



EMPLOYMENT TRIBUNALS

Claimant

Mr Ahmed Nooh

v

Respondent

Frimley Health NHS Foundation Trust

Heard at:

Reading Employment Tribunal

On:

11,12,13,14 April and 2 May 2023

Before:

Employment Judge Forde

Members:

Ms J Stewart

Dr C Whitehouse

Appearances

For the Claimant: Unrepresented, in person

For the Respondent: Ms C Van Den Berg Barrister

RESERVED JUDGMENT

1. The claimant's claim of wrongful dismissal and notice pursuant to s.86 ERA 1996 is unfounded and dismissed;
2. The claimant's claim of direct discrimination on the grounds of race and religion or belief pursuant to s.13 EqA 2010 is unfounded and dismissed;
3. The claimant's claim of less favourable treatment contrary to s.3(1) the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 is unfounded and dismissed;
4. The claimant's claim of harassment under s.26(1) EqA 2010 is unfounded and dismissed.

REASONS

1. By way of a claim form dated 22 September 2021 the claimant pursues claims of unfair dismissal, direct discrimination on the basis of race, religion or belief, notice pay, breach of his terms and conditions of employment and racial harassment. He also complains that he has suffered a detriment by virtue of him being a fixed term worker. All claims were denied by the respondent.

Procedure

2. The hearing was listed over five days. The first four days were in person with Ms Stewart was sitting remotely. The last day of hearing was for the

panel to reach a decision on the issues to be determined and was conducted in the absence of the parties.

3. A number of issues were discussed at the beginning of the hearing. First, in relation to witness evidence, the tribunal had a bundle of four statements namely of the claimant, Mr Mohamad Alruby, Mr Gary Hay, Ms Anne Deans. At the outset of the hearing, the Judge raised his concern with the claimant that Mr Alruby's statement appeared to be irrelevant to the issues that appeared to be determined by the tribunal in that, the statement appeared to not provide any commentary on any of the facts or issues to be determined by the Tribunal. Instead, it contained a series of commentaries that the witness set out in relation to what he perceived to be conduct on the part of the respondent, which he had received and which he believed mirrored the claimant's experience.
4. Ms Van Den Berg agreed citing the fact that Mr Alruby had never worked for the respondent. The claimant stated that his reliance on the statement was to the extent that Mr Alruby had suffered similar treatment to the kind the claimant complained of in his claim. Clearly, this did not provide a justification for inclusion of his witness statement in evidence. However, it was decided that the statement would remain in evidence and that the Tribunal would place it whatever weight it deemed appropriate on its contents.
5. A second issue arose in relation to the list of issues. The claimant applied to expand the list of issues. This application was refused by the Judge on the basis that it appeared that the proposed changes sought by the claimant would introduce issues germane to a claim of unfair dismissal which the claimant had been barred from pursuing during the case management phase of the claim. This application was refused because it was considered to amount to an unfairness on the respondent who would have to prepare to meet the further allegations which it was unprepared for. To have granted the application would have amounted to a prejudice against the respondent. Further, it was not, in the view of the tribunal, in accordance with Rule 2 of the tribunal's rules (Overriding Objective) to allow the application on the basis that the very late application would have given rise to the more time and expense being expended by the respondent and in terms of the tribunal's resources if the application was granted. Accordingly, the issues were to remain as previously directed.
6. Third, the claimant applied to change the identity of the comparator to his fixed term worker claim. However, this application was refused also on the basis that it was in the judges view in accordance with the overriding objective (rule 2 of the Employment Tribunal 2013 rules) and in the interest of justice to do so as it would have introduced and placed the parties on a different footing with regards to the presentation of their cases. Specifically, would have required the respondent to have reformulated its response, and also to have reconsider its witness evidence. It was the Tribunals view that it would be and was a particularly late stage to seek such an amendment and because of the prejudice likely to have been caused to the respondent the application was refused.

7. The Tribunal had before it, a bundle of 821 pages which was considered carefully in advance of hearing evidence and to it was taken to from time to time. Any reference to the contents to the bundle within the judgment would appear from time to time.
8. The 4 days allotted to the hearing was enough to deal with evidence. The tribunal sat in the absence of the parties on a further day in order to deliberate its decision on all issues. This meant that this judgment had to be reserved as there was not enough time available to do in the presence of the parties.
9. Further, the parties were permitted to provide their submissions in writing and directions were issued to ensure that any written submissions were provided in advance of the tribunal reconvening to deliberate this judgment.

The Issues

The issues to be determined had been decided by an employment judge together the parties during the case management phase of the case. Those issues are set in full below as follows:

Wrongful dismissal

10. Statutory notice pay.
 - 10.1 Was the claimant continuously employed for one month or more?
 - 10.2 If so, was the claimant entitled to statutory notice pay?
11. Contractual notice pay.
 - 11.1 Did the respondent breach a term or condition of the claimant's contract of employment in dismissing the employee? The claimant alleges that the respondent failed to follow its own disciplinary policy and procedure and there was no process carried out before the claimant was summarily dismissed.
 - 11.2 If so, was the claimant entitled to notice pay under the contract of employment?

Direct discrimination (race and/or religion (under Section 13 of The Equality Act 2010))

12. Has the claimant established at the following conduct occurred as alleged.
 - 12.1 The respondent summarily terminated the claimant's employment on 4 June 2021;
 - 12.2 The respondent failed to arrange induction for the claimant and the provision of necessary tools for the claimant's fund to take his duties and access to the respondent's IT and Clinical systems on 17 May 2021

- 12.3 The respondent failed to offer the claimant who was employed as a consultant, a suitable office/desk space to base himself and undertake the necessary clinical administration duties were not providing clinical care from 17 May 2021 to 4 June 2021;
- 12.4 Dr Anne Deans failed to offer the claimant at least one administration session per week from 17 May 2021 to 4 June 2021;
- 12.5 Dr Anne Deans failed to appreciate the claimant's seniority and his contributions to the surface at the senior level when she insisted to oversee his work from the 17 May 2021 to the 4 June 2021;
- 12.6 The respondent failed to appreciate that the claimant was employed as a consultant by forcing him to do registrar duties from 17 May 2021 to 4 June 2021;
- 12.7 The respondent failed to offer the claimant a fixed rota/timetable with the hassle of unpredictability and changing his duties on very short or no notice at all from 17 May 2021 to 4 June 2021
- 12.8 The respondent failed to appreciate the claimant's flexibility, willingness to help and act as a team player from 17 May 2021 to 4 June 2021;
- 12.9 The respondent poorly planned the claimant's duties and activities across four hospitals meaning he would have to travel up 45 minutes between two hospitals on the same day, with no time to have lunch or go to the toilet from 17 May 2021 to 4 June 2021;
- 12.10 The respondent failed to offer the claimant the necessary IT systems access from 17 May 2021 to 4 June 2021;
- 12.11 The respondent forced the claimant to use log in details of other staff members from 17 May 2021 to 4 June 2021;
- 12.12 The respondent failed to appropriately process the claimant's time sheets from 21 May 2021 to 4 June 2021;
- 12.13 The respondent make comments such as "I am a bit concerned" without providing the claimant the opportunity to provide his side of events or relevant statements from 17 May 2021 to 4 June 2021;
- 12.14 Dr Anne Deans listened to rumours and false allegations while failing to listen to the claimant's side from the 17 May 2021 to 4 June 2021;
- 12.15 Dr Anne Deans fails to treat the claimant with respect and dignity when she summarily dismissed him, phoning the recruitment agency and voicing concerns on 4 June 2021;
- 12.16 The respondent reported the claimant to his GMC-nominated Responsible Officer on 12 June 2021 for the first time;
- 12.17 The respondent reported the claimant to his GMC-nominated Responsible Officer ("RO") on 19 June 2021 for the second time

regarding a decision to do an emergency caesarean on 19 June 2021;

