



EMPLOYMENT TRIBUNALS

Claimant: Ms T Campbell

Respondents: LEWISHAM AND GREENWICH NHS TRUST (1)
ANN MARIE COILEY (2)
TRACEY MURPHY (3)
ANNIE O'LONE (4)
GLENDA MONCAR (5)
PHILLIP BRIGGS (6)
TONY ROGERS (7)
VICKY LEWIS-TOWLER (8)
RODNEY KATANDIKA (9)
CHRISSI THOMPSON (10)

Heard by video On: 13-29 March 2023
29 June 2023 (In chambers)

Before: Employment Judge Corrigan
Ms L Grayson
Ms J Saunders

Representation

Claimant: In person
Respondent: Ms H Patterson, Counsel

RESERVED JUDGMENT

1. The Tribunal has found the Respondent did not contravene the Equality Act 2010 (direct race discrimination, race and/or sex related harassment and victimisation) and all of those claims are dismissed.

2. The Tribunal does not find the claimant's complaint that she was subjected to detriments for making protected disclosure well-founded. That complaint is also dismissed.

REASONS

Preliminary matters

1. The claimant at the outset wanted a reconsideration of the Acting Regional Judge's decision not to postpone the case. We did not consider there was a basis to do so in the absence of medical evidence saying she was not fit to attend a hearing. We discussed with the claimant the kind of adjustments we could make to assist her. Her main concern was that she had not been able to focus on her preparation. She had not completed inserting page numbers into her witness statement, which the respondent's representatives agreed to complete for her during our reading time. She had only just received the respondents' statements and the final bundle. We took two days at the outset for the tribunal's reading which also gave the claimant time to read the statements and prepare her questions and familiarize herself with the bundle. We agreed that Ms Patterson would also be able to assist her in finding a page in the bundle where necessary. She had friends and family who attended during parts of the case as support. In the event our impression was the claimant had an excellent grasp of both bundles and knew where relevant pages were located in the bundle, despite their size (2300 pages and 300 pages approximately). The same applies to the statements and paragraph numbers.
2. As the claimant was concerned she had not completed her statement and had only just received the respondents' statements she was also given the opportunity to add key evidence she needed to orally, and she made a number of additional comments.
3. We had regular breaks throughout the hearing including ensuring we took one hour lunch most days.
4. Once we had discussed adjustments and the claimant realized that the hearing could not be re-listed until 2025 she herself accepted it was better to continue. We also explained we would not re-open the question of whether the unfair dismissal claim (9th claim) would be heard with these claims as that decision had already been determined. In any event the respondent had only just submitted their response in that claim.
5. The claimant throughout the hearing appeared to cope well. She knew where page numbers and statement paragraph numbers were and although it was stressful and upsetting at times, as is to be expected, there were no apparent

signs that her mental health was affecting her ability to give evidence or present her case and she did not raise any further issues about this herself.

6. When it came to submissions the claimant was given additional time to read the respondent's submissions and also additional time to make her submissions, including a break overnight. Although ultimately a time limit was placed on her submissions she was given 30 minutes on one day and then a further 90 minutes approximately the following day. I reminded her of the purpose of submissions several times and with some prompting she did have the chance to comment on all the allegations and protected acts/disclosures. The submission was repetitious and mostly concentrated on the claimant's feelings rather than the issues. She did stray into irrelevant matters, new evidence and sought to change the issues or reopen aspects of the case she had withdrawn. With all of this in mind the tribunal did impose a time limit and stopped the claimant after she had had two hours. She had had an overnight break and a ten minute break the following day and had been encouraged to focus her submissions on the issues. She did not object to the time limit given and thanked the tribunal for their patience. The concern was that without the limit the submissions would have taken a disproportionate time without adding further substance.
7. The Claimant confirmed during the hearing that there were no allegations pursued against the 10th Respondent and she is removed as a party to the proceedings.

CLAIMS

8. The Claimant brings claims of:
 - 8.1 Direct race discrimination;
 - 8.2 Harassment on the grounds of race and sex;
 - 8.3 Victimisation; and
 - 8.4 Detriment on the grounds of making a protected disclosure.
9. The issues were set down in the Case Management Order dated 22 March 2022, and were amended in discussion with the parties during the hearing. The respondent produced an updated table on 23 March 2023. This reflected that two of the allegations (originally 22 and 33) were not ultimately pursued by the claimant. The issues are as follows:

JURISDICTION

Discrimination

10. Do any or all of those acts/omissions form part a course of conduct by the Respondents extending over a period of time ending after 11 June 2019? (Section 123(3) Equality Act 2010 (**ERA**)).
11. If not, then is it just and equitable to extend time in respect of those allegations?

Detriment on the Grounds of Making a Protected Disclosure

12. Has the Claimant submitted any claims under s48 Employment Rights Act 1996 (**ERA**) before the end of the period of three months beginning with the date of the act or failure to act which the complaint relates to, or where that act or failure is part of a series of similar act or failures, the last of them?
13. If not, was it reasonably practicable for the Claimant to submit her claims within time?
14. If not, did the Claimant present her claims within a further reasonable period?

EQA, SECTION 13: DIRECT DISCRIMINATION BECAUSE OF RACE

15. The Claimant defines her race by reference to Jamaican nationality.
16. Did the Second Respondent (AMC), the Third Respondent (TM), the Fourth Respondent (AOL), the Fifth Respondent (GM) and the Sixth Respondent (PB) subject the Claimant to less favourable treatment as set out set out in Columns C and E of the updated Schedule of Allegations?
17. Did this amount to treating the Claimant less favourably than she otherwise would have been had she not been Jamaican? The Claimant relies on a hypothetical comparator. In addition a number of comparators had been named in the Case Management Order. Not all of these were relied on in the end. The comparators that were relied on are listed beside each allegation in the amended schedule of allegations provided by the respondent. The schedule is inserted below but without the names of the comparators as they are not all parties to the proceedings and this will be a public document published online. Where we have made findings of fact about them they are identified by description rather than by name.
18. If so, was this because of the Claimant's race and/or because of the protected characteristic of race more generally?

EQA, SECTION 26: HARASSMENT (RACE AND SEX)

19. Did the Respondent/s engage in the following unwanted conduct as set out in Column C and F of the amended Schedule of Allegations?
20. Was the alleged conduct related to the Claimant's race and/or sex?
21. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
22. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading humiliating or offensive environment for her?
23. Was it reasonable for the alleged conduct to have the effect claimed?

EQA, SECTION 27: VICTIMISATION

24. Did the Claimant do a protected act or did the Respondents believe the Claimant had done, or might do, a protected act? The Claimant relies upon the following acts:
 - 24.1 The Claimant's email of 6 June 2019 to Mr Briggs which was leaked to Tracey Murphy and Annie O'Lone;
 - 24.2 The Claimant's Employment Tribunal claims 1 – 5;
 - 24.3 Grievances of 28 June 2019; 24 July 2020, December 2020/January 2021 (grievance against Tony Rogers), September/October 2021 (in relation to suspension).

The protected acts above are referred to chronologically in the facts below (whereas the above list is not chronological).

The Claimant confirmed she no longer relies upon a concern to the Information Commissioner's Office on 23 August 2019 regarding a leaked email dated 6 June 2019.

There was a reference to claims 6-8 in brackets in the list of issues but these were not relied on.

25. If this was a protected act was it done in bad faith (for the purposes of remedy)?
26. Did the Respondents subject the Claimant to any detriments as set out in Column C and G of the Schedule of Allegations (the amended Schedule of Allegations identifies those alleged detriments which predated the above alleged protected acts. We have only addressed those detriments that post date the protected acts)?

27. If so was the way the Respondents treated the Claimant because the Claimant did a protected act and/or the Respondents believed the Claimant had done, or might do a protected act.
28. If this was a protected act was it done in bad faith?

PUBLIC INTEREST DISCLOSURE - DETRIMENT

Disclosures

29. Did the Claimant make the protected disclosure(s) in accordance with s.43B ERA as set out in column A in the Table below and did the Claimant have a reasonable belief that the information in Column A tended to show that the Respondents failed, are failing or are likely to fail to comply with a legal obligation in column C?

A	B	C
Nature of disclosure	Source	Ground under section 43B
<p>The gist of the disclosure was that:</p> <ul style="list-style-type: none"> - there had been a data breach incident in relation to the Claimant's email of 6 June 2019. - That a very unpleasant environment had been created in which the Claimant was accused of leaking the email of 6 June 2019, which she had not. 	<p>The Claimant relies upon a concern to the Information Commissioner's Office on 23 August 2019 regarding a leaked email dated 6 June 2019. [Claim 4]</p>	<p>Breach of legal obligations under the DPA in the leak itself and a failure to report the leak to the ICO.</p> <p>The Claimant's health and safety was harmed by leak.</p>
<p>The gist of the disclosure was that:</p> <ul style="list-style-type: none"> - a group of other employees colluded against the Claimant in making false allegations of bullying and harassment which had a severe impact on the Claimant's wellbeing. - Mr Rogers had compared the Claimant's body parts to a 	<p>On 18 May 2021, the Claimant made a referral to the NMC [Claims 6 to 8]</p>	<p>That the Claimant's health and safety was being harmed.</p> <p>That patient health was at risk.</p> <p>Miscarriage of justice</p>

<p>computer which she found distressing.</p> <ul style="list-style-type: none"> - The investigation into the Claimant's complaint about Mr Rogers was badly handled; - The Claimant was penalised for speaking up about wrongdoing. - There was inadequate staffing putting patient safety at risk. 		
--	--	--

30. Did the Claimant reasonably believe that the disclosures were in the public interest?
31. If so, was the Claimant subjected to the detriment(s) set out in Column C and H of the Schedule of Allegations on the grounds of having made a protected disclosure contrary to s.47B ERA? Again the respondent identified those allegation which pre dated the alleged disclosures and we have only addressed those which postdated the alleged disclosures.

Schedule of Allegations

A	B	C	D	E	F	G	H	I
Allegation no.	Date	Unfavourable treatment/unwanted conduct	Which R	Direct Race	Harassment	Victimisation	PIDA	Comparator
1	09.02.16	Declined the Claimant's annual leave request for 7-21 March 2016	R1, R3	x				Nurse (granted 6 weeks' annual leave)
2	14.02.16	Falsely accused the Claimant for not following the annual leave policy	R1, R3	x				Practice Development Nurse (training week leave)
3	27.02.16	"Apologised on behalf of Rodney" for	R1, R3	x				Hypothetical

A	B	C	D	E	F	G	H	I
Allegation no.	Date	Unfavourable treatment/unwanted conduct	Which R	Direct Race	Harassment	Victimisation	PIDA	Comparator
		failing to communicate reasons why her annual leave was declined yet levelled blame against the Claimant “for not highlighting the problem earlier and for escalating the situation this far”						comparator
4	27.02.16	Admonished the Claimant that “personal conflict should be put aside and that I would expect a professional relationship between two Band 7 where they should ask each other for off duty swaps”	R1, R3	x				Trainee Advanced Clinical Practitioner (grievance supported)
5	27.02.16	Patronised, belittled and accused the Claimant of not being a team player in relation to her annual leave request in respect of 7 – 21 March 2016.	R1, R3	x		x		Glenda Moncar (praised when the Claimant was admonished)

A	B	C	D	E	F	G	H	I
Allegation no.	Date	Unfavourable treatment/unwanted conduct	Which R	Direct Race	Harassment	Victimisation	PIDA	Comparator
						<i>Claimant.</i>		
6	22.11.16	Failed to support the Claimant during reports of slander raised and shared to other Emergency Department staff by a junior staff (British White)	R1, R3	x				Band 7 Senior Sister
7	13.08.17	Ms murphy refused to conduct an appraisal on the Claimant.	R1, R3	x				All other band 7s
8	11.12.17	Failure to take reasonable actions to address the concerns raised by the Claimant regarding junior staff's poor professional conduct during practice.	R1, R2	x				Tony Rogers
9	17.06.18	Becoming hostile towards the Claimant after being queried about the duty of care	R2		X (race)			

A	B	C	D	E	F	G	H	I
Allegation no.	Date	Unfavourable treatment/unwanted conduct	Which R	Direct Race	Harassment	Victimisation	PIDA	Comparator
		towards an employee on 17 June 2018						
10	December 2018 and January 2019	Supported two Emergency Department staff –a Black African (Fifth Respondent GM) and British White ethnicity (Amanda Yates) to raise complaints against the Claimant in December 2018 & January 2019	R1, R2	x				Band 7 Senior Sister and Glenda Moncar
11	March 2019	The Third Respondent thought the term “black professional bullies” was funny and passed funny comments twice at the Claimant’s hearing in March 2019.	R1, R3	x				Race specific allegation/ hypothetical comparator
12	8-11.03.19	Shouted at and accused the Claimant, in front of a pharmacist, for the messy ED drug room on 8 March 2019,	R1, R4	x				All other band 7s

A	B	C	D	E	F	G	H	I
Allegation no.	Date	Unfavourable treatment/unwanted conduct	Which R	Direct Race	Harassment	Victimisation	PIDA	Comparator
		“demanded” hugs after the incident and then praised the Claimant for being a professional in an email report on 11 March 2019						
13	05.12.18 – April 2019	Supported four Emergency Department staff (3 British White, 1 Black African) to raise complaints against the Claimant	R3 & R4	x		x <i>This allegation pre-dates all protected acts relied on by the Claimant.</i>	x <i>This allegation pre-dates all protected disclosures relied on by the Claimant.</i>	Glenda Moncar, Senior Band 7 Sister, Trainee advanced Clinical Practitioner and Practice Development Nurse
14	06.06.19	A person unknown leaked the Claimant’s confidential data to Ms Murphy and Ms O’Lone. The only person who should have had a copy was Mr Briggs	R1, R6			x	x <i>This allegation pre-dates all protected disclosures relied on by the Claimant.</i>	

