



EMPLOYMENT TRIBUNALS

Claimant: Mr A E Ayodele

Respondent: The Greater Manchester Mental Health NHS Foundation Trust

Heard at: Manchester

On: 31 October 2022,
1 to 2 November 2022,
16 January 2023
(In Chambers)

Before: Employment Judge Ainscough
Dr Vahramian
Ms S Howarth

REPRESENTATION:

Claimant: In person

Respondent: Mr Dunn, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claim of direct race discrimination brought in accordance with Section 39 of the Equality Act 2010 is unsuccessful and is dismissed
2. The claim of harassment related to race brought in accordance with Section 40 of the Equality Act 2010 is unsuccessful and is dismissed.

REASONS

Introduction

1. The claimant was a student at Salford University on a Mental Health Nursing Course. As part of that course, he went on a number of placements at NHS Hospitals in order to gain practical experience. The claimant attended his course part time and when he wasn't on the course, he worked as a Nursing Assistant for the NHS.

2. The respondent provides mental health services to the people of Greater Manchester and in particular, provides wards where those with acute conditions can be admitted as in patients. The ward on which the claimant was placed for a period of four weeks from February 2021 to March 2021 was an all-female ward with approximately eight or nine patients.
3. The claimant who is black, complained that whilst on placement at a ward he was subject to unlawful race discrimination by way of direct discrimination or harassment contrary to the Equality Act of 2010.

Evidence

4. The Tribunal heard evidence from the claimant. The Tribunal also heard evidence from the claimant's supervisors Staff Nurse Victoria Howard and Advanced Practitioner Emma Bryant. The parties agreed a bundle of 322 pages. The Tribunal was also referred to a document out of a bundle prepared for the Preliminary Hearing on 31 August 2021.

Issues

5. The issues were agreed at a Preliminary Hearing before my colleague Employment Judge Ord on 22nd March 2022 as follows:

Direct Discrimination (Section 13 Equality Act 2010)

- (i) Did the respondents treat the claimant less favourably because of his race? The actions relied on as less favourable treatment are set out below.
- (ii) The claimant's **comparators** are

(a) With respect to the first respondent:

Another female, white student nurse who was on the Junction 17 Ward during the time of the claimant's placement. The claimant cannot remember her name. The claimant will say that she was treated differently and in a nice way and was allowed to do clinical work.

Other comparators are nursing students from Salford University, who were on other wards at Prestwich hospital. They were all white and female. There were no male student nurses. The claimant will say that they did not have the issues he complains of and they were allowed to do clinical work.

Alternatively, the claimant will rely on hypothetical comparators.

(b) With respect to the second respondent:

Other student nurses who were on his course. The claimant cannot remember any of their names.

Alternatively, the claimant will rely on hypothetical comparators.

Harassment (section 26 Equality Act 2010)

- (iii) Did the respondents do the things that are set out below?
- (iv) If so, was that unwanted conduct?
- (v) Was it related to race?
- (vi) Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
- (vii) If not, did it have that effect?
- (viii) Was it reasonable for the conduct to have had that effect taking account of the claimant's perception and the other circumstances of the case?

Incidents alleged and relied on by the claimant as constituting Direct Discrimination or Harassment in the alternative against the First Respondent

- (i) Not giving the claimant any induction when he started on the ward or at all. Emma Bryant (acting ward manager) and Victoria Howard (his supervisor) should have inducted him.
- (ii) Nobody showing or explaining the clinical work to the claimant. Victoria Howard should have organised this and allocated somebody to the claimant to mentor him. It resulted in him not being able to evidence having learnt about any clinical work, which was essential to his progression. He needed to log this in his PARE (Practice Assessment Record and Evaluation) document. The failure occurred throughout his placement.
- (iii) The claimant was only asked to do domestic duties and not given clinical duties. It was the responsibility of the three nurses in charge to find him clinical work. One was Victoria Howard, and another was Emma Bryant. The claimant cannot remember the name of the third nurse. It resulted in him not being able to evidence having done any clinical work, which was essential to his progression and needed to be logged in his PARE. The failure occurred throughout his placement.
- (iv) Emma Bryant declined a request from the claimant to take time off when he had a migraine brought on by dealing with a difficult patient on the ward. This was around 15 February 2021.
- (v) The claimant was denied access to the weekly ward round meetings with the doctor. They took place in a room opposite the bedroom of the patient who was aggressive to the claimant. The claimant was told by Emma Bryant not to go to the meetings because it would upset the patient. These meetings would take place once a week every Tuesday and consequently the claimant

missed out on all four of them and had nothing to put in his PARE log. The ward rounds were important to his progression.