- 12.18 The respondent failed to forward the claimant the four hospital notes of the patient referred to when the respondent on 19 June 2021 reported the claimant to his GMC-nominated "RO" for the second time;
- 12.19 Ms Nicky Heyworth emailed the claimant's GMC-nominated "RO" with four allegations/concerns on 25 June 2021 (reporting the claimant for the third time);
- 12.20 The respondent falsely alleged that in the meeting of 1800pm on 4 June 2021 with Dr Anne Deans that it was explained (for the first time) to the claimant, the respondent would no longer require his services and that the claimant threatened that "he would ensure that Dr Deans was ruined and taken to the GMC if she pursued these dales allegations".
- 12.21 Ms Nicky Heyworth falsely alleged that there was no colleague feedback to include on 25 June 2021;
- 12.22 Dr Deans failed to respond to the claimant's request to have a meeting with the claimant to put things right from 17 May 2021 to 4 June 2021;
- 12.23 Dr Deans failed to appreciate that the claimant had done almost 30 caesarean sections without a single fault or complication from 17 May 2021 to 4 June 2021.
- 12.24 The respondent raised false, baseless and non-substantiated concerns/ allegations against the claimant and failed to take into consideration the other side of the story or give him the opportunity to defend himself on 19 or 20 May 2021;
- 12.25 Dr Deans failed to give the claimant the support he was looking for on 19 and 20 May and changed the plan of management on his third or fourth day of employment;
- 12.26 Dr Deans criticised that the claimant's plan of managing a patient and asked him "could you not take a vulval punch biopsy?" and "how many vulval punch biopsy's have you taken? By the way, a junior registrar or even more junior doctor could ease them and comfortably take a vulval punch biopsy; and everyday mind the procedure" on 19 or 20 May 2021;
- 12.27 The respondent failed to respond to the claimant's request to send hospital notes and an incident form from 5 July 2021 to date;
- 12.28 The respondent failed to follow due governs processes in dealing with an incident report from 20 May 2021 to date.

- 12.29 The respondent failed to respond to the claimant's request dated 5 July 2021 to disclose the name of staff that it alleged the claimant was rude to;
- 12.30 The respondent made false allegations that the claimant had taken an early decision to do an emergency caesarean section on two women from 3 June 2021.
- 12.31 5.30 the respondent failed to say the truth regarding the incident of a lady who transferred out from the Day Obstetric unit for a scan after attending for reduced foetal movement and in alleging that the claimant did not document a single thing and went home on the 3 June 2021;
- 12.32 The respondent failed to say the truth regarding the incident of a difficult patient seen by him at the colposcopy clinic and made a false allegation that he did not instil much confidence with the ladies on 4 June 2021;
- 12.33 Dr Deans failed to give him the support he was looking for and undermine him when he would change his plan of management for the difficult case in the colposcopy clinic then kicked him out of the clinic on the 2 June 2021. Dr Deans appearing from nowhere on that day, made a discourteous intrusion into the colposcopy clinic and decides to reverse the claimant's decision and return the patient immediately back to the clinic saying "I will have a go" after she, indecently, kicked the claimant out the clinic;
- 12.34 The respondent failed to say the truth regarding the claimant running an outpatient hysteroscopy clinic on 24 May 2021 and accused him of being rude while failed to show any evidence to support its allegation.
- 12.35 The respondent raised a further false allegation on 25 June 2021 but there were two junior doctors that alleged that the claimant had made undermining comments about the management of payments which made them uncomfortable while the respondent failed to show any evidence to support its allegation;
- 12.36 The respondent failed to appropriately investigate its concerns and allegations against the claimant and failed to implement its own disciplinary policy and procedures from 17 May 2021 to date;
- 12.37 The respondent was subject to the claimant to the same ill treatment and harassment and unfair discrimination which Dr Karim previously suffered;
13. If the treatment occurred as alleged was less it favourable treatment?
14. If so, was the less favourable treatment because of the claimant's race and/or religion; specifically:
 - 14.1 Who is the relevant comparator? The claimant rises on a hypothetical white British consultant in respect of his race discrimination claim and

non-Muslim constant in respect of his religion/belief discrimination claim.

- 14.2 Are there facts, from which the tribunal can conclude, in the absence of any other explanation, that the respondent discriminated against the claimant?
- 14.3 If so, has the respondent established an explanation for the treatment which is nothing whatsoever to do with the claimant's race and/or religion?
- 14.4 It is to be noted that the claims are not mutually exclusive and the claimant must therefore show that each act of discrimination occurred because of race and/or religion.

Harassment because of race and/or religion under section 26 of the Equality act 2010.

15. Did the respondent subject the claimant to unwanted conduct which related to his race and/or religion as set out above?
16. If so, did that conduct have the purpose of:
 - 16.1 Violating the claimant's dignity or;
 - 16.2 Creating a hostile, degrading, humiliating or offensive environment for the claimant?
17. If not, did that conduct have the effect of:
 - 17.1 Violating the claimant's dignity, or;
 - 17.2 Creating a hostile, degrading, humiliating or offensive environment for the claimant?
18. If so, was it reasonable for the conduct to have that effect? In determining which, the tribunal should consider objectively whether the claimant has been "hypersensitive" to any such alleged acts of harassment.

Fixed term employees

19. Has the claimant established that the following conducts occurred as alleged?
 - 19.1 The respondent repeats those allegations set out above in addition the below;
 - 19.2 The respondent issued the claimant with an ID badge with the words "**AGENCY**" on 17 May 2021;
 - 19.3 The respondent failed to investigate the claimant's grievance as per the grievance policy and failed to respond to the claimant's proposals for assessment from 5 June 2021 to date.

- 19.4 If the treatment occurred as alleged that this amount to less favourable treatment via being subjected to a detriment by any act, or deliberate failure to act of the respondent?
20. If so, was the less favourable treatment on the grounds of the claimant's fixed term status; more specifically:
- 20.1 Who is the relevant comparator? The claimant's position is that Ms Deed was the appropriate comparator.
- 20.2 If so, can the respondent show that the less favourable treatment is justified or on objective grounds.
21. Details of the issues in relation to remedy have not been repeated here for reasons that are obvious.
22. At the end of this judgment each of the above issues are determined with an explanation as to how that determination was reached.

Findings of fact

23. The following findings of fact are agreed or are findings reached by the Tribunal on the balance of probabilities. Where there has been a dispute as to the evidence, we have set out how the Tribunal reached its decisions.
24. The claimant is an experienced consultant practicing in the field of obstetric and gynaecological medicine. The respondent in an NHS Trust and at all times material for this claim, the claimant provided his services to NHS Trust's via a medical services agent, Medecho. Medecho arranged for the claimant to take up a three-month fixed term locum contract with the respondent starting from the 15 May 2021 to 3 August 2021. However, the claimant's contract was terminated by Dr Anne Deans ("Ms Deans"), Head of Service of the respondent's Obstetrics and Gynaecology department on the 4 June 2021 in circumstances which are contentious between the parties and lie at the heart of this claim. The reasons given for the termination of the claimant's contract form the subject of the matter to be heard before the tribunal. From the evidence presented to the tribunal, it was clear that the majority of the claimant's concerns that form his claim and which are ostensibly raised against the respondent were in fact raised against Ms Deans.
25. In short, the respondent says that it dismissed the claimant lawfully and principally due to Ms Deans forming the view that it had serious concerns around the claimant's practice and behaviour whilst discharging his contractual duties. On the other hand, the claimant says that the respondent acted unlawfully by discriminating against him and did so on the basis of the protected characteristics detailed above.
26. The Tribunal heard evidence from the claimant, Mr Hay who is the independent investigator tasked with investigating the grievance raised by the claimant and about which more is said later in the judgment, and lastly Mr Deans. At this point, it is also important to say something about the evidence the Tribunal heard.

