



# EMPLOYMENT TRIBUNALS

**SITTING AT:** LONDON CENTRAL

**BEFORE:** EMPLOYMENT JUDGE F SPENCER

**MEMBERS:** MR J CARROLL  
MS G CARPENTER

**CLAIMANT** MRS A BOATEANG

**RESPONDENT** THE ROYAL FREE LONDON NHS FOUNDATION TRUST

**ON:** 23-26 , 29-31 January 1<sup>st</sup> February and (in chambers)  
29<sup>th</sup> February 1 and 4 March 2024)

**Appearances:**

**For the Claimant:** Mr Ogbonmwan, lay representative.  
**For the Respondent:** Ms H Patterson, counsel

**HYBRID Hearing-** part by CVP and part in person.

## RESERVED JUDGMENT

The Judgment of the Tribunal is that all claims fail and are dismissed:

## REASONS

**Introduction**

1. The Claimant is a healthcare assistant who has worked for the Respondent since January 2006. She continues to do so. She brings the following claims:

- a. direct race discrimination
  - b. direct sex discrimination
  - c. direct age discrimination
  - d. harassment related to race
  - e. whistleblowing detriment
  - f. victimisation.
2. The time taken to hear this case, and the number of issues is out of all proportion to the potential detriment to the Claimant. The events complained of in this case principally take place between January 2020 and the date of submission of the claim form, namely 26 November 2021, although one complaint goes back to 2014/2015. The detriments principally relate to complaints about how her grievance was handled and being the subject of a fact-finding investigation in 2020 following complaints from team members working on the Claimant's ward. No disciplinary action was however taken against the Claimant, and she moved to a different ward, at her request, in January 2021. She has now worked in the new ward for nearly 3 years where, she says, she has been happy. Her grievances were for the most part, upheld and recommendations made.
3. From these slender facts the issues have burgeoned. The Claimant has been represented throughout by Mr Ogbonmwan. He describes himself as a lay representative but appears to do frequent work for individuals in the Employment Tribunal. The particulars of claim are largely incomprehensible (beyond setting out a list of legal causes of action) and generic. Her witness statement is poorly put together.
4. A Preliminary Hearing took place on 22 June 2021. It is apparent from the resulting order that the judge was not at that stage able to put together a comprehensive list of the issues to be decided at the full merits hearing. He ordered that further information should be provided. The case was listed for hearing in February 2023.
5. In the event the February listing was vacated at the request of the Claimant because she had had a bereavement. Instead the first day of the hearing was used to conduct a further Preliminary hearing at which the issues were identified.
6. The list of issues ran to nearly 13 pages. Allegations were made against 12 of the Respondent's employees namely Francis Cruz, Abbie Varney, Charlene Davies, Anna Marie Edwards, Meehad Husnoo, Rita Smith, Chloe Clark, Fritzie Cencil, Laura Robertson, Alisha Ali, Georgia Emes, and Mary Essel. The language used in those issues (reproduced in the schedule to this Judgment) is strong and alleges significant bad faith on the part of the Respondent's employees. No care has been taken to ensue that the dates of events or the alleged protected acts/disclosures are correct, or that the individuals accused of discrimination were in fact involved in the actual matters that form the substance of the complaint. It is a scattergun approach.

7. In her schedule of loss the Claimant seeks the upper Vento band for injury to feelings of £37,000, £7500 for aggravated damages, an ACAS uplift of 25%, and £350 for expenses and interest. (96).
8. In the case management order it is recorded that the parties had confirmed that the list of issues reflected the Claimant's claims. It is recorded that "For the avoidance of doubt, the list of issues shall be treated as final unless the tribunal directs otherwise." It is also recorded that the parties' representatives confirmed that no reasonable adjustments, interpreters or other special measures were required. However, shortly before this hearing was due to start Mr Ogbonmwan asked for a Twi interpreter for the Claimant and that was arranged. We used the interpreter when required.
9. On 6<sup>th</sup> January 2024 the Claimant's representative wrote to the Tribunal applying for a postponement, complaining about incomplete disclosure and "improper" preparation of the trial bundle. Employment Judge Khan refused the request for a postponement but suggested the Claimant make an application for specific disclosure at the start of the hearing identifying the documents in respect of which disclosure was sought, and stating why they were relevant and necessary to the case.
10. At midnight the night before the hearing Mr Ogbonmwan had sent a further email to the Tribunal asking among other things for a reconsideration of the decision not to postpone, and making an application for specific disclosure in terms which did not comply with the order of EJ Khan.
11. At the start of the hearing we spent considerable time discussing the bundle. Mr Ogbonmwan said that the bundle was so badly arranged it was unusable. It was "not up to the standard required by law" and was "a deliberate attempt to mislead the Tribunal". However, with the assistance of a helpful timeline from Ms Patterson we were satisfied that Mr Ogbonmwan had had the bundle, in both hard and electronic form, since February 2023. The bundle was not particularly well arranged, but it was certainly usable and had been helpfully hyperlinked for those using the electronic version of the bundle. At the Claimant's request we ordered a number of additional documents to be provided, but there was no prejudice to the Claimant's ability to present her case.
12. We also had lengthy discussions about the list of issues. Mr Ogbonmwan continued to maintain that he had not agreed the list of issues, but was unable to identify in what way the list of issues in the Case Management Order did not reflect the issues in the case. He told the tribunal that he agreed to the list of issues, but that there were "things missing". He was unable to articulate what things were missing. After a protracted and confusing discussion Mr Ogbonmwan finally agreed that the list of issues that was contained in the case management order were the issues in the case. We also note that, despite having had the list of issues and the bundle for nearly a year before this hearing started, Mr Ogbonmwan had

not identified that many of the dates of the protected acts/protected disclosures/detriments were incorrect, and it was left to Ms Patterson to identify what she thought the Claimant may have been referring to. In relation to the age claim no age group had been identified for comparison purposes and, at our request, he identified that the comparison to be made was between those below 50, with those in the Claimant's age group of 59/60. Mr Ogbonmwan also objected, at some length, to the Respondent's decision that Ms Robertson would not be called. All of this, quite unnecessarily, took up valuable tribunal time.

13. We started the hearing, as agreed at the case management hearing, by CVP. The Claimant who lives in London had travelled to Reading to be in the same room as Mr Ogbonmwan. The Claimant and Mr Ogbonmwan had considerable technical difficulties with the CVP. During the course of the hearing on the first two days (Tuesday and Wednesday) there were difficulties with logging on, causing delays, echoes, and the Claimant or her representative "freezing". In addition the Claimant appeared to have considerable difficulty in finding documents in the electronic bundle. All these difficulties made the hearing largely unmanageable. Accordingly we directed that from Thursday the hearing should be in person (although Ms Carpenter who is at present unable to attend would participate by CVP). The Tribunal also agreed that Ms Clark who was on maternity leave should be permitted to give her evidence by CVP and that those who were merely observing could also attend by CVP.
14. Mr Ogbonmwan objected. He complained about the cost of travel to London. The Claimant said that she could not travel back to London without assistance because she had a bad back. She had travelled to Reading with assistance from her son to carry her bags, but he was not available. Accordingly we directed that the hearing on Thursday should start at 11.30 to allow the Claimant time to travel into London, outside rush hour, with the assistance of Mr Ogbonmwan. At midnight Mr Ogbonmwan sought a reconsideration of the decision to change the hearing location. Nonetheless the next 4 days proceeded in person with the final two days by CVP.
15. We are sorry to say that the hearing was made more protracted and difficult by the Claimant's representative, who raised unnecessary objections, repeatedly interrupted, used inflammatory language, talked over the Employment Judge and was combative with Ms Patterson. As a result the evidence which had been timetabled to last for 6 days lasted for 8 days, and the Tribunal had to reconvene in chambers to consider the evidence and reach a decision.

### Evidence

16. The Tribunal had a bundle of documents. We heard evidence from the Claimant. On behalf of the Respondent we heard from following witnesses:
  - Ms M Essel, the Claimant's line manager until June 2019,

- Mr M Husnoo, the Claimant's line manager from June 2019 until she left the ward in early 2021.
- Ms A Edwards, a matron in neurology/service overseeing the service including the ward where the Claimant worked.
- Ms R Smith, who undertook a fact-finding investigation into the complaints made against the Claimant in 2020
- Ms F Cencil, Clinical Practice Educator
- Ms A Varney, a senior adviser
- Ms Chloe Clark, a healthcare assistant working at the relevant time with the Claimant.

We also had a witness statement from Ms Robertson who was not called to give evidence by the Respondent.

### Credibility

17. Despite the length of the list of issues the Claimant's witness statement is short on facts and long on assertions. It would not have been possible to understand the factual matrix by reading the Claimant's witness statement alone. There were no references to documents in the bundle and frequently the witness statement simply repeated the allegations in the list of issues without providing any detail.
18. The language used in the witness statement was also very strong. Words such as oppressive, coercion, duress, malicious and so on were frequently used. A witness statement should set out the facts. It is for the Tribunal to decide if the actions of the Respondent were unlawful. It was also apparent, during cross examination, that the Claimant did not understand the claim that she had brought. When documents were put to her in cross examination she had a tendency to say that she hadn't seen it before – even when those documents had been written by her. When challenged about this, the Claimant said that she had in fact seen the document but hadn't seen it for a long time. From time to time she would ask the Twi interpreter to read those documents aloud – but in English. While the Employment Judge allowed short documents to be read aloud in this way, she did not allow lengthy documents to be read aloud in this way, as this would not have assisted the Claimant to answer the relevant questions. It did not appear that the Claimant had prepared for the hearing.
19. Additionally the Claimant's evidence was frequently inconsistent and muddled. At times she contradicted her own case. She was reluctant to make any concessions, even when it was plain that the evidence required it. She accused various witnesses of having fabricated allegations or evidence against her, without any supporting evidence.
20. On the other hand the Respondent's witnesses were clear and consistent. It has only been possible for us to understand the chronology through the hard work of Ms Patterson, who adopted a careful, detailed and forensic approach throughout, carefully identifying which issue she was addressing when cross-examining the Claimant.