A	B	C	D	E	F	G	H	I
Allegation no.	Date	Unfavourable treatment/unwanted conduct	Which R	Direct Race	Harassment	Victimisation	PIDA	Comparator
15	June 2019	“Blindsiding” the Claimant with a prank job offer being available by November 2019 at the University Hospital of Lewisham	R1, R4 & R6	x			x <i>This allegation pre-dates all protected acts relied on by the Claimant.</i>	Hypothetical comparator
16	14.06.19	Falsely accused the Claimant of leaking the 6 June 2019 email during a meeting on 14 June 2019	R1, R4	x				Philip Briggs
17	14.06.19	Reported to the Claimant that more people wanted to complain about the Claimant and she had to “fan them away”.	R1, R4	x				Hypothetical comparator
18	24.06.19	Informed the Claimant during a telephone call at 16:37 hours on 24 June 2019 not to report any more for Emergency	R1, R4	x				Hypothetical comparator

A	B	C	D	E	F	G	H	I
Allegation no.	Date	Unfavourable treatment/unwanted conduct	Which R	Direct Race	Harassment	Victimisation	PIDA	Comparator
		Department duties but to go instead to Discharge Team						
19	31.10.19	Denying the Claimant her 2019 annual appraisal	R1, R6		x (Race)		x	
20	27.01.19 – December 2019	Participate in a smear campaign against the Claimant from January 2019 to December 2019 by submitting allegations of bullying and harassment against the Claimant on 27 January 2019	R1, R5	x				Hypothetical Comparator
21	26.06.19 – 03.02.20	Demoted the Claimant to a lowered clinical skill set duties (Band 4)	R1, R6				x	
22	20.12.19	Told the Claimant to accept this report as findings of the investigation at a debriefing meeting on 20 December 2019.	R1, R6	x				Hypothetical comparator

A	B	C	D	E	F	G	H	I
Allegation no.	Date	Unfavourable treatment/unwanted conduct	Which R	Direct Race	Harassment	Victimisation	PIDA	Comparator
		<i>The Claimant confirmed that she was not pursuing this allegation during cross-examination.</i>						
23	14.06.19	Told the Claimant she would be transferred to Lewisham Hospital until the investigation was completed but she was not.	R6				x	
24	24.06.19	The Claimant was transferred to the discharge planning team where she had lower skilled duties	R6				x	
25	August 2019	Mr Briggs pressured the Claimant to say that she leaked the email of 6 June when she had not.	R6				x	
26	03.02.20	Placed on Ward 22	R6				x	
27	17.05.20	Complained about Ann Marie intimidation as line manager	R6				x	

A	B	C	D	E	F	G	H	I
Allegation no.	Date	Unfavourable treatment/unwanted conduct	Which R	Direct Race	Harassment	Victimisation	PIDA	Comparator
		to Mr Briggs and his response was that he showed a preference to her over the Claimant.						
28	30.09.20	Making derogatory, sexist and racist comments about the Claimant's buttocks, specifically that the buttocks part of a body map looked like the Claimants	R1 & R7		X (sex and race)			
29	15.07.21	Sending an email to all Ward 22 staff regarding the Claimant	R9			x	x	
30	22.07.21	Submitting a collective grievance against the Claimant	R6			x	x	
31	28.07.21	Suspending the Claimant	R1 & R8			x	x	
32	12.08.21	Subjecting the Claimant to a disciplinary investigation	R1 & R8			x	x	
33	19.08.21	Amending/supporting the	R10			x	x	

A	B	C	D	E	F	G	H	I
Allegation no.	Date	Unfavourable treatment/unwanted conduct	Which R	Direct Race	Harassment	Victimisation	PIDA	Comparator
		collective grievance <i>The Claimant confirmed that she was not pursuing this allegation during cross-examination</i>						
34	10.10.21	Failure to deal with the Claimant's grievance within a reasonable period	R1			x	x	
35	22.10.21	Refusal to respond to the Claimant's discrimination questions of 13 October 2021	R1			x	x	
36	28.07.21 to date	The length of the Claimants suspension	R1			x	x	

Hearing

32. The Tribunal heard evidence from the Claimant on her own behalf. The Tribunal heard evidence on the Respondents' behalf from Ms Ann-Marie Coiley (Head of Nursing and respondent 2) Ms Annie O'Lone (Head of Nursing and respondent 4), Ms Tracey Murphy (Emergency Department Matron and respondent 3), Ms Glenda Moncar (Band 7 Sister at the relevant time, and respondent 5), Mr Phillip Briggs (Divisional Director of Nursing and Governance and respondent 6), Mr Tony Rogers (Senior Clinical Site Manager and respondent 7), Ms Kelly Lewis-Towler (Divisional Director of Operations and respondent 8), Mr Rodney Katandika (Matron and respondent 9), Mr Paul

Larrisey (Divisional Director of Operations University Hospital Lewisham), and Ms Chrissy Thomson (HR Manager).

33. There was a bundle of 2304 pages. The claimant also referred to an additional supplementary bundle of 300 approx pages. There were some additional documents provided by the respondent during the hearing, without objection from the claimant.
34. The parties made oral submissions and both sides provided written submissions. The respondent also provided a chronology and cast list.
35. Based on the evidence heard and the documents before us we found the following facts.

Facts

36. The Claimant commenced employment with the Respondent on 10 July 2000. By the relevant time she was a band 7 sister in the Emergency department. The claimant had been promoted to the position of band 7 by Ms Murphy. This is a senior nursing role, responsible for the department and the nursing team on a particular shift including a number of band 6s and lower band nurses.
37. The emergency department is a busy and stressful environment.
38. The first incident occurred in February 2016 and related to the claimant's annual leave request. The claimant had requested 3 weeks' of annual leave from 7-28 March 2016. However she did not have sufficient leave remaining in the leave year and so Mr Katandika only approved the first two weeks. She also had not followed the policy in respect of leave longer than two weeks by emailing Ms Murphy for her permission in advance. She should have received an automatic email confirming the 2 weeks leave. The policy states Mr Katandika should have informed the claimant that her full request was declined within 14 days, which he did not do. She did not realise until she logged into the system to request days off on the 28 and 29 March 2016 (the week following her 3 week request).
39. At that point she queried the decision not to grant the full request with Ms Murphy and Mr Katandika. She had already booked her flights to Jamaica and said she had a very important event to attend overseas in the week that had been refused and which she could not change (630). The initial response from Ms Murphy was curt but factual. She expressed surprise the claimant was querying her leave. She said if she had checked her entitlement she would have seen she had insufficient leave remaining. She said staff are encouraged to monitor their leave so they know how much leave they have remaining (629). No solution was offered at that stage.
40. The claimant then explained that she would be out of the country in the week of 21st March and would forego leave the week of 7th March (629).

41. Ms Murphy then explained that a straight swap as suggested by the claimant would leave the band 7 cover of the emergency department with a considerable deficit. She said she understood the claimant's dilemma but explained that she had created it by not writing to get authority for the 3 weeks leave 3 months in advance and booking flights prior to receiving authority (both of which were contrary to policy). She did however suggest as a solution that the claimant request another band 7 to either swap or cover her shifts. She said she was more than happy to agree to such a solution.
42. Instead of following the advice to speak to her peers the claimant escalated the situation with the email on 14 February 2016 at pages 627-628. The email was copied to the Acting Head of Nursing. She countered the suggestion that she had breached policy by pointing out that she had not had the request declined in writing within the requisite 14 days and that she had wanted to choose which two weeks to take. She said she would report the matter to HR. She raised other issues about shifts and stated to Ms Murphy
- “I don't like dissension, war and confusion please stop this. Given the happenings over the past few months, same has taken a toll on my health ...I cannot work efficiently in such a hostile environment with the ED manager...
- [It is] really sad that over 15 years or more of working in this department there appears to be such a huge animosity between us....”
- She referred to Ms Murphy having promoted her but said “was it from a pure heart?” and later that “this controlling spirit has got to be stopped it is spoiling the atmosphere in the department”. She said she would be taking it further as soon as possible.
43. This email went far beyond seeking a resolution to her leave and understandably caused offence to Ms Murphy and damaged their relationship. This was the first example we were shown of a pattern with the claimant's communication that she uses hyperbole and extreme statements without backing them up with substance and without any appreciation of the offence they are likely to cause. She also threatens further action.
44. Ms Murphy was offended by the email and this led to the mediation meeting with the Senior Matron on 16th February 2016. There was a dispute about whether a particular HR Representative was also there but we don't consider this relevant. This was a lengthy meeting. Ms Murphy's position was that she did not want to have line management responsibility for the claimant around issues that might provoke conflict until the claimant's email was investigated. There was some discussion of this in the lengthy meeting but no clarity as to what that meant. The listed outcomes dated 16 February 2016 were in relation to the support the claimant was to receive in respect of the time off and “request by[Ms Murphy] to investigate allegations in the [claimant's email] through the grievance policy. Investigating officer to be assigned”(p627).

45. There was a lack of clarity as to who was bringing a grievance against who and neither party at that stage instigated a formal grievance. The action point in respect of an investigation officer was not carried out.
46. In respect of the leave there was a meeting with Ms Murphy, Mr Katandika and the claimant. The claimant received an explanation as to why the leave had been given as it had and was advised that a clear solution to the problem was to discuss with her colleague Glenda Moncar to request to swap weeks. The claimant was not happy to do so because of personal conflict with Ms Moncar. The claimant gave other explanations for not speaking to Ms Moncar in evidence but we accept the contemporaneous note and the evidence of the respondents' witnesses that the reason was that she did not wish to talk to Ms Moncar about it. Ms Murphy told the claimant and recorded it in the email at page 625 that personal conflict should be put aside and she expected a professional relationship between two band 7s. Nevertheless she did arrange the swap for the claimant herself. She said in the email that "Glenda has kindly agreed to give up her leave".
47. The claimant compared her situation to that of another nurse who took 6 weeks' leave to visit her young children in India. Ms Murphy agreed that she did persuade staff to work together to help cover shifts for this individual as she is a mother working in UK whilst her young children live in India and Ms Murphy wanted to help her visit them.
48. The claimant also compared her situation to that of another colleague who was allowed to take leave during mandatory training.
49. We find these all to be examples of how the respondent worked with individuals from diverse backgrounds to help them take the leave they each needed. This included the claimant, as a solution was found to enable her to take the leave she needed. She also had an ongoing arrangement to have Saturday days off (working nights instead).
50. On 17 November 2016 a Deputy Sister raised an issue with a Junior Sister about a student nurse having been unwell and extremely upset after talking to the claimant, and who was saying she did not want to have anything to do with the claimant. The junior sister forwarded it to the person managing students who in turn forwarded it to the claimant "for her attention".
51. The claimant then responded to Ms Murphy and another band 7 giving her account of what had happened and saying she was baffled at the email from the Deputy Sister. She said it was one of many instances the Deputy Sister used "to defame [her] character with others (LAS crew and colleagues alike) during clinical practice" (p660). She said it was a "libel" matter. She was critical of the Deputy Sister but the detail is not relevant, save that again it involved hyperbole and extreme statements disproportionate to what had happened. She requested that they no longer work together on shift. She wanted the matter resolved locally without having to "take it further".

52. The claimant did not receive any response initially. The band 7 was on leave but replied on her return saying she had spoken to Ms Murphy and recording that the claimant had also spoken to Ms Murphy, and that it had been handed over to the Senior Matron to investigate. Ms Murphy did not take up the issue herself because she was maintaining the position she felt she had expressed at the mediation that she was not going to get involved with managing the claimant where conflict could be involved.
53. The Senior Matron then confirmed the same day that she wanted to discuss it and confirmed to Ms Murphy that she did so on 12 December 2016 (p665). There was a plan to have a 3 way meeting with the Deputy Nurse. Ms Murphy replied saying "What is the situation with the [deputy nurse] as staff also mention difficulties when she is on shift as well". As she said in evidence though she did not want to get involved this was her supporting the claimant by saying that the deputy sister caused issues also (p665).
54. On 13 August 2017 the Claimant wrote to Ms Murphy, picking up on the email chain that included her email of 14 February 2016 and the mediation outcome on 16 February 2016 (we find this this from the chain of emails on pp 681 which we deduce follows on from page 626 given the reference to the chain of emails at p 626 in the reply from Ms Murphy on page 681 and the timing of the email on page 681 from the claimant which fits with the undated content at the top of page 626).
55. The body of her email is at p626 and raised her appraisal and the question of who would be doing it. The fact that she raised this issue as a follow on from the mediation outcome and queried who would be doing her appraisal confirms that she was aware Ms Murphy was not planning to do it following on what was said at the mediation about her taking a step back from managing the claimant pending the investigation. Although unhappy about it she had not had an appraisal in 2016 either, consistent with the mediation outcome.
56. Ms Murphy replied (p 681) confirming that the reason her appraisal for the previous year had not been done was because of the outcome of the mediation and the fact that the claimant's allegations were to be investigated at Ms Murphy's request. She said that without a resolution to that situation it would be inappropriate for her to conduct her appraisal. She referred to that having been discussed at the meeting on 16 February 2017, which we accept. She copied in the Senior Matron and Ann Marie Coiley so that they could confirm who would do the claimant's appraisal which she confirmed was due in the upcoming mandatory training week in September 2017.
57. No-one was put in place to do the appraisal. Instead the Senior Matron with HR input proposed a mediation between the claimant and Ms Murphy and an external mediator to give a starting point to move on. It was confirmed to Ms Murphy that they would not in fact be investigating incidents from 2016 (despite the previous mediation outcome to the contrary). It is not clear that the claimant was informed of this plan until she appears to have chased up her appraisal on 12 September 2017 with Ms Ann- Marie Coiley (p688). She was not told about

