above. Mr Buist-Bainbridge denied this. He said they often deal with patients who behave in an unpredictable manner and he is protective of his colleagues. However he does not recall this particular incident.

Issue 3.1.8: The selfish comments'

60. The tribunal asked the claimant why she felt, given the general discussion and what she had said, that there was anything wrong with Mr Buist-Bainbridge commenting that her reasons were selfish. The claimant said no, it was just his opinion. She was not complaining about it, although she did not like it that he had repeated the remark. She had been asked for more context about her allegations and she had just written down everything she could remember each day.
61. Mr Buist-Bainbridge told the tribunal he has no recollection of this conversation. He knew the claimant was single and had a 6 year old child. There had been small talk the first few days, but he had not had any further conversation with her about her domestic circumstances.

Issue 3.1.9: The vulgar comment

62. This allegation is described above. Mr Buist-Bainbridge denies it. When the tribunal suggested to him that there was obviously a certain amount of jokey conversation between him and the claimant, eg over the Halloween costume, he said he liked to keep things professional but light. However, this comment was far too vulgar even to be a joke; it was not something he would say even to a friend in jest. Moreover he would not risk his job (and in turn, risk deportation back to New Zealand) or his personal reputation saying such things.

Issue 3.1.10: 'I need to be careful not to write anything sexual in your PAD document'.

63. This allegation is described above. Mr Buist-Bainbridge denies it. He says that in any event, he had stayed late in the staff room to sign off the claimant's PAD and she was not present.

New allegation: Tracheostomy incident

64. The claimant told us about an additional incident which she said occurred towards the end of her placement, although she could not remember the date or the name of the third crewmate.. ('The tracheostomy incident').

65. The claimant said they had gone to a patient whose tracheostomy needed suctioning. She had gone in to see the patient first with the crewmate. The crewmate had sent her back to the ambulance to get a bit of equipment. Mr Buist-Bainbridge was sitting on a chair speaking on the phone. The claimant bent down to open the drawer, touching Mr Buist-Bainbridge's chair to keep her balance. Mr Buist-Bainbridge said 'Don't do that'. The claimant said 'I am really sorry to have offended you, I didn't mean anything by it'. She did not in fact believe she had offended him or done anything wrong. He said 'Don't be like that'. The claimant said 'What do you mean'. He said 'Can't you just suck it?' The claimant said, 'I can't do this. I can't do this with you.' He said 'Why, please, why'. The claimant said, 'I can't do this with you right now'. She did not want to reject Mr Buist-Bainbridge to the point where he hated her because he still had to sign her PAD. The claimant says she then said 'Besides the patient's really sick'. They ended up going back to the ambulance where the crewmate asked 'Josh, what have you done to her?' The claimant did not tell the crewmate what had happened because the patient was not there.

66. Mr Buist-Bainbridge denied the incident. He told the tribunal that he had only ever visited one patient with a tracheostomy and even on repeat visits to that patient, it had never been with the claimant.

67. The claimant had never mentioned this incident during the investigation or in her claim form or in her witness statement. She was aware of this. The evidence emerged during cross-examination. The claimant said that Mr Buist-Bainbridge had brought up sex a few times. She knew what she was about to say was not in her claim form and she would stop if the tribunal wanted. The tribunal told her she could give her evidence though she would be asked why she had not mentioned it before.

68. When questioned as to why she had not mentioned it before, the claimant said everything she had previously mentioned she had dealt with emotionally, whereas she had not yet dealt with this other comment. She said she does not share something until she knows she can cope with it. This particular incident she found really embarrassing. Of everything that had been said, it felt the most embarrassing to her. She knew the slave comment was awful but she had heard worse. Racist comments are awful but she has heard them

before and she feels anyone who is racist is beneath her. However, no one had said something like this to her before and she had had to come to terms with what had been said.