- (vi) There was a shift handover at 7.00pm each day. As part of the clinical duties the claimant was supposed to be present and watch and learn from the handover. On one handover, Victoria Howard told him not to be present at the handover for no apparent reason. This was on 24 February 2021 at about 7.00pm.
- (vii) The claimant was excluded from a patient seclusion intervention by Victoria Howard and Emma Bryant. The intervention was conducted by the police and the clinical team and he should have experienced it as part of his training. Instead he was told by Victoria Howard and Emma Bryant to stay in a room with the other patients on his own. This was on 4 March 2021.
- (viii) The claimant was sent to the pharmacy, which is quite far away from Junction 17 Ward and told to collect medication and bring it back to the ward. The pharmacist told the claimant that he should not be doing that because it was a risk. Victoria Howard and Emma Bryant told him to go.
- (ix) The claimant took a sealed bag to the pharmacy which should have contained an authorisation signed by either Victoria Howard or Emma Bryant. Because it was sealed the claimant could not check inside it. On two occasions there was no authorisation inside and the claimant had to go back to get the authorisations from Victoria Howard and Emma Bryant. They just smiled when the claimant told them he needed the missing authorisations. They then sent him back again. The claimant thinks the first occurrence was about 10 February 2021 and the second occurrence was about 23 February 2021.
- (x) On the last day of his placement on 5 March 2021, Emma Bryant attempted to lock the claimant in the manager's office to write a statement about the incident that had occurred with the patient. He refused because it was an isolated area. Emma Bryant called the police and tried to have the claimant arrested. The police refused and did not come out. The claimant does not know what Emma Bryant said to the police. The claimant only found out about this during a later disciplinary meeting with Salford University.
- (xi) On 5 March 2021 Emma Bryant told the claimant to leave the hospital site at 2.00pm rather than at 7.00pm when the claimant's final shift was due to end.
- (xii) Emma Bryant made false accusations against the claimant regarding the incident on 5 March and complained about him to the University.
- (xiii) Emma Bryant and Victoria Howard falsified documents to support the accusations made and sent them to the University.

6. On 30 August 2022 the second respondent the University of Salford was removed as a respondent. The claim therefore was pursued against the first respondent only.
7. In addition, during the course of the evidence, the claimant confirmed that he was relying on a hypothetical comparator of a white student nurse.

Relevant Findings of Fact

Placement

8. The claimant was placed as a student on Griffin Ward at Prestwich Mental Health Hospital. The claimant's placement ran from 5 February 2021 until 5 March 2021. Griffin Ward comprises of approximately eight to nine beds offering acute mental health services for females between the ages of 18 to 25 years of age.
9. Kate Bowen, Staff Nurse was appointed as the claimant's mentor. Victoria Howard, Staff Nurse was appointed as the claimant's Practice Assessor.
10. The claimant was required to complete a PARE document (practice, assessment, record and evaluation) in order to provide evidence of his placement and complete assessments. The PARE document sets out learning objectives and students are required to complete that document during the placement. The PARE document is signed off by an assessor to confirm that those objectives have been completed.

Claimant's Induction

11. Kate Bowen was responsible for the claimant's induction on the ward. Emma Bryant saw Kate Bowen giving the claimant an induction in the lounge area of the ward on the first or second day of the claimant's placement.
12. In evidence the claimant admitted that he was late on his first day and as a result he sat down with Kate Bowen on the second day and discussed his learning objectives.
13. Each student is responsible for meeting the learning objectives set out in the PARE document. During an induction ward staff explain the routine of the ward and that it is for the student to join activities in order to experience them and evidence them in the PARE document.

Tasks

14. Two weeks into the claimant's placement Kate Bowen went off sick. Thereafter, Charlotte Goodall, a Team Leader, became the claimant's mentor. Prior to Charlotte Goodall becoming the claimant's mentor, Victoria Howard was the claimant's interim mentor and as a result the claimant was asked to join Victoria Howard on the night shift.
15. The claimant was asked to accompany patients when they left the ward for fresh air or cigarettes. The claimant was also asked to take Covid tests to the pharmacy during the pandemic. Emma Bryant gave evidence that

accompanying patients would amount to a clinical task because it gave the practitioner an opportunity to talk to the patient about their mental health.