Findings of fact

21. The Claimant is employed as a healthcare assistant with the Respondent. She started work for the Respondent in January 2006 and she remains employed by them. She describes herself as Black British of Ghanaian origin.
22. In 2010 the Claimant was working in 6 South Ward, which is a stroke and neurological ward. The ward was very mixed in terms of nationality and ethnic origin. Ms Edwards told us that, of the over 30 nurses, there were some black British nurses but for the most part they were international - mostly from Ghana, Nigeria India and the Philippines and only two or three were white. There was a similar mix for the healthcare assistants with two or three white healthcare assistants out of 20-25 HCA's. The deputy managers, of which there were 4 to 6 were from India, Ghana and Portugal. Ms Essel is of Ghanaian origin, and Mr Husnoo, is from Mauritius and describes himself as black African. The ages of the staff were also very varied. We were provided with a breakdown which showed that while the age of staff varied over time there was always a good proportion of staff over 50.
23. CQC. It is the Claimant's case that the CQC visited the ward in 2014 or 2015 and that during her interview with them she disclosed "harassment, failure of promotion and bullying of black members of staff, including myself." She says that after her interview, Ms Essel, then her line manager coerced her into withdrawing her complaints with threats of serious consequences. In cross examination the Claimant told the Tribunal that she was threatened by Ms Essel and told that she should "drop it otherwise I would be in trouble". When challenged (after giving several inconsistent answers as to what Ms Essel had said) the Claimant said "what is in my witness statement is what she said" which did not give the Tribunal much confidence in the Claimant's recollection of events. She told the tribunal that she had not withdrawn her complaint to the CQC because she had thought that Ms Essel had withdrawn it on her behalf.
24. Ms Essel, who is also of Ghanaian origin, says she cannot recall having been made aware of any discussion that the Claimant had with the CQC. Interviews with the CQC are confidential and would not have been revealed by the CQC to her. Ms Essel denies trying to persuade the Claimant to withdraw any anything that the Claimant had said to the CQC.
25. We do not accept the Claimant's account that Ms Essel threatened her with "serious consequences" if she did not withdraw her complaint to the CQC. We find it highly unlikely that the CQC would have disclosed the content of the Claimant's conversation with then to Ms Essel.
26. Staff survey. In January 2020 an anonymous complaint was raised through the Respondent's "Speaking up" channels about Ms Edwards, the ward matron, and about bullying, harassment, racism, favouritism, nepotism and exposure of patients to risk. The complaint said that Ms Edwards had

displayed racism and had said, in terms, that she was trying to remove all black people from the ward and to “bring my people” (509).

27. In response to the complaint, Ms Jalloh, Divisional Director of Nursing - PPU was asked to investigate. As part of her investigation she asked all staff on the ward to complete a survey. The outcome was that the allegations against Ms Edwards were not upheld, and no further action was deemed necessary. A number of recommendations were made designed to improve the team culture (543).
28. It is the Claimant's case that she was deliberately excluded from this survey in order to prevent her from speaking up, and as such this was an act of harassment and a whistleblowing detriment. Although not identified in the issues, in cross examination the Claimant said that it was Ms Jalloh who had deliberately excluded her.
29. Documents in the bundle establish that the Claimant was invited to complete the survey and that she emailed Ms Jalloh on 17 February 2020. (531) The subject line is 6 South survey and starts “Thank you for the opportunity to have our experiences be heard.” When taken to this in cross examination the Claimant continued to insist that Ms Jalloh had deliberately excluded her because of her race, sex and age.
30. The final report was not given to staff, although it was sent to Mr Mansfield, the union representative (544) who confirmed he was happy for the case to be closed and the outcome and the recommendations were discussed at a staff team meeting.
31. We do not accept that the Claimant was excluded from the anti-bullying investigation. We are surprised that this allegation continued to be pursued after disclosure had taken place.
32. Incident with Ms Clark. On 3 March 2020 an incident occurred between the Claimant and another healthcare assistant Chloe Clark (Ms Clark is white). Ms Clark complained to management that the Claimant had initially refused to help a patient whose father was asking for her to be taken to the toilet and, when Ms Clark had intervened to help, the Claimant had argued with her and had hit her on the leg with the commode. Both of them provided written statements at the time (133 and an unnumbered document provided during the hearing) . The Claimant accepted in her written statement that she had initially “spoke out” when the patient's father had approached her to help, because she was in pain. She denied hitting Ms Clark on the leg with the commode.
33. Mr Husnoo invited both Ms Clark and the Claimant to an informal meeting to discuss the incident and followed this up with a written note sent to the Claimant (134). In that note he records that “you reacted [to the patient's father] by saying that you are on your own and it's nearly time to go home.” He told the Claimant that the way she answered the patient's father was unacceptable and he reminded Ms Clark that it was not professional to

argue in front of patients and relatives. The incident was treated informally, but the Claimant was told *that “should there be another incident in future, it might result in disciplinary actions being taken.”*

34. Two months later on 20<sup>th</sup> May the Claimant sent Mr Husnoo and Mr Binch a statement complaining about a number of things, including the way Mr Husnoo had handled the incident with Ms Clark (546). (She also emailed her union representative Mr Mansfield 135.) The statement is difficult to understand (Ms Edwards assessment that it was not entirely coherent is accurate), but in general the Claimant appears to be accusing Mr Husnoo of favouritism, race discrimination, and of taking Ms Clark’s side “because of colour”. She told the Tribunal (as suggested in her email to Mr Mansfield) that she made that complaint on 20<sup>th</sup> May because “one of the nurses told me that she had seen Chloe and Meehad giving Chloe a chance to write about me on the computer.”
35. Ms Edwards responded to that statement the next day to say that she was satisfied with Mr Husnoo’s handling of the incident with Ms Clark. As for her concerns about discrimination she told the Claimant the results of the investigation then being conducted by Ms Jilloh would be shared with the staff at a team meeting the next week. (135). She told the Claimant she would be happy to meet her to discuss the letter in more detail “and help clarify with you any actions you wish to see with your concerns.”
36. The Claimant did not seek a meeting with Ms Edwards, and when Ms Edwards followed up with her some weeks later the Claimant said that she did not want to pursue it.
37. We do not accept, as the Claimant alleges, that Mr Husnoo encouraged Ms Clark to bring false allegations against the Claimant or that he influenced her to write a “malicious formal grievance against the Claimant”. Ms Clark and Mr Husnoo have both denied this. Ms Clark’s evidence was that she wrote her statement at home, but that Mr Husnoo may have helped her in his office to write a Datix about the incident as she did not know how to do it herself. We accept that evidence.
38. In addition the Claimant was not threatened with a disciplinary investigation “relating to inappropriate informing a patient’s family member that she was alone when pressured to assist a second patient.” She was, quite appropriately, told that she had not been professional in her interactions with the patient’s father and that if there was another incident in future it might result in disciplinary action being taken.
39. The Claimant also alleges that Ms Clark “subjected her to undue pressure and excessive tasks while she was doing nothing and failed to help the Claimant when asked.” In cross examination, however, the Claimant denied that Ms Clark had asked her to do tasks on 3 March 2020 and also said that she had not asked Ms Clark to help. There was no evidence to substantiate this allegation.



40. It is also alleged that on 15 April 2020 the Claimant complained to Mr Husnoo and Ms Edwards that Chloe Clark had *“repeatedly applied oppressive control in assigning to the claimant on every occasion until she attended to what is unjustly assigned to the claimant. For example on or around 15 April 2020 Chloe Clark would manipulate the tasks on the rota board to allocate the claimant seven patients who are very ill and bedbound while she assigned herself five patients.”*
41. This there is no written complaint on 15<sup>th</sup> April and the Claimant’s evidence about this in cross examination was wholly unclear. She was uncertain to who she had made the complaint or whether it was orally or in writing. The Claimant’s witness statement merely repeats the allegation, without providing details of what tasks she had been assigned or what patients. In her witness statement Ms Clark denies that she assigned the Claimant tasks. She is a healthcare assistant, and it was not within the remit of her role. She had no authority to organise the allocations on the board. The Tribunal notes that 15 April 2020 was the date on which the Claimant and Ms Clark met with Mr Husnoo to discuss the 3 April incident but certainly not in the terms now set out in the issues or the Claimant’s witness statement. It may well have been that the Claimant complained to Mr Husnoo about Ms Clark on that occasion, but we do not accept that she did so in the terms set out in her witness statement. We find that Ms Clark neither assigned the Claimant tasks nor manipulated the rota board.
42. Training. At the Claimant’s appraisal meeting with Mr Husnoo on 30 September 2020 it was agreed that her objectives for the following year would include undertaking training in cannulation and IT (144). It is for employees to book their agreed training direct with the Clinical Practice Educator (the CPE). The Claimant did not need the consent of the ward manager to do this, although Mr Husnoo told us that he had asked Ms Cencil to book the Claimant onto that training.
43. In the event all face to face training at the Respondent from March 2020 to July 2021 was cancelled due to the pandemic, and when it restarted cannulation training for nurses was prioritized. It is also recorded in that appraisal (138) that the Claimant was 100% compliant with Mandatory and Statutory Training (MaST).
44. In the list of issues it is recorded that Mr Husnoo “denied the Claimant’s access to the Respondent professional development benefits, study days or facilities and falsely informed her she needed MaST to qualify for future training”. The Claimant now accepts that she needs MaST to qualify for future training but says that Mr Husnoo falsely told her that she was not compliant.
45. We do not accept that. The disclosed appraisal which shows that Mr Husnoo specifically recorded that the Claimant was 100% compliant. This allegation that he denied her access to training is contradicted by the content of the appraisal. Faced with this the Claimant then alleged that

although he had agreed she could undertake the training he had failed to action it.