- the decision to have formal independent mediation until 28 September 2017, after when her appraisal should have been done.
58. The mediation took some time to organise and the joint meeting did not occur until 8 January 2018. The mediator had some difficulty progressing to the joint meeting and requested Ms Coiley's involvement to set it up as the claimant had not responded to a request for dates and was focused on a request for the mediator's notes which are not provided to the participants (p706). The subsequent delay was due to annual leave and Christmas.
 59. In the event the mediation took place and following that Ms Murphy resumed responsibility for the line management of the Claimant and did her 2018 appraisal.
 60. On 8 December 2017 the Claimant submitted an Incident Report (p 712) including the statement "high resistance of poor team play attributes received by NIC...". The claimant was told by Ms Coiley that such issues should be raised separately and not in the incident reports. She said that the claimant was not the only person who did this but it was discouraged.
 61. On 11 December 2017 (p714) the claimant did email Ms Coiley about the incident and a number of concerns about the deputy nurse (who has already been referred to above). Ms Coiley offered to meet them both to discuss. In the event she did not follow this up. Her evidence is that due to the time of year, which is busy, and the temporary expansion of her responsibilities to the entire medical division, she forgot to follow this up and did not receive any further prompt from the claimant. She was also dealing with the mediation.
 62. On 18 January 2018, about the time the mediation formally completed, the Claimant contacted Ms Murphy to discuss her application to attend the South London Leadership Programme but Ms Murphy was on sick leave. On 24 January 2018 the Claimant was signed off to do the South London Leadership Programme by Ms Coiley. Ms Murphy then contacted the claimant on 30 January to confirm that she had been on leave but understood it had been actioned.
 63. On 30 January 2018 the same deputy nurse that has already been mentioned herself made a formal complaint to Ms Coiley about the Claimant. Again, on 1 February 2018, Ms Coiley proposed for the three of them to meet to discuss the issue informally. She also did not in the event follow this up.
 64. On 17 June 2018 the Claimant emailed Ms Murphy what appears to be an email to her union about not having received an appraisal since 2015. She referred to a previous email in September 2017 that she sent to Ann- Marie Coiley and others referencing "duty of care". Ms Murphy replied confirming she was going to do it in 2018 and that it was Ms Coiley who was responsible in 2017 and the Senior Matron in 2016.
 65. The claimant's union wrote to Ms Coiley on her behalf to ask for a meeting with Ms Coiley because the claimant still had issues about the appraisal after the

- mediation (p760). There are emails between Ms Murphy and Ms Coiley in which Ms Murphy said that the claimant's issue was why Ms Coiley had not done it pending the mediation and Ms Coiley said it probably should have been the Senior Matron who did it.
66. In September 2018 Ms Murphy completed the Claimant's appraisal for 2018.
67. On 07 September 2018 Ms Coiley and the Claimant had a disagreement about the Claimant attending training when the department was short staffed. The claimant had organised training as part of the mandatory training week. However Ms Coiley took the decision to cancel it as she was 10 nurses short in the emergency department which was 50% of the required staffing and was unsafe. The operational needs of the emergency department took priority. The claimant was not happy with this decision, partly because it had been taken without discussion with her. Ms Coiley said she had not realised she was on duty and had spoken to someone else.
68. The claimant then attended her shift as required but not in uniform. Ms Coiley was disappointed with the example that set and noted that all other staff had attended as normal without issue. Other teams had also had training cancelled. There was a heated discussion between the two which Ms Coiley terminated abruptly because she had to go into a meeting. She did ultimately agree that one particular hour of training could go ahead if it was clinically safe for it to do so. The claimant was particularly concerned to ensure that hour of training went ahead. Ms Coiley also confirmed she would request training be rearranged in October.
69. By email on the same day Ms Coiley stated that she had perceived that the claimant was "abrupt and rude" in their telephone call. She noted that during the call with the claimant she had said as Head of Nursing she expected her decisions in respect of operational demands to be followed. She explained that she had abruptly ended the call due to the meeting. She confirmed that she apologised for her tone. She also explained that she had expected the claimant to wear her uniform (774).
70. The claimant also followed up with her own account on 14 September 2018 saying Ms Coiley had refused to listen and hung up on her, and had been dismissive and abrupt. She said too often "the position of power is used as a club to force compliance" She said Ms Coiley's reference to Head of Nursing was dictatorial (p773).
71. On 20 September 2018 the Claimant emailed Ms Coiley about becoming part of the EDI Team at the Trust. Ms Coiley replied to the Claimant confirming that she was happy to support her and providing her with an electronic link in respect of this.
72. On 27 September 2018 Ms Murphy responded to the Claimant confirming that she would be a referee for the claimant on a training course.

73. On 5 December 2018 a band 7 colleague (colleague A) submitted a formal complaint using the bullying and harassment policy citing the Claimant's "unreasonable behaviour". She made clear she wished it to be addressed formally stating she had tried discussing it with the claimant. Nevertheless there are messages in the bundle which suggest there was an attempt to meet informally but that it was not possible due to her impending maternity leave (806). An investigation officer therefore progressed the case formally (p809). The email on p 857 confirms that there had been an attempt at mediation which was unsuccessful.
74. On 24 January 2018 the claimant took over the role of handling complaints.
75. Whilst the investigation of the first complaint at paragraph 73 was still ongoing Ms Moncar then submitted a formal complaint of bullying and harassment against the Claimant on 27 January 2019 (p824). She had already had a discussion with Ann-Marie Coiley on 20 December 2018. Part of the grievance was about how she perceived the claimant treated Ms Murphy and she had not therefore raised it to her (Ms Murphy).
76. Also on 27 January 2019 a patient's relative complained about the way they had been treated in the emergency department and in doing so made reference to another black patient and a number of black nurses and alleged that her family had been racially abused (822). She referred to the nurses as "health care professional BULLIES". This was assigned to the claimant to deal with and due to its content she went to speak to Ms Murphy.
77. There is a dispute about what was said. The claimant says in her statement that she was offended by Ms Murphy making "funny comments about "professional black bullies" twice in that first conversation and assuming that the claimant was one of the nurses. She also says Ms Murphy repeated the phrase "professional black bullies" in a meeting with Ms O'Lone on 7 March 2019. In her oral evidence she was not able to expand on what was said other than to repeat the phrase and the fact that there was an assumption that she was one of the nurses involved. She said Ms Murphy was sniggering when she said it and on the second occasion the claimant had said "actually it is not funny" to Ms Murphy. We have no note of the claimant questioning Ms O'Lone about whether she agreed with the claimant's account of this conversation during her cross examination (this is referred to as "putting the case" to the witness).
78. Ms Murphy says that the claimant told her that she would not respond to the complaint because it was racist and "she was not a lawyer". Ms Murphy says that she asked her about the complaint and then asked her if she was one of the "black nurses" as that would be the only valid reason for refusing to deal with it. She says she said that otherwise the claimant should put the personal aside and just respond to what was written. She said she did not find anything about the complaint funny.
79. The claimant's initial draft response to the patient's relative took issue with the allegation of racial abuse and said the term "black " was used repeatedly and unnecessarily and that it was considered unacceptable language by the trust

- as it makes assumptions about people because of their race. This was removed from the letter that was sent to the complainant. It is therefore likely that the draft reflects the claimant's view and her view was that the complaint was racist. We therefore accept Ms Murphy's account that the claimant told her it was racist and that she was reluctant to deal with it. We accept that that was the context in which Ms Murphy asked the claimant whether she was one of the nurses.
80. This allegation was addressed by the NMC subsequently and in their outcome letter they have recorded a phone call with the claimant on 13 May 2022. They record that she was unable to recall the alleged funny comment said by Ms Murphy and that she said that Ms Murphy did not use the phrase "professional black bullies" (p2302). In the internal grievance it was presented by the claimant's union representative that the letter itself stated "professional black bullies", something which was repeated in the NMC referral.
81. We prefer the account of Ms Murphy in respect of the conversation as it is consistent with the way the claimant responded to the complaint in her initial draft response and makes sense in the context of the policy (that the only basis for not dealing with a complaint is if it is in respect of oneself). We find it more likely that it is the claimant who has amalgamated the reference to black nurses and professional bullies in the letter as that is how it was presented in both her grievance and her NMC referral (referred to below). We find it more likely that the claimant has misconstrued the question legitimately asked by Ms Murphy as to whether she was one of the people referred to. The claimant's account meanwhile has varied and she has not been able to provide the contextual detail to the alleged comments she says were made by Ms Murphy.
82. On 8 March 2019 the claimant was triaging a patient when Ms O'Lone was called by the pharmacy assistant technical officer due to the state of the drug room. Both describe the room's state as unsafe and completely unacceptable in the context that the hospital had already received an improvement notice in respect of this issue and a further visit by the CQC is possible any time. Ms O'Lone wanted to inform the claimant who was responsible for such issues on the shift but the claimant ignored her several attempts to ask her to come to the drug room. Ms O'Lone confirms that triaging a patient cannot be interrupted but says the claimant did not explain the situation. When the claimant did finally come she shouted she was busy and when shown the room said "did you see me do it". She accepts she said that. Ms O'Lone was frustrated both with the state of the room and the claimant's response and there was an altercation, as confirmed by the pharmacy assistant technical officer. She herself had left saying she would return to do the required top up once the room was tidy. The claimant left and Ms O'Lone tidied the room and followed it up with an email to all relevant staff. The claimant says that afterwards Ms O'Lone demanded hugs whereas Ms O'Lone says that she was aware that that would not be something the claimant would be comfortable with but that she agrees she may have put an arm around her to try to restore the relationship.
83. Ms O'Lone did subsequently praise the claimant on 11 March 2019 having received positive feedback about how the claimant had dealt with a very difficult

- incident. The claimant suggests this was overcompensation due to what had happened before in the drug room but we find they were two unrelated incidents and Ms O'Lone genuinely felt the claimant deserved the positive feedback.
84. On 9 March 2019 a band 5 colleague raised a further grievance with Ms Murphy against the Claimant. Initially Ms Murphy suggested a meeting between herself, the colleague and the Claimant to resolve the issue but he said he did not think it would help and could even make the situation worse.
 85. On 25 March 2019 Matron (Medicine) confirmed to the claimant that she had been instructed to investigate the first complaint of bullying and harassment raised against the Claimant and it is evident she was having difficulty arranging a meeting with the claimant (p857).
 86. On 27 March 2019 Ms Murphy emailed the aggrieved band 5 colleague, noting he did not wish to attend an informal meeting with the Claimant and providing a copy of the bullying and harassment policy and saying his alternative was to have a formal investigation.
 87. On 1 April 2019 the Claimant attended an Investigation Meeting with the Matron tasked with investigating the grievances.
 88. On 4 April 2019 the aggrieved band 5 colleague formally submitted what was the third complaint of bullying and harassment against the Claimant (p 865).
 89. On 4 April 2019 Ms Murphy attended an Investigation Meeting with the Matron.
 90. On 9 April 2019 another band 7 colleague submitted a formal complaint of bullying and harassment against the Claimant (p 871) (the fourth complaint).
 91. On 11 April 2019 Ms O'Lone raised with HR that there were now 4 grievances against the claimant and the claimant was not yet fully aware of these. She was concerned that they all be considered together.
 92. On 8 May 2019 the Chief Nurse emailed the claimant confirming a meeting they had had in which the claimant had communicated that it was a difficult time. They had discussed the possibility of the claimant submitting her own formal grievance and also discussed other supportive measures (p880).
 93. On 14 May 2019 the claimant met with Ms O'Lone and explained how she felt in the department. The claimant followed this up by email saying it was therapeutic and thanking her for her support. Ms O'Lone was concerned with the claimant's isolation within the department.
 94. On 6 June 2019 the Claimant submitted her own grievance about Ms Murphy (the first alleged protected act) (pp886-890). She completed it on a shared computer in the emergency department. Someone else obtained access to it, as an unknown person printed it off and left it in an envelope on Ms Murphy's desk. We accept that this was not Mr Briggs. He said he did not in evidence

- and there is no logical reason why he would do that rather than progress the grievance through the relevant process. We accept his evidence.
95. Ms Murphy raised the breach of confidentiality with Ms O'Lone and Mr Briggs as confirmed in an email on 10 June 2019 (p900). She reported having received the anonymous letter but also that the document was left open for all to read. She requested an investigation.
96. The claimant says she was accused of leaking this document. We have seen no evidence that she was ever accused of being the person who printed off the document and placed it on Ms Murphy's desk. There was an issue as to how the unknown person had gained access after the claimant had used the computer. There was an investigation with IT to understand how this could have happened and the respondent, based on IT's response (pp1187), considered the most likely explanation was that the claimant had not shut down the computer in a way that ensured the document could not be accessed by a subsequent user. Consideration was given as to whether this was a disciplinary matter but no disciplinary proceedings were ever commenced.
97. The claimant met with Mr Briggs on 10 June 2019. They discussed her grievance and she said the relationship with Ms Murphy had completely broken down. She also believed all those who had brought complaints against her were friends of Ms Murphy. She said it would be better if she worked elsewhere and she said she was happy to go to University Hospital Lewisham and be flexible. She was shown the relevant form in the bullying and harassment policy to complete. He did in that meeting suggest she had done the letter in the triage room and left the letter open on the computer and/or "had not closed the entry" and a number of people had seen it. He asked her to write a statement about the incident. He did not ask her to confess to the leak as she alleges (pp 893-4).
98. On 14 June 2019 the Claimant attended a meeting with Ms O'Lone. Part of that discussion is reflected in the email at page 907 where Ms O'Lone said she tried to explore with the claimant why staff had started to raise issues about her behaviour. This related not just to the four complaints but she had also mentioned that other staff had informally raised issues. We accept her evidence that she did not say she had to fan them away. Her conclusion expressed to HR was that "[the claimant] felt she [was] being victimised ...and sadly [the claimant] felt that her actions and behaviour was exemplary and professional at all times". Although not recorded there the meeting also covered the claimant's interest in moving from the emergency department. This is confirmed by the claimant's own subsequent email on 19 June 2019 at page 913/917. It was the claimant who, when referring to complaints in addition to the four existing complaints, said please "don't fan them away". It is in quotations which the claimant says means she is quoting Ms O'Lone however the context suggests they are the claimant's words referring to Ms O'Lone having told her there were other informal complaints.
99. The claimant in her email of 19 June 2019 confirmed it had been discussed that the claimant would be out of the emergency department by Thursday 20 June