New allegation: 'If you do not sleep with me, I will fail you'

69. While being cross-examined, the claimant said that Mr Buist-Bainbridge had failed her because she would not sleep with him and that he had said so. She said he had told her, 'I don't care how good you are or how nice you are to me, if you don't sleep with me, I am going to fail you'. The claimant had not previously mentioned this in the investigation, in her tribunal claim form or in her witness statement. She said she felt uncomfortable talking about it and felt she was in denial a bit.
70. Mr Buist-Bainbridge denies ever having said this.

'Horror stories' WhatsApp

71. A final matter to mention is that in January/February 2022, the claimant says she was discussing placement experience with someone called Eleanor Parrett, who pressed the claimant on how she found working with Mr Buist-Bainbridge. She said she had worked with him for one shift and had a poor experience. There are WhatsApp messages in the trial bundle. Ms Parrett says 'Interestingly I'm now working with someone whose opic mentor was Josh. Horror stories.'

Law

72. Under s26(2), EqA 2010, a person harasses the claimant if he engages in unwanted conduct of a sexual nature, and the conduct has the purpose or effect of (i) violating the claimant's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether conduct has such an effect, each of the following must be taken into account: (a) the claimant's perception; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.
73. By virtue of s212, conduct which amounts to harassment cannot also be direct discrimination under s13.
74. Under s26(3) it is also harassment if, because of the claimant's rejection of or submission to such conduct, the person treats the claimant less favourably than he would have treated the claimant if she had not rejected or submitted to the conduct.
75. In Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336, EAT, Mr Justice Underhill (as he then was) gave this guidance:

'an employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so.....Not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other discriminatory grounds) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'

76. In Grant v HM Land Registry [2011] EWCA Civ 769, Elias LJ pointed out that the words 'violating dignity', 'intimidating, hostile, degrading, humiliating, offensive' are significant words. 'Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.'

77. In Betsi Cadwaladr University Health Board v Hughes and others UKEAT/0179/13, Mr Justice Langstaff said:

'The word 'violating' is a strong word. Offending against dignity, hurting it, is insufficient. 'Violating' may be a word the strength of which is sometimes overlooked. The same might be said of the words 'intimidating' etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.'

78. In Weeks v Newham College of Further Education UKEAT/0630/11, Mr Justice Langstaff considered the meaning of the word 'environment'. He said it means a state of affairs. It can be created by a single incident, but the effects must be of longer duration. Spoken words must be seen in context, which includes other words spoken and the general run of affairs within the office or staffroom concerned.

79. A single one-off event can constitute harassment if sufficiently serious. A flippant or light-hearted remark can constitute harassment, just as much as one which is made aggressively. What is relevant is whether such a remark, whether flippant or not, meets the legal definition. (See eg Driskel v Peninsula Business Services Ltd and ors [2000] IRLR 151, EAT.)

80. Where the conduct was not done with the purpose of violating dignity etc, the question is whether it had that effect. The EHRC Employment Code says at paragraph 7.18:

'In deciding whether the conduct had that effect, each of the following must be taken into account:

- (a) The perception of the worker; that is, did they regard it as violating their dignity or creating an intimidating (etc) environment for them. This part of the test is a subjective question and depends on how the worker regards the treatment.
- (b) The other circumstances of the case; circumstances that may be relevant and therefore need to be taken into account can include the personal circumstances of the worker experiencing the conduct; for example, the worker's health, including mental health; mental capacity; cultural norms; or previous experience of harassment; and also the environment in which the conduct takes place.
- (c) Whether it is reasonable for the conduct to have that effect; this is an objective test. A tribunal is unlikely to find unwanted conduct has the effect, for example, of offending a worker if the tribunal considers the worker to be hypersensitive and that another person subjected to the same conduct would not have been offended.'

81. Context is important in assessing the effect of the conduct. Other relevant factors (though none of them are determinative) might be whether the conduct was directed at the claimant; the frequency with which the words were used; what the speaker's intentions appeared to be; and whether the claimant possessed the relevant protected characteristic. (See eg *Weeks v Newham College of Further Education* UKEAT/0630/11.) Whether and when the claimant complained might also be relevant, although it is not always easy for an employee to make an objection, so tribunals should be cautious about this factor.