27. The claimant gave evidence first and did so for around one day. The Tribunal found at times the claimant was combative and at points difficult to follow or that he felt addressed the points raising questions to him by Ms Van Den Berg on behalf of the respondent. On more than one occasion the claimant had to be reminded that he was to answer questions he was asked as opposed to asking a question in response to those questions or providing submissions. At times, he was intemperate when responding to questions and particularly so when referring to the patient concerns relied upon by the respondent when terminating his engagement with it. At times he was dismissive. However, the Tribunal considered his performance as a witness in light of the fact that he was an unrepresented litigant in person dealing with a long hearing, during the month of Ramadan (the claimant is a practicing, adherent Muslim) and having to deal with a series of questions which centred upon his conduct and professional competence.
28. Mr Hay gave evidence next and was asked questions by the claimant related to his role as the investigator of the concerns raised by the claimant as well as dealing with the issues arising from that investigation. The Tribunal found Mr Hay to be an honest and straightforward witness whose evidence was reliable and could be relied upon. Where appropriate, Mr Hay was able to take the Tribunal to relevant documentary evidence contained within the bundle which supported his findings or the evidence that he was providing in response to questions posed to him by the claimant.
29. Lastly, Ms Deans gave evidence and did so over one day. Again, the claimant asked her a series of questions which focused mainly on the respondent's response and the claimant's claim and then her witness statement. At times, the claimant was intemperate, and interruptive when either addressing Ms Deans or when she was giving her answers.
30. Further, the claimant was at times prone to repeating questions or was unfocused on the issues that the tribunal had to determine whilst cross examining Ms Deans. Consequently, and after some discussion and direction, the claimant was able to conclude his cross examination on Ms Deans after one and half days. However, it should be noted that the claimant had estimated that it would take him approximately three to four days to cross examine Ms Deans and it was only after it was made clear that the claimant would not be able to ask Ms Deans multiple questions covering the same issues or facts arising from first her witness statement and then the respondent's response that the claimant was able to focus his attention as to the ground that he needed to cover so far to his claim was concerned.
31. The Tribunal found Ms Deans to be an honest, reliable and straightforward witness in most if not all issues. In general, her answers were thorough, well explained and detailed. It was evident that Ms Deans' propensity towards thoroughness and detail in her answers annoyed the claimant who would at times demonstrate intemperate and inappropriate conduct towards her, frequently interrupting her during the course of her answer and on one occasion commenting: "Dr Deans you just go on and on and on". On this occasion the claimant was warned as to his conduct. While the claimant apologised it remained the case that he continued to interrupt Ms Deans evidence and make submissions in response to answers given by her with

the concomitant result that Ms Deans' evidence was, in the view of the Tribunal, unnecessarily prolonged but not by her. The Tribunal accepted the evidence of Ms Deans which was critical to the findings of facts it reached.

Background

32. On 19 May 2021, three days into the claimant's engagement, a concern was raised as regards the claimant's performance by the senior sister and the rapid access clinic at Wexham Park hospital. That concern arose due to complaints that had been raised by two female patients.
33. In respect of the first patient, it had been reported that the claimant had been rude to the patient, refused to answer her questions and then was observed to have been dismissive to the point that he was prepared to discuss the extent to his experience and qualifications. The second patient was a woman with suspected ovarian cancer. Again, similar criticisms were leveled at the claimant that he was insensitive, rude, and unprepared to answer her questions.
34. In respect of patient one, the Tribunal noted the following passage of the claimant's cross examination:

Ms Van Den Berg: "You saw a patient with suspected vulval disease?"

Claimant: "Bipolar, very rude, very uncivilised. Some hospitals say zero tolerance of physical and verbal abuse. Patient was mad. She had bipolar. She was very rude and had an obsession that she had vulval disease. She had no signs which would lead me to such a conclusion."

I could see from the notes that she had raised the same issue with the same doctor who she had seen the year before, so I referred her to her. She saw a matron who was white British, and the patient complained which was not acceptable. Ms Deans then met the patient and that undermined me. Staff started to make malicious comments."

Ms Van Den Berg: "Patient's mother had vulval cancer".

Claimant: "Not caused by heredity. Caused by sexual intercourse."

Ms Van Den Berg: "But mother had vulval cancer."

Claimant: "Can't remember."

Ms Van Den Berg: "Patient told you?"

Claimant: "Can't remember?"

Ms Vandenberg: "Hence why patient was anxious."

Claimant: "Probably yes."

Ms Van Den Berg: “When a patient is anxious you need to treat them with extra care or empathy.”

Claimant: “If she tells me or if it’s in the notes but cannot remember and cannot remember if in the notes.”

35. In respect of the second patient, a concern arose around the claimant’s communication of her suspected cancer diagnosis to her. The patient became upset following an interaction with the claimant and her level of upset precipitated the respondent’s staff calling Ms Deans who consequently made contact with the patient, examined her herself and determined that she did not in fact have cancer. Ms Deans spoke to the claimant on the telephone about both patients and their concerns on the 20 May 2021. During the course of this conversation, and in the claimant’s words, he sought to allay any concerns raised with him and instead sought to highlight his concerns as to the behavior of the individual patients. In evidence, Ms Deans expressed the view that she felt that the claimant had been dismissive in respects of the concerns that she raised with him. Ms Deans made clear that she did not criticise the claimant’s plan for managing the patient or suggest that vulval punch biopsy was a minor procedure. However, due to the concerns raised by the patient Ms Deans made the decision to invite the patient back for a biopsy given the patient’s anxiety.
36. Ms Deans’ said that two nurses witnessed the claimant’s behaviour as described by Ms Deans in her statement as having taken place on the 24 May 2021. In addition, Ms Deans described complaint from two junior doctors that the claimant had made undermining comments about the management of patients and made those doctors feel uncomfortable. This information came to Ms Deans attention following an investigation by the gynaecology matron who questioned the members of staff involved and thereafter escalated as a number of concerns arising from their investigation to Ms Deans.
37. On the 2 June 2021 the claimant was unable to identify a patient’s cervix when examining her in the colposcopy clinic and made the decision to put her under general anaesthetic theatre list treated instead of under local anaesthetic in the clinic. It is undisputed that the patient was considerably obese. However, there was a difference of view between the claimant and Ms Deans as to whether or not the administration of general anaesthetic would have been a risk to her health. This resulted in Ms Deans changing the patient’s treatment plan; she arranged for the patient to see the colposcopy nurse who successfully managed the procedure.
38. On the 3 June 2021 the claimant worked on the labour ward. He arranged two female patients to have a caesarean section. In response to his decision, the labour ward coordinator sent an email to Ms Deans in the following terms.

“Today Mr Nooh was the labour ward consultant for the morning. On the ward round he told two women he was concerned for their babies and that he would give them a caesarean section. Neither myself or the reg felt the CTG’s were bad to need a section. One lady had a normal delivery a short time later and the other is currently ongoing in labour. Both women are to speak with me as they were

both upset about having spoke with them and that he did not give them an explanation for his decision”.