46. Refusal of annual leave. Although not referred to at all in the Claimant witness statement, Mr Husnoo told the Tribunal that in early October 2020 the Claimant had asked for urgent annual leave on 2 October 2020. As her request would have pushed the ward over their key performance indicators, he changed the rota so that the Claimant would be on a non working day on 2 October 2020 rather than on annual leave. He recorded another working day the following week as annual leave instead. As a result the Claimant did not work on 2 October 2020. There was no detriment to the Claimant.
47. Incident with Ms Matthews. On 19<sup>th</sup> October 2021 of the staff nurses , Ms Jenna Matthews, reported to Ms Edwards that the Claimant had refused and ignored her requests for help and that the Claimant had shouted at her on a previous shift. Ms Edwards suggested that Ms Matthews should meet with the Claimant to talk about it. Ms Edwards then asked them both to attend a meeting in her office. At the meeting on 19 October the Claimant said that she had not understood Ms Matthews to be requesting immediate help. She did not feel that she had refused to help. Ms Edwards considered that this was a case of miscommunication, and at the end of the meeting the Claimant and Ms Matthews “both hugged and apologised to each other for the way they had both misspoken.” We do not accept, as the Claimant alleges, that during this meeting Ms Edwards said about the Claimant that “shouting is part of their culture.”
48. In relation to this incident the Claimant alleges that on 19 October 2020 “the Respondent pursued unannounced disciplinary investigation against me alleging, that I failed on 13 October 2020 to follow Jenna’s instructions.” She also alleges that she was “detained” by Ms Edwards. This meeting was subsequently part of her grievance and investigated by Ms Emes.
49. We are satisfied, however, that there was no disciplinary investigation. As set out above there was an informal meeting, (for which Ms Edwards was criticised in the subsequent investigation.) She was not detained. This is another example of the sort of inflammatory language being used in this case. The Claimant also says that the allegation made by Ms Matthews was false and the Respondent was “attempting to make my work environment hostile and subjecting me to undue pressure to resign, as the respondent did with other black colleagues who had been pushed out of the business unlawfully because of their colour of origin.” We are satisfied however there was no pressure to resign and no attempt to make her work environment hostile. Ms Mathews had complained and Ms Edwards sought to sort the matter out informally. The Claimant gave no evidence of any pressure that the Respondent put on any other black colleagues.
50. Alleged abuse incident. In mid October a patient alleged that the nurse washing her had been heavy-handed when washing her face and that,

despite telling the member of staff to stop, the member of staff did not do so, and the patient ended up with bruises. A Datix was filed, and Serious Incident Investigation was commissioned. (183) On 21 October 2020 Mr Husnoo emailed all staff who had been on duty of the night of the 13/14 October asking them to provide statements (549 – 555.) This included the Claimant. Ms Edwards chased those statements on 25<sup>th</sup> October. The Claimant provided a statement on 29<sup>th</sup> October.

51. It was subsequently discovered, when reviewing the patient notes that the incident had occurred on the night shift of the 12/13 and that different people may have been on shift. A new email (173) was sent out on 8<sup>th</sup> December to those working on the 12<sup>th</sup> asking for statements about the shift of 12<sup>th</sup> October to be provided urgently by 4 pm that day. A text was also sent by Ms Edwards. Mr Husnoo also asked the Claimant for a statement. The Claimant responded to the latter email saying that she had made a statement about the 13<sup>th</sup> October and was unable to help this time. She suggested that she had been coerced and harassed. Another member of staff said that the Claimant had had care of the relevant patient that night.(173)
52. The Claimant alleges that the Respondent's handling of this matter was direct discrimination because of race, sex and age and victimisation. In cross examination the Claimant said that while the emails may have been sent to others, the Respondent was harassing her more than others, that the complaint from the patient's daughter (189) had been fabricated by the Respondent and repeated that there were no photos of the bruising. She was unprepared to accept that this was a genuine investigation. The Tribunal does not accept that this was "a malicious and unfounded disciplinary investigation into the Claimant physically abusing a patient", or that it was tainted with discrimination or victimisation.
53. Events of 4-10 November and fact-finding investigation. On 27<sup>th</sup> October another member of the ward, Ms Ocampo, complained to Mr Husnoo that the Claimant had told her that Mr Husnoo was in love with her, but as she now has a boyfriend that was not the case anymore. She said it was unacceptable and malicious. She also complained that the Claimant had been intimidating and had accused her of reporting the Claimant for being too loud and disturbing. She asked for a transfer to another ward. The same day Mr Husnoo then also complained to Ms Edwards about the Claimant's comments about him and Ms Ocampo.
54. Separately on 22<sup>nd</sup> October Ms Clark complained to Mr Husnoo about the Claimant's behaviour towards Ms Ocampo and also that she had overheard the Claimant call her "a white devil". Mr Dawson also complained about the Claimant saying that when he has seen that Claimant was upset and had asked her if she was OK, she had replied that it was his fault and that "God will punish all you white people." He also said that the Claimant said to him that Ms Clark was wicked and a white devil. Mr Husnoo escalated these matters to Ms Edwards.

55. Ms Edwards decided that here would need to be what she termed “an informal fact-finding investigation”. She asked to speak to the Claimant in her office with Ms Robertson in attendance. The Claimant claims that Ms Edwards and Mr Robertson “obstructed the claimant’s break and threatened her with a disciplinary investigation in a meeting without prior warning or consultation.” Ms Edwards says that she doesn’t know whether the Claimant was on a break, but she was on the ward when she asked the Claimant if she could speak to her. She told the Claimant that there had been complaints and there would be an investigation. She followed this up with an email to the Claimant (164) to say that concerns had been raised around (i) her having accused staff of having inappropriate relationships (ii) the staff were feeling bullied through intimidation and inappropriate insults. She said that Ms Smith would conduct “an informal fact-finding investigation to understand further what has occurred in order to resolve an opportunity for you to address your concerns and discuss what has occurred.” She stressed that while the investigation was being undertaken, it was to be kept confidential.
56. Ms Edwards then emailed Ms Smith instructing her to undertake the fact-finding investigation (161). She asked her to ensure the matter was handled sensitively and to ensure that there was no potential “ganging up” towards the claimant given the number of complaints received.
57. Ms Smith met with the Claimant on 7 November. (165) At the Claimant’s request she was accompanied by the nurse in charge during the meeting. The Claimant denied any truth in the allegations and said that there was discrimination on the ward. Ms Smith also met with those staff members who had raised concerns 6,9, 10 and 11 November. (167-169).
58. On 13<sup>th</sup> November Ms Smith emailed Ms Edwards. Her conclusion was that there was a big problem on the ward stemming from the “old” team, (i.e. the longer serving members) and that there was racism (of black to white) and continual bullying. (172) On 7 December she emailed Ms Edwards with her conclusions which were that the Claimant made “no efforts to accommodate or consider other staff. In fact her behaviour prevented any possibility of creating harmony and goodwill within the nursing team.” The Claimant did not “actively respect colleagues.” (170).
59. Ms Edwards took no disciplinary action against the Claimant as a result of this report. In cross examination she said that they were going to issue an improvement notice, (which she described as an informal warning) i.e. an action to improve and discussion to be had in her appraisal. However, that never happened.
60. On 16 December the Claimant commenced a period of sickness absence for stress. She returned to work at the beginning of February 2021. On 12 January 202, while on sickness absence, she raised a grievance. At her request she was temporarily allocated to another ward (229), and then transferred permanently to 8 East from 1<sup>st</sup> March 2021.

61. Publishing medical details. On 29<sup>th</sup> December, while the Claimant was on sick leave, she emailed Mr Husnoo to complain that the reason for her sickness absence “anxiety and stress” was visible on the rota for all to see (180). Mr Husnoo responded just over two hours later saying that he been trying to call, but had not got an answer, to tell her that it was not possible for anybody else to see details of her sickness absence. While the reason for her absence was visible to her personally, and to management, other people could not see it. The Claimant responded “thank you for your concern. I rang the ward twice and I managed to speak to Adam, and I spoke to Jackie, and she explained it to me.” It would appear from the above that the Claimant had accepted the explanation at the time.
62. The Claimant now alleges that Mr Husnoo discriminated against her because of her age, sex and race when he published an extract from the Claimant’s medical record on the staff noticeboard. She also suggests that this was an act of victimisation. In cross examination the Claimant accepted that she did not know what was, or was not, visible to other staff. Given that it appears from her email that she had accepted that it was not visible at the time, the pursuit of this allegation appears to be in bad faith.
63. The Grievances. On 12 January 2021, while she was on sick leave the Claimant raised a grievance (210) about racial discrimination and harassment by Ms Edwards and Mr Husnoo. In particular she said that for the past two months she had been subjected to harassment and had been called into the office unexpectedly and repeatedly on a number of occasions. She referred to the various events described above. She said there was a plan by the managers to use her as a scapegoat. She referred to the investigation into patient abuse which she called a false allegation. She said that the date was changed “by those harassing me for a statement and it made me feel attacked and victimised.”
64. On 12 February it was confirmed that Ms Emes had been appointed to investigate the Claimant’s grievance at the informal stage of the Respondent’s procedure (232).
65. Ms Emes interviewed the Claimant on 4 March. She also interviewed Ms Edwards and Mr Husnoo on 11 March. She produced an informal fact-finding report on 9 April 2020 (266 – 282). (This was shared internally but it was not clear whether this detailed report had been shared with the Claimant.) In the report Ms Emes said that she was proposing to uphold the grievance. Management was criticised for a number of things including calling the Claimant into the office without prior notice on three occasions which could be perceived as intimidating. In the report (292) Ms Emes was critical of the way that the Claimant had been dealt with on 19<sup>th</sup> October (following the complaint by Ms Matthews) and concluded that the issues should have been managed more formally under the bullying and harassment policy.
66. On 10<sup>th</sup> May, 18<sup>th</sup> May and 24<sup>th</sup> May Ms Emes contacted the Claimant by email to ask if there was a time when it would be convenient to speak to

share the outcome of the grievance. She did not receive a reply. Consequently on 26 May she emailed the Claimant attaching the outcome letter for her to read noting that if she remained aggrieved following the letter she had 10 days to respond (295). In that letter the Claimant was informed that her grievance was partially upheld and that “there is evidence to state that you were not treated in accordance with the relevant policies on a number of occasions”. She found that the Claimant had been “treated unfairly and harassed” between 19 October and 9 December but found that there was no conclusive evidence to confirm that the treatment she received was due to her race.