Conclusions

Our approach

82. This was not an easy case for us to decide. We were aware that the claimant was representing herself and this may have been particularly difficult in a case such as this. The claimant only asked Mr Buist-Bainbridge a handful of questions. Although the tribunal stepped in and asked questions as far as was appropriate, we must remain neutral. A tribunal cannot advocate for one side. We did give the claimant the opportunity to ask additional questions after the tribunal questions, but she had few to add. This meant that Mr Buist-Bainbridge was not effectively cross-examined.
83. We also bore in mind the difficulties which the claimant identified in her ADHD assessment concerning expressing herself verbally and in writing, and difficulties with concentration and attention. Where the claimant was inaccurate over dates or did not include information in earlier documents, we asked ourselves whether that might be due to her ADHD as opposed to an indicator that her evidence in the tribunal was unreliable.
84. No disrespect is meant by this. We agree that the claimant presents as intelligent, serious-minded and well- motivated. She was well-prepared for the tribunal and answered questions directly, respectfully and to the point.

85. We also bore in mind our experience that in sexual harassment cases, the person subjected to harassment often does not report it for some time, and even then, does not always remember or talk about every incident at the outset. Additional evidence can emerge over time. It is also not unusual for someone to report harassment only when they feel they have to, because of a threat to their employment (or in this case, their degree). This does not mean it is not true.
86. Having said that, these are not irrelevant factors. We still have to consider the circumstances of the individual case. It is more helpful when someone has reported harassment at an early stage or before they have any conceivable motive to make a false allegation.
87. Another factor for us to consider was that none of the ten employees spoken to as part of the investigation supported the claimant or said anything critical of Mr Buist-Bainbridge. Of course we accept that many of these were not present at the time of the incidents alleged by the claimant. We are also aware that it is difficult for people to persuade colleagues to come forward as witnesses to discrimination in the workplace. Moreover, the claimant was only on a short placement. Why would Mr Buist-Bainbridge's colleagues who worked with him, had to continue to work with him, and may have personal loyalty to him, stick their neck out for the claimant? However, in the investigation notes there is not the slightest hint of a criticism of Mr Buist-Bainbridge or caution about how he presents himself. It also means, in practical terms, we have no witness corroborating the claimant's evidence.
88. There is the 'Horror stories' WhatsApp which the claimant showed us, but that is very vague and does not necessarily refer to sexual behaviour at all.
89. The fact that we have not upheld the claim, for reasons we will go on to explain, does not mean that we consider the claimant was deliberately fabricating events. It is possible for events to be misinterpreted and it is possible for memory to become distorted over time. We have simply approached this case in terms of the evidence we have, and what can or cannot be proved.
90. We will go through the separate incidents, but as we have done so, we have always kept in mind the overview. A comment which seems harmless on its own, could appear quite differently when taken together with others. Where we have found words were said or an incident did happen, we will go on to consider issues 3.2 and if applicable, 3.3.

Overview

91. On some of the allegations there was very little to go on other than one word against another. It therefore helped us to have an overview.
92. The claimant said to us several times that she had never wanted to take up these issues. Indeed she told us that individual comments had come and gone, but she had not put them together in her head until she heard her

tutor's reaction in December 2021 and until she wrote out a full statement. Indeed, the claimant frequently said she found the alleged behaviour odd rather than upsetting. She told us she needed to process it, usually with her counsellor, before she felt able to discuss it. She tried to withdraw during the investigation. She told us she never thought it would come to a tribunal hearing.