39. In evidence and in response to what the labour ward coordinator said, the claimant denied the allegations. First, he made clear that he was polite to all patients and secondly made the point that it was his practice to finish consultations by asking his patients whether or not they had any questions for him. In order to respond, the claimant felt that he needed sight of the relevant hospital records of the two patients concerned in order to respond. It should be set out at this point that the Tribunal disagreed with the claimant’s view in this regard as the evidence that the claimant was seeking to obtain and rely upon was evidence of a specialist medical matron not relevant to the issues to be determined by the Tribunal.
40. Also on the 3 June, the claimant saw a pregnant patient who had been transferred from the outpatient Obstetric Day Assessment unit for an ultrasound because the midwives were unable to find a foetal heartbeat. The labour ward coordinator had complained to Ms Deans by email that evening when the claimant had undertaken a scan but had not documented anything prior to the handover to another consultant. In evidence, the claimant stated that after consultation with the transferring consultant, he was told that he did not need to document what he had found. He said that this conversation had been witnessed by the Labour Ward Coordinator.
41. During the course of his cross examination, it was put to the claimant that there was a guidance as to the steps to be taken in respect of stillbirth which included obtaining a second opinion as soon as practically possible in respect of care and advice together with a discussion with the claimant in an empathetic way in respect of next steps in the patient’s treatment plan. In response, the claimant explained in evidence that as he was coming to the end of his shift, he decided that he would undertake a scan and explain to the patient what he was looking for, namely a heartbeat, and that he was arranging for a second scan to be undertaken.
42. His reason for not informing the patient of his initial finding, namely that there had been an intrauterine death of the foetus, was because he wanted to “give her the benefit of the doubt” ie, he wanted to await a further review by a second consultant and consequently handed over the patient to the transferring consultant. He explained that the reason why he had not written up his notes was that because Ms Furniss, the second consultant had told him that she would write up the notes. Consequently, the claimant accepts that he should have written up his notes and has apologised for his failure to do so.
43. It is the respondent’s case that notwithstanding the reasons put forward by the claimant, that the claimant’s conduct on 3 June 2021 amounted to a clear breach of the Good Medical Practice guidelines on documenting patient care. Specifically, it is said to be particularly important that each scan is documented by a separate consultant so there can be no confusion as to whether two scans were done.
44. On 4 June, the matron raised concerns with Ms Deans that the claimant did not instill confidence in patients and that his practice did not “appear current”.

45. In cross examination, the claimant was asked whether he agreed that the email sent by the matron (see page 506 of the bundle) was in respect of repeated concerns raised by staff and for clinical reasons. The claimant confirmed that he accepted that Ms Deans concerns were related to clinical reasons and the concerns raised to him by the medical staff.
46. Ms Deans explained that the respondent receives around two to three complaints from patients per month from a catchment area of approximately 900,000 patients, half of which are believed to be women. In the three weeks covering the duration of the claimant's engagement, six patients made complaints about the care they had received from and on the 19 May, two women complained during the course of just one clinic, which she considered to be highly unusual.
47. The following day, 4 June 2021 the claimant received information from his agency that his employment with the respondent was to come to an end. The agency had been notified by the Trusts temporary staffing unit that following concerns raised by staff to Ms Deans, that it was her intention that the claimant's employment would be brought to an end. Ms Deans had sent an email to the respondents temporary staffing unit on the 4 June 2021 at 11:24.
48. The claimant received a request to meet Ms Deans later that day which he did. Following a conversation between the two, witnessed by another consultant Mr Beynon, the claimant's engagement was terminated.
49. There is a dispute between Ms Deans and the claimant as to whether or not the claimant was aggressive and threatening during the course of that conversation. It was put to the claimant that during the course of the meeting he was repeatedly rude and that he did not like it when he felt that his clinical competence was being questioned by a number of members of staff. In response, the claimant stated that he felt that the criticism being leveled at him was "destructive criticism" and that he learnt from constructive criticism. Further, he accepted that he had become angry during the course of the meeting which he attributed to the fact that he had been informed earlier that day that his employment was to come to an end. When asked whether or not he intended to take action against the respondent if the concerns raised with him by Ms Deans were shared with the General Medical Council (GMC) the claimant responded that he warned Ms Deans that he would take legal action against her and the trust based on what he considered to be unjustified clinical concerns raised in respect of him and threatened to report Ms Deans to the GMC or stating that he would "ruin" her.
50. Because of the dispute between the claimant and Ms Deans as to how the claimant behaved during the course of the meeting, it is helpful to the tribunal to have a contemporaneous record of the meeting in the form of Mr Beynon's note which is set out below as follows:

"At approximately 5:15pm on 4 June I was contacted by Ms Deans who requested my presents at a meeting with Mr Nooh agency locum consultant – as she was about to terminate him employment.

Ms Deans advised Mr Nooh that there had been complaints regarding his performance in the colposcopy clinic and in his interactions with patients. Mr Noor was angry and advised Ms Deans that he held her responsible for undermining him and that he felt victimised by her.

Mr Nooh challenged Ms Deans that if she were to undermine his reputation then he would retaliate with legal action. His voice was raised and was clearly very angry and his demeanour was intimidating. He felt that as his employment was terminated, his reputation with his medical agency would be besmirched.

Ms Deans thanked him for his hard work during the time of his employment and the meeting was terminated as Mr Nooh left the room.”

51. The claimant accepted that his voice was loud during the meeting. When he was asked whether or not he agreed that it was an inappropriate way to discuss the matters raised during the course of the meeting, the claimant responded that it was Ms Deans intention that the meeting was a difficult and a humiliating one for him. He pointed out that she did not invite HR and made the further point that this amounted to a failure the respondent's disciplinary procedures.
52. Ms Van Den Berg put to the claimant that the disciplinary procedure he was referring to, namely the respondent's Disciplinary Policy and Procedure (see page 165 of the bundle) applied to all permanent staff who had been confirmed in post which was not. In response to this question, the claimant stated that he did not accept that it did not apply to him as a temporary staff or locum.
53. The conclusion of the meeting on the 4 June 2021 the claimant was provided notice of termination with immediate effect. In evidence, and in a manner consistent with the respondent's case could throughout, Ms Deans confirmed that the claimant's engagement was terminated on the grounds of serious capability concerns arising from her reasonable belief that the claimant had been unable to perform his duties and responsibilities as a locum consultant in obstetrics and gynecology to the required standard. During the three weeks in which he had been engaged by the respondent, there had been a number of complaints from both the staff and patients about him and in addition, Ms Deans felt that the claimant presented a safety risk by continuing to work the respondent.
54. On the 5 July 2021 the claimant submitted a grievance to the respondent. The grievance was investigated by Mr Hay who gave evidence to the Tribunal. It should be noted that the respondent's grievance policy applies only to employees of the respondent whereas its Harassment and Bullying policy applies to all grades of staff. It was on this basis that the respondent agreed to investigate the claimant's allegations. Mr Hay's grievance investigation covered three areas namely: (1) that the claimant's termination of engagement with the Trust was unfair, (2) that Ms Deans treated him less favorably on the grounds of his locum status and/or his Egyptian origin and/or his Muslim faith and, (3) that the claimant had been discriminated against by the trust and its work on the basis of his locum status.