67. As a result Ms Emes recommended (i) training for management on a number of topics including “having difficult conversations” and equality and diversity, (ii) mentors be arranged for ward managers to support their development and that (iii) the staff survey results were reviewed. She also noted that team building days to improve the relationship of colleagues would be beneficial.
68. The Claimant now alleges that the Respondent’s senior clinical managers including Ms Edwards, Ms Ali and Ms Emes “*deliberately obstructed, concealed and misrepresented viable and significant information that the Claimant was on approved holiday when they decided to hear the Claimant’s grievance dated 13<sup>th</sup> October 2020, and derogatorily stated in and email dated 26 May 2021 the Claimant refused to attend her grievance hearing.*” (We note that it was not until after the Claimant had finished her evidence that Mr Ogbonmwan recognised that the 13<sup>th</sup> October date was wrong and should have read 12 January 2021.)
69. This allegation is factually incorrect. The Claimant’s grievance was not heard in her absence. She met with Ms Emes via Teams on 4 March and was sent the notes of that meeting (254). In cross examination the Claimant said that she went on holiday on 26 May and so she did not receive the written document on 26 May. She accepted that she was there on the 10<sup>th</sup>, 18<sup>th</sup> and 24<sup>th</sup> when the initial emails were sent asking for a meeting. The letter does not state that she refused to attend her grievance hearing. The Claimant has not given any evidence as to what information was concealed or misrepresented.
70. Two months later, on 30<sup>th</sup> July, the Claimant raised what she called a second grievance, but which was in effect an appeal against the outcome of the informal stage of the first grievance. (313 and 301-307) She said that she had received the outcome while she was away in Ghana and so the appeal period had lapsed. It contains numerous accusations/allegations about deliberately failing to provide a timely grievance hearing, being deprived of her right to be fully involved in the grievance, that management “planned to hear the grievance knowing I was on vacation”, that the investigator “did not want me to attend the hearing”, that the behaviours of management who had conduct of the investigation were appalling and so on. It is a lengthy document without much clarity. It

does not read as if it was drafted by the Claimant. Some of it is factually wrong.

71. The grievance was acknowledged by Ms Ali on 6 August (312). On 26 August, Ms Ma asked Ms Jalloh to commission an investigator (328).
72. At this point any progress with the Claimant's second grievance appears to have stalled. On 14<sup>th</sup> September the Claimant contacted ACAS for early conciliation. She presented her claim to the Tribunal on 26 November 2021.
73. It was not until 21<sup>st</sup> October that Mr Cruz was appointed to hear the Claimant's grievance (330) and then he did not contact the Claimant until a month later, on 18 November 2021 (334), to say that he would be in touch once he had finished reviewing the papers.
74. Events post dating the claim. On 6 December 2021 the Claimant wrote to Mr Cruz to complain (justifiably) about the delays and telling him that she had now presented a claim to the Employment Tribunal. She also raised, for the first time, an enquiry why she had not been promoted and said that she had not been promoted because of her age and race (335).
75. Mr Rigg, Senior Improvement Adviser, was tasked to provide a report and this was finalised on 7 December 2021 (336), though Ms Varney told the Tribunal that this had not in fact been received until 20 December. Mr Rigg treated the Claimant's July complaint as escalating the original complaint January complaint to the formal stage, having waived the 10-day limit.
76. On 9 December the Claimant was invited to a hearing on 22 December 2021. Ms Varney told the tribunal that Mr Rigg's report was not received until 20<sup>th</sup> December (despite being dated 7 December 2021). Therefore they felt it was necessary to cancel the meeting scheduled for 22 December. The Claimant was told this was due to "unforeseen circumstances", although Ms Varney told the tribunal that the reason for this was because there was insufficient time to circulate the report to the Claimant before the hearing.
77. The hearing was rearranged for 23<sup>rd</sup> February 2022. On 15<sup>th</sup> February the Claimant was informed the Respondent that she would be on leave that day and the hearing was rescheduled for 17<sup>th</sup> March. This hearing was then cancelled at the Claimant's request and rearranged yet again for 12 May 2022
78. In the meantime on 7 February 2022 the Claimant had raised a further complaint about the handling of her grievance (356). On 13 April a meeting was arranged by Teams (370) and the Claimant informed that she could bring a work colleague or trade union representative with her.
79. The Claimant attended the hearing on 12<sup>th</sup> May by Microsoft Teams accompanied by Mr Ogbonmwan. The Claimant had not informed the

Respondent that he would be accompanying her. As the Claimant and Mr Ogbonmwan appeared to have logged on in a public place, it was agreed that the meeting should be adjourned and reconvened at a more appropriate place. The Claimant agreed that she would send two dates when she would be available to meet. (373)

80. The meeting was then rearranged for 8 June (374). On 7<sup>th</sup> May the Claimant wrote objecting to the fact that she was not allowed to bring a friend to the hearing.(376). On 8<sup>th</sup> May the Claimant was again accompanied by Mr Ogbonmwan. She was told that she had to be accompanied by the union representative or a work colleague and as a result the meeting was again adjourned. She was not denied the right to be accompanied as she alleges in her witness statement.
81. The meeting was eventually held on 28<sup>th</sup> July 2022. Th Claimant was accompanied by a work colleague. An outcome was given on 25 August 2022. The outcome upheld the Claimant's grievance in part and made a number of recommendations.

### The law

82. Section 39 of the Equality Act 2010 prohibits an employer discriminating against or victimising its employees by dismissing them or subjecting them to any other detriment. Section 40 prohibits an employer from harassing its employees.
83. Section 13 defines direct discrimination as follows:-  
"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favorably than A treats or would treat others.  
  
Race, sex and age are protected characteristics.
84. Section 13 focuses on "less favourable" treatment. A claimant must compare her treatment with that of another actual or hypothetical person who does not share the same protected characteristic. In comparing whether the employee has been treated less favourably than another section 23 of the Equality Act provides that "on a comparison of cases for the purposes of section 13... there must be no material difference between the circumstances relating to each case." Is not necessary for all the circumstances to be the same provided that the circumstances are materially similar. In other words for the comparison to be valid like must be compared with like.
85. Section 40 prohibits an employer from harassing its employees. Section 26 defines harassment as follows:  
  
(1) A person (A) harasses another (B) if—  
  
(a)A engages in unwanted conduct related to a relevant protected characteristic, and



(b) the conduct has the purpose or effect of—

- (i) violating B's dignity, or
- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

86. Although isolated acts may be regarded as harassment, they must reach a degree of seriousness before doing so. In Richmond Pharmacology v Dhaliwal (2009 ICR 724) the EAT stressed that the Tribunal should identify the three elements that must be satisfied to find an employer liable for harassment

- (i) Did the employer engage in unwanted conduct.
- (ii) Did the conduct in question have the purpose or effect of violating the employee's dignity or creating an adverse environment for him/her.
- (iii) Was that conduct on the grounds of the employee's protected characteristic.

87. An action that is complained of must be either direct discrimination or harassment, but it cannot be both. Equally such an action cannot be both harassment and victimisation. It must be one or the other. (Section 212). This is because the definition of detriment excludes conduct which amounts to harassment.

88. As to victimisation section 27 provides that:

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

- (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
- (a) bringing proceedings under this Act;
  - (b) giving evidence or information in connection with proceedings under this Act;
  - (c) doing any other thing for the purposes of or in connection with this Act;
  - (d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving information or making a false allegation is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

90. Proving and finding discrimination is always difficult because it involves making a finding about a person's state of mind and why he has acted in a certain way towards another, in circumstances where he or she may not even be conscious of the underlying reason and will in any event be

determined to explain their motives or reasons for what he or she has done in a way which does not involve discrimination.

91. It is for this reason that there is what is called a “shifting burden of proof”. Section 136 provides that it is for the Claimant to prove the primary facts from which a reasonable Tribunal could properly conclude, from all the evidence before it, in the absence of an adequate explanation, that there has been a contravention of the Equality Act. If a Claimant does not prove such facts she will fail – a mere feeling that there has been unlawful discrimination, harassment or victimisation is not enough. Once the Claimant has shown these primary facts then the burden shifts to the Respondent and discrimination is presumed unless the Respondent can show otherwise . It is however insufficient
92. As Mummery LJ held in Madarassy v Nomura [2007] ICR 867 it is not sufficient for the Claimant simply to prove facts from which the tribunal could conclude that the Respondent “could have” committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.
93. It is not necessary in every case for the tribunal to specifically identify a two-stage process. As was said in Hewage v Grampian Health Board 2012 ICR 1054 “They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other. ...”
94. Section 47B(1) gives an employee the right not to be subjected to a detriment on the ground that she has made a protected disclosure. Section 48(2) provides that, in a case of detriment for making a protected disclosure, it is for the employer to show the ground on which any act or deliberate failure to act was done. In Fecitt v NHS Manchester 2012 IRLR 64 the Court of Appeal held that, for the purposes of a detriment claim, a Claimant is entitled to succeed if the Tribunal finds that the protected disclosure materially influenced the employer's action. The test is the same as that which applies in discrimination law.
95. The term “protected disclosure” is defined in Section 43A of the Act as a “qualifying disclosure” (as defined in Section 43B) which is made in accordance with sections 43C to 43H. A “qualifying disclosure” means “any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:-  
“ (a) that a criminal offence had been committed, is being committed or is likely to be committed”,  
(b) that a person has failed, is failing or is likely to fail o comply with any legal obligation to which it subject; ...or  
(f) that information tending to show any matter falling within any of the above paragraphs has been, or is likely to be, concealed.”

96. The qualifying disclosure must also be made to one of the categories of person set out in section 43C – H. These categories include the worker's employer.

Submissions.

97. Both parties made extensive submissions on the facts which we do not repeat here. There was no dispute on points of law.

Conclusions

Time limits.

98. Many of the Claimant claims are out of time. As set out above, the Claimant moved to another department in early 2021. However, as she relies on a continuing act, it was necessary to consider the whole narrative of her complaints. As none have been successful, it is not necessary to deal with the time point. In addition much of the narrative includes matters which postdate the claim but, as they have been included in the list of issues and not objected to by the Respondent, we have assumed that an amendment to the claim had been permitted in an earlier hearing.

Direct discrimination on the grounds of race, sex or age.

99. The factual matters said to be done because of race sex or age set out at 2.1 the list of issues. Dealing with these in turn.