93. The claimant's real focus was on her studies. Because of her ADHD, she has to work very hard. She got off to a bad start with Mr Buist-Bainbridge due to her lateness, her awkward 'orange' comment and various other matters we have mentioned. While he tried to keep a light tone in the ambulance, he was also clearly a tough task master. The claimant found him nit-picky. He had little patience with the claimant's disorganisation over the final papers and was not very supportive about recompleting her PAD, despite knowing it had been stolen and knowing of her ADHD. That may well be indicative of what he was like as a mentor. It is certainly how the claimant experienced working with him.
94. In the absence of other evidence, it seems unlikely to us that in the first few days Mr Buist-Bainbridge would have been both hostile to the claimant as she suggests, including asking her to be transferred to another mentor, and at the same time making sexual innuendos when eg suggesting they be friends.
95. We have the impression that from when the claimant, under the stress of being suddenly told her mentor had failed her, mentioned for the first time that she had felt uncomfortable throughout her placement, including being called 'bitch' and 'slave', matters spiralled out of hand. Her tutor and the university reacted absolutely appropriately, but the claimant found herself being asked to write out statements and attend interviews, reviewing matters which had not particularly impacted on her at the time. Whether or not the claimant accurately remembered the events in question, it is clear she did not really want to take it all up. Reviewing and rereading detailed statements has been difficult for her. We therefore cannot rule out that the claimant's perception and memory may have been changed by this process.
96. The claimant's difficulty is that she has no witnesses to any of these events, even where third parties were apparently present. While we understand why that might have happened, it is still a problem. Also, as we have said, some of the witnesses were very positive about Mr Buist-Bainbridge, which goes against the tenor of the allegations.
97. There are also no contemporaneous records of the claimant's allegations. Sometimes GP notes are helpful but the claimant did not at that stage visit her GP. She did not make a contemporaneous diary note. She did not tell her personal tutor or anyone else at the university. She did not tell any friends or family. We appreciate her evidence about a small kinship circle, but again it means we do not have that evidence.
98. We did consider Mr Buist-Bainbridge's behaviour at the end regarding redoing the PAD and not signing her as passed. But there were explanations

for that which did not for us raise any questions about underlying motives related to sexual harassment.

99. All we are left with is the claimant's unsupported evidence describing the incidents. For reasons we explain below, in several cases we think there may have been a misinterpretation. That is consistent with the claimant's evidence about not necessarily being upset at the time.
100. Subject to our further analysis of the individual incidents below, unless there are any further considerations, we would not uphold the claims.

The bitch comment

101. A lot of time was spent talking about the badge and the alleged 'bitch' comment, but it was not in fact part of the tribunal claim. It is no easier to decide what happened on this than on many of the other allegations. It is therefore not particularly useful for us to attempt to make a fact-finding. Both sides agree that there were several conversations about the gold kiwi brooch that Mr Buist-Bainbridge was wearing, that the claimant described it as a kangaroo and said something about Mr Buist-Bainbridge being Australian. Mr Buist-Bainbridge got fed up with this and in his words, told the claimant to stop. He says he used no profanities, but we doubt he was quite as mild as that. We would be surprised if he said something as aggressive and unprofessional as 'bitch', but given that she had repeated herself four times, it would not be surprising if he had displayed an impatient tone.

Issue 3.1.1: On 11 October 2021, saying to the claimant, 'Hopefully we can maybe be friends'

102. Mr Buist-Bainbridge did say these words.
103. This conduct was unwanted. The claimant said at the time, 'I am fine with not being friends'.
104. However, it was not conduct of a sexual nature. Several things went wrong when the claimant arrived for the first shift of her placement. She was late. She offended Mr Buist-Bainbridge by calling him 'orange'. She dropped and broke her glass water bottle. After that start and the claimant's obvious agitation, there was nothing wrong with Mr Buist-Bainbridge saying 'Hopefully we can have a positive relationship and maybe be friends'. The particular context does not indicate he was saying anything suggestive or sexual.
105. This was therefore not an act of sexual harassment.