16. The claimant was asked to assist with the dispensing of medication and complete paperwork. Victoria Howard said in evidence that she considered this to be a clinical task because the claimant was able to learn about the different medication and the use for it.
17. Victoria Howard also recalled during evidence that the claimant was asked to assist with completing a handover sheet which would be used by the next shift to understand the issues for each patient. Victoria Howard was clear that this amounted to a clinical task because it dealt with the medical aspects of the patient care. Victoria Howard also recalls that the claimant was asked to sit and observe a patient in a quiet room so that she would not use her mobile phone.
18. Partway through the claimant's placement he had a review of his assessment. During that review the claimant revealed that he would often be absent from the ward as a result of a personal health issue which required him to use the bathroom for longer periods of time. Following this disclosure, the qualified staff on the ward were made aware of the possibility of the claimant's prolonged absence.

Ward Rounds

19. There was a ward round meeting once a week between the medical staff and any other practitioners in the Quiet room. Each patient was seen every other week to discuss their care.
20. The Quiet room was, at the time of the claimant's placement, opposite the bedroom of patient A. Patient A would often exhibit psychotic and delusional behaviour in respect of men. As a result, any males that worked on the ward were asked not to use the toilet on the same corridor as the bedroom of patient A. In addition, the male practitioners were informed that if patient A became irate, they would not be responsible for checking on her. At the time of the claimant's placement, patient A was fixated on black men.
21. On 8 February 2021, the claimant attended the first ward round without any issue. On 15 February 2021, the claimant attended the ward round meeting but this caused upset and distress to patient A. In order to de-escalate the situation, Emma Bryant asked the claimant to leave the room and go to the lounge to sit with the other patients.
22. Later that day, as Emma Bryant was walking down the corridor to collect another patient for a ward round meeting, the claimant stopped Emma Bryant and asked why Kate Bowen was not on shift. The claimant was informed that Kate Bowen was had taken two weeks sick leave at short notice. The claimant then asked Emma Bryant who would replace Kate Bowen as his mentor and Emma Bryant did not have an answer. The claimant then asked Emma Bryant if he could go home before the end of his shift. Emma Bryant asked the claimant to stay until the end of his shift at 7pm. The claimant did not attend the third or fourth ward round meeting during his placement.

Handover

23. At the beginning and end of each shift there is a handover meeting. This meeting coincides with a cross over of shifts so that the practitioners can speak to one another about what has happened on the previous shift so that the oncoming practitioners are aware of any issues that might occur during their shift.
24. The claimant's placement took place during the pandemic. As a result, the practitioners followed the advice and guidance to keep socially distanced and to have minimal contact with other people.
25. On 24 February 2021 the claimant was asked to leave the handover meeting at the end of his shift. The claimant had been in attendance at the handover meeting at the beginning of his shift.

Patient Seclusion Intervention

26. Patient B was a patient who was sexually disinhibited and as a result, would often remove her clothing in public. When patient B was subsequently medicated and calmed down, she became extremely embarrassed about her behaviour. As a result, when patient B acted in this way, she was taken to a private room for seclusion in order to protect her privacy and dignity.
27. On 4 March 2021 patient B acted in such a way. The claimant was asked not to attend to patient B as he was a male student.
28. During patient B's seclusion, the claimant was asked to wait in the lounge with the other patients.

Pharmacy Visits

29. The claimant was asked by Victoria Howard and Emma Bryant to go to the pharmacy to collect patient medication. On two occasions, the claimant was unable to collect the medication because either Victoria Howard or Emma Bryant had not signed the paperwork authorising collection of the medication. This required the claimant to return to the ward to have the paperwork signed so that he could go back to the pharmacy and collect the medication.
30. Emma Bryant recalls that on one occasion she asked the claimant to go to the pharmacy and he asked if he could complete a university assignment before he did so. After approximately five minutes, the claimant had not finished his assignment and Emma Bryant asked him to stop what he was doing and go the pharmacy because the medication was needed prior to a patient going home. Emma Bryant recalls that the claimant logged off the computer and went to the pharmacy.

5 March 2021

31. On the last day of the claimant's placement on Griffin Ward, patient A became distressed about the claimant's presence on the ward. The claimant was witnessed shouting at patient A and holding the door to patient A's bedroom

shut so that patient A could not leave her bedroom. Emma Bryant asked the claimant to come away from patient A's door and wait in the clinic.