- and she said she was delighted. On 19 June 2019 she sought confirmation the move was still happening. She said it wasn't fair to Ms Murphy for her to stay on and that she needed to move for her health's sake (p917). Also on 19 June 2019 (p 912) Mr Briggs followed up on whether she was doing the formal grievance paperwork.
100. Ms O'Lone had some ideas about the claimant's transfer. She thought there was a possibility that a band 7 at Lewisham was about to hand in their notice and that a position might be available by about November 2019. There was also a community position at Lewisham but in the claimant's email of 19 June she expressed a preference to work in hospital rather than the community. Ultimately she declined that position.
101. On 22 June 2019, in order to move the claimant away from the emergency department, it was decided to move the claimant to the discharge team as a temporary measure, as she was informed in the email on page 916. She was told this would be until details were finalised with Lewisham.
102. It is accepted by the respondent that this was not a suitable long term arrangement as it did not utilise the claimant's extensive emergency department experience and expertise. It was also a lower level but she was to continue on her existing salary. The intention was to support her by enabling her requested move out of the emergency department as soon as possible. It was the only option that was immediately available.
103. On 23 June 2019 whilst on annual leave Ms O'Lone left a voicemail for the claimant saying she was to report to the discharge team on 24 June 2019. The claimant did not attend work on 24 June having not picked up the message so Ms O'Lone contacted the claimant by phone to confirm that she was move to the Discharge Team the next day. The claimant, despite having indicated she had been delighted to move the previous week, tried to say that she had agreed to cover a colleague on the 25 June 2019 at the emergency department and wanted to honour that. Ms O'Lone told her she was not to return to the emergency department. The claimant was very upset with Ms O'Lone in that call as she did not want to go to the discharge team and Ms O'Lone accepts she could have handled this situation better. She emailed the same day with confirmation of the start the next day. The claimant did not attend on 25 June either but instead emailed Ms O'Lone to complain about her attitude in the call (923).
104. Ms O'Lone then essentially passed the situation to Mr Briggs (p 923). The claimant did then move to the discharge team.
105. On 28 June 2019 the claimant completed the appendix 2 form for her grievance (alleged protected act 2). Her grievance raised a number of historic matters leading up to the more recent events relating to the leaked document and the involvement of Ms O'Lone. Whereas initially her complaint had focused on Ms Murphy it was now expanded to include Ann-Marie Coiley, Annie O'Lone and Glenda Moncar.

106. On 13 August 2019 the claimant attended a meeting with the investigation officer dealing with her grievance to discuss the complaint.
107. On 23 August 2019 the Claimant raised a concern with the Information Commissioner's Office about the leak of her grievance, the sharing of a meeting invite with other staff and that a sensitive folder was missing from her NHS email account.(Alleged protected act 3, alleged protected disclosure 1).
108. She also says that at some point in August 2019 after raising the ICO concern that Mr Briggs in a corridor conversation asked her if she had written a statement saying she had leaked the email. He says he would not have said that. The evidence does not suggest he thought she had been the source of a leak but that she had left the computer open. He did not require a statement saying that as it was what the IT investigation suggested. We do not accept Ms Campbell's evidence on this point but prefer the evidence of Mr Briggs.
109. The claimant did not have an appraisal in 2019. The claimant asked for an update on 31 October 2019 along with an update on what was happening with a more suitable role (p1174). She then requested a month of annual leave.
110. The claimant accepts the appraisal was the Senior Matron's responsibility and not Mr Briggs' responsibility. It was not completed prior to the grievance outcome and the claimant moving roles as set out below.
111. Whilst on the requested annual leave the claimant contacted ACAS on 6 November 2019.
112. The report into the 4 complaints was completed on 28 November 2019 and the report into the claimant's grievance was completed on 9 December 2019. Meanwhile the ACAS conciliation period ended on 6 December 2019.
113. As per the policy she was not given copies of these reports but a debrief meeting in respect of both was held on 20 December 2019 as confirmed in the subsequent letter dated 17 January 2020 (p 563).
114. The findings in respect of the 4 complaints were that there was no evidence the claimant bullied and harassed the complainants and there had been no malicious intent. However it was found that she did display inappropriate behaviour and had failed to communicate effectively, that the issues were long standing and there was a communication breakdown on both sides. In particular she had worn head phones whilst working; there had been unprofessional communication on both sides with Glenda Moncar; and that the claimant was socially isolating herself. It was recommended that the claimant did not return to the emergency department. The investigation officer said she felt uncomfortable about the way one complaint came in after another.
115. The conclusion in respect of the claimant's grievance begins at p574 and was that there was no evidence to suggest Ms Murphy had bullied and harassed the claimant, but that they had had a difficult relationship for years and the professional relationship had broken down and there had been long

- periods with no communication. Although the second mediation had improved things temporarily it was short lived. The claimant had dissociated herself from others which was interpreted by others as rudeness or poor professional behaviour.
116. It was agreed that she should have had the appraisals in 2016 and 2017 done by senior management. There was no other criticism of Ms Coiley.
117. It was found that both she and Ms O'Lone raised their voices in the drugs room but that Ms O'Lone had subsequently apologised. There was no evidence that Glenda Moncar bullied and harassed the claimant.
118. Incidental findings to the claimant's grievance correspond with the findings in the other investigation that the claimant had a tendency to ignore people for months at a time; she refused to give or take handovers at times; she had a tendency to misinterpret statements rather than seek clarification; she wore head phones during management days; refused to use local procedures making life difficult for herself; she had refused to work in certain areas and appeared to lack insight into her own behaviour.
119. There was also a tendency in the department for behaviours to be allowed to continue.
120. The claimant indicated during the debrief meeting that she wanted to take things further and if the hospital could not do anything she would have to go elsewhere.
121. Mr Briggs stated that given the outcome the emergency room was not the right place for her to work and requested she remain in the discharge team until the New Year. He confirmed she had the opportunity to appeal. He set a further date to meet.
122. On 02 January 2020 the claimant submitted her first tribunal claim going over the issues dealt with in the grievance amongst others. In it she named Ms Murphy, Ms Moncar, Ms Coiley and Ms O'Lone as personal respondents though those complaints were not accepted due to failure to contact ACAS in respect of each individual respondent. She also named a long list of other respondents in the additional information including the Senior Matron, Mr Briggs and a number of others including the Royal College of Nursing.
123. On 20 January 2020 the claimant submitted a further tribunal claim (2nd claim) going over similar matters and adding a claim of detrimental treatment for making protected disclosures. Three days later the claimant contacted ACAS again and received certificates in respect of the 4 named individual respondents.
124. There was a further feedback meeting on 27 January 2020 which included discussion about where the claimant should work going forwards. The only suitable role the respondent had been able to identify was Band 7 Ward Manager Ward 23 (though the parties sometimes referred to this as Ward 22

- as the wards were adjacent). She was to report to Mr Katandika (Matron). The claimant expressed concern that he reported to Ms Coiley, Head of Nursing, as she had been one of the people against whom the claimant had brought a grievance. There was not any other position available at that point but given the seniority of Ms Coiley's role it would have been difficult to find a role at Queen Elizabeth not under her supervision. The mooted Lewisham position was not available as the person decided not to leave. The claimant herself had turned down the community based position. The position on Ward 22/23 was at the right level and suited her skills as it supported the same day emergency care pathway.
125. As part of the discussion Mr Briggs did say the claimant could return to her position in the emergency department if she chose. The claimant said she could not due to the subjects of her grievance working there.
126. The claimant sought to continue to air her grievances but Mr Briggs went to some lengths to seek to reassure her moving forwards but also did not shy away from discussing where her own conduct had been a contribution. He did say that if she was unhappy with the outcome she did have the right to appeal.
127. He said she must have left the computer open with respect to the leaked email as IT had said there had not been an internal hacking. She refuted this.
128. The decision was made that she would transfer to the Band 7 position on a permanent basis but this could be reviewed in 3-6 months. Other ongoing support was discussed. The meeting was constructive despite being frank at times. The transfer to Ward 22/23 took place in February 2020. The letter from Mr Briggs refers to the claimant being pleased to be returning to work on ward 23 and that she was looking forward to wearing her uniform again (p 583).
129. On 03 February 2020 the claimant submitted a further similar tribunal claim again citing the 4 individual respondents, having received certificates in respect of each of them. This also included the public interest disclosure detriment complaint (third claim).
130. On 05 February 2020 the Claimant appealed the outcome of the investigation into the allegations of bullying and harassment she raised.
131. On 17 February 2020 the Claimant informed Mr Katandika at 3.20am that she would not be able to attend work that day because she had jury related duties. On 03 March 2020 Mr Katandika requested a copy of the Claimant's jury notice. On 04 March 2020 the Claimant confirmed that the emergency day off was to take legal advice on her case and nothing at all to do with jury service. Nevertheless no action was taken against the claimant in respect of this.
132. On 15 May 2020 the claimant raised health and safety issues relating to the transfer of patients at short notice due to the pandemic (p1356). The respondent accepts these concerns were valid to raise.
133. The Claimant's Appeal Meeting took place on 28 May 2020.

134. On the same day Ms Coiley replied to the claimant's email referred to at paragraph 132, explaining the reasons for how the transfer of patients had been conducted but that she was happy to discuss further. The claimant responded on 17 May 2020 confrontationally and going back to past issues. She ended with "I am tired [of] being treated disrespectfully by you – I shall report this along with others to my Union". Mr Briggs, who had been copied in, then intervened in a conciliatory manner to seek to calm the matter but asked that "we draw a line on further emails and calling individuals out" (p1358).
135. Mr Briggs then tried to meet with the claimant. The claimant refused saying she needed to speak to her union. Mr Briggs said it was a reasonable management request but the claimant continued to decline to meet.
136. The claimant sent a number of emails complaining about Mr Briggs and then continued to say she would not meet until her grievance appeal outcome.
137. On 22 May 2020 Mr Briggs sent a more formal letter requesting that she meet. She refused to attend that meeting.
138. He then wrote the letter dated 4 June 2020 summarising what had happened and that her behaviour was unacceptable and unprofessional, affects working relationships and therefore patient care. He said he would not allow it to continue. He said he was dealing with the matter informally but that he had to advise her that a repeat of similar misconduct was next time likely to lead to disciplinary action (1367-1368).
139. On 10 June 2020 the claimant was informed that her grievance appeal was not upheld. Ms Kelly Lewis-Towler, the Appeal Manager, found that a full and thorough investigation had been carried out and a reasonable and balanced conclusion had been reached.
140. On 13 June 2020 the claimant initiated the meeting with Mr Briggs which took place on the 18 June 2020 and did not go well. It lasted just 2 minutes. The claimant recorded her version at 1.16pm. She said Mr Briggs was judgmental, prejudiced and that since June 2019 he had been rigid, unreasonable, unfair and "bigoted (racist)". She mentioned he had threatened her with disciplinary action. She said she would "be escalating his conduct to reputable agencies for further address" (p1386).
141. Mr Briggs responded the same day. He did not agree with her description but declined to get into an email debate. He said that her words were deeply offensive, hurtful and unnecessary. He suggested that she reflect and understand what she really wanted (p1386).
142. He said in evidence that the claimant had called him racist and bigoted in the meeting itself and he had asked her to leave, which we accept.

143. On 22 July 2020 the Claimant submitted a Formal Bullying and Harassment complaint against Mr Briggs. The respondent decided to appoint an independent consultant to address this grievance.
144. On 24 August 2020 the claimant contacted ACAS in respect of a claim against Mr Briggs personally. The certificate is dated 24 September 2020.
145. On 30 September 2020 Mr Rogers submitted a Formal Grievance against the Claimant in respect of an incident which had occurred on that day around a dispute as to whether a patient should have a side room. The claimant had wanted the patient to remain in the side room whereas Mr Rogers wanted the patient moved. He complained about the way the claimant had behaved and spoken to him (1433-1434). He expanded on it in a statement dated 2 October 2020 when he alleged the claimant acted towards him as she did because of strong religious beliefs and alleged homophobic attitudes (1437).
146. On 05 October 2020 Mr Katandika informed the Claimant about Mr Roger's complaint and invited her to make a statement about the incident (1439). The claimant replied saying she had reported Mr Roger's behaviour to a colleague and had told him she would be reporting him on the 30th September.
147. On the same date a Senior Staff Nurse gave a statement about the incident on 30 September 2020 confirming that the doctor concerned had also wanted the patient to remain in the side room but after a conversation with Mr Rogers the patient was moved (1438). He otherwise does not support either side's allegation in this dispute.
148. On 13 October – 11 November 2020 the Claimant was absent from work due to work related stress. Whilst absent, on 24 October 2020, she put in a further tribunal claim just against Mr Briggs personally in terms similar to the grievance against him (fourth claim). On 11 November 2020 the first case management hearing took place and the claimant withdrew a number of claims (p177).
149. On 18 November 2020 Occupational Health provided a report which confirmed that the Claimant was fit for work.
150. On 23 November 2020 the Commissioning Manager wrote to the Claimant to inform her that a Disciplinary Investigation would take place into Mr Roger's complaints against her. The allegations are listed at page 1461.
151. On 25 November 2020 the Claimant responded to the disciplinary investigation letter by saying she would contact the police. The Commissioning Officer responded by signposting her to the support that was referred to in the previous letter.
152. On 30 November 2020 a doctor gave a statement in respect of the incident on 30 September 2020. He said the site manager (Mr Rogers) wanted the side room in which there was a patient who was very unwell with a high possibility of passing away. The site manager (Mr Rogers) was stating that as

- the patient was being actively treated they could not be classed as end of life. The doctor heard the treating doctor say she felt the most dignified thing was for the patient to be in a side room. He did not hear any unprofessional comments by the claimant who was also present. We find this incident demonstrates the type of conflict between different practitioners concerned about different patients with respect to the scarce resource of the side room, particularly during the pandemic.
153. The claimant herself prepared a statement in response to the complaint (dated 15 December 2020). She also said Mr Rogers treated her badly in that dispute. She made her own allegation about Mr Roger's conduct towards her in a separate incident on the same date. She said about 30 minutes after the previous incident that he came behind her as she was walking along. She said he cracked jokes comparing her body parts to the patient's body map that she was working on. She also had an interview on 16 December 2020 and said in that meeting that she had told a doctor on the day about the "butt" comment.
154. There was a further case management hearing by telephone on 2 December 2020.
155. On 29 December 2020 the Claimant contacted ACAS in respect of her claim against Tony Rogers. The ACAS certificate is dated 6 January 2021.
156. Meanwhile on 05 January 2021 the Claimant submitted a Formal Grievance against Mr Rogers that on 30 September 2020 he had made derogatory and offensive comments about her anatomy (buttocks). She said she considered him individually liable and the respondent liable.
157. An external investigator at Capsticks was appointed to investigate the Claimant's Bullying and Harassment Complaint against Mr Briggs and the Senior Matron, as well as other concerns identified in her Grievance. She contacted the claimant on 6 January 2021 to arrange a meeting.
158. The meeting was scheduled for 18 January 2021 but in the event the claimant decided not to discuss the substance of her grievance due to the ongoing tribunal claims.
159. On 19 January 2021 there was a further face to face case management hearing at the tribunal (p215).
160. On 02 February 2021 the Claimant did attend an Investigation Interview in relation to Mr Roger's complaint.
161. On 04 February 2021 the claimant submitted a tribunal claim against Mr Rogers for the incident on 30 September 2020 (fifth claim). Here she said she was working on the body map on the computer and he approached from behind. She said he said that the buttocks on the body map looked like hers. She said that she told him then that it was not funny and she would report him. This is the alleged 10th protected act.