2.1 (a) The delay in hearing the Claimant's grievance's dated 14<sup>th</sup> and 30 July 2021.

100. There was no grievance dated 14 July 2021. There was a very long delay in dealing with the 30<sup>th</sup> July grievance, some of which was down to the Respondent (particularly the delay from 30<sup>th</sup> July to 21<sup>st</sup> October before Mr Cruz was appointed). As at the date of the presentation of the Claim, the Claimant had received notification that Mr Cruz had been appointed (331) although not much else had happened.
101. Despite the exaggerated language we have heard no evidence to suggest the delay was influenced by the Claimant's race, age or sex. It was not clear who was responsible for the delay in appointing Mr Cruz. Once Mr Cruz had been appointed there were numerous dates set for the hearing, and only one of the four postponements (i.e. the first one) could be said to be the fault of the Respondent.

2.1 (b) The Respondent's handling of the Claimant's grievances in respect of the following series of complaints raised by the Claimant on 20 May 2020, 13 October 2020, 9 February 21, 4 March 2021, 14 July 2021, 30<sup>th</sup> July 2021 and 30 September 2021.

102. Apart from delay the Claimant has never made it clear what other aspect of the Respondent's handling of her grievance is said to be less favourable treatment on a proscribed ground. As we have said, the Claimant and her representative have been somewhat cavalier with the identification of

dates. There are complaints/grievances submitted by the Claimant on 20<sup>th</sup> May, (546) and 30 July. There are no grievances submitted on 13 October 2020, 9 February 2021, 4 March 2021, or 14 July 2021.

103. Early on in the hearing Mr Ogbonmwan accepted that there was no complaint/grievance on 13 October 2020- although there was a grievance submitted on 12 January 2021, which is not referred to in the pleadings. It is also possible to construe the 17 February 2020 email from the Claimant (531) as a complaint or grievance, but that is also not referred to in the pleadings.
104. The 30 July grievance was extremely slowly dealt with but, as set out above, there is no evidence to suggest that that delay was influenced by the Claimant protected characteristics. In respect of the Claimant's complaints of 20<sup>th</sup> May, the Claimant told Ms Edwards that she did not want to pursue it. The Claimant's grievance of 12<sup>th</sup> January was progressed once she returned to work in early February and was ready to be fed back to her on 10<sup>th</sup> May. While not particularly speedy there is no evidence to suggest that the speed of response was influenced by the Claimant protected characteristics.
105. For the avoidance of doubt we do not accept that Ms Edwards said that "shouting is part of their culture" on 19<sup>th</sup> October or that she pursued an unannounced disciplinary investigation against the Claimant on 19 October 2020. (2.1(b)(i). The serious incident of patient abuse did not target the Claimant. (2.1(b)(ii). There is no evidence that Ms Edward's actions on 4 November in asking the Claimant to come to her office in order to inform her that there would be an informal investigation was influenced by any of the Claimant's protected characteristics. (2,1(b)(iii) We do not accept that Mr Smith invited the Claimant into office without disclosing why - the Claimant had been told the purpose of that meeting on 4 November. (2.1(b) (iv). Ms Smith undertook an informal fact-finding investigation as she was tasked to do, as other members of the ward had raised complaints which needed an investigation.

2.1 (c ) Ms Clark applying "oppressive control in assigning excessive task to the claimant on every occasion..."

106. We do not accept that Ms Clark had ever assigned any tasks to the Claimant let alone excessive tasks.

2.1 (d) The majority of promotional pay gap opportunities between 2014 and 26 November 2021 were continually continuously offered to male colleagues.

107. No details of this were set out in the Claimant's witness statement. No questions were asked in cross examination about this topic and there is no evidence before the tribunal to make any finding that this was the case.

2.1 (e ) Mr Husnoo “denied the Claimant access to the respondent’s professional development benefits, days or facilities on or about 25<sup>th</sup> August 2020 and falsely informed her she needed MaST in order to qualify for future training

108. We do not accept that Mr Husnoo denied the Claimant access to professional development benefits. Our findings of fact are set out above. The Claimant now accepts that it is true that she needs 100% MaST to qualify for other training, and it is clear that Mr Husnoo was supportive of her desire to undertake cannulation and IT training. Beyond training the Claimant has given no instances as to what she means by of the denial of “professional development benefits days or facilities.”

2.1(f) The Respondent failed to investigate the claimant’s complaints against senior management as follows:

- i. A complaint filed [in writing] on 30 September 2020 with Mehaad Husnoo regarding lack of access to IT training and cannulation training;
- ii. A complaint made [orally] to Fritze Cencil (Clinical Nurse Specialist) on 26 August 2020 that Mehaad Husnoo had falsely told her that she needed to undertake MaST training before qualifying for future training;
- iii. A complaint made [in writing and orally] to Anna Marie Edwards about bad faith handling of medical records by Mehaad Husnoo – exhibiting her sick notes dated 04 to 27 January 2021 on the staff notice board without her permission (or consultation); and
- iv. A complaint on 29 December 2020 against Mehaad Husnoo for inappropriately publishing an extract from the claimant’s medical record on a staff notice board.

109. As to i. the Claimant has not identified the complaint which she says was filed in writing on 30 September 2020 with Mr Husnoo, though 30 September 2020 was the date of her appraisal. In that appraisal Mr Husnoo supported her request for IT and cannulation training. We conclude that there was no complaint in writing on that date, nor was there a lack of access to IT or cannulation training other than that which was a result of the cuts made to all staff because of the pandemic.

110. As to ii, Ms Cencil had no recollection of any complaint made to her. We find that none was made. It is quite clear from the appraisal that Mr Husnoo had recorded the Claimant as 100% compliant with MaST so it is unlikely, and we reject any allegation, that he had told her that she needed to undertake further MaST training before qualifying for further training.

111. As to iii., there is no complaint on 27 January 2021. It appears to be a reference to a complaint on 29 December 2020 (as set out at iv) by the Claimant about the reason for her absence being visible to other staff. This

was answered immediately, and the Claimant appeared to have accepted that explanation.

112. There is nothing in the above to suggest that the Claimant made any such complaints or that Respondent failed to investigate them.

#### Harassment

Issue 3.1 The following acts were based on a series of grievances raised by the claimant on 20 May 2020, 9 February 2021, 4 March 2021, 14 July 2021, 30 July 2021 and 30 September 2021.

Issue 3.1 (a) she was deliberately excluded from the internal anti-bullying and harassment survey between January to April 2020.

113. As we set out above there was no exclusion of the Claimant, deliberate or otherwise for the anti-bullying and harassment survey.

3.1 (b) On 19 October Ms Edwards said that “shouting is part of their culture” when referring to the claimant.

114. As set out above we do not accept that Ms Edwards made the statement.

3.1(c) Between 29 October and December 202 Mr Husnoo, Ms Edwards, Ms Smith and Ms Robertson subjected the Claimant to persistent emails and text message attacks while at home on her day off.

115. This allegation relates to the Respondent’s investigation into patient abuse described at paragraph 50 of our Judgment onwards . There are no emails about this from Ms Robertson or Ms Smith - neither were involved in any request to ask the Claimant to make a second statement. Ms Edwards and Mr Husnoo contacted the Claimant on a number of occasions, perfectly properly, as they did with all other staff. Ms Edwards also accepts that she sent a text to the Claimant, as she did to all other staff on duty on the relevant date. Although the Claimant says that she was sent “repeated texts”, she has been unable to provide any such texts as evidence to this tribunal, nor has she been able to provide any additional emails, despite the fact that she remained in employment and has access to her inbox.
116. This conduct is very far from being harassment within the definition set out in section 26 of the Equality Act and there is no evidence to link it to the Claimant’s age, sex or race.

3.1(d) Deliberate and repeated refusal by Mr Husnoo and Mr Cruz to provide the Claimant with her personnel file.

117. This allegation is repeated in the Claimant’s witness statement without providing details of what she says were her repeated requests. Mr Husnoo’s evidence was that he did not recall the Claimant ever requesting her personnel file. From the documents in the bundle we find that the

Claimant had sent an email to Mr Cruz on 2<sup>nd</sup> May 2022 asking for her records. Mr Cruz said that he did not have access to them and had forwarded the email to Ms Ma, and had also asked Ms Varney to look into it. We have no further evidence as to what happened next, and no questions were put to Ms Varney about this.

118. The Claimant remains in employment and has access to all her work emails yet has been unable to produce any emails requesting her personnel file or refusing her access to it. In the absence of further evidence we make no finding that there were repeated refusals to provide her personnel file.

3.1(e). On various dates subjecting the claimant to intimidating threatening and derogatory behaviours. The Claimant claims that Ms Edwards, Ms Smith and Ms Robertson removed the claimant from her lunchbreak, invited her to a disciplinary investigation without notice, refused to investigate Chloe Clark putting her risk by arbitrarily increasing patient numbers against a backdrop of complaints about excessive workloads to black members of staff.

119. This is another example of the Claimant's approach to allegations. It is not clear whether it is alleged that all of the named individuals did all of those things or, if not, who did what. Breaking it down we find that:
- a. Ms Robertson's involvement with the Claimant was limited to attending a meeting as an observer on 4 November 2020. She did none of those things.
  - b. Ms Edwards asked the Claimant to attend a short meeting with her when she was on the ward. Even if the Claimant was on her lunch break, this could not be described as harassment.
  - c. The Claimant was not "invited to a disciplinary investigation without notice". On 4 November she was informed that an informal fact-finding investigation was being commissioned into various concerns that had been raised.
  - d. We have heard no evidence that the Claimant complained in late 2020 that Ms Clark was putting the Claimant at risk as alleged. In her witness statement the Claimant says that on 15 April 2020 she complained about Ms Clark assigning her excessive tasks on the rota, but there was no evidence before us that the Claimant complained or that Ms Clark had assigned her such tasks. We refer to paragraph 41 above.
  - e. None of the above could amount to harassment because of a protected characteristic.

3.1(f). Mr Husnoo not affording the Claimant further opportunity to grow and develop etc.