32. Emma Bryant spoke to the claimant and the claimant became upset. Emma Bryant asked the claimant to accompany her to the office. Emma Bryant asked the claimant to stay in the office whilst she found a colleague to witness the conversation between Emma Bryant and the claimant. The claimant said that he wanted to go back on to the ward. Emma Bryant returned to the office with a witness, Chloe Donnelly.
33. The claimant became upset when Emma Bryant asked him to finish his shift and go home. The claimant was told that before he finished, he had to produce a written statement about the incident with patient A. The claimant refused to do this and said he was going back to the ward to finish his shift. The claimant was asked to stay in a different office and complete the statement before leaving the ward.
34. Patient A called the Police to report the incident. The Police contacted the practitioners on the ward and when they were told that patient A was safe, they did not attend the ward.
35. Emma Bryant subsequently contacted the University to report the incident. As a result, the University instigated a fitness to practice investigation into the claimant's behaviour. Both Emma Bryant and Victoria Howard provided statements as part of that investigation.
36. The investigation panel concluded that the claimant should be subject to a finding of professional misconduct and professional unsuitability. There was also a finding that the claimant had committed Plagiarism. The claimant was suspended from his University course for a period of six months and given a final written warning.
37. The claimant chose to leave the course before the conclusion of the course.

Relevant Legal Principles

Discrimination

38. Discrimination against an employee is prohibited by section 39(2) Equality Act 2010:

“An employer (A) must not discriminate against an employee of A's (B) –

- (a) as to B's terms of employment;**
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;**
- (c) by dismissing B;**
- (d) by subjecting B to any other detriment.”**

39. Harassment during employment is prohibited by section 40(1)(a).

40. The protected characteristic of race is defined by section 9(1) as including colour, nationality or ethnic origins.

Direct Discrimination

41. The definition of direct discrimination appears in section 13 and so far as material reads as follows:

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

42. The concept of treating someone “less favourably” inherently requires some form of comparison, and section 23(1) provides that:

“On a comparison of cases for the purposes of section 13 ... there must be no material differences between the circumstances relating to each case”.

43. It is well established that where the treatment of which the claimant complains is not overtly because of race, the key question is the “reason why” the decision or action of the respondent was taken. This involves consideration of the mental processes of the individual responsible: see the decision of the Employment Appeal Tribunal in **Amnesty International v Ahmed [2009] IRLR 884** at paragraphs 31-37 and the authorities there discussed.

44. That case endorsed the approach taken by the House of Lords in **Nagarajan v London Reginal Transport (1999) IRLR 572**. In **Nagarajan** the House of Lords determined that a respondent may treat a claimant less favourably as a result of a subconscious intention and commented:

“All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. It is part of our make-up. Moreover we do not always recognise our own prejudice. Many people are unable or unwilling to admit even to themselves that actions of theirs may be (racially) motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant’s (race). After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not (race) was the reason why he acted as he did.”

Harassment

45. The definition of harassment appears in section 26 which so far as material reads as follows:

“(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**
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B...**

- (4) In deciding whether conduct has the effect referred to 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.
- (5) The relevant protected characteristics are ...race”.

Code of Practice

46. The Code of Practice on Employment issued by the Equality and Human Rights Commission on 6 April 2011, provides a detailed explanation of the legislation. The Tribunal must take into account any part of the code that is relevant to the issues in this case. In particular the Tribunal has considered:

- (a) paragraphs 3.11 – 3.16 – “because of a protected characteristic”.
- (b) paragraphs 7.6 – 7.11 – “harassment related to a protected characteristic”.

Burden of Proof

47. The burden of proof provision appears in section 136 and provides as follows:

- “(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 sub-section (2) does not apply if A shows that A did not contravene the provision”.

48. In **Hewage v Grampian Health Board [2012] ICR 1054** the Supreme Court approved guidance given by the Court of Appeal in **Igen Limited v Wong [2005] ICR 931**, as refined in **Madarassy v Nomura International PLC [2007] ICR 867** where Mummery LJ commented:

“In my judgment, the correct legal position is made plain in paragraphs 28 and 29 of the judgment in *Igen v Wong*:

“28...it is for the complainant to prove facts from which...the employment tribunal could conclude, in the absence of an adequate explanation, that the respondent committed an unlawful act of discrimination.”