Issue 3.1.2: On 15 October 2021, addressing the claimant as 'Hun' and 'sweetheart' and touching her lower back

106. We accept the claimant's evidence that Mr Buist-Bainbridge was more positive and less critical of her on 15 October 2021, which was the shift after she had told him about her diagnostic screening for ADHD, autism and dyspraxia. They had not started particularly well. He had picked her up on the lateness and was critical on a number of matters, which the claimant experienced as nit-picky and made her feel tense. It is likely that he responded to this possible diagnosis by trying to be more supportive, at least in the short term, and that his manner and language were more gentle.
107. On the balance of probabilities, we find that Mr Buist-Bainbridge did not use the words 'hun' and 'sweetheart'. We accept his evidence that these are not his kind of words.
108. In the February 2022 statement, the claimant says that Mr Buist-Bainbridge touched her lower back on multiple occasions throughout the day, but in the tribunal she said it was only once, in the corridor. We feel the claimant's evidence on this is vague and uncertain. We therefore find on the balance of probabilities that it did not happen.
109. This claim is therefore not upheld.

Issue 3.1.3: On 29 October 2021, while the claimant was cannulating a patient, coming up behind her and wrapping his arms around her

110. We find on the balance of probabilities that Mr Buist-Bainbridge did not come up behind the claimant when she was cannulating a patient and wrap his arms around her. This would have been dangerous for the patient because Mr Buist-Bainbridge would have been unable to see properly or sufficiently guide the claimant's hand if there was a problem. We do not think Mr Buist-Bainbridge would have done anything which was dangerous for patients. There is no evidence that he was unprofessional in that way.
111. In addition, the claimant said the incident took place in front of an Occupational Therapist as well as the other crew member. It seems unlikely Mr Buist-Bainbridge would risk doing something unsafe, odd and sexually intrusive in front of two other professionals. This would have been a risk to his career and if he lost his job, he risked deportation.
112. This claim is therefore not upheld.

Issue 3.1.4: On other occasions standing too close to the claimant and invading her personal space

113. The claimant did not give clear examples of these other occasions. The ambulance was small and crowded. It would be easy to misinterpret someone standing too close or brushing past. The evidence in this context was too vague.

114. The only actual example given (other than those the subject of other specific allegations) was the occasion of the drunk and homeless man, when Eliza Nagle was present. Our impression from that account is that it was simply another occasion when the ambulance was crowded which made the claimant feel uncomfortable. Ms Nagle did not mention anything untoward when she was interviewed during the investigation. In any event, it seems very unlikely again that Mr Buist-Bainbridge would press against the claimant in front of another work colleague.

115. If the claimant felt Mr Buist-Bainbridge did stand too close or even brush against her when passing, we accept this was unwanted. However, it was not conduct of a sexual nature. It was accidental because space in the ambulance was cramped.

116. This was therefore not an act of sexual harassment.

Issue 3.1.5: On 6 November 2021, saying to the claimant, 'Don't you care about me?' and when the claimant did not respond, then saying, 'Oh you just want your PAD document signed'.

117. The context of this exchange was a discussion about stabbing. We are not concerned about the claimant saying it happened on a date when Mr Buist-Bainbridge was not at work. She said there were several conversations about the risk of stabbing. She may have remembered the wrong date.

118. It is not clear exactly what the claimant alleges Mr Buist-Bainbridge said. In her February 2022 statement, she said it was 'Oh so you do care about me?'. In her claim form and witness statement, she said it was 'Don't you care about me?' The two formulations carry a slightly different nuance in our view. 'Oh so you do care about me' sounds more jovial and light-hearted. On balance, we find that is what was said, since it is what she put nearer the time in her February 2022 statement.

119. The comment was unwanted (the claimant initially reacted with silence) but there is nothing in the surrounding context to suggest it was conduct of a sexual nature. We have all previously heard such a remark made in a jokey and non-sexual way between work colleagues of any sex. Of course in some situations it could carry sexual connotations. But there is no evidence of that on this occasion. We were not told exactly what was said in the lead up to the remark, but it sounds like an attempt to lighten the mood while discussing a serious threat, which the claimant was also trying to do when she joked about whether Mr Buist-Bainbridge would sing to the patient.