162. On 15 February 2021 Mr Rogers attended an Investigation Interview in relation to his complaint against the Claimant and denied the allegation about the derogatory comment. He said he did not see that she was working on a body map.
163. On 24 February 2021 the other doctor involved in the 30 September 2020 incident provided her statement for the investigation. She confirmed that she had wanted the patient to remain in the side room and said that Mr Rogers had been unprofessional and shouted at her and the claimant. She confirmed the conversation had carried on with Mr Rogers being aggressive to the claimant. She had not heard a comment about the claimant's butt but said that the claimant "mentioned it to me later as she was very upset about it". She did not specify what she meant by later. She said she could not remember the specifics but she could remember the claimant was very very upset about it and told her shortly after the altercation that he had made a comment about her body. She said the claimant had repeated that she was very upset several times. The doctor did back up the claimant's view on the needs of the patient.
164. The outcome of the investigation did not uphold the homophobic element of the allegations against the claimant or the comment about the butt but did find both Mr Rogers and the claimant had communicated inappropriately over a dispute about which patient should have a room.
165. In respect of the incident on 30 September 2020 we accept that something that Mr Rogers said upset the claimant enough for her to mention it to the doctor shortly after. However, we also find it unlikely having heard from Mr Rogers that he would have made that particular comment about her body and the body map, and to the claimant, in particular. He came across as serious and officious, particularly with respect to the priorities over side rooms and the altercation with the claimant that day. We find it extremely unlikely that he would have shifted so quickly to make a comment in respect of her buttocks. Moreover the claimant is not a reliable witness in respect of the accuracy of comments she reports to have been said. She has repeatedly misinterpreted statements in this case but also within the hearing she has shown that she does not always report things accurately. She is prone to exaggeration and hyperbole. That does not mean that this incident did not happen but on the balance of probability we accept Mr Rogers' evidence that he did not see the body map and made no comment about the claimant's buttocks. This is the limit of what we are required to decide happened in respect of the grievances involving Mr Rogers, even though those were much wider and this does not mean we prefer Mr Roger's evidence about other matters.
166. The claimant was given further opportunity to meet to participate in the investigation into her grievance against Mr Briggs and the Senior Matron but she declined to do so.
167. On 25 May 2021, the Claimant, using a form for referring herself to the NMC, reported the Senior Matron, Ms Coiley, Mr Briggs, Mr Katandika and the Matron (Medicine) to the NMC, amongst others, detailing all the matters that

- had previously been raised in her grievances (this is the second alleged protected disclosure).
168. On 07 June 2021 the Claimant failed to provide availability for mediation with Mr Rogers and confirmed that she would be seeking advice from the NMC.
169. On 18 June 2021 Ms Lewis-Towler sent the Investigation report from the grievance into Mr Briggs and the Senior Matron to the claimant. The grievance was extensive. With respect to the email interactions and the warning of disciplinary action that triggered the grievance it was found there was no evidence to support the claimant's assertion that Mr Briggs was racist and that informal disciplinary action was taken because of the claimant's tone rather than her refusal to meet with him. On 05 July 2021 the Claimant confirmed her intention to appeal the outcome of her grievance.
170. On 14 July 2021 the NMC contacted relevant staff about the claimant's referral to the NMC.
171. On 15 July 2021 Mr Katandika sent out an email to all staff in his ward explaining his intention to seek feedback about management, There had been specific issues raised about band 6s on the ward but in any event it is something he has done before. His intention was to request feedback about the claimant and her team first (though telling staff that no specific names should be used in the feedback) and then himself second as their roles were different. The claimant was informed of the plan along with other staff in a group email but she did not see it so was only informed by another colleague about the feedback being sought about her team. In the end this idea was not pursued.
172. On 22 July 2021 a collective grievance was raised against the Claimant with a cover email from Mr Briggs stating "Please find attached a grievance from a large number of staff presently working at [the respondent]. We ask that this situation is looked into urgently as the group of staff raising this grievance can [no] longer carry on with a situation that we feel has completely spun out of control (p1819). The grievance was signed by all the individual respondents except for Ms Kelly Lewis-Towler. It was also signed by 7 other staff. The grievance itself referred to the fact that the staff had been subject to allegations of bullying and/or harassment by the claimant and that over time there had been numerous investigations completed by the Trust related to the one staff member (the claimant) with outcomes for all staff to take but the working relationships had now broken down with daily interactions being feared. All of the complainants were also subject to the NMC referral and feeling victimised by the claimant. They said they were acting professionally but the response from the claimant was not professional or reflective of Trust values. It said their well being was affected due to fear of threats and legal action. Allegations included that the claimant had made a high number of allegations documented in separate grievances with accusations of racism and bullying. No allegation had been upheld upon investigation. They said there was an inability to manage the claimant as there was an ongoing fear of retribution/ further grievance; the claimant did not speak directly with many colleagues; she often laughed at people when she saw them and walked away making staff feel

- belittled and humiliated. They said that despite their having raised grievances about the claimant the trust had failed to protect the wider staff from unfounded allegations from the claimant. It said that it was impacting on their own mental health and well-being(p1820-22).
173. Mr Briggs in evidence said that the NMC proceedings were having a significant impact on the affected staff. He said Mr Rogers had said that the claimant's behaviour had brought forward his retirement. Mr Rogers himself said that prior to the grievance Mr Rogers was already dreading bumping into the claimant and on anti-depressants following their respective grievances. He said following the claimant's referral to the NMC he negotiated his early retirement. The Practice Development nurse was crying at the thought of working with the claimant and the Deputy Sister on the verge of a "breakdown".
174. Ms Lewis-Towler then met with a number of the staff concerned on 28 July 2021. She said they were visibly distressed and she was concerned she was about to lose her senior nursing team. This led to her email to HR of the same date (p1830). She described the claimant's behaviours as being vexatious and intimidating. She confirmed there that she had been told that at least 3 or 4 key members of staff were on or contemplating sick leave due to workplace stress; two others were considering delaying their return from leave. She reported a number of behaviours by the claimant, some of which she had witnessed herself. These included that the claimant would return to the emergency department without clinical purpose despite being asked to leave several times; she was attending bed meetings and waving good morning after sending grievance correspondence; she was regularly walking past and laughing at staff including Ms Lewis-Towler and they felt unable to challenge this. She did refer to having received pages of allegations and that many accuse herself and others of bullying and racist actions but she stated that all investigations have failed to be upheld. She also reported that she was concerned about patient safety as staff were concerned about retribution if clinical situations were questioned with the claimant. She reported that her staff no longer felt she was able to support them adequately with the situation and that the mental well being of her leadership team was at crisis point and she feared a mass exit of staff. She said "I am truly saddened that I am now in this position, and am at risk of having the years of cultural development and belief destroyed by an individual [the claimant]". She said the claimant herself was deeply unhappy and behaving in ways that do not uphold core values and that she was concerned how the Trust would continue to safely manage the individual where she has taken out grievances against the "entire" line management.
175. On the same day the Claimant was suspended. The letter confirming suspension said it was pending investigation into serious concerns raised by a number of staff regarding conduct that could amount to intimidation.
176. On 10th & 19th August 2021 the claimant attended her appeal hearing with respect to the grievance. The appeal outcome was sent to the claimant on 24 August 2021.

177. Meanwhile on 12 August 2021 the Claimant was informed that the concerns raised about her behaviour in the collective grievance would be investigated. She was invited to an investigation interview on 26 August 2021. The emphasis was concerns about the well being of all parties and the impact on service delivery.
178. The terms of reference were whether there had been a breakdown in trust and confidence or an irretrievable breakdown in the claimant's work relationships with colleagues, managers and/or the Trust in particular:
- 178.1 intimidating behaviour by the claimant creating a hostile environment by presenting at the Emergency Department when not required to do so and laughing at those involved in internal complaints; and/or
 - 178.2 a recurring pattern of discontent and adversarial challenge in response to management instructions.
179. The Trust said they would use the principles of the disciplinary policy but emphasized it was not being treated as misconduct.
180. On 21 September 2021 the claimant sent the email on page 1957 entitled grievance but described in the first line as a counterclaim. This was about the proposed ward survey to request feedback on management (paragraph 171), the collective grievance and other matters including historic matters. She said that ward 22 was an unsafe working environment and that she had been asking to move from that site since 26 November 2018, which is not true as she had agreed to the move.
181. On 8 October 2021 the claimant obtained a further ACAS certificate.
182. She added to her grievance on 10 October 2021 (p1999) saying the collective grievance and the suspension were because she had done protected acts and they amounted to detriments contrary to s27 of the Equality Act and s47 Employment Rights Act. This is the alleged 11th protected act.
183. The claimant complains about delays in dealing with this grievance. However, the relevant staff had annual leave but within 12 days she was aware that it would be investigated as part of the current investigation into the breach of trust and confidence. She then raised issues about the commissioning manager and so on 18 November the Trust informed her that they were seeking to replace him. This is how Mr Larrissey came to be involved.
184. On 13 October 2021 the Claimant sent a discrimination questionnaire to the Respondent. On 22 October 2021 Ms Thomson responded to the Claimant's discrimination questionnaire explaining that the Respondent had considered the request but decided it was not appropriate to respond in the

- circumstances. This position was reconsidered and a response was ultimately provided (p2050). See below.
185. On 27 October 2021 the claimant submitted her 6th Employment Tribunal Claim about the suspension and disciplinary investigation and in similar terms to the grievance. It also included the refusal to respond to the discrimination questionnaire. This was against the Trust itself.
186. On 2 November 2021 the claimant obtained another ACAS certificate.
187. In November 2021 the Investigation Report was produced in respect of the Collective Grievance. This was a thorough investigation with 16 people interviewed. She reviewed historic documents.
188. On 29 November 2021 the claimant issued the 7th Employment Tribunal Claim. This was against Ms Lewis-Towler for the suspension and disciplinary investigation and Mr Katandika with respect to the ward survey.
189. On 9 December the investigation report was sent to Mr Larrissey. The claimant was informed of his appointment and that it would lead to some delay on 9 December. She received an update on 22 December that more time was needed. Then his outcome was further delayed due to the claimant's bereavement. On 25 January 2022 the Claimant received the investigation report which addressed her grievance.
190. On 16 December 2021 the respondent provided a response to the Claimant's discrimination questions but indicated that some answers would be provided as part of the tribunal preparation in disclosure and statements. The claimant was not satisfied with this and raised it with the Employment Tribunal (p 361) but Employment Judge Dyal agreed with the respondent's approach.
191. On 16 January 2022 the claimant submitted the 8th Employment Tribunal Claim. This was against Philip Briggs and Ms Thomson (Ms Thomson is no longer a respondent) based on matters similar to claims 6 and 7.
192. The claimant's suspension continued until she was dismissed. The dismissal itself is the subject of a further claim that is not before us. The suspension and the length of it was reviewed on 12 August 2021 and the decision was that she should remain suspended throughout the investigation but with regular reviews. It was reviewed again on 29 September 2021 (1963) and it was extended until 31 October 2021 because the investigation was still ongoing. On 14 October 2021 (1990) the claimant was told that due to annual leave the review would be a week later but the suspension was to continue. However the claimant then complained about the commissioning manager and so he was removed and there was a delay. The claimant was informed on 18 November 2021 that a new commissioning manager was being appointed and that they would review the suspension. Once Mr Larrissey was appointed he wrote to the claimant on 22 December 2021 confirming that due to the nature

of the allegations being about working relationships and trust and confidence the suspension should remain in place until a determination but he lifted restriction on working through an agency outside of the respondent.

193. Further delays were due to scheduling the internal hearing but the invitation was sent to the claimant on 15 March 2021 and it took place on 27 & 28 April 2022.

Relevant law

Direct race discrimination

194. Section 13 Equality Act 2010 states that a person (A) discriminates against another (B) if because of race A treats B less favourably than A treats or would treat others. Section 23 provides that where a comparison is made for the purpose of section 13 there must be no material difference between the circumstances relating to each case.