49. Importantly, at paragraph 56, Mummery LJ held that the bare facts of a difference in status and a difference in treatment are not without more sufficient to amount to a prima facie case of unlawful discrimination.

50. In the case of **Qureshi v Victoria University of Manchester and another (2001) ICR 863** the Employment Appeals Tribunal warned against a Tribunal looking at a claim in a piecemeal fashion and commented:

“It was not however necessary for the Tribunal to ask itself in relation to each incident or item whether it was itself explicable on racial grounds’ or on other grounds. That is

a misapprehension about the nature and purpose of evidentiary facts. The function of the Tribunal is to find the primary facts from which they will be asked to draw inferences and then for the Tribunal to look at the totality of those facts (including the respondent's explanations) in order to see whether it is legitimate to infer that the acts or decisions complained of in the originating applications were on 'racial grounds.'

Submissions

Respondent's Submissions

51. The respondent submitted that the Tribunal should accept the evidence of Emma Bryant and Victoria Howard over that of the claimant. It was the respondent's contention that the claimant had been inconsistent on a number of matters. The respondent believed that the claimant had made a number of serious allegations but had not provided any evidence to prove the same.
52. It was the respondent's contention that whilst the claimant had identified a hypothetical comparator there had been no evidence to move the burden of proof to establish that the claimant had been subject to discrimination. The respondent submitted that on a number of occasions the claimant had conceded that he did not believe he had been subject to such treatment because of the protected characteristic of race.
53. The respondent reminded the Tribunal that the claimant had been subject to findings by a misconduct panel and the respondent's evidence should be preferred.

Claimant's Submissions

54. The claimant maintained the allegations that he made were true and he had been subject to harassment, prejudice and discrimination. The claimant maintained that just because he could not identify an actual comparator did not mean that he had not been treated less favourably than a hypothetical comparator.
55. It was the claimant's case that he had worked with the respondent Trust since 2014 and had always been professional.
56. The claimant asserted that he had always intended to leave the course because he had been attacked for speaking out. It was the claimant's position that he was not found guilty of Plagiarism but rather that he was asked to do additional study to account for the error with his paperwork.
57. The claimant maintained that the respondent's witnesses had submitted false documents and this had affected the outcome.
58. In addition, the claimant submitted that he had been ill with depression and this hadn't been taken into account.
59. The claimant asked the Tribunal to note that he had been severely financially affected by the outcome of the investigation and whilst he had tried to remedy his financial losses, by even travelling to Liverpool for a job, he had been unable to do so.

Discussion and Conclusions

60. The Tribunal has made findings of fact about each incident set out in the List of Issues entitled “Incidents alleged and relied on by the claimant as constituting direct discrimination or harassment in the alternative by the first respondent.”

Allegation One

61. The claimant complains that he did not have a “formal” induction. But this is not the same as having no induction at all.
62. The outcome of the grievance found that induction had been done because the claimant sat with Kate Bowen and went through his PARE document. This is corroborated by Emma Bryant in her witness statement in which she states that she saw the claimant and Kate Bowen in the lounge having an induction over the first couple of days to discuss the claimant’s learning objectives.
63. It was the claimant’s expectation that a formal induction would have allowed him to look at patient records and he would have been shown around the ward to meet everybody before starting his placement. In addition, the claimant contended that he should have had an opportunity to discuss his illness with his mentor.
64. The Tribunal has determined that the claimant did have an induction, but it was not as formal as the claimant would have liked. The claimant complained it did not conform to the National Medical Council’s standards, but there is no evidence of this. The Tribunal is of the view that the claimant wanted a comparable induction to those starting in a permanent position. The claimant had a permanent role as a Healthcare Assistant and no doubt received a more in-depth induction in that role.
65. The Tribunal accepts that Kate Bowen discussed learning objectives with the claimant, and this was sufficient for his four week placement.
66. Therefore, the Tribunal concludes that the first allegation is unsubstantiated.

Allegation Two

67. It is clear that when Kate Bowen went off sick at short notice, there was a gap in the mentoring of the claimant which the respondent attempted to plug by asking the claimant to shadow Victoria Howard on the night shift. However, it was Victoria Howard’s evidence that a night shift did not give the claimant the practical experience he needed because most of the patients were asleep, and incidents would rarely occur. Therefore, Victoria Howard sent the claimant back to the day shift and Charlotte Goodall was appointed as his mentor in Kate Bowen’s absence.
68. Emma Bryant was clear in her witness statement and during live evidence that it was for a placement student to make sure they completed the

objectives and to seek out clinical tasks because the qualified practitioners did not have time to do so.