120. This was therefore not conduct of a sexual nature and not an act of sexual harassment.

Issue 3.1.6: On 19 November 2021, saying to the claimant, 'You're like my slave. I should call you my slave. The only thing I'm missing is a whip'. And when the

claimant responded saying 'Keep your kinky thoughts to yourself', saying 'I am going to make you my slave and get a whip'

121. We gave this allegation a great deal of thought. We accept the claimant's evidence that there was a general conversation about racism earlier in the shift. We do not see why there would not be enough time to have such a conversation as Mr Buist-Bainbridge suggests. There was time for all the other little conversations we have referred to here.

122. The claimant was accurate in saying that the conversation was with another paramedic from New Zealand, that Mr Buist-Bainbridge used the term 'half caste' and that she suggested to the other paramedic that he call Mr Buist-Bainbridge 'Australian'. We do not find Mr Buist-Bainbridge's evidence credible that the claimant just happened to hear the term 'half caste' as she was passing. That seems an unlikely coincidence. Moreover, why would the two New Zealand paramedics be talking to each other using that term?

123. We therefore wondered whether, because he had earlier been talking about issues of race, Mr Buist-Bainbridge still had such issues on his mind, consciously or unconsciously, and whether he thought he was making a joke to the claimant. After all, they had been joking about such matters as going to Halloween parties as a sexy unicorn which had been shot in the head. Mr Buist-Bainbridge said he did not know the claimant well enough to make that kind of joke and from what he knew of the UK, it would be seen as extremely untoward.

124. We also had in mind that one of the first matters referred to by the claimant in December 2021 was the slave comment.

125. In the end, we have decided on the balance of probabilities that Mr Buist-Bainbridge did not make such a comment. This is because the claimant said he repeated it when back in the ambulance, where a witness, Emma Ballard, was present. Ms Ballard was interviewed during the investigation. She did not mention this incident. She said she did not witness any negative comments or name calling and she did not believe that was something Mr Buist-Bainbridge would ever do. We appreciate that Ms Ballard was interviewed some time later in March 2022 and also that she is apparently a good friend of Mr Buist-Bainbridge. Nevertheless, she does not give the slightest hint of anything potentially problematic, and goes out of her way to say she does not believe Mr Buist-Bainbridge would make any negative comments.

126. This claim is therefore not upheld.

Issue 3.1.7: On 19 November 2021, accusing the claimant of flirting with a patient who told the claimant he liked her, and slamming the ambulance door

127. We accept that Mr Buist-Bainbridge did tell the claimant that she should not be flirting with a patient. We do not find that is conduct of a sexual nature.

The patient was drunk and initiated the flirting with the claimant. Mr Buist-Bainbridge would be sensible to warn the claimant against responding.

128. If it was unwanted conduct of a sexual nature, we would say that Mr Buist-Bainbridge did not intend it to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her. Nor do we think it would be reasonable to have that effect.
129. We can imagine that in some contexts it would be conduct of a sexual nature to accuse a woman of flirting and moreover that it could violate the woman's dignity. However, we were not given sufficient detail of this incident or the wording of the alleged accusation to make such a finding in this case. This was about dealing with difficult patients, the patient had directly flirted with the claimant, and Mr Buist-Bainbridge was advising on the claimant's response.
130. We were also not given enough detail about the slamming of the ambulance door. This could be a misinterpretation of a door which is swung closed or it could have been slammed for a quite different reason.
131. We therefore do not find this to be an act of sexual harassment.

Issue 3.1.8: On 19 November 2021, repeatedly saying to the claimant that her reasons for not being in a relationship were selfish

132. Mr Buist-Bainbridge knew that the claimant was a single parent with a 6 year old child. We think it perfectly possible that there was further chat about her domestic circumstances. Work colleagues do chat even if they are busy, and there is evidence that there was chat on other occasions about other matters such as the Halloween costumes.
133. We find it perfectly credible that the other crewmate asked the claimant if she was seeing anyone and the conversation developed as described by the claimant, with her saying that she did not like sharing her bed and she did not want to waste her 20s in a relationship. We find it also credible that Mr Buist-Bainbridge, listening to the conversation, commented that the claimant's reasons were selfish.
134. Although the topic is relationships, we do not think the comment about it being selfish is conduct of a sexual nature.
135. The claimant told the tribunal in any event that she saw nothing wrong with Mr Buist-Bainbridge making this remark (though she did not like that he had repeated it) and she was not complaining about it.
136. This claim is therefore not upheld.