Harassment

195. Section 26 Equality Act 2010 states that a person (A) harasses another (B) if A engages in unwanted conduct related to race or sex and the conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
196. In deciding whether the unwanted conduct has the requisite effect the tribunal must take account of B's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Victimisation

197. Section 27 Equality Act 2010 states that a person A victimises a person B if A subjects B to a detriment because B does a protected act, which includes making an allegation that A or another person has contravened the Equality Act.
198. In the case of *Martin v Devonshires Solicitors* 2011 ICR 352 the distinction was drawn between cases where the reason for the detriment was not the protected act as such but a feature of it which could properly be treated as separable such as the manner in which the protected act was carried out.

Burden of proof

199. Section 136 (2) provides that if there are facts from which the tribunal could decide, in the absence of any other explanation, that a person A contravened a provision of the Equality Act then the tribunal must hold that the contravention occurred unless A proves that A did not contravene the provision. This is known as the shifting burden of proof.

Time limits

200. Proceedings may not be brought after the end of a period of three months (plus any extension by virtue of ACAS conciliation) from the date of the discriminatory act or such further period as the tribunal considers just and equitable (s23 Equality Act). Conduct extending over a period is treated as being done at the end of the period.

Public interest disclosure detriment

201. Under s 47B Employment Rights Act 1996 a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker made a protected disclosure. A protected disclosure is defined in sections 43A – 43H Employment Rights Act 1996 and is a disclosure of information which, in the reasonable belief of the worker making the disclosure, [is made in the public interest and] tends to show one or more of the following:

- (a) That a criminal offence has been committed, is being committed or is likely to be committed;
- (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- (c) ...
- (d) That the health or safety of any individual has been, is being or is likely to be endangered...

202. The disclosure of information must also be made to the employer or to another person in the circumstances covered by sections 43C-H.

203. The respondent's representative referred the tribunal to the case of *Kong v Gulf International Bank (UK) Ltd* (EA -2020 -000357JOJ) which applied the case of *Martin v Devonshires Solicitors* above to a public interest detriment case and drew a distinction between the making of a protected disclosure on the one hand and on the other, conduct associated with or consequent on the making of the disclosure, where the protected disclosure was the context but not itself the reason for the impugned treatment. The question is whether there is a separate feature distinct from and not a necessary/inherent feature of the protected disclosure.

Conclusions

Race discrimination

Did the Second Respondent (AMC), the Third Respondent (TM), the Fourth Respondent (AOL), the Fifth Respondent (GM) and the Sixth Respondent (PB) subject the Claimant to less favourable treatment as set out set out in Columns C and E of the updated Schedule of Allegations?

Did this amount to treating the Claimant less favourably than she otherwise would have been had she not been Jamaican?

If so, was this because of the Claimant's race and/or because of the protected characteristic of race more generally?

Allegations 1-5

204. The relevant factual findings are at paragraphs 38-49 above.

Allegation 1: Decline the Claimant's annual leave request for 7-21 March 2016?

205. The respondent granted the leave to the extent it was covered by the claimant's remaining entitlement. The claimant's issue was that she would have preferred the second two weeks out of her three week request. The respondent and Ms Murphy in particular, did help her resolve it by organizing a swap with Ms Moncar so that she did get the weeks she wanted and that she was entitled to. There was no actual comparator in the same circumstances but the examples show that the Trust was accommodating wherever possible to meet the different needs of their diverse staff, including the claimant.

Allegation 2: Falsely accused the Claimant for not following the annual leave policy (14.02.16)?

206. The claimant did not follow the policy in three respects. She did not make a request to Ms Murphy because the request involved 3 weeks, as required by the policy; She did not keep an accurate record of her own leave entitlement and was therefore mistaken in her belief that she had 3 weeks remaining; she had booked her flights prior to the approval. That these issues, which had caused the problem, were brought to her attention was not a false accusation.

Allegation 3: "Apologised on behalf of Rodney" for failing to communicate reasons why her annual leave was declined yet levelled blame against the Claimant "for not highlighting the problem earlier and for escalating the situation this far" (27.02.16)?

207. In the email on page 625 Ms Murphy made the factual statement that if the claimant had followed the policy the situation would have been addressed earlier and would not have escalated. There was an apology for the fact that the situation was contributed to by Mr Katandike due to his not informing the claimant within 14 days that not all of her leave request.

Allegation 4: “Admonished the Claimant that “personal conflict should be put aside and that I would expect a professional relationship between two Band 7 where they should ask each other for duty swaps” (27.02.16)?

208. The claimant was not “admonished”. Ms Murphy explained to the claimant that personal conflict should be set aside with respect to the claimant’s reluctance to speak to Ms Moncar.

209. There was some criticism of the claimant because she was refusing to speak to Ms Moncar to resolve the matter herself even when the respondent was indicating that Ms Moncar would be receptive to a swap which would resolve the matter.

Allegation 5: Patronised, belittled and accused the claimant of not being a team player in relation to her annual leave request in respect of 7-21 March 2016?

210. The claimant was not patronized, belittled or accused. Her own concerns were being addressed and the respondent found a solution. The respondent spoke with the claimant about the fact she had not followed the procedure and that she was reluctant to speak with a colleague about a swap which would have resolved the problem.

With respect to Allegations 1-5.

211. In addition to naming others who she perceived had been treated better with respect to their leave requests (covered at paragraph 205) the claimant named some comparators with respect to how she was treated but none of them were in the same situation.

212. We do not find any of the above allegations to amount to less favourable treatment of the claimant because of race. It was not less favourable treatment. There is no evidence from which we could conclude that any other staff member would not have been treated the same way in the same circumstances. There is also nothing from which it could be inferred that the way the claimant was treated was because of her race, rather than because she did not follow the process for requesting leave of 3 weeks and being unhappy with the particular two weeks she was given, refusing to resolve the matter herself by talking to her colleague who was willing to swap with her.

213. The allegation that this is also an act of victimization is misconceived as the first protected act post-dates this allegation by three years. It is an essential requirement in a victimization claim that the detriment must have happened

after the claimant raised a complaint of discrimination or did another protected act.

Allegation 6: Failed to support the claimant during reports of slander raised and shared to other Emergency Department staff by a junior staff

214. The relevant findings of fact are at paragraphs 50-53 above. The reports were not slander but concerns about the claimant raised by a student nurse were passed on to the relevant person. The claimant raised her own issues about one of the staff members who had been involved in forwarding the student's concerns. The Senior Matron met with her and planned to have a three way meeting with the claimant and the staff member involved. This was overlooked but the claimant did not chase it up. The claimant's complaint before us focused on Ms Murphy not responding, but it had been confirmed to the claimant that it had been passed over to the Senior Matron to deal with. The claimant compares her treatment to those who lodged formal grievances but they are not comparable as this was not a formal grievance.

215. Although the meeting did not happen for whatever reason there is no evidence this was because of the claimant's race. Ms Murphy's own lack of direct response was because it was being handled by the Senior Matron and she had indicated she was withdrawing from managing the claimant while her grievance was investigated. She did however support the claimant by communicating that the other staff member could also be the cause of issues at times.

216. There is no suggestion that there was any other action taken against the claimant because of the concerns raised by the student.

Allegation 7: Ms Murphy refused to conduct an appraisal on the claimant (13.08.2017)

217. Ms Murphy took a step back from managing the claimant while she believed her grievance about the claimant's email dated 14 February 2016 was investigated, consistent with the outcome of mediation. The Senior Matron was to be responsible in the meantime and it is she who did not ensure the appraisal was carried out. We find that Ms Murphy's understanding from the appraisal was clear and consistent with the documentation but the Senior Matron did not action it as there was no investigation into Ms Murphy's grievance and it is likely that Ms Murphy's concerns were overlooked and that is also the reason the Senior Matron did not take on the responsibility for the appraisal.

218. There is no evidence to conclude this was because of race rather than a failure to follow through on the mediation outcome and Ms Murphy's concerns.

Allegation 8: Failure to take reasonable actions to address the concerns raised by the claimant regarding junior staff's poor professional conduct during practice

219. The claimant had initially raised these in an incident report which was not appropriate but later Ms Coiley agreed to a three -way meeting which never took place. Ms Coiley believes this was an oversight due to her having additional responsibilities at a busy time of the year. The claimant did not chase it up either. Similarly Ms Coiley also failed to follow through on a three way meeting requested by the other white British staff member. We agree with the respondent that this is a more suitable comparator than the comparator suggested by the claimant whose circumstances were different as he brought a formal grievance.

220. Clearly it would have been better to have the meetings but there was no less favourable treatment and no evidence at all that the reason was the claimant's race

Allegation 10: Ms Coiley supported two emergency department staff to raise complaints against the claimant

221. The two members of staff chose to bring grievances against the claimant. There is no evidence of any support beyond informing the staff of their entitlement to do so and how to go about it. We agree with the respondent that this is entirely appropriate and the claimant has at times had similar support when she wanted to bring a formal grievance.

Allegation 11: Ms Murphy thought the term "black professional bullies" was funny and passed funny comments twice within the claimant's hearing in March 2019 [this included an assumption that the claimant was one of the nurses]

222. We preferred Ms Murphy's account of this incident. She did not find anything about the complaint funny. She did ask the claimant if she was one of the nurses because the claimant was reluctant to deal with it and that is the only legitimate reason not to address a complaint (if the staff member is themselves a subject of the complaint). It is the claimant who has introduced the phrase "black professional bullies" and it is an amalgamation of terms used in the patient complaint.

223. We do not find anything about Ms Murphy's involvement to be less favourable treatment because of race.

Allegation 12: Ms O'Lone shouted at and accused the Claimant, in front of a pharmacist, for the messy ED drug room on 8 March 2019, "demanded" hugs after the incident and then praised the Claimant for being a professional in an email report on 11 March 2019.

224. The drug room was messy and the claimant was the person responsible for its oversight on the shift in question. She had been asked to come multiple times to see the state of it. This was in the context that the CQC had issued an improvement notice.

225. The claimant had a good reason for not coming immediately as she was triaging a patient but she did not communicate this to Ms O'Lone. Ms O'Lone therefore did become more assertive in calling the claimant and was frustrated

- and disappointed with the room. The claimant herself was rude in response and did not accept responsibility. Ms O'Lone's conduct is understandable in the situation. It was not acceptable for the claimant to respond as she did.
226. In an event there is no evidence that anyone else would have been treated differently in the same circumstances and no evidence that Ms O'Lone's conduct was due to race rather than her need to show the claimant the state of the room and the claimant's continuing failure to follow her management instruction without explanation.
227. Ms O'Lone did not want to leave the relationship that way and did seek to restore matters with the claimant with a gesture but it was not a demand for a hug as she understood that would not have been appreciated. This is not less favourable treatment.
228. She did praise the claimant for an entirely unrelated incident which the claimant handled well and this was not less favourable treatment.
229. The way the claimant put her case fell far short of what is required and suggests a misunderstanding of the concept of race discrimination. Consistently she referenced how her feelings had been hurt by an incident and that she had the protected characteristic of race. Nothing more.

Allegation 13: Ms O'Lone Supported four Emergency Department staff (3 British White, 1 Black African) to raise complaints against the Claimant

230. This is similar to the allegation against Ms Coiley at allegation 10 above but includes the two further grievances. Again this went no further than management seeking to direct an employee as to how to put in a grievance they wanted to bring. With respect to the third complaint there was an attempt by Ms Murphy to de-escalate by way of offering an informal meeting but this was rejected. The Claimant's grievances were also dealt with in a similar way.
231. Ms O'Lone was concerned about the fact the claimant was facing four separate grievances and therefore requested that they be considered together so she only had go through one process. This was done to support the claimant.
232. Again there is no evidence of less favourable treatment against the claimant or that any actions taken were because of race.
233. The suggestion that this complaint is also victimisation or a detriment for making protected disclosures is misconceived as it pre-dates all the protected acts and disclosures relied on by the claimant.

Allegation 15: Ms O'Lone and/or Mr Briggs "Blindsiding" the Claimant with a prank job offer being available by November 2019 at the University Hospital of Lewisham

234. There was no offer of a job at Lewisham. Ms O'Lone mentioned during a meeting with the Claimant and Mr Briggs that someone might be leaving thereby vacating a suitable role, but that did not transpire as the person concerned did not then leave. Otherwise the available job was in the community which the claimant made clear she did not want.

235. The actions of Ms O'Lone in mentioning the possibility of upcoming vacancies was not less favourable treatment and was not done because of race. The respondent was trying to assist the claimant to move away from the Emergency Department and exploring possibilities.

Allegation 16: Ms O'Lone falsely accused the Claimant of leaking the 6 June 2019 email during a meeting on 14 June 2019

236. The claimant was never accused of being the person who left the letter on Ms Murphy's desk (the leak). Ms O'Lone did explore with her whether she had, having written the letter on the shared computer, left the computer in a way that meant another person had access to the letter. This was an entirely reasonable avenue of enquiry. The respondent explored whether it was a disciplinary issue but took no action.

237. There is no evidence that this was less favourable treatment because of race. It was entirely reasonable to investigate given the claimant was responsible for the letter, took the decision to write it on a shared computer and was responsible for shutting down the computer or her account. The letter was accessed by someone after the claimant had written it and that person did print it out.

238. There was no evidence that Mr Briggs had done anything inappropriate or comparable or was a remotely suitable comparator.

Allegation 17: Ms O'Lone reported to the Claimant that more people wanted to complain about the Claimant and she had to "fan them away".

239. The relevant factual findings are at paragraph 98 above. Ms O'Lone did tell the claimant that in addition to the four grievance complaints about her there were other informal matters about the claimant raised by staff with her. It was the claimant's terminology to use the phrase "fan them away". Ms O'Lone was trying to explore with the claimant why staff were raising issues in an informal conversation. There is no evidence that a hypothetical comparator would have been treated any differently in circumstances where there were four grievances raised about them and other staff were raising issues about them informally. It was not done because of the claimant's race but because staff were complaining to Ms O'Lone about the claimant and she wanted to explore this informally with the claimant.