120. This allegation relates to the complaint about not being given IT or cannulation training or computer-based study time and that Mr Husnoo “falsely told the Claimant she required MaST training to be put forward for future training.” We have dealt with this above. This allegation is simply wrong. Mr Husnoo supported the Claimant’s request for cannulation training and IT training. However face-to-face training was stopped because of the pandemic. It is clear from the Claimant’s appraisal that she was 100% compliant with MaST.

3.1(g) between 10 October 2020 and 20 December 2020 Mr Husnoo, Ms Edwards Ms Smith, Ms Robertson and Ms Varney applied coercion and duress in putting the Claimant through an unlawful disciplinary process and pursuing unsuccessful malicious disciplinary action . This includes the incidents referred to on 19, 21 and 25 October 2020, 4 and 7 November 2020 and also 8 December 2020. On 8 December 2020 the Claimant’s ward manager exerted undue influence on her by way of email and telephone conversations, compelling her to make a fresh statement, despite making one previously .

121. The facts are set out above. Ms Varney was not involved during this period (beyond being copied in on an email). Ms Robertson was merely an observer at the 4<sup>th</sup> November meeting. The reference to 8<sup>th</sup> December relates to the patient rough handling investigation. There was no coercion or duress. The request for a new statement was made to everyone and entirely proper. The reference to 19<sup>th</sup> October relates to the discussion between the Claimant, Ms Edwards and Ms Matthews, following a complaint made by Ms Matthews but there was no malicious disciplinary action, and no undue influence was exerted upon the Claimant. We have no evidence of incidents which occurred on 21 and 25 October 2020 (though we suspect this referred to the patient rough handling complaint.) The reference to 4 and 7 November refers to the instigation of a fact-finding investigation. The reason for this was that several members of the ward had complained. It was not influenced by the Claimant’s protected characteristics.

Whistleblowing.

122. The Claimant relies on protected disclosures made:

- a. To CQC representatives in 2014/2015
- b. an oral disclosure made to Ms Emes on 4 March 2021
- c. an email to Mr Husnoo and Mr Binge of 20 May 2020
- d. an email to Ms Ali, Mr Binch and Mr Husnoo on 21 May 2020 and another email on the same day to Ms Edwards
- e. a disclosure to Ms Cencil that Mr Husnoo was refusing to afford her training.
- f. an email on 24 May 2022 to Mr Mansfield, her trade union representative.
- g. disclosures made in her grievances on 20 May 2020, 13 October 2020, 9 February 2021, 4 March 2021, 14 July 2021, 30 July 2021 and 30 September 2021.



123. As set out above many of these disclosures did not happen but, in any event, we are satisfied that the detriments referred to were not influenced by the matters relied on as protected disclosures. Dealing with these in turn.

4.6(a). 4.6 (c ) Ms Ethel unreasonably questioning the claimant and coercing her into withdrawing her complaints and telling her she would be sacked if she did not draw her complaints to the CQC.

124. The Tribunal does not accept that Ms Essel questioned the Claimant about any disclosure she had made to the CQC (unreasonably or otherwise) or that she coerced the Claimant into withdrawing her complaints with threats of serious consequences. As set out above, it is completely implausible that the CQC would have disclosed the content of a confidential conversation with the Claimant to Ms Essel. The complaint is also significantly out of time, being several years before the remaining complaints.

4.6(b). Throughout 2019 - 2021 Ms Ali, Ms Edwards, Mr Husnoo and Mr Cruz failed to take reasonable steps to address the prevailing acts of discrimination set out in the Claimant's grievances and complaints.

125. This is a very broad and unspecific allegation. The Claimant made no complaint in 2019. Her complaint to Mr Husnoo of 20 May 2020 was referred on to Ms Edwards. As set out above the Claimant chose not to go and see Ms Edwards when requested, and then told her that she did not want to take matters further. Accordingly there was no detriment. The Claimant's complaint of 12 January 2021 was dealt with by Ms Emes and largely upheld. The July complaint was dealt with, albeit slowly, by Mr Cruz and also largely upheld.

4.6(d) the Claimant was excluded from the anti-bullying investigation survey in 2020.

126. This is factually incorrect.

4.6(e) Mr Husnoo escalating his heavy handedness against the Claimant and in particular Chloe Clark was encouraged to bring false allegations against the claimant in April 2020.

127. We do not accept that Ms Clark was encouraged to bring false allegations against the Claimant. We have had no particulars of what the Claimant meant by Mr Husnoo "escalating his heavy handedness".

4.6(f) .Chloe Clark's monitoring increased with a view to retaliating, and her request for things that the claimant was ordinary entitled to were routinely denied.

128. The Claimant has provided no specifics of this allegation, and it is not made out.

4.6 (g) the delay in hearing the Claimant's grievance dated 13<sup>th</sup> July.

129. We understand this to mean the grievance of 30<sup>th</sup> July. There was indeed a delay, as we have said, but there was no evidence before us to suggest that the delay was influenced by the Claimant's alleged protected disclosures. Some of the delay was caused by the Claimant herself.

Victimisation.

130. The Claimant relies on (i) a threat in July 2021 to take the Respondent to employment tribunal and (ii) her grievances of 20<sup>th</sup> May, 13 October 2020, 9 February, 4 March, 14 July, 30 July and 30 September 2021 as protected acts. The threat is said to have been made "between July and November" during "a meeting" and in writing to Mr Cruz, Ms Ali and Ms Varney. (She does not give a date). The Claimant sets out a significant number of alleged detriments at paragraph 5.3 of the list of issues.
131. There were no complaints on 13<sup>th</sup> October 2020 or 30 September 2021.

5.3 (a) In the arrangements made for deciding whether to hear the claimant's grievances whilst she was on approved holiday. The respondent's senior clinical managers including Anna Marie Edwards, Alisha Ali and Georgia Emes deliberately obstructed, concealed and misrepresented viable and significant information that the claimant was on approved holiday when they decided to hear the claimant's grievance dated 13 October 2020 and derogatorily stated in an email dated 26 May 2021 that the claimant refused to attend her grievance hearing.

132. We accept the Respondent's submission that this allegation is misconceived. The Claimant's grievance was not heard in her absence. She was interviewed by Ms Emes in March. None of the above managers said that the Claimant refused to attend her grievance hearing. Given that Ms Emes upheld the Claimant's grievance, it is hard to understand why she would victimise the Claimant as alleged, and we find that she did not do so.

133. 5.3(b)

- a. 5.3 (b) (i) Mr Husnoo did not encourage Chloe Clark to write a malicious formal grievance against the Claimant. This allegation is not factually made out.
- b. 5.3(b) (ii) Mr Husnoo did not deny the Claimant's annual leave. He organised matters so that she could take the day off, but it was categorised as a nonworking day. There was no detriment.
- c. 5.3 (b) (iii) Mr Husnoo and Ms Edwards did not "maliciously conduct an unfounded disciplinary investigation into the Claimant physically abusing a patient". This was a perfectly proper

investigation, and they asked the Claimant perfectly proper questions.

5.3(c) (i) . Respondent deliberately failing to provide minutes of the investigative hearing related to its own investigation held in Anne Marie Edwards’s office on 04 November, and on 07 November 2020 by Rita Smith and Laura Robertson.

134. The first meeting was a meeting to notify the Claimant that an investigation would be undertaken. There were no minutes, so no deliberate failure. While not best practice perhaps, the Claimant was sent an email the same day (164) which summarised the content of the meeting. There was no detriment to the Claimant.

135. A note was taken of 7 November meeting by Ms Smith (165). It is not clear if these were provided to the Claimant. The only protected act which predates this allegation is the complaint of 20 May and Ms Smith denied that she had any knowledge of that complaint. We accept that evidence.

5.3(c) (ii) failing to investigate the Claimant’s complaint of 20<sup>th</sup> May.

136. As set out in the facts the Claimant told Ms Edwards that she no longer wished to pursue this, so there is no detriment.

5.3(c) (iii) failing to implement the respondent’s recommendations following the Claimant’s grievance outcome on 26 May.

137. In the outcome of the Claimant’s formal grievance of July 2021 Mr Cruz noted that the recommendations in the grievance management report completed by Mr Rigg had not been implemented. These recommendations replicated those suggested by Ms Emes which were training for management, mentors for the matron and the ward manager, a study of the staff survey results and possibly team building days. By this time Ms Edwards had left the trust.

138. However, the evidence does not lead us to conclude or infer that this failure was an act of victimisation because the Claimant had made earlier complaints. The causal link is not supported by the evidence.

5.3(d) Affording the claimant and other African employees’ access, or not, to opportunities for promotion, transfer, training, benefits, facilities, or services in a discriminatory or targeted manner including cannulation training, IT training and computer-based study date between 2014 until February 2021.

139. It is not clear what this is about. The only evidence we have heard which fits this category is the allegation that Mr Husnoo denied her an opportunity for cannulation and IT training – an allegation which we have found to be factually incorrect. The Claimant was transferred to another ward when she asked for it, and we have heard no evidence of her being denied opportunities for promotion, benefits facilities or services.

5.3(e) Retaliating against the claimant whenever she made a grievance as specified in paragraph 5.3(b).

140. This appears to be a repeat of 5.3 (b) which we have dealt with above. No specifics were given.

5.3 (f) Ms Clark subjecting the claimant undue pressure and excessive tasks whilst she was doing nothing and failed to help the claimant when asked, later threatening the claimant with a disciplinary investigation relating to inappropriately informing a patient's family member that she was alone when pressure to assist a second patient.

141. The facts are set out above. They do not reflect this allegation. In any event the Claimant says that she complained about this on 15 April which predates the pleaded protected acts.

5.3 (g) Failing to disclose the outcome reports of an Equality and Diversity investigation into employees being bullied, harassed, and discriminated against between March and April 2020

142. There is no evidence about this in the Claimant's witness statement. In any event, although the report was not given to staff, the outcome of the survey and the recommendations were discussed at a team meeting. The Claimant was treated the same as all the other members of the ward. If there was a failure to provide the staff with the written report, the Claimant was not singled out because she had done a protected act.

5.3(h) Denying the claimant's annual leave on 2 October 2020 despite this being an emergency, but Mehaad Husnoo approved a future date which the claimant did not request.

143. We have dealt with this above. The Claimant was not denied her annual leave. She was permitted to take the day off and there was no detriment.