55. Mr Hay found the decision to terminate the claimant's engagement was based on genuine concerns around the claimant's capability and following the raising of a number of complaints (see above). Second, that there was no evidence of a less favorable treatment as alleged by the claimant on the grounds of his locum status and/or his Egyptian origin and/or his Muslim faith. Third, that there was no evidence to support the allegation the claimant was treated less favourably on the grounds of his locum status.
56. In cross examination, Mr Hay confirmed that he had undertaken a number of investigations and prepared reports on behalf of the respondent. When challenged as to whether or not he was an appropriate person to undertake the investigation on the basis that he did not have any clinical knowledge, Mr Hay confirmed that he had not been asked to investigate clinical concerns and therefore was not offering views on a clinical opinion and that he was not required to do so because of the terms of reference for his investigation. Mr Hay was challenged as to whether or not he had undertaken the investigation and provided his report in circumstances where he was in conflict with his ongoing commercial relationship with the respondent, Mr Hay responded that he was an investigator, independently engaged that he had on occasion upheld grievances. He felt that his previous engagements had no bearing on the outcomes that were contained in his report.
57. Ms Deans gave evidence after Mr Hay. In addition to issues identified above, Ms Deans made a number of further factual observations which require mention.
58. First, Ms Deans explained that where the respondent has serious concerns around the practice and behaviour of a consultant it is under a duty to report it. The Tribunal was shown evidence within the bundle that the respondent's medical director, Mr Tim Ho called the respondent's Employee Liaison Officer, Michael Cotton to discuss the concerns raised and Mr Cotton's advice was to share this information with the claimant's Responsible Officer. In addition, Mr Cotton expressed his view that the allegations required a formal referral to the GMC due to the threats said to have been made to Ms Deans, in serious breach of the Good Medical Practice Guidance.
59. Second, Ms Deans refuted the claimant's allegation that there was no colleague feedback to include within a report, relying on the fact that this was in fact a true reflection of the state of affairs.
60. Third, Ms Deans refutes on behalf of the respondent the claimant's assertion that the respondent had failed to investigate his grievance in accordance with the grievance policy or respond to his proposals for settlement. Fourthly, and in evidence, Ms Deans confirmed that she had discovered that the claimant had previously been erased from the GMC register from February 2021 to March 2017. After a review of the outcome letter Ms Deans became aware that the allegations made at the fitness practice hearing in 2009 related to that erasure were similar to those made against the claimant whilst he was at the respondent namely that he was hostile to colleagues, dismissive of their concerns, did not discuss his plan of management with patients and did not make an entry on the patients' medical records and overall, did not act in the best interest of the patients with his actions falling below the standard of a

reasonably competent locum consultant. Specifically, in her statement, Ms Deans states: “although I cannot comment on this process, as I was not involved, it is worrying that Mr Nooh’s attitude and actions seem to remain the same as prior to the erasure.”

Relevant Law

61. The law relevant to the claims the claimant pursues is set as follows:

Notice pay

62. Section 86 of the Employment Rights Act 1996 (ERA 1996) provides that:

“86 Rights of employer and employee to minimum notice.

- (1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—
 - (a) is not less than one week’s notice if his period of continuous employment is less than two years,
 - (b) is not less than one week’s notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and
 - (c) is not less than twelve weeks’ notice if his period of continuous employment is twelve years or more.
- (2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week.

Direct discrimination

63. Section 13 of the Equality Act 2010 (“EqA”) provides:

“13 Direct discrimination

- (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.

Harassment related to race / religion – s. 26 EqA 2010

64. Section 26 of the EqA provides:

“26 Harassment

- (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 in subsection (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—
 - age;
 - disability;
 - gender reassignment;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.

Fixed-term Employee Regulations

65. Regulation 1(2) of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (“the FTW Regulations”) provides:

“permanent employee” means an employee who is not employed under a fixed-term contract, and any reference to “permanent employment” shall be construed accordingly;

66. Regulation 2 of the Regulations provides that:

“2.— Comparable employees

- (1) For the purposes of these Regulations, an employee is a comparable permanent employee in relation to a fixed-term employee if, at the time when the treatment that is alleged to be less favourable to the fixed-term employee takes place,
 - (a) both employees are—
 - (i) employed by the same employer, and
 - (ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification and skills; and
 - (b) the permanent employee works or is based at the same establishment as the fixed-term employee or, where there is no comparable permanent employee working or based at that establishment who satisfies the requirements of sub-paragraph (a), works or is based at a different establishment and satisfies those requirements.

67. Regulation 3 provides:

“3.— Less favourable treatment of fixed-term employees

- (1) A fixed-term employee has the right not to be treated by his employer less favourably than the employer treats a comparable permanent employee—
 - (a) as regards the terms of his contract; or
 - (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.
- (2) Subject to paragraphs (3) and (4), the right conferred by paragraph (1) includes in particular the right of the fixed-term employee in question not to be treated less favourably than the employer treats a comparable permanent employee in relation to—
 - (a) any period of service qualification relating to any particular condition of service,
 - (b) the opportunity to receive training, or
 - (c) the opportunity to secure any permanent position in the establishment.
- (3) The right conferred by paragraph (1) applies only if—
 - (a) the treatment is on the ground that the employee is a fixed-term employee, and
 - (b) the treatment is not justified on objective grounds.
- (4) Paragraph (3)(b) is subject to regulation 4.

4.— Objective justification

- (1) Where a fixed-term employee is treated by his employer less favourably than the employer treats a comparable permanent employee as regards any term of his contract, the treatment in question shall be regarded for the purposes of regulation 3(3)(b) as justified on objective grounds if the terms of the fixed-term employee's contract of employment, taken as a whole, are at least as favourable as the terms of the comparable permanent employee's contract of employment.
- (2) Paragraph (1) is without prejudice to the generality of regulation 3(3)(b).”

Submissions and initial findings

68. Both parties provided submissions which were lengthy and detailed. For that reason, there are not summarised or copied here. Instead, the submissions relevant to the decisions reached by the tribunal are provided as they provide a guide a guide to the tribunal’s reasoning.
69. It was submitted by Ms Van Den Berg on behalf of the respondent, and accepted by the tribunal that they key to any discrimination claim is the causal link between the treatment alleged by the claimant that they have suffered at the hand of the respondent and there are protected characteristic or status of the claimant. In order words, it is one thing to say that the claimant had been the subject of differential, unfair or unreasonable

treatment at the hands of the respondent. But it is for the claimant to not only prove that the conduct occurred but that was linked to a protected characteristic.

70. The above point is clarified by s.136 EqA which provides that the burden of disproving whether a particular act was discriminatory or not will pass to a respondent once the claimant has established that the facts at play have established that discrimination was their cause in the absence of any other reason. As will be seen, the tribunal has found that in each and every instance of alleged direct discrimination the claimant has failed to discharge this burden because it considers that the issues raised by the claimant in this claim which arose due to legitimate concerns that the respondent had around the claimant's conduct or his clinical practice.

Harassment claims.

71. For the same reasons as submitted on behalf of the respondent in respect of the claimant's discrimination claims, it was submitted by Ms Van Den Berg that unless the claimant was able to show that there was a causal link between the alleged treatment and the protected characteristics his claim of harassment pursuant to section 26 of the Equality Act 2010 must fail.
72. As will be seen, the tribunal was unable to find that the claimant was subjected to harassment for the reasons stated. This is for the same reason as was the case in his direct discrimination claims namely that he was unable to prove that the acts he complained of were acts related to a protected characteristic.

Fixed term working claim.