Allegation 18: Ms O'Lone Informed the Claimant during a telephone call at 16:37 hours on 24 June 2019 not to report any more for Emergency Department duties but to go instead to Discharge Team

240. The relevant paragraphs of the facts are paragraphs 101-103 above. On 23 June 2019, whilst on annual leave, Ms O'Lone left a voicemail for the claimant saying she was to report to the discharge team on 24 June 2019. The claimant did not attend work on 24 June having not picked up the message so Ms O'Lone contacted the claimant by phone to confirm that she was move to the Discharge Team the next day. The claimant, despite having indicated she had been delighted to move the previous week, tried to say that she had agreed to cover a colleague on the 25 June 2019 at the emergency department and wanted to honour that. Ms O'Lone told her she was not to return to the emergency department. The claimant was very upset with Ms O'Lone in that call as she did not want to go to the discharge team and Ms O'Lone accepts she could have handled this situation better. She emailed the same day with confirmation of the start the next day. The claimant did not attend on 25 June either but instead emailed Ms O'Lone to complain about her attitude in the call (923).

241. Ms O'Lone then essentially passed the situation to Mr Briggs (p 923). The claimant did then move to the discharge team.

242. The intention was to help the claimant to move immediately away from the Emergency Department as was her wish. The only available position was the discharge team and this was only to be temporary. The phone call followed an email the day before explaining the position. The claimant did not want to go to the discharge team.

243. Ms O'Lone accepts she could have handled the situation better but she was trying to assist the claimant from her own Annual Leave. The matter ultimately was resolved.

244. There is no evidence that a hypothetical comparator in the same circumstances [where the comparator had said they wanted to move as soon as possible but then resisted the instruction to move teams, whilst Ms O'Lone was trying to deal with it during her own Annual Leave] would have been treated any differently and in any event this had nothing to do with the claimant's race. The intention of the call was to help the claimant with her desired move. Any failure to deal with it appropriately was because Ms O'Lone met resistance from the claimant about the move to the discharge team and Ms O'Lone was herself trying to deal with the matter whilst on her own Annual Leave.

Allegation 20: Glenda Moncar participated in a smear campaign against the Claimant from January 2019 to December 2019 by submitting allegations of bullying and harassment against the Claimant on 27 January 2019

245. There is no evidence of a smear campaign, only that Ms Moncar submitted a grievance about the way the claimant treated her, at around the same time other colleagues did the same. The claimant's behaviour was ultimately criticised in the grievance outcome, though the problem between the two staff members was found to be two-way.
246. There is no evidence that this was done by Ms Moncar because of the claimant's race rather than her behaviour.
247. There were no other allegations of direct race discrimination.

Harassment

Did the Respondent/s engage in the following unwanted conduct as set out in Column C and F of the amended Schedule of Allegations?

Was the alleged conduct related to the Claimant's race and/or sex?

Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading humiliating or offensive environment for her?

Was it reasonable for the alleged conduct to have the effect claimed?

Allegation 9: Ms Coiley becoming hostile towards the claimant after being queried about the duty of care towards an employee on 17 June 2018

248. The factual findings are at paragraphs 67-70. The context of this was that Ms Coiley as Head of Nursing had cancelled staff training due to significant under staffing of the emergency department. This was her prerogative.
249. The claimant did not agree with the decision and took actions which undermined it such as attending work without her uniform. The two had a heated discussion about it. Ms Coiley perceived the claimant to be rude, loud and abrupt when challenging the decision and communicated this to her. She emphasized that her operational decisions as Head of Nursing should be followed. She did apologise for her tone shortly after. She did also agree that if service requirements permitted that a particular part of the training could still go ahead.
250. Ms Coiley's conduct might have been unwanted. The two did have heated words but Ms Coiley apologized for her part swiftly afterwards. Otherwise, her actions were reasonable management. It was reasonable to remind the claimant that the Head of Nursing's operational decisions were to

be followed in the circumstances, and to challenge behaviour from the claimant towards the Head of Nursing that was perceived to be rude, loud and abrupt. Taken all together the actions of Ms Coiley did not remotely fit the definition of harassment.

251. Her actions did not have the purpose of violating the claimant's dignity or create an intimidating, hostile, degrading or humiliating environment for the claimant. It was not reasonable of the claimant to consider they did have the requisite effect. The purpose was to manage the claimant's unhelpful challenge to a decision taken by the Head of Nursing in the interests of the service, and ultimately patient safety. It also had nothing to do with the claimant's race, but with her unwillingness to accept a management decision taken in the interests of the service.

Allegation 19: Mr Briggs denying the Claimant her 2019 annual appraisal

252. The relevant factual findings are at paragraphs 109-110 and the following paragraphs up to paragraph 128. Responsibility for the appraisal was the Senior Matron's not Mr Briggs'. There is no explanation for why it did not happen as it should have in 2019. It was cancelled and then followed up by the claimant, who asked for an update on 31 October 2019. However the claimant then took a month of annual leave, then moved out of the discharge team at the beginning of February 2020.

253. Whilst there is an argument the appraisal should have happened, the failure to do an appraisal is not unwanted conduct that meets the test for harassment. There is also no evidence it was because of race.

Allegation 28: Mr Rogers making derogatory, sexist and racist comments about the Claimant's buttocks, specifically that the buttocks part of a body map looked like the Claimants

254. The relevant factual findings are at paragraph 165. We have preferred the evidence of Mr Rogers that he did not see the body map and did not make the derogatory comment. We therefore do not uphold this allegation.

255. There are no other allegations or harassment.

EQA, SECTION 27: VICTIMISATION

Did the Claimant do a protected act or did the Respondents believe the Claimant had done, or might do, a protected act? The Claimant relies upon the following acts:

The Claimant's email of 6 June 2019 to Mr Briggs which was leaked to Tracey Murphy and Annie O'Lone;

256. The email itself is at pages 886-890. It covers complaints about some of the matters before us and others. Within it the claimant does not make any express allegations of breaches of the Equality Act on grounds of race or other protected characteristics. However she does use language like “bullying and harassment” following her choice to “speak-out against unfavourable treatments” and that she was being “victimised” and that she “felt as though [she] were being directly discriminated against” and “perceived discrimination”. She accused the Matron of having a “bigoted” attitude to her and later made reference to being “rob[bed] ...of [her] dignity based on ...”bigoted” views. We consider that parts of it amount to a protected act. We note that the respondent did not really challenge that it was a protected act but focused on whether it was done in good faith or as retaliation for the four grievances brought against the claimant, which were part of the matters covered in the email.

257. It was not in the original list of issues but to the extent that the ICO report about this incident was also relied on as a protected act in addition to a public interest disclosure, there was nothing in the report about any complaints of discrimination or reference to the Equality Act. The report was not a protected act.

The Claimant’s Employment Tribunal claims 1 – 5;

258. We consider the claims are protected acts. They have all been about discrimination issues.

Grievances of 28 June 2019; 24 July 2020, December 2020/January 2021 (grievance against Tony Rogers), September/October 2021 (in relation to suspension).

259. Grievance of 28 June 2019 (at pages 939-948 and addressed in the facts at paragraph 105 above) was in similar terms to the letter of 6 June 2019 but expanding the subjects of the grievance to include Ann-Marie Coiley, Annie O’Lone and Glenda Moncar. We accept it amounts to a protected act.

260. It was in fact on 22 July 2020 that the Claimant submitted another formal grievance raising bullying and harassment against Mr Briggs (see paragraph 143 above and pp1404-1415). This grievance raised issues from the “leak” of 6 June onwards and other issues after Mr Briggs’ involvement. It does mention racism and racial disparities. We accept it contains protected acts.

261. The grievance against Tony Rogers raised the allegation that has been considered here as an allegation of harassment on grounds of race and/or sex. We accept this was a protected act.

262. By email dated 21 September 2021 the claimant headed an email “grievance” and described it as her counterclaim. She raised a number of complaints and queries but these were not necessarily discrimination complaints. However, by a series of emails on 3 October (1971), 10 and 20 October 2021 (pp 1994 &1999), the claimant raised that the collective grievance against her and the decision to suspend her was victimisation. In the

October emails she was therefore clear she was complaining of breaches of the Equality Act.

Did the Respondents subject the Claimant to any detriments as set out set out in Column C and G of the Schedule of Allegations?

If so was the way the Respondents treated the Claimant because the Claimant did a protected act and/or the Respondents believed the Claimant had done, or might do a protected act.

Allegation 5: Ms Murphy patronised, belittled and accused the Claimant of not being a team player in relation to her annual leave request in respect of 7 – 21 March 2016.

263. This pre-dates the alleged protected acts and therefore cannot succeed as a claim for victimisation.

264. In any event we found above in relation to the race discrimination claim based on the same allegation that the claimant was not patronized, belittled or accused. Her own concerns were being addressed and the respondent found a solution. The respondent spoke with the claimant about the fact she had not followed the procedure and that she was reluctant to speak with a colleague about a swap which would have resolved the problem. The reason the respondent spoke with the claimant is that she herself had not followed the procedure thereby causing the problem, and she was not willing to talk to Ms Moncar about a swap that would solve the issue.

Allegation 13: Ms O'Lone Supported four Emergency Department staff (3 British White, 1 Black African) to raise complaints against the Claimant

265. This also pre-dates the first protected act.

Allegation 14 : A person unknown leaked the Claimant's confidential data to Ms Murphy and Ms O'Lone. The only person who should have had a copy was Mr Briggs

266. The only protected act that pre-dates the "leak" is the 6 June 2019 email itself. We do not know who printed it out and put it on Ms Murphy's desk. Ms Murphy reported it to Ms O'Lone because it had been left on her desk by an anonymous source and she was concerned about the breaches of confidentiality involved (p900).

267. We accept that the "leak" of the letter was a detriment and was a catalyst for the claimant's urgent move from the emergency department to the discharge team, although a move at some stage was inevitable, particularly following the grievance outcomes. Mr Briggs' confirmed his view that the claimant could not continue to work in the emergency room in the de-brief meeting to discuss the

grievance outcomes. The claimant herself within the email of 6 June said she wanted to move away from the emergency room. We note that the claimant also contributed to the situation by writing the letter on the shared computer and leaving the letter accessible to another computer user.

268. We do not know the motivations for the person who printed it out and put it on Ms Murphy's desk and whether it was because it involved discrimination allegations. We agree with the respondent's submissions that there is no evidence of any causative link between making a complaint of discrimination in the email and the actions of the person concerned.

269. The discrimination allegations are not made expressly as we have said above. There are a lot of other personal damaging comments about Ms Murphy (and a number of other colleagues) in the email, along with other personal information about colleagues and the claimant. For example : " I have found Matron Tracey Murphy attitude towards me to be sometimes unreasonable, inflexible, inconsistent, thinks she is always right, fixated, unkind, bigoted, not engaging, too controlling and unreal". We agree with the respondent's submission that on the balance of probability if the person felt Ms Murphy should have sight of it they would have done so irrespective of the references to discrimination.

Allegation 29: Mr Katandika sending an email to all Ward 22 staff regarding the Claimant on 15 July 2021

270. This pre-dates any protected act that was relevant to Mr Katandika, but in any event we accept his reason for sending an email stating that he was going to seek feedback about management was issues with the band 6s and team building. He also never in the end sent the survey. This was not a detriment and was not done because of any protected act done by the claimant.

Allegation 30: Mr Briggs submitting a collective grievance against the Claimant on 22 July 2021

271. The cover email sent by Mr Briggs when attaching the collective grievance is at page 1819. It states "we ask that this situation is looked into urgently as the group of staff raising this grievance can no longer carry on with a situation that we feel has completely spun out of control".

272. The grievance itself is at pages 1820-1822. The context clearly was that the claimant had been raising allegations of breaches of the Equality Act both internally and by this time to the tribunal and the NMC.
273. There was a reference to the number of allegations and that they had been unsuccessful. There was reference to the staff members concerned being the subjects of allegations of bullying and harassment. There was a reference to the “high number of allegations made by this individual; documented in separate grievances with accusations of, racism, bullying. All allegations have been investigated both internally and externally and no allegations upheld.” It referenced that “all registered staff named in this grievance are also now subject to an external professional regulation investigation ...following what they consider to be unfounded...allegations....”
274. It further stated: “A culture of trepidation has developed across the teams; this has resulted in the inability to manage this individual appropriately as there is an ongoing fear of retribution/further grievances or referral to statutory bodies....She makes constant internal and external complaints against her colleagues...the trust have failed to protect the wider staff involved in these unfounded allegations”.
275. We find the collective grievance was a response to the claimant’s protected acts and the key question in respect of this allegation is, as per the case of *Martin v Devonshires Solicitors* 2011 ICR 352, whether the motivation for the grievance was the protected acts themselves on the one hand or a feature of the protected acts which could properly be treated as separable such as the manner in which the protected acts were carried out. We consider this would not simply be the fact there were a high number of protected acts or that they were considered to be unfounded. Even the issue of bad faith is limited to the issue of remedy. The motivation needs to be some other aspect that can properly be treated as separable.
276. In this case, the signatories of the grievance were primarily concerned with the fact that the claimant’s behaviour was creating a hostile environment for them, causing “high amounts of distress and anxiety” and they felt they were unable to continue to work within it. It was not just that the claimant was raising allegations but that she did so in response to reasonable management instructions, no matter where she worked within the organisation, meaning that she was impossible to manage and they did not feel they were getting the requisite support from the respondent. She was raising issues that had already been investigated with outcomes which she did not accept. The claimant had worked in three teams and there had been grievances in each team such that options for where the claimant could work within the organisation were running out. They felt she was herself behaving in intimidatory ways by laughing and then walking away (paragraph numbered 6 of the collective grievance); not talking directly to colleagues (again, paragraph numbered 6). They express that they felt they could not make reasonable management requests due to their own anxiety and fear. They said the working relationships had broken down and they feared daily interactions and it was impacting on their own well-

being. In evidence we heard that the health of some of the signatories was affected and Mr Rogers was considering bringing forward his retirement.