5.3 (i) Mehaad Husnoo influencing Chloe Clark to write a malicious formal grievance against the Claimant in April 2020

144. We have dealt with this above. Mr Husnoo did not influence Ms Clark as alleged.

5.3 (j) On 19 October 2020, threatening the claimant with disciplinary action in respect of a purported dispute with Jenna Matthews.

145. There was no threat of disciplinary action on 19 October 2020 in relation to Ms Matthews complaint about the Claimant's conduct.

5.3 (k)- On 2 November 2020<sup>1</sup> Anna Marie Edwards and Laura Robertson obstructed the claimant's break and threatened her with a disciplinary investigation in a meeting without prior warning or consultation. They later threatened the claimant with further disciplinary action on 07 November 2020 during an unannounced investigative hearing.

146. Again the facts are set out above. On 4 November Ms Edwards told the Claimant that she was initiating a fact-finding investigation. There had been complaints from other members of the ward and this action was taken in response to those complaints - not in response to the Claimant's complaints.

5.3 (l). Mr Husnoo deliberately failing to redeploy the Claimant between 2019 and 2020.

147. The Claimant makes this broad allegation in her witness statement without including any specifics as to when she asked to be redeployed or to which ward. Ms Edwards and Mr Husnoo both denied that the Claimant ever asked to be redeployed in this period. We prefer the Respondent's evidence. This allegation is not made out.

5.3(m). Anna Marie Edwards maliciously conducting an unfounded disciplinary investigation into the claimant physically abusing a patient on 19 October 2020.

148. We do not accept that Ms Edwards maliciously conducted an unfounded disciplinary investigation into the Claimant physically abusing a patient on 19 October 2020. There had been a patient complaint and it needed to be investigated. (The date of the alleged abuse to the patient was 12<sup>th</sup> October not 19<sup>th</sup> October.)

5.3 (n) deliberately failing to handle the claimant's grievances raised in 2020 and 2021,

149. There was no deliberate failure to handle the Claimant grievances. There was some delay but no deliberate failure.

5.3(o) Between 27 and 29 December 2020, Mehaad Husnoo and Anna Marie Edwards published the claimant's medical information on the ward rota disclosing that the Claimant was absent due to anxiety, psychiatric depression, and stress.

150. Neither Mr Husnoo nor Ms Edwards published the Claimant's medical information on the ward rota. This allegation is not factually correct.

### **Overall conclusion.**

151. The Claimant has bought a claim in which many of the allegations are simply factually incorrect. As we said many of the matters set out in the extensive list of issues are not referred to at all in the Claimant's witness

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<sup>1</sup> It was clarified in XX that the date is an error, and this should be 4 November not 2 November 2020.

statement. Many of the allegations lack specificity. Allegations are made against numerous people without regard to whether they were involved in the relevant incidents or not.

152. Allegations of discrimination are serious matters which cause worry and concern and soul-searching to those who stand accused. Those involved in bringing claims should not do so without careful consideration. In this case the Claimant and her adviser have not always taken the time to ensure that the allegations that they have made have a proper basis in fact.
153. Many of the allegations are not made out on the facts. Where they are, there was no material before us from which we could conclude or infer that the conduct complained of related to, or was influenced by, the Claimant's race, sex or age or to her various complaints (either protected acts or public interest disclosures).
154. All claims are dismissed.

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Employment Judge Spencer  
12<sup>th</sup> April 2024

JUDGMENT SENT TO THE PARTIES ON

24 April 2024

.....  
FOR THE TRIBUNAL OFFICE

## THE ISSUES

### Jurisdiction

1.1 Have the claimant's claims been issued within the time limit set out in section 123 of the *Equality Act 2010* ("EqA") taking into account any period of time for ACAS Early Conciliation?

1.2 If not:

1.2.1 In respect of the discrimination claims, do the allegations form part of a continuing act under section 123(3)(a) of the EqA, or would it be just and equitable for the Tribunal to extend the time limit for the claimant to do so?

1.2.2 In respect of the whistleblowing detriments claim, was it reasonably practicable for the claimant to bring her claim within the time limit set out in section 48 of the *Employment Rights Act 1996* ("ERA"), or if not, has the claim been brought within such further period as the Tribunal considers reasonable?

### 2 Direct discrimination on the grounds of race and/or sex and/or age

2.1 Has the respondent treated the claimant less favourably than it treated or would treat others? The claimant relies on the following acts of the respondent:

(a) the respondent's deliberate and exceptionally prolonged delay in hearing the Claimant's grievances dated 14 and 30 July 2021, for example its deliberate and exceptionally prolonged delay in hearing them by Francis Cruz, Abby Varney, and Charlene Davies;

(b) The respondent's handling of the claimant's grievances in terms of the following series of complaints raised by the claimant on 20 May 2020, 13 October 2020, 09 February 2021, 04 March 2021, 14 July 2021, 30 July 2021, and 30 September 2021:

i. On 19 October 2020 Anna Marie Edwards pursued an unannounced disciplinary investigation against the claimant by taking the claimant into her office and detaining her without notice or explanation. Anna Marie Edwards then brought Jenna Matthews into the room and alleged that on 13 October 2020 the claimant raised her voice and failed to follow Jenna

Matthews's instructions, which the claimant denied and challenged the Matron to prove. Anna Marie Edwards also made a discriminatory statement that "*shouting is part of their culture*" when referring to the claimant;

- ii. A serious incident of patient abuse and bruising was reported to Meehad Husnoo on 21 October 2020, resulting in an investigation involving the claimant which lasted until January 2021, while the claimant's complaints were still pending. The allegations were tainted by inconsistent dates, times, and accounts of the incident. Anna Marie Edwards also contacted the claimant about the investigation on 25 October 2020 and the respondent unlawfully imposed undue pressure on the claimant during the rest of the investigation to provide another statement more than 40 days after the incident citing changes to the incident's date and time;
  - iii. On 04 November 2020 Anna Marie Edwards pulled the claimant into her office without prior notice or an apology for an unnecessary and purported disciplinary investigation without the offer to be accompanied. Laura Robertson was also present. This occurred whilst the claimant's grievance dated 13 October 2020 was pending; and
  - iv. On 07 November 2020 Rita Smith invited the claimant to Anna Marie Edwards's office without disclosing why Vanessa Cardoso was also present. Rita Smith intimidated the claimant and threatened disciplinary action with no proof and the claimant felt this was retaliatory in nature. Rita Smith cautioned the claimant during the meeting by saying "*we do not tolerate bullying here*".
- (c) On 15 April 2020 the claimant complained to her Ward Manager (Mehaad Husnoo) and Anna Marie Edwards (her Ward Matron) that Chloe Clark, a white employee, repeatedly applied oppressive control in assigning excessive tasks to the claimant on every occasion until she attended to what was unjustly assigned to the claimant. For example, on or around 15 April 2020, Chloe Clark would manipulate the task on the Rota Board to allocate the claimant 7 patients, who were very ill and bed-bound, whilst she assigned herself 5 patients. She had no authority to interfere with the allocation of patients;



- (d) The majority of promotion and pay gap opportunities between 2014 and 26 November 2021 were continuously offered to male colleagues in the period complained of (this is an allegation of direct sex discrimination only) at the hands of the respondent, ward managers and ward matrons. The claimant states that the details of this are provided in her witness statement;
- (e) Mehaad Husnoo denied the claimant access to the respondent's professional development benefits, study days, or facilities on or about 25 August 2020 and falsely informed her she needed MaST (Mandatory and Statutory Training) in order to qualify for future training; and
- (f) The respondent failed to investigate the claimant's complaints against senior management that she brought as follows:
  - i. A complaint filed [in writing] on 30 September 2020 with Mehaad Husnoo regarding lack of access to IT training and cannulation training;
  - ii. A complaint made [orally] to Fritze Cencil (Clinical Nurse Specialist) on 26 August 2020 that Mehaad Husnoo had falsely told her that she needed to undertake MaST raining before qualifying for future training;
  - iii. A complaint made [in writing and orally] to Anna Marie Edwards about bad faith handling of medical records by Mehaad Husnoo – exhibiting her sick notes dated 04 to 27 January 2021 on the staff notice board without her permission (or consultation); and
  - iv. A complaint on 29 December 2020 against Mehaad Husnoo for inappropriately publishing an extract from the claimant's medical record on a staff notice board.

The protected characteristics relied on by the Claimant for each of the above is race, sex, and age, unless specified otherwise.

2.2 If there has been less favourable treatment, was that treatment because

of the protected characteristic of race and/or age and/or sex?

2.3 In respect of the allegations of discrimination, the comparator relied on by the claimant is a hypothetical comparator.

2.4 In respect of the claimant direct age discrimination claim, can the respondent that its treatment of the claimant was a proportionate means of achieving a legitimate aim?