Issue 3.1.9: On 21 November 2021, making vulgar comments to the claimant such as, 'If you had sucked dick instead of fucking, then maybe you would not have had a child' and 'Clearly you are not very good at it'

137. We find that there was a certain amount of consensual friendly chat about the claimant's personal circumstances (amongst other topics). There was nothing wrong with that. We have already talked about this in relation to 'the selfish comments'.

138. There was also a level of conversation and language which the claimant was comfortable to join in with or even initiate. She was happy to talk about dressing as a 'sexy unicorn' which was shot in the head. She was happy to refer to a 'BBL' when asked about her body goals by another colleague. She chose to tell Mr Buist-Bainbridge about the Facebook comment 'You can suck my mil wood'. We are not suggesting there was anything wrong with any of this conversation, as opposed to 'the vulgar comment', which is clearly offensive in meaning and expression. We mention the earlier conversations only because we wondered whether the topic and language used in the alleged 'vulgar comment' was less surprising than it may seem, and therefore more plausible that it was said, albeit completely inappropriately.

139. Mr Buist-Bainbridge agreed there was a certain amount of jokey conversation eg about Halloween, but he said he considered this comment far too vulgar even to be a joke.

140. We also considered the new allegation about 'the tracheostomy incident'. The problem with the latter is that we were not given the date or the name of the crewmate. A further problem is that Mr Buist-Brainbridge says the claimant has never been to a tracheostomy patient with him. That is the sort of information which one would think was checkable, and therefore unlikely to be untrue. Also, the other incidents which the claimant had complained about were different in kind. They did not involve asking her for sex or oral sex. The 'touching' incidents were different in nature.

141. Another consideration is that the claimant had never mentioned the tracheostomy incident prior to the tribunal hearing. We do take into account, as we have already mentioned, that many women do not mention sexual harassment for some time; that they may not speak about all the incidents from the outset; that they might be embarrassed or have other inhibitions as the claimant describes; that finding witnesses may be problematic. However, it does not leave us with much to go on in this case. The claimant did not keep any contemporaneous diary or tell her GP or WhatsApp anyone about it as it happened.

142. Given the seriousness of the tracheostomy incident, all these factors lead us to the conclusion that on the balance of probabilities it did not happen.

143. This does not in itself mean that 'the vulgar comment' was never made, but again, we are not left with much to go on. The claimant did mention it at an early stage, ie in her 10 December 2021 statement, but it was not one of

the first two things she mentioned on 6 December 2021 despite the extreme language and despite referring to being called a slave, which she says happened the same day.

144. We refer to our overview of the case which we set out above before we addressed the individual allegations.

145. On the balance of probabilities, taking everything into account, we are therefore not satisfied that Mr Buist-Bainbridge did make these remarks. The claim regarding the vulgar comment is therefore not upheld.

Issue 3.1.10: On 21 November 2021, when the claimant was waiting for him to sign her off as having completed her placement, saying to her, 'I need to be careful not to write anything sexual in your PAD document'.

146. This allegation logically follows on from the previous. If Mr Buist-Bainbridge did not make 'the vulgar comment', it would have been random to make this comment. There is no external corroborating evidence. We therefore find on the balance of probabilities that this remark was not made and this claim is not upheld.

Issue 3.4: Not signing the claimant off as successfully completing her placement because she had rejected or submitted to the above conduct

147. We cannot sensibly consider this applying the two stage burden of proof because the explanation is intertwined with the facts. We therefore looked at it in the round.