69. It was the evidence of the respondent's witnesses that they found the claimant to be dis-interested. They recalled that the claimant was often seen on his phone or went missing from the ward. It was their view that the claimant wanted to be told what to do rather than being proactive in order to achieve his objectives.
70. Under cross examination the claimant said he had lots of experience and often clashed with the practitioners about how to treat the patients.
71. The Tribunal determines that there was an obligation on the claimant to seek out the experience he needed to meet his objectives. This was not a large ward, and the task would not be too onerous. The claimant's induction had given him guidance on how to do this and there appeared, from the examples given by the respondent's witnesses, plenty of opportunities to proactively observe.
72. Therefore, the Tribunal determines that the respondent did not fail to show or explain the clinical tasks to the claimant but rather the claimant failed to proactively seek out such work in order to achieve his objectives. This part of the claim is unsubstantiated.

Allegation Three

73. It was the claimant's evidence that he was treated as an errand boy by Victoria Howard and Emma Bryant and that the duties he was given to do were domestic duties. The Tribunal heard evidence that the claimant was often asked to take patients out of the ward for fresh air or cigarettes. The respondent maintains that this task was an excellent opportunity to have a one to one with patients and find out about their mental health. The respondent's witnesses were clear that this was a clinical task. Evidence was also given that this task was performed by the Advance Practitioner, the Consultant and sometimes the Pharmacist.
74. The respondent's witnesses also provided evidence that the completion of paperwork would have allowed the claimant to understand the reasons the medications were dispensed, as would the collection of medication from the pharmacy.
75. It is clear to the Tribunal that the claimant had different expectations about what he should be doing on a placement. As the claimant already worked as a Nursing Assistant in his ordinary employment, it is possible that the claimant took a view that he did not want to be doing similar tasks whilst on placement. However, the qualified staff had a view that these tasks were appropriate for a student to undertake in order to learn about the patients on the ward.
76. The Tribunal accepts the evidence of the respondent's witnesses that the tasks the claimant was asked to perform were not domestic tasks but rather did amount to clinical tasks with the patients on the ward. The Tribunal therefore determines that this part of the claim is unsubstantiated.

Allegation Five

77. The claimant complains that he missed out on ward round meetings during his placement. Ward round meetings took place each week and so it is the claimant's contention that he missed four such meetings. However, the Tribunal notes from the claimant's evidence that he attended the first ward round meeting, was asked to leave the second ward round meeting and didn't attend the third or fourth ward round meeting.
78. The Tribunal notes that patient A had a particular problem with men and at that time, black men, and so it is understandable that she would be distressed by the claimant's presence. The Tribunal understood from Emma Bryant's evidence that the only way to de-escalate the situation with patient A was to remove the claimant. The Tribunal accepts the evidence of the respondent's witnesses that they never specifically excluded the claimant from any ward rounds save for on the second occasion when patient A became upset. The Tribunal notes that whilst the claimant originally contended that he had missed all four, he only said he had missed three in cross examination and in fact only said he had missed two in his grievance. The Tribunal concludes that the claimant was only excluded part way through the second ward round because of the distress of patient A.
79. The Tribunal determines that as a result the claimant was subject to a detriment for the purposes of the direct discrimination claim and unwanted conduct for the purposes of the harassment claim.
80. However, the Tribunal also determines that, in light of the evidence given by Emma Bryant and Victoria Howard, it is more likely than not that any male who was in the ward round meeting would cause patient A distress and would be asked to leave. Therefore, the claimant was not treated less favourably than a white male student would have been.
81. The Tribunal concludes that the unwanted conduct was related to both the claimant's gender and race. However, whilst the Tribunal heard evidence from the claimant that he was upset and distressed by the removal from the ward round meeting, the Tribunal does not conclude that it was reasonable for the claimant to feel this way.
82. The claimant was on notice that patient A had a problem with men and at that particular time, black men. The claimant was an experienced student who had practical experience of mental health issues. It is unlikely that this was the first time the claimant had been subject to some form of personal abuse by a patient with mental health difficulties. The Tribunal determines that it was not reasonable for the claimant to be offended by the removal from the ward round meeting as he should have understood the nature of patient A's difficulties.