73. Ms Van Den Berg submitted that the claimant had selected Ms Deans as his actual comparative for the purposes of his fixed term working claim. The tribunal heard evidence from Ms Deans that she had been the Chief of Service in Obstetrics and Gynecology since 2019. As part of her role, Ms Deans oversees the department and was responsible for correct clinical conduct within the department. She also line manages consultants. She occasionally undertakes clinics on an ad hoc basis, but this does not make up the majority of her work.
74. In contrast, the tribunal heard and accepted the evidence from the claimant that his day-to-day work was consisted mainly of clinic work. In evidence, he stated that he was working in clinics full time and the tribunal accepted this evidence, supported by the fact that it was reflected by his job plan and Rota.
75. Ms Van Den Berg submitted that the claimant and Ms Deans were not undertaking work of the same or broadly similar nature. Therefore, it would follow that in accordance with the leading case of Matthews and others v Kent and Medway towns fire authority and others [2006] ICR 365, HL the tribunal was being called upon to assess whether or not the work was the same or broadly similar or whether particular weight should be given to the extent to which the work of the two groups are in fact the same and the importance of that work to the enterprise as a whole.

76. As part of her submission, Ms Van Den Berg correctly drew the tribunal's attention to the judgement of Baroness Hale in Matthews and, specifically, the importance of the extent to which the work being performed by the two groups in question is "exactly the same" and the extent to which shared work is important to the enterprise as a whole.
77. At the start of the hearing the claimant applied to change the identity of his comparator. His application was rejected. The tribunal accept that if it is the case the criteria as set out in Matthews (see above) then the claim must fail.
78. The tribunal accepts the evidence of both the claimant and Ms Deans. Both witnesses confirm that Ms Deans undertook a role which was incomparable to that of the claimant. Accordingly, the tribunal finds, on the balance of probabilities that Ms Deans is not an eligible comparator as defined within Regulation 2 of the FTW.
79. It follows that this claim must fail and the tribunal finds as such. This is because the tribunal found that the work that the claimant did could not be said to be the same or similar to Ms Deans. The two had very different roles with very different elements of work inherent to them.

Notice pay.

80. In her submissions, Ms Van Den Berg stated that the correct statutory notice minimum period applied pursuant to the claimant's contract. Section 86 of the Employment Rights Act 1996 provides that no notice pay is due where an employee has been employed for less than a month.
81. There is no dispute that the claimant was engaged by the respondent for no more than 3 weeks and the tribunal finds this to have been the case. Given this and applying the law and specifically s.86 ERA1996 the tribunal finds that the claimant's claim in respect of notice pay fails as he was engaged by the respondent for less than a month.

Factual allegations

82. For the reasons set out below, the tribunal has found against the claimant in all aspects. In respect of every allegation set out, the tribunal properly considered all of the issues and claims by the claimant. The following reasoning is applied:

The respondent summarily terminated claimant's employment on the 4 June 2021.

83. The Tribunal finds that the respondent terminated the claimant's contract because of serious concerns about his clinical practice and behaviour towards patients and staff, concerns with the tribunal found were based upon a reasonable opinion formed following a reasonable investigation of the concerns presented to Ms Deans by the clinical staff concerned.
84. Specifically, the tribunal find that it was open to Ms Deans to find that the claimant had been rude to a patient who was anxious about the possibility of Vulval cancer, a second patient with suspected ovarian cancer, to nurses and junior doctors within the clinical team. . In addition, the tribunal accepts

Ms Deans evidence he had concerns about the claimant's clinical competence arising from her view that the claimant's placement of an obese patient on the general anastatic list was inappropriate and possibly unsafe. Further, tribunal find that Ms Deans was entitled to find that the claimant had been rude and dismissive towards two patients who had been listed for caesarean surgery and that in respect to a third patient he had acted in clear breach of the Good Medical Practice guidelines in failing to document patient care in respect of a patient whose baby had died in utero. The fact that the claimant accepted in evidence before the tribunal that his actions here did indeed breach the Good Medical Practice guidelines it must follow that Ms Deans' concern here was justified.

85. Moreover, the tribunal accepts the evidence of Ms Deans that in her experience the number of complaints received in respect of the claimant far outweighed the normal run of complaints the trust received in respect of its obstetrics and gynecology department and in totality that Ms Deans was entitled to have serious concerns about the claimant's conduct and clinical capability that it was appropriate for her to terminate the claimant's engagement without notice in the way that she did.
86. Moreover, the tribunal finds on the balance of probabilities that the claimant was at times during his interactions with Ms Deans dismissive, rude and aggressive such that she could consider the relationship between the two of them to have been undermined to the extent that it was not possible for him to continue in his role. Because the tribunal has reached this finding it is not necessary to consider whether the claimant suffered discrimination in the way that he alleges because he has failed to show that the treatment that he received was due to any of the protected characteristics that he relies upon. In other words, the reason for the conduct of which he complains of was due to his conduct or practice which the tribunal accepts was such that it was reasonable for Ms Deans or the respondent to act in the way that it did towards the claimant.

The respondent failed to arrange an induction for the claimant in the prevision of the necessary tools for claimant to undertake his duties and access to the respondents IT and finical systems on the 17 May 2017.

87. The tribunal find that this allegation is not proven. The tribunal accepts the evidence so far as it relates to this allegation specifically, the tribunal finds that the respondent took adequate and appropriate steps during the course of the claimant's induction.

The respondent failed to offer the claimant, who was employed as a consultant, a suitable office/desk space to base himself and undertake the necessary clinical administration duties when not providing clinical care from the 17 May 2021 to the 4 June 2021.

88. The tribunal finds that this allegation is not proven. In particular, the tribunal accepts the evidence of Ms Deans that the respondent operated a hot desk system. Therefore, it would not have been possible for the claimant to have been provided his own room as he claims.

Dr Anne Deans failed to offer the claimant as least one administration session per week from the 17 May 2021 to the 4 June 2021.

89. The claimant said that the tribunal accepts the evidence that Ms Deans paid the claimant for all admin hours that he put on his time sheet. Accordingly, the tribunal finds that the claimant was paid for admin time. In addition, the tribunal accepts Ms Deans' evidence that the claimant was allowed time to undertake his admin. It follows that the tribunal finds this allegation to be not proven.

Dr Anne Deans failed to appreciate the claimant's seniority and his contribution to the service at the senior level when she insisted to oversee his work from 17 May 2021 to 4 June 2021.

90. The tribunal finds that Ms Deans oversaw some of the claimant's work and did so because he was a new starter and therefore unfamiliar with the respondent's local protocols and procedures and given the circumstances, it was entirely appropriate for Ms Deans to do so.

The respondent failed to appreciate that the claimant was employed as consultant by forcing him to do register level duties from 17 May 2021 to 4 June 2021.

91. The tribunal finds that this allegation is not proven. The tribunal accepts the evidence of Ms Deans that the claimant was required to do work which would ordinarily form part of his duties as consultant. While it may well have been the case that from time to time the claimant may have believed that the work he was doing was beneath his standing as a consultant the tribunal does not agree with him that this amounted to him being forced by Ms Deans to undertake registrar level duties.

The respondent failed to offer the claimant a fixed Rota/timetable with the hassle of unpredictability and change his duties on very short notice or no notice at all from 17 May 2021 to 4 June 2021.

92. The tribunal finds this allegation unproven on the basis that the evidence presented to it, it was found that the respondent changed the claimant's rota twice during his engagement and that was due to issues beyond its control.

The respondent failed to appreciate the claimant's flexibility, willingness to help and acts as a team player from 17 May 2021 to June 2021.

93. The tribunal find that this allegation is not proven on the facts presented to it.

The respondent poorly planned the claimant's duties and activities across four hospitals meaning he would have to travel 45 minutes between two hospitals on the same day, with no time to have lunch or go to the toilet from 17 May 2021 to 4 June 2021.

94. The claimant accepts the evidence of Ms Deans that the claimant was paid for all travel time. Further, the claimant's time sheet for his first week

suggests that he only travelled between sites once and took 30 to 60 minutes breaks every day.