### Harassment

3.1 Did the Respondent act as follows:

The following acts were based on the series of grievances raised by the claimant on 20 May 2020, 09 February 2021, 04 March 2021, 14 July 2021, 30 July 2021 and 30 September 2021:

- (a) she was deliberately excluded from the internal anti-bullying and harassment survey between January - April 2020 carried out as a result of an anonymous complaint from January 2020 to preclude her from speaking up;
- (b) On 19 October 2020 Anna Marie Edwards made derogatory remarks to Jenna Matthews during an investigation into an allegation against the claimant that she shouted at Jenna Matthews, by saying that "*shouting is part of their culture*" when referring to the claimant;
- (c) Between 29 October and December 2020, Mehaad Husnoo, Anna Marie Edwards, Laura Robertson and Rita Smith unlawfully subjected the claimant to persistent emails and text message attacks whilst at home on her days off in an attempt to cause or pressure her to make an alternative statement.
- (d) The claimant says there was deliberate and repeated refusal by Mehaad Husnoo and Francis Cruz to provide the claimant with her personnel file;
- (e) On 19 October 2020, 4 November 2020, 7 November 2020 and during December 2020, Anna Marie Edwards, Rita Smith and Laura Robertson knowingly or recklessly subjected the claimant to intimidating, threatening and derogatory behaviours (the claimant complains that, Anna Marie Edwards, Rita Smith and Laura Robertson removed the claimant from her lunch break, invited her to a disciplinary investigation without notice, refused to investigate Chloe Clark putting her at risk by arbitrarily increasing her patient numbers during her shifts and interfering with their care) and this was in the backdrop of the claimant's complaints about excessive workloads and allocating heavy lifting to black members of staff (as detailed in the claimant's witness statement);
- (f) Mehaad Husnoo continuously not affording the claimant further opportunity to grow and develop through the respondent's internal professional training programme, deliberately passing her over for training and promotion,

and refusing her the opportunity to be redeployed. In particular, this allegation relates to IT training, cannulation training and general access to the respondent's benefits of computer-based study time. Between 19 and 25 August 2020, Mehaad Husnoo falsely told the claimant she required MaST training in order to be put forward for future training. He then deliberately refused the Claimant's request for cannulation training on or about 25 August 2020 and IT professional development training on or about 30 September 2020; and

- (g) Between 10 October 2020 and 20 December 2020, Mehaad Husnoo, Anna Marie Edwards, Rita Smith, Laura Robertson and Abby Varney applied coercion and duress in putting her through and attempting to put the claimant through an unlawful disciplinary process and pursuing unsuccessful malicious disciplinary action. This includes the incidents referred to on 19, 21 and 25 October 2020, 4 and 7 November 2020, and also 8 December 2020. On 08 December 2020 the claimant's Ward Manager exerted undue influence on her by way of email and telephone conversations, compelling her to make a fresh statement, despite making one previously.

3.2 If the respondent did any or all of those things, did such action or inaction amount to unwanted conduct related to the claimant's race?

3.3 If so, did the conduct have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, having regard to all the circumstances and whether it is reasonable for it to have that effect?

## **Whistleblowing**

4.1 What protected disclosures does the claimant rely on?

(a) Between 2014 and 2015, the claimant was interviewed by the CQC representatives during a visit to the respondent's place of work in respect of the complaints made by some aggrieved employees and during these interviews the claimant disclosed information that the respondent was contravening the EqA, in particular relating to race discrimination and harassment of African employees by senior managers in respect of lack of promotion and adequate training, and sex discrimination in respect of retention and disciplinary processes being falsely instituted causing resignation, suspension and dismissal;

- (b) On 04 March 2021, oral disclosures made to Georgia Emes during a telephone conversation about senior members of staff (Anna Marie Edwards, Rita Smith and Laura Robertson) continuously committing acts of race discrimination over a prolonged period unabated;
- (c) On 20 May 2020 by email to Mehaad Husnoo and Craig Binch (Senior Matron) raising concerns about the claimant's concerns that Mehaad Husnoo was seeking to illegally encourage, aid and abet Chloe Clark to file a fresh allegation arising from a previous event already settled, which was an abuse of the procedure;
- (d) On 21 May 2020 by email to Alisha Ali (Divisional Nurse Director), Craig Binch, and Mehaad Husnoo, and a subsequent email on the same day to Anna Marie Edwards in relation to (c) above;
- (e) The claimant made a protected disclosure to Miss Fritze Cencil (Training Co-Ordinator), that Mehaad Husnoo was refusing to put her onto cannulation training, IT training, study day and that this was on the ground of her race (even though this was agreed on her appraisal - MaST on 26/08/202 -30/08/2020.)
- (f) On 24 May 2020 by email to Jim Mansfield forwarding the email referred to at (c) above and saying that she felt discriminated against by Mehaad Husnoo on the ground of race; and
- (g) In addition to the above, the claimant relies on the disclosures made in all her grievances on:
  - (i) 20 May 2020,
  - (ii) 13 October 2020,
  - (iii) 09 February 2021,
  - (iv) 04 March 2021,
  - (v) 14 July 2021,
  - (vi) 30 July 2021, and
  - (vii) 30 September 2021in which the claimant disclosed information that the respondent was contravening the EqA, in particular relating to race discrimination.

**4.2 Was the alleged protected disclosure(s) made in the public interest?**

4.3 Did the information disclosed tend to show a qualifying disclosure as set out in s43B(1)(a-d) ERA?

4.4 If so, did the claimant have a reasonable belief that the matters alleged were qualifying disclosures?

4.5 Did the claimant raise the disclosure(s) with an appropriate person namely either her employer or to another person (s43C)?

4.6 What alleged act(s) or omission(s) of the respondent does the claimant rely on in respect of her detriments claim pursuant to section 47B ERA?

- (a) After the CQC's departure in 2014 - 2015, Sister Mary Essel, a Ward Matron, unreasonably questioned the claimant in a private meeting and coerced her into withdrawing her complaints with threats of serious consequences;
- (b) Throughout 2019 – 2021, Alisha Ali, Anna Marie Edwards, Mehaad Husnoo and Francis Cruz failed to take reasonable steps to address the prevailing acts of discrimination set out in the claimant's grievances and complaints, and the issues remain unresolved;
- (c) That after her disclosure to the CQC, Sister Mary Essel (Ward Manager) called her aside, telling her she could be sacked if she does not withdraw the complaints before the CQC leaves and that there would be consequences;
- (d) She was excluded from the anti-bullying investigation survey in 2020;
- (e) Mahaad Husnoo, escalated his heavy handedness against the claimant (things escalated when Mahaad Husnoo became the Ward Manager in 2020) and in particular Chloe Clark was encouraged to bring false allegations against the claimant in April 2020;
- (f) Following the disclosures in 4.1(b) to (g), Chloe Clark's monitoring increased with a view to retaliating, and her requests for things that the claimant was ordinarily entitled to were routinely denied; and
- (g) The delay in terms of hearing the claimant's grievance dated 13 July 2021 (which was not heard until June 2022).

4.7 Was the claimant in fact subjected to the above detriment(s) on the

grounds of the alleged protected disclosure?

## 5 Victimization

5.1 Did the claimant do a protected act? As protected acts, the claimant relies on the following communications:

5.1.1 Around July 2021 the claimant threatened to take the respondent to an Employment Tribunal in respect of her EqA complaints.

5.1.2 Grievances dated 20 May 2020, 13 October 2020, 09 February 2021, 04 March 2021, 14 July 2021, 30 July 2021, and 30 September 2021.

5.2 Were those allegations false and/or was the allegation made in bad faith?

5.3 Has the respondent subjected the claimant to a detriment because she had done a protected act? The claimant relies on the following as acts of detriment:

(a) In the arrangements made for deciding whether to hear the claimant's grievances whilst she was on approved holiday. The respondent's senior clinical managers including Anna Marie Edwards, Alisha Ali and Georgia Emes deliberately obstructed, concealed and misrepresented viable and significant information that the claimant was on approved holiday when they decided to hear the claimant's grievance dated 13 October 2020 and derogatorily stated in an email dated 26 May 2021 that the claimant refused to attend her grievance hearing;

(b) Deliberate obstruction in terms of the claimant being able to pursue her grievance and misrepresentation that the claimant refused to attend her grievance hearing in the following terms:

(i) In or about May 2020, Mehaad Husnoo encouraging Chloe Clark to write a malicious formal grievance against the Claimant with a view to making the claimant withdraw her grievance;

(ii) Mehaad Husnoo denying the claimant's annual leave on 02 October 2020 despite this being an emergency, but approved a future date which the claimant did not

request; and

(iii) Mehaad Husnoo and Anna Marie Edwards maliciously conducting an unfounded disciplinary investigation into the claimant physically abusing a patient between 13 October 2020 and December 2020;

(c) Not hearing the claimant's grievances in line with the Trust's grievance policy, in particular that:

(i) Respondent deliberately failing to provide minutes of the investigative hearing related to its own investigation held in Anne Marie Edwards's office on 04 November, and on 07 November 2020 by Rita Smith and Laura Robertson.

(ii) The respondent's decision to investigate those allegations made by senior managers or Nurses against the claimant but deliberately failing to investigate her allegations (this relates to events described by the claimant in or about May 2020, or a complaint dated 24 May 2020).

(iii) Respondent deliberately failed to implement its recommendations following the respondent's informal hearing of the claimant's grievance on 04 March 2021 and outcome dated 26 May 2021.

(d) Affording the claimant and other African employees' access, or not, to opportunities for promotion, transfer, training, benefits, facilities, or services in a discriminatory or targeted manner including cannulation training, IT training and computer-based study date between 2014 until February 2021;

(e) Retaliating against the claimant whenever she made a grievance (as specified in paragraph 5.3 (b) above);

(f) On 03 March 2020 Chloe Clark subjected the claimant to undue pressure and excessive tasks whilst she was doing nothing and failed to help the claimant when asked, later threatening the claimant with a disciplinary investigation relating to inappropriately informing a patient's family member that she was alone when pressured to assist a second patient;

(g) Failing to disclose the outcome reports of an Equality and

Diversity investigation into employees being bullied, harassed, and discriminated against between March and April 2020;

- (h) Denying the claimant's annual leave on 2 October 2020 despite this being an emergency, but Mehaad Husnoo approved a future date which the claimant did not request;
- (i) Mehaad Husnoo influencing Chloe Clark to write a malicious formal grievance against the claimant in April 2020;
- (j) On 19 October 2020, threatening the claimant with disciplinary action in respect of a purported dispute with Jenna Matthews;
- (k) On 2 November 2020 Anna Marie Edwards and Laura Robertson obstructed the claimant's break and threatened her with a disciplinary investigation in a meeting without prior warning or consultation. They later threatened the claimant with further disciplinary action on 07 November 2020 during an unannounced investigative hearing;
- (l) Mehaad Husnoo deliberately failing to redeploy the claimant between 2019 and 2020;
- (m) Anna Marie Edwards maliciously conducting an unfounded disciplinary investigation into the claimant physically abusing a patient on 19 October 2020;
- (n) Anna Marie Edwards, Mehaad Husnoo Rita Smith, Fracis Cruz and Laura Robinson deliberately failing to handle the claimant's grievances raised in 2020 and 2021; and
- (o) Between 27 and 29 December 2020, Mehaad Husnoo and Anna Marie Edwards published the claimant's medical information on the ward rota disclosing that the Claimant was absent due to anxiety, psychiatric depression, and stress.

Remedy issues