Allegation Four

83. Emma Bryant disputed that the claimant ever mentioned that he had a migraine when he asked if he could finish his shift. It was Emma Bryant's evidence in cross examination that she suffers from migraines and had the claimant mentioned migraine she would not have allowed him to drive home.
84. In cross examination the claimant admitted that he did not think Emma Bryant refused the claimant's request to go home because of his race. It was the claimant's main complaint that Emma Bryant was not listening to him.
85. The Tribunal prefers the evidence of Emma Bryant. She is a nurse and had a migraine been mentioned to her it is more likely than not that she would not have ignored such a medical condition. The Tribunal determines that the claimant wanted to go home because his mentor had left for the day, and he did not want to work without her. The Tribunal concludes that had the claimant mentioned a migraine it is likely that he would have been allowed to go home on public transport as there would be no benefit in keeping a practitioner on the ward with a migraine. The Tribunal therefore concludes that this complaint is unsubstantiated.

Allegation Six

86. Victoria Howard gave evidence that it was more important for the claimant to be in attendance at the handover at the beginning of his shift than it was at the handover at the end of his shift. Victoria Howard's evidence was that the claimant needed to understand what was happening with the patients before he helped care for them. Victoria Howard took the view that there was no need for a student to be at the handover at the end of a shift and particularly so when numbers had to be limited because of the Covid pandemic.
87. In fact, at paragraph 13 of the claimant's witness statement he recalls that he was reluctant to attend the handover because he was in fear of catching Covid because often the meetings would violate social distancing guidelines and endangered his health. The Tribunal therefore has difficulty in understanding why the claimant was upset that he was not allowed to attend the evening handover.
88. Victoria Howard admitted asking the claimant to leave, and therefore the Tribunal concludes that the claimant was asked to leave on 24 February 2021. However, the Tribunal does not conclude that the same amounted to less favourable or unwanted treatment. It is more likely than not that a white student would have been asked to leave because the purpose of asking the claimant to leave was because it was not necessary for a student to attend the handover at the end of the shift when the practitioners were trying to restrict numbers during the Covid pandemic. Whilst the conduct may have been unwanted by the claimant, it was not related to his race.

Allegation Seven

89. The Tribunal found the evidence from the claimant about the patient seclusion complaint confusing. The claimant gave evidence about one incident involving patient B and then gave evidence about the other incident which occurred on the 5 March 2021 involving patient A. For this allegation, the Tribunal has considered the evidence given about patient B and in particular the fact that she was sexually disinhibited.
90. Victoria Howard was clear that in such circumstances a male student or practitioner would not be allowed in the room in order to protect patient B's privacy and dignity. Emma Bryant's evidence was that for the same reason, the claimant was asked to wait in the lounge with the other patients. The claimant admitted in cross examination that this was the first all-female ward upon which he had worked and therefore, it is possible that this was the first time that this had happened to the claimant. The Tribunal concludes that because the claimant recalls that the incident took place in the evening and the Police attended and Emma Bryant does not work past 6pm, the claimant must be mistaken about the timing of the incident.
91. The Tribunal determines that the claimant was excluded from the patient's seclusion intervention and asked to stay in the lounge with the other patients. However, the Tribunal concludes that this was not less favourable treatment because any male, including a white male, would have been excluded in a similar way to preserve patient B's privacy and dignity. Whilst this was unwanted conduct for the claimant, it was not related to his race because he was excluded on the grounds that he was a male student.

Allegations Eight and Nine

92. The respondent's witnesses admitted that the claimant was sent to the pharmacy and whilst they did not specifically recall if he was sent to the pharmacy without the correct paperwork, they conceded that this may have happened due to human error.
93. The respondent's witnesses also gave evidence that all staff including the consultant went to the pharmacy to collect medication for the patients. The respondent's witnesses disputed that the pharmacists visited the ward every thirty minutes and instead, gave evidence that the pharmacists visited the ward once a week to make sure that the medication of long term patients was up to date.
94. It was the claimant's complaint that by being sent to the pharmacy he was missing other valuable experiences on the ward. However, it was the evidence of both Emma Bryant and Victoria Howard that attendance at the pharmacy could be a clinical task because the claimant would need to understand the nature of the medication being requested and the reason why it was being requested.
95. Emma Bryant gave evidence that it would not have been a risk to the claimant's career if he had attended at the pharmacy and received medication

without the correct paperwork. Instead, Emma Bryant gave evidence that it was her responsibility as the practitioner sending the student to the pharmacy.