The respondent failed to offer the claimant the necessary IT systems from 17 May 2021 to 4 June 2021.

95. The tribunal finds this allegation not proven on the basis that the tribunal has found that the respondent was provided with adequate IT systems access.

The respondent forced the claimant to use login details of other staff members from 17 May 2021 to 4 June 2021.

96. The tribunal finds this allegation to be proven . it was accepted by Ms Deans that she provided her login details to the claimant so that he could log on to the respondent's IT system. However, the tribunal does not find that this allegation amounts to anything other than a simple and straightforward administrative task which enabled the claimant to have access to the relevant IT data base so that he could perform his duties. The claimant has not shown that this was conduct which was capable of amounting a treatment arising from a protected characteristic.

The respondent failed for appropriately process the claimant's time sheets from 21 May 2021 to 4 June 2021.

97. The tribunal find that this allegation is unproven on the basis that the tribunal finds the reason why the claimant's time sheet was processed late was due to the claimant submitting his time sheet late to his agency and due to no fault of the respondent.

The respondent made comments such as "I'm a bit concerned" without providing the claimant the opportunity to provide a side of events or relevant statement from 17 May 2021 to 4 June 2021.

The tribunal finds that Ms Deans was entitled to have concerns with regards with the claimant's performance and capability. She was entitled to raise any concerns with the claimant in light of her findings which the tribunal finds were reached on a reasonable basis having undertaken a reasonable investigation of what had happened in all instances.

98. During the course of his cross examination with Ms Van Den Berg, the claimant was able to explain to the tribunal the extent to which he was given an opportunity to provide to Ms Deans a response to the concerns that she around his practice and interactions with staff and patients. Whilst it is accepted by the tribunal that this was the last conversation that the two had with regards to the claimant's performance, the tribunal finds that Ms Deans spoke to the claimant on the phone several times throughout his engagement in order to hear what he had to say about matters that had arisen. Therefore this allegation is not proven.

Dr Anne Deans listened to rumors and false allegations while failing to listen to the claimant side from 17 May 2021 to 4 June 2021.

99. This allegation was not proven. The tribunal's finding is predicated on the basis that the claimant was unable to set out any cogent or credible evidence to support his contention that rumors, or false allegations were circulating about him and that Ms Deans had listened to them.

Dr Anne Deans failed to treat the claimant with respect and dignity when she summarily dismissed him, phoning the recruitment agency and voicing concerns on 4 June 2021.

100. As outlined above, Ms Deans spoke to the claimant's recruitment agency in advance of speaking to the claimant to inform them of the termination of his engagement. Whilst this was a regrettable chain of events in that the claimant heard of the termination of engagement first from a third party and not from Ms Deans, it is the tribunal's finding that this does not amount to a failure to treat the claimant with the respect or dignity or less favourable treatment. Accordingly, this allegation falls to be unfounded.

The respondent reported to the claimant and his GMC nominated Responsible Officer on the 12 June 2021 for the first time.

101. This allegation is unproven on the basis that the tribunal finds the respondent reported the claimant to his responsible officer whilst on the 25 June 2021.

The respondent reported the claimant to his GMC nominated Responsible Officer ("RO") on 19 June 2021 for the second time regarding the decision to do an emergency cesarean on 19 June 2021.

102. Again, this allegation is unproven on the basis that the tribunal finds that only one report was made to the claimant's RO being that would be the one on the 25 June 2021.

The respondent failed to forward the claimant's four hospital notes off the patient referred to when the respondent on 19 June 2021 reports to the claimant to his GMC nominated "RO" for the second time.

103. The tribunal finds this allegation unproven on the basis that the respondent clearly had no obligation to send the claimant patient notes which are confidential.

Ms Nicky Heyworth emailed the claimant's GMC nominated "RO" with four allegations/concerns on 25 June 2021 (reporting the claimant for the third time).

104. The tribunal finds that the report that it made to the claimant's RO on 25 June 2021 to have been the only report that it made. The tribunal accepts the evidence of Ms Deans that this report was made following advice and guidance from the respondent's Employment Liaison Officer. The tribunal accepts that the decision to make the report was based on reasonable grounds namely the concerns that were presented to Ms Deans and was in line with the Good Medical practice. Accordingly, the tribunal finds this allegation to be unfounded.

The respondent falsely alleged that in the meeting of 18:00pm on 4 June 2021 with Dr Anne Deans that it was explained (for the first time) to the claimant that the respondent would no longer require services and that “he would ensure that Dr Deans was ruined and taken to the GMC if she pursued these false allegations”.

105. There was a clear conflict of evidence in regard to what was to have been said by the claimant in this meeting. The tribunal finds that this conflict is resolved by Mr Beynon’s note of the meeting which is referred to earlier in this judgment. That note records the claimant as being angry he challenged Ms Deans to the extent that were she to undermine his reputation then he would retaliate with legal action. Mr Beynon stated: “his voice was raised, and he was clearly very angry and his demeanor was intimidating”.
106. In evidence, the claimant accepted that he “warned” Ms Deans that he would retaliate with legal action if she did not keep the concerns that she had raised with him during the course of the meeting confidential.
107. Weighing up the evidence in the round, the tribunal finds that the claimant did threaten Ms Deans by way of reporting her to the GMC if she were to inform it of her concerns about the claimant. It is noted by the tribunal that in evidence the claimant said that he was particularly concerned about a report to the GMC given his previous report given his previous erasure and difficulties as is the claimant’s admission that he was, as a result, sensitive to any issues that might be escalated to the GMC.

Ms Nicky Heyworth falsely alleged that there was no colleague feedback to include on 25 June 2021.

108. The tribunal find that MS Heyworth’s assertion that there was no colleague feedback to provide to be a truthful and correct one to have made. In making this allegation the claimant relied on feedback that he had received when working within a different hospital, during a time that predated his engagement with the respondent. As there was no evidence before the tribunal which demonstrated that there was colleague feedback available to Ms Heywood that had been provided by someone who had been a colleague of the respondent. Accordingly, tribunal find this allegation unfounded.

Dr Deans failed to respond to the claimant’s request to have meeting with the claimant to put things right from 17 May 2021 to 4 June 2021.

109. The tribunal find that there was no evidence of the claimant requesting such a meeting. Accordingly, tribunal finds that this allegation is unproven.

Dr Deans failed to appreciate that the claimant had done almost 30 cesarean sections without a single fault or complication from 17 May 2021 to 4 June 2021.

110. In evidence, Ms Deans accepted that the claimant carried out a number of successful caesarean sections during his engagement. However, any alleged failure by Ms Deans is, in line the tribunal’s previous findings , incapable of amounting to mistreatment which could form part of a claim of

discrimination, harassment or to a finding which would support the claimant's fixed term worker status claim.

The respondent raised false, baseless, and non-substantiated concerns/allegations against the claimant and failed to take into consideration the other side of the story or given the opportunity to defend themselves.

111. For the reasons set out as above, the tribunal finds this allegation to be unfounded. Specifically, the tribunal find that that the claimant was given an opportunity to provide his side of events and failed to allay the serious concerns Ms Deans had about his conduct of practice.

Dr Deans failed to give the claimant the support he was looking for on 19 or 20 May 2021 and changed his plan of management on a third or fourth day of employment.

112. The tribunal finds this allegation to be unfounded. The claimant was not able to prove on a balance of probabilities that he was not provided the support he was looking for or that the change in his management plan had been changed inappropriately. .