148. Mr Buist-Bainbridge only completed the negative summary, marking that the claimant had not achieved acting in accordance with the HCPC Guidance, after Mr Bowler for the university took him up on the difference between his feedback email and the signed summary form which the claimant had submitted. We believe that up until that point, Mr Buist-Bainbridge was content to let the claimant submit the signed summary form. He was already irritated about being asked to rewrite entries for the lost PAD on the last day with a short deadline. It had taken him one and a half hours at home which he resented. The claimant then started asking him to sign the summary sheet when in his mind the placement was ended and he was about to go on holiday.

149. We would add as an aside at this point, that the WhatsApp messages do not suggest to us that the claimant was acting fraudulently. The problem was that the claimant was disorganised and anxious, and Mr Buist-Bainbridge's tone was dismissive and annoyed rather than supportive.

150. When Mr Bowler asked for feedback in an email, Mr Buist-Bainbridge was still annoyed. He replied that the claimant had been late on her first two shifts and on one shift with a colleague, and that she was very disorganised which

had led to him having to stay late after work by 1.5 hours. This all only got onto the summary form and led to the non-achieve marking because Mr Bowler wanted it formalised. Mr Buist-Bainbridge was not even aware of the implications of what he put on the form and whether it would automatically lead to the claimant failing the course. We believe it was a chain of events essentially arising from the fact that Mr Buist-Bainbridge was annoyed about the paperwork. We also know that he was strict about timekeeping and when asked about feedback, he mentioned this. As we have said, we think this all led to a non-achieve on the HCPC guidelines was just the result of Mr Bowler pointing out an inconsistency on something which Mr Buist-Bainbridge had not been going out of his way to record.

151. We would add that the only two complaints made by Mr Buist-Bainbridge on the forms concerned lateness and disorganisation over the final documents. All the PAD 2 competency entries were positive. There is no suggestion that him pointing out certain competencies had not been covered because they did not arise on call-outs was in any way objectionable.
152. We do think it a little unsympathetic for Mr Buist-Bainbridge to have complained of the claimant's disorganisation when he was aware of her ADHD and also aware that her PAD had been stolen. However, as we have said, Mr Buist-Bainbridge initially thought he was giving feedback only to the university; he was in a bad mood about the documentation; and at the end of the day, lateness is important when dealing with ambulance emergency call-outs.
153. Quite apart from this, the incidents described prior to the tribunal hearing and which are issues in this case do not suggest Mr Buist-Bainbridge made any link between the claimant accepting or rejecting his advances and whether she would be passed. That fear may have been in her own mind, but she does not say he ever made the link. There is not any evidence which would suggest that, even if any of the alleged incidents had happened, Mr Buist-Bainbridge would be vindictive enough to carry his behaviour over into his final marks for the claimant.
154. We have thought about the claimant's new allegation while being cross-examined that Mr Buist-Bainbridge had told her, 'I don't care how good you are or how nice you are to me, if you don't sleep with me, I am going to fail you'. We do not believe Mr Buist-Bainbridge said this for several reasons.
155. First, the claimant had not previously mentioned it. While we understand that genuine new allegations can sometimes emerge at a late stage in a sexual harassment case as we have already explained, in this instance paragraph 37 of the claim form alleges that Mr Buist-Bainbridge did not sign the claimant off because she had rejected his conduct. It is very surprising that this alleged remark was not put into the claim form at this point. Nor was it in the list of issues or in the claimant's witness statement.
156. Secondly, the type of language and the kind of sexual behaviour in the other allegations is not about 'sleeping' with Mr Buist-Bainbridge. He was not

asking her to sleep with him. He was, on her allegation, referring to and asking for other sexual acts, and indeed in cruder language. It seems out of register to us.

157. It may be that the claimant, looking back from the fact that Mr Buise-Bainbridge did not pass her, has convinced herself that that was the reason, and then that he might actually have said so. But in any event, for the reasons we have explained, we find he did not.
158. In conclusion, we do not find that the reason Mr Buist-Bainbridge failed to sign off the claimant was because she had submitted to or rejected his other conduct or because he refused to sleep with him.

Employment Judge Lewis

Dated: 27 January 2023

Judgment and Reasons sent to the parties on:

30/01/2023

For the Tribunal Office