96. The Tribunal concludes that the claimant was not subject to less favourable treatment because, it heard evidence that others were sent to the pharmacy including the Consultant. It is therefore more likely than not that a white student would also have been sent to the pharmacy.
97. The claimant may have not wanted to go to the pharmacy, but the Tribunal does not conclude that the unwanted treatment was related to his race. It was an essential part of the practitioner's care of the patients that the correct medication was collected and provided to the patients at the right time and in particular, when they were going home. It was clear from the respondent's witnesses that this was a clinical task because the claimant would need to understand the nature of the medication that was being prescribed. The Tribunal therefore concludes that this complaint is unsubstantiated.

Allegations Ten and Eleven

98. The claimant admitted during evidence in chief that he had used the toilet on the same corridor as patient A's bedroom on 5 March 2021. The claimant knew about the staff toilet that was outside the ward, but that the toilet on the ward was nearer. The claimant did not provide evidence in chief that there was a call to the Police to report the incident.
99. It was Emma Bryant's evidence that she found the claimant holding patient A's door shut and shouting at patient A. It was also Emma Bryant's evidence that it was in fact patient A who called the Police. Emma Bryant was clear in her evidence that when she spoke to the claimant in the clinic, he called her a racist and this was the reason why she wanted a witness to join them so that the conversation could be witnessed.
100. It was clear to the Tribunal that Emma Bryant had asked the claimant to stay in the office, but the Tribunal does not conclude that Emma Bryant attempted to lock the claimant in the office. The claimant told Emma Bryant that he wanted to return to the ward. The Tribunal concludes that it is more likely than not that in her position of authority, Emma Bryant told the claimant he was not to leave the office and go back to the ward. This is not the same as the claimant being held in the office against his will.
101. The fact that Emma Bryant allowed the claimant to move to a different office provided he wrote a statement before he left, is evidence of the fact that there was not an attempt to hold him against his will. The most Emma Bryant did was ask the claimant to write the statement before he was allowed to leave his shift early. The Tribunal notes that under cross examination the claimant admitted that he was not treated in this way because of his race.
102. The Tribunal concludes that the claimant was not treated less favourably. The hypothetical comparator is a white student. The correct comparator would be a white student who treated patient A in the same way. The Tribunal is of the view that the claimant has not proven facts to show that a white student would have been treated any differently to the claimant. Emma

Bryant was concerned that the claimant had locked patient A in her bedroom and was shouting at her. Had a white student done this it is more likely than not that they would have been treated in the same way as the claimant.

103. The conduct was unwanted. However, the Tribunal concludes that this was not related to the claimant's race but rather to his behaviour towards patient A. Patient A clearly had complex needs and had any student or member of staff attempted to lock her in her room and shout at her, it is more likely than not that they too would have been asked to leave the ward.

Allegations Twelve and Thirteen

104. Emma Bryant gave evidence that she filled in all the necessary paperwork following the incident on 5 March 2021. It was this incident that was investigated by the University. Emma Bryant had an obligation to complete the paperwork in light of the distress caused to patient A and the involvement of the Police.
105. Neither Emma Bryant nor Victoria Howard made the complaint of Plagiarism. This was something that was initiated by the University and the respondent's staff were not involved.
106. The claimant did not provide any evidence that the allegations made by Emma Bryant or Victoria Howard were false and further no evidence that there had been a falsification of documents.
107. Therefore, the Tribunal determines that this complaint is unsubstantiated.

Conclusion

108. The Tribunal preferred the evidence of Emma Bryant and Victoria Howard to that of the claimant where the evidence of the witnesses differed. The Tribunal determines that the claimant had high expectations of his placement that the respondent was unable to meet. However, this does not mean that the claimant was subject to unwanted conduct or treated less favourably because of his race.
109. Ironically, the respondent witnesses had high expectations of the claimant in light of the previous record of his performance in placements. It is clear that neither party met each other's expectations, and the placement was unsuccessful.
110. The Tribunal does not conclude however, that the failings in the placement were unlawful race discrimination or harassment and the claims are dismissed.

Employment Judge Ainscough
24 April 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON
25 April 2023

FOR THE TRIBUNAL OFFICE

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