Dr Deans criticised the claimant's plan of managing a patient "could you not take a vulval punch biopsy?" and "how many vulval punch biopsy have you taken? By the way, a junior register or even more junior doctor could easily and comfortably take a vulval punch biopsy, an everyday minor procedure" on 19 or 20 May 2021.

113. The tribunals finding in respect of this allegation is that Ms Deans was asking the claimant legitimate questions relating to his clinical competency and was doing so in light of concerns raised around his competency by the claimant's colleagues and patients. The tribunal has already found that in respect of this allegation that Ms Deans' investigation of the claimant to have been a reasonable one. Accordingly, the tribunal find this allegation to be unfounded.

The respondent failed to respond to the claimant request to send hospital notes and an incident form from the 5 July 2021 to date.

114. The tribunal find this allegation to be unfounded on the basis it finds that it would have been considers it entirely inappropriate for the respondent to have provided the claimant with the confidential medical notes of a patient who was no longer within the care of the respondent and after the end of his engagement. The tribunal considers this allegation to be entirely misconceived.

The respondent failed to follow due governance processes in dealing with an incident report from 20 May 2021 to date.

115. The tribunal find that this allegation is not proven. Specifically, the claimant has failed to identify in any way what the due governance process which he complains of, the due governance process failure he relies upon are or how they relate to any of the claims he pursues.

The respondent failed to respond to the claimant request dated 5 July 2021 to disclose the name of staff that it alleged the claimant was rude to.

116. The tribunal finds that the respondent had no obligation to disclose those names concerned. Accordingly, this allegation is unfounded.

The respondent made false allegations that the claimant had taken an earlier decision to do an emergency cesarean section for two women from 3 June 2021.

117. The tribunal finds the claimant made a decision to elect two female patients for emergency cesarean sections in circumstances where the decision was later found to be premature. Here, the tribunal notes the evidence of Ms Deans who explained that following a complaint from the Labour ward Co-ordinator that neither she nor the Obstetric Registrar felt a caesarian birth was necessary and that the claimant had not explained his reasoning to the patients concerned. The tribunal accepts the evidence of Ms Deans. Accordingly, this allegation is unfounded.

The respondent failed to say the truth regarding the incident of a lady who was transferred up from the day obstructive unit from a scan after attending for reduced fetal movement and in alleging the claimant did not document a single thing and went home on the 3 June 2021.

118. The tribunal notes that the claimant has admitted not documenting his interaction with this patient in evidence, admitted that he did go home after seeing the patient and following handover to another consultant. Accordingly, the tribunal find this allegation to be unfounded.

The respondent failed to say the truth regarding the incident of a difficult patient seen by him at the colposcopy clinic and made a false allegation that he did not instill much confidence with the ladies of 4 June 2021.

119. The tribunal has already found that the respondent was entitled for its own view of the claimant's conduct. In this regard, the tribunal notes the claimant's cross examination on this issue (see above) finds that it was likely that the claimant was not only rude and dismissive to the patients and staff concerned and we accept that Ms Deans evidence that she had to intervene in order to restore confidence in the respondent's ability to provide the patients concerned with suitable treatment and support.

Dr Deans failed to treat the claimant with dignity and respect and failed to give him the support he was looking for and undermine him when she changed his plan of management for the difficult case of the colposcopy clinic and then kicked him out of the clinic on 2 June 2021 Dr Deans, appearing from nowhere on that day, made a discourteous intrusion into the colposcopy clinic and decided to revert the claimant's decision and return the patient immediately back to the clinic saying "I will have a go" after she, indecently, kicked the claimant out of the clinic.

120. The tribunal finds, on the balance of probabilities, that Ms Deans acted in a courteous and professionally appropriate manner to the claimant at all times. In addition, the tribunal finds that as a result of the claimant's conduct and clinical care that Ms Deans was required to intervene in the way that she did. Accordingly, the tribunal finds this allegation to be unfounded.

The respondent failed to say the truth regarding the claimant running an outpatient hysteroscopy clinic on 24 May 2021 and accused him of being rude while failed to show any evidence to support this allegation.

121. The tribunal accepts the evidence of Ms Deans in regard to the allegations made verbally to her by the Labour Ward coordinator [see paragraph 29 of the statement of Dr Anne Deans]. Accordingly, this allegation is found to be unfounded.

The respondent raised a further false allegation on 25 June 2021 that there were two junior doctors that alleged the respondent had made undermining comments about the management of patients which made them uncomfortable while the respondent failed to show any evidence to support his allegation.

122. The tribunal finds that the allegations here were made by two doctors to the Labour Ward Coordinator who in turn reported her concerns to Ms Deans. while it is noted that the claimant asserts that these allegations were made falsely he has not been able to provide any evidence to allow the tribunal to reach the same conclusion. Accordingly, it must follow that the tribunal finds this allegation to be unfounded.

The respondent failed to appropriately investigate its concerns and allegations against the claimant and failed to implement its own disciplinary policy and procedures from 17 May 2021 to date.

123. The tribunal finds that the allegations raised by the claimant were appropriately and adequately investigated by Mr Hay. Accordingly, this allegation is to be founded.

The respondent subjected the claimant to the same ill treatment and harassment and unfair discrimination which Dr Karim previously suffered.

124. This allegation is not something which is one for this tribunal to determine.

The respondent issued the claimant with an ID badge with the word "AGENCY" on 17 May 2021.

125. The claimant's case was that his badge which identified him as "AGENCY locum consultant" should have only had the words "locum constant". As a consequence of this difference the claimant submitted that he was subjected to less favorable treatment due to a negative connotation associated with the word agency among permanent staff.

126. In evidence, the claimant confirmed that he did not complain about this at the time. In evidence, Ms Deans the respondent confirmed that had a

request for a badge had been made by the claimant a different badge would have been provided to him. Moreover, the claimant was unable to identify any treatment that he suffered as a consequence of having the word agency on his badge. Consequently, the tribunal finds that this allegation fails to amount to anything more than what it is namely an allegation. Accordingly, this allegation is not proven.

The respondent failed to investigate the claimant grievance as per the grievance policy and failed to respond to the claimant's proposal for settlement from 5 July 2021 to date.

127. The tribunal finds that the respondent was entitled to determine that its grievance policy did not apply to the claimant who was not a permanent member of staff. Instead, it investigated the claimant concerns under the auspices of its harassment and bullying policy. Further, it appointed an independent investigator, Mr Hay, to review the claimant's grievance and provide findings. It is noteworthy that in evidence, the claimant accepted that Mr Hays report was detailed and addressed all of his allegations. Consequently, the tribunal finds that the allegation here is unfounded.

Summary

128. Tribunal finds all of the claimant's claimants to have been unfounded.
129. Turning first to the claim of wrongful dismissal, the claimant's period of engagement with the respondent was less than 4 weeks and accordingly he is not entitled to receive statutory notice pay as he is ineligible to claim it.
130. The claimant's fixed term worker claim fails due to due the fact that his chosen comparator falls foul of the test in Matthews (see above) meaning that he is without a comparator. Given this, this claim fails by virtue of the claimant being unable to establish a set of facts that would support a claim here. The claimant's direct discrimination claims fail on the basis that each allegation raised does not, in the view of the tribunal, satisfy s.136 EqA (see paragraph 63, above). The tribunal's findings are set out in respect of each allegation in paragraphs 75-120 above. Given this finding it must follow that the claim of harassment must fail; the claimant failed to establish that the harassment that he complained of was caused by the discriminatory treatment that he complained of.
131. It follows that all of the claimants claims are unfounded and are dismissed.

Employment Judge Forde

Date: 6 October 2023

Sent to the parties on: 9 October 2023

For the Tribunal Office