277. We find that the concerns of the signatories are not inherent to doing protected acts and were not simply about the number of the protected acts. The concerns were that the claimant herself was using the protected acts, including making the same allegations which had already been the subject of investigations, and other behaviour, to intimidate her managers and colleagues, making her unmanageable, and the situation was causing harm to a wide number of colleagues, and was untenable. These do relate to the manner the protected acts were carried out and the wider behaviour of the claimant, and are separable from the protected acts themselves. Another way of putting it is that the collective grievance was not motivated by the nature of the claimant's allegations so much as by the way they were made in response to reasonable management instruction and her other behaviour inhibiting managers from making reasonable management instructions.

278. The reason for the grievance was perhaps better expressed later in the investigation letter dated 12 August 2021 (p1851) by which time the crux of the problem expressed by the collective grievance had been articulated as:

"1. whether there has been a breakdown in trust and confidence in you and/or an irretrievable breakdown in your work relationships with your colleagues and/or your managers and/or the Trust? In particular whether you have presented:

- a) Intimidating behaviour, including presentation at ED department when not required to do so and creating a hostile environment by laughing at colleagues involved in internal complaints;
- b) A recurring pattern of discontent and adversarial challenge in response to management instructions..."

279. Articulated this way, the issue had nothing to do with the nature of claimant's grievances. Although the collective grievance is less refined we find the motivation behind it and/or reason for it was as reflected in the invitation to the investigation. It follows that we do not find the motivation to be the protected acts themselves but the manner, and purpose for which, the claimant was bringing protected acts and her wider behaviour. This is properly separable from the protected acts themselves.

Allegation 31: Ms Lewis-Towler suspending the claimant

280. We accept that the suspension was a detriment and our focus is on the reasons for the suspension.

281. The concerns of Ms Lewis-Towler were expressed in her email dated 28 July 2021 (p1830). Ms Lewis-Towler suspended the claimant because she had had the senior management team in her office explaining the impact of the claimant's conduct on their own well-being. She listed a number of key staff

who were absent or contemplating absence because of the claimant's conduct. She described the mental well-being of her leadership team being at crisis point and was concerned she was facing a mass walk out of key staff with the potential extremely damaging impact on the service. She was already concerned about the claimant's conduct impacting patient safety. Although she did mention the claimant's allegations her emphasis was very much more on the claimant's wider behaviour and the imminent prospect of key senior members of her team leaving the organisation. These concerns are clearly separable from the protected acts themselves.

282. It is difficult to see what else the respondent could do at this point. Similar problems had arisen in each team the claimant had worked in and the claimant had issues with senior managers such that there were few if any options left in terms of where she could work within the organisation. The service clearly could not risk the loss of the senior nursing team.

Allegation 32: Subjecting the claimant to a disciplinary investigation

283. The letter informing the claimant of the investigation (p1851) said that it was not a disciplinary investigation but an investigation into whether there had been an irretrievable breakdown in working relationships. Specifically whether there had been

283.1 intimidating behaviour by the claimant creating a hostile environment by presenting at the Emergency Department when not required to do so and laughing at those involved in internal complaints; and/or

283.2 a recurring pattern of discontent and adversarial challenge in response to management instructions.

It was also to investigate the impact of the above on the claimant, her colleagues, managers and the quality of patient care and experience.

284. We note, as already referenced above, that by this stage it was clear the concerns about the claimant's conduct were not that the claimant had done protected acts but her own intimidating behaviour and adversarial challenge to management and the impact the breakdown in working relationships was having on the team and patient care.

285. It follows that though being subject to an investigation is a detriment, it was not done because the claimant had done protected acts, but because of the above concerns about the claimant's own conduct and its impact.

Allegation 34: Failure to deal with the claimant's grievance within a reasonable period.

Allegation 36: The length of the suspension

286. The claimant's grievance with respect to the collective grievance and decision to suspend was treated as part of the investigation into the collective grievance (p2001) and as her response to it. This was to ensure a complete picture in the investigation and was a reasonable approach. It was not motivated by the claimant having done a protected act. Having commenced the investigation, it was bound to take some time as it involved a number of staff, and the time taken is not in itself detrimental. Some parts of the delay were caused by the claimant requiring further time and/or raising issues which needed addressing (including the appropriate person to deal with it and the change in the Commissioning Manager involved at the claimant's request).

287. The claimant's ongoing suspension until the process completed was inevitable given the nature of the concerns. It was not done because she had done protected acts. Following the change in Commissioning Manager the restriction on working outside of the Trust was lifted to assist the claimant.

Allegation 35: The refusal to respond to the claimant's discrimination questions of 13 October 2021

288. The relevant documents are at pages 1986-1989 and 2001-2002 (which is the respondent's initial refusal as the understanding was that the process had been repealed), 2007-2010 and then 2053-2057 which is the Trust's eventual response dated 16 December 2021. At the preliminary hearing on the 21 January 2022 claimant then applied for an order for the respondent to respond to some specific questions in the questionnaire but this was addressed and refused. Employment Judge Dyal did not consider it reasonably necessary for answers to be given in advance of disclosure or witness statements.

289. It is not therefore correct that the Respondent refused to reply. There was an initial refusal but subsequently the respondent did reply. The tribunal did not consider it necessary to order any further response at the case management stage. We did not consider the respondent's conduct to be detrimental to the claimant. Nor was it done because of any protected act by the claimant.

If this was a protected act was it done in bad faith (for the purposes of remedy)?

290. As we did not uphold these complaints of victimisation we did not need to consider whether any of the protected acts were done in bad faith. Nevertheless we will record here that we accept the claimant has a genuine belief in her complaints. We do not therefore consider she was acting in bad faith.

PUBLIC INTEREST DISCLOSURE – DETRIMENT

Disclosures

Did the Claimant make the protected disclosure(s) in accordance with s.43B ERA as set out in column A in the Table below and did the Claimant have a reasonable belief that the information in Column A tended to show that the Respondents failed, are failing or are likely to fail to comply with a legal obligation in column C?

Did the Claimant reasonably believe that the disclosures were in the public interest?

A	B	C
Nature of disclosure	Source	Ground under section 43B
<p>The gist of the disclosure was that:</p> <ul style="list-style-type: none"> - there had been a data breach incident in relation to the Claimant's email of 6 June 2019. - That a very unpleasant environment had been created in which the Claimant was accused of leaking the email of 6 June 2019, which she had not. 	<p>The Claimant relies upon a concern to the Information Commissioner's Office on 23 August 2019 regarding a leaked email dated 6 June 2019. [Claim 4]</p>	<p>Breach of legal obligations under the DPA in the leak itself and a failure to report the leak to the ICO.</p> <p>The Claimant's health and safety was harmed by leak.</p>

291. The report to the ICO is at pages 965-973. The claimant used a form for organisations to report a personal data breach and need to report it. It does not appear that it is intended as a form for individuals to use and that the claimant used the form inappropriately.

292. The claimant reported the sharing of the confidential data in her email of 6 June (“the leak” whereby a copy was placed by an unknown person on Ms Murphy’s desk) and also other related matters (pp966-967), though the list of issues was limited to the part about the letter.

293. The claimant worked on the sensitive personal document on a shared computer and left the computer in a manner that the document could be viewed by others. An unknown person took advantage of the opportunity. The claimant has not established that the information she disclosed in the report, in her reasonable belief, tended to show a breach of a legal obligation.

294. In any event we agree with the respondent that if the claimant believed the disclosure to be in the public interest, that belief was not reasonable. It was a one off incident caused by the claimant’s own actions in leaving the file on the computer accessible. It is not a matter in the public interest.

A	B	C
Nature of disclosure	Source	Ground under section 43B
<p>The gist of the disclosure was that:</p> <ul style="list-style-type: none"> - a group of other employees colluded against the Claimant in making false allegations of bullying and harassment which had a severe impact on the Claimant’s wellbeing. - Mr Rogers had compared the Claimant’s body parts to a computer which she found distressing. - The investigation into the Claimant’s complaint about Mr Rogers was badly handled; - The Claimant was penalised for speaking up about wrongdoing. - There was inadequate staffing putting patient safety at risk. 	<p>On 18 May 2021, the Claimant made a referral to the NMC [Claims 6 to 8]</p>	<p>That the Claimant’s health and safety was being harmed.</p> <p>That patient health was at risk.</p> <p>Miscarriage of justice</p>

295. The referral to the NMC is at pages 1697 to 1718. Again the form appears to have been used inappropriately as it is a form for a self referral about an individual's own fitness to practice. The claimant went back over very historic matters including the annual leave issue that is the first allegation in this case and even earlier matters. She covered most if not all of the other allegations we have addressed here and that the respondent had addressed internally.

296. Although our view is that it was not an appropriate use of the NMC referral to rake back over all the above issues again, we note that the NMC took the referral seriously and there is nothing we have been shown to suggest that they were critical of the claimant in raising it. We were shown the outcome letter that was sent to Ms Murphy on 7 June 2022 and it shows the NMC did a thorough screening of each allegation before deciding that they had not identified evidence of a serious concern that would require regulatory action to protect the public. Their letter states that their remit is about managing risks to patients or the public in the future and not about punishing people for past events, resolving disputes or managing employment issues. They noted a number of matters were very historic. Yet they did not just dismiss it as being an employment dispute or very historic. They treated it seriously and gave it a thorough screening process as can be seen by the decision letter.

297. We also again note that the claimant's belief in her claims is genuine. However we do not consider it reasonable that the claimant persisted in her belief that the information she was giving tended to show the respondents had breached a legal obligation or that it was in the public interest to be continuing to go over the same issues that had been addressed internally.

298. It follows that we do not find that the claimant made protected disclosures. We nevertheless make the following observations about the allegations that she was subjected to detriments.

If so, was the Claimant subjected to the detriment(s) set out in Column C and H of the Schedule of Allegations on the grounds of having made a protected disclosure contrary to s.47B ERA?

299. Again the respondent identified those allegation which pre dated the alleged disclosures and we have only addressed those which post-dated the alleged disclosures, as clearly the claimant cannot have been subjected to a detriment for making a protected disclosure if she had not yet made it.

Allegation 19: Denying the claimant her 2019 annual appraisal

300. This occurred after the ICO report but before the NMC referral. We agree with the respondent that there is no evidence to link the failure to do an appraisal with the fact she had made a report to the ICO. We do not know why she did not have an appraisal in 2019 but note it was whilst she was temporarily deployed to the discharge team and that she herself requested a month's leave around the time it had been due.

Allegation 21: Mr Briggs demoted the Claimant to a lowered clinical skill set duties (Band 4)

301. The claimant was covering a lower skilled job on a temporary basis but with protected pay. It was not a demotion. The move was to assist the claimant because she agreed she needed to move from the Emergency Department and that role was what was available in the short term. It was temporary until something more appropriate was found. Eventually the claimant was moved to the more suitable role on Wards 22/23.

302. The move to the discharge team pre-dates the disclosures and there is no evidence they are connected.

Allegation 25: Mr Briggs pressured the Claimant to say that she leaked the email of 6 June when she had not

303. This did not occur. The respondent did not consider the claimant had leaked the email herself, but that she had left the shared computer in a manner that the file was accessible to others.

Allegation 26: Placed on ward 22

304. The claimant was placed on ward 22 with her agreement because she had agreed she needed to leave the emergency room and the temporary placement on the discharge team was not an appropriate long-term solution. She was keen to return to using her nursing skills and the ward 22 position enabled her to do so. This had nothing to do with the ICO report.

Allegation 27: Complained about Ann Marie [Coiley] intimidation as line manager to Mr Briggs and his response was that he showed a preference to her over the Claimant.

305. Mr Briggs attempted to reasonably line manage the claimant and deal with the way she raised issues with managers. His actions were due to the way the claimant had corresponded with Ms Coiley, and nothing to do with the report to the ICO.

Allegation 29: Sending an email to all Ward 22 staff regarding the claimant

306. The email to staff proposing that their feedback about management would be canvassed (which in the end was not pursued) had nothing to do with the ICO report. It was also not detrimental to the claimant.

Allegation 30: Submitting a collective grievance against the claimant

307. The NMC complaint was clearly the catalyst for the collective grievance. Staff were very distressed that their registration had been questioned in this way. It is expressly referred to in the collective grievance. However, the same or similar comments as made at paragraphs 271-279 above apply here. The grievance was not about the fact the claimant had made protected disclosures (in any event we have found she had not) in her referral to the NMC but that she had chosen to use the NMC, along with internal processes, as a vehicle to keep raking over the historic matters that had been investigated internally. It was part of the pattern of raising complaints in response to reasonable management, intimidating her managers and creating a hostile environment for them, making her unmanageable and impacting their own health and well-being. Using the NMC as a vehicle (whatever the specifics of what she had said) was adding an additional level of stress to managers that were already struggling with their management of the claimant.

Allegation 31 and 32: Suspending the claimant and subjecting the claimant to a disciplinary investigation

308. The observations at paragraphs 281 and 282 also apply here with respect to Ms Lewis-Towler's decision to suspend.

309. The letter about the investigation focused on the claimant's intimidating behaviour and adversarial challenge to reasonable management. It did not even mention the NMC referral. By this time it was clear it was the claimant's wider behaviour and unmanageability that was the issue and not that she had made any protected disclosures to the NMC (which we have found she did not).

Allegations 34-36

310. The comments with respect to these allegations under the heading of victimization apply here also.

Time limits

311. Time limits were a live issue. The respondent helpfully set out the detailed issues in her submission as the situation is complex with 8 claims. We

did not address this in detail as we have not upheld any of the complaints and it would not be proportionate.

312. However we do note that the earliest date for events to be in time, given the report to ACAS on 6 November 2019, was 7 August 2019. Events pre-dating that are out of time, unless part of a continuing act or it is just and equitable to extend time. We do not find the historic matters that occurred in 2016-2018 to be part of a continuing act and they are so historic it would not be just and equitable to extend time

.....
Employment Judge Corrigan
21 February 2024

Sent to the parties on
5 March 2024

For the Tribunal Office

Public access to Employment Tribunal Judgments

All judgments and written reasons for the judgments are published online shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case. They can be found at: www.gov.uk/employment-tribunal-decisions.