EMPLOYMENT TRIBUNALS

Claimant: Ms R Riscau

Respondents: (1) Wye Valley NHS Trust
(2) Mr S Bhat

FINAL HEARING

Heard at: Birmingham

On: 22 to 26 & 29 September 2025

Before: Employment Judge Camp
Miss SP Outwin
Mr PA Kennedy

Appearances
For the Claimant: in person
For the Respondents: Mr S Peacock, solicitor

REASONS

1. On 29 September 2025 the Tribunal gave a unanimous oral decision, with reasons, dismissing the claim. The written judgment was approved on the same day. These are written reasons, requested by the Claimant in an email of 3 October 2025.

Introduction, background & issues

2. The Claimant was employed by the First Respondent NHS Trust as a Medical Laboratory Assistant from 19 September 2022 until 30 June 2023. During that time, Mr Bhat, the Second Respondent, was her line manager. Her employment came to an end because her fixed-term contract terminated. She went through the early conciliation process from 19 December 2023 to 29 January 2024 and presented her claim form on 28 February 2024. In her latest schedule of loss, she is claiming over £400,000.

3. What the Claimant was claiming was not entirely clear from her claim form and the attached "*Grounds of Claim*" document. On the face of it, she was claiming direct sex discrimination or sex-related harassment in relation to her recruitment, to a redeployment

process, to a comment allegedly made by a colleague called Jane Thomas, and to a "*grievance and appeal*". Possibly, she was claiming victimisation too, although about what was not specified.

4. On 11 October 2024, there was a case management preliminary hearing of the kind that is standard in cases like this. At that hearing, Employment Judge Fitzgerald identified the complaints being made and the issues to be decided at the final hearing. The Judge also dealt with an amendment application, which she refused. The case went forward on the basis of the list of issues that was included within the written record of the hearing. There is no suggestion in the Judge's orders that the list of issues reflected any expansion or contraction of the claim that is set out in the Grounds of Claim; the Claimant has not been given permission to amend to put forward complaints that are not made in the Grounds of Claim; nor has she withdrawn any complaints.

5. We refer to that list of issues, which is an integral part of our decision and of these reasons. It identifies five complaints of direct sex discrimination, two complaints of sex-related harassment, and six complaints of victimisation, which overlap with one another, as well as time limits points.

6. Between that preliminary hearing and this final hearing, neither side challenged the list of issues or in any other way suggested it was inaccurate or incomplete. At the start of this hearing, the parties confirmed their understanding and agreement that it was, indeed, accurate and complete.

7. We are nevertheless now satisfied that the list of issues contains complaints which were not made in the Grounds of Claim, in relation to which the Claimant has not been given permission to amend, and which are therefore not part of the claim that she has before the Employment Tribunal. This includes all of her victimisation complaints, in circumstances where the totality of what could be a victimisation claim in the Grounds of Claim was: "*The Claimant was subjected to …* [unspecified] *detriment because of her disclosure of harassment to the* [Guardian] *of free speech.*" In accordance with **Chapman v Simon** [1994] IRLR 124 and **Chandhok v Tirkey** [2015] IRLR 195, the Claimant would need to have successfully applied to amend her claim in order to put any particular complaint of victimisation before the Tribunal.

8. Be that as it may, although we have discussed with the parties the fact that it seemed to us there were complaints in the list of issues that were not made in the claim form, we have considered and will deal with all of those complaints as if they <u>were</u> made in the claim form.

9. In addition, there is an unparticularised claim in the claim form that is not in the list of issues but which, again, we have considered and will deal with in this decision, namely an allegation that (to quote from the Grounds of Claim): "*During the employment period a series of actions of harassment and humiliation was inflicted into the Claimant by co-workers calling her "crazy" or making sexual remarks or insinuating sexual nature facts.*"

10. In the run up to and at the start of this final hearing, there have been some procedural issues and, amongst other things: the Claimant has made applications to postpone this hearing which have been refused; we directed (without objection from either side) that the

Claimant's evidence-in-chief would consist not just of her witness statement, but the contents of the Grounds of Claim as well. We directed this to help the Claimant, because her witness statement did not cover significant parts of her claim. We do not intend to say any more about those procedural issues as part of this decision, as they have been dealt with in oral and written orders and directions which are already, as it were, on the record.[1]

Summary of the law

11. This is a case where factual rather than legal issues predominate and we can deal with the law relatively briefly.

12. Our first consideration is the relevant legislation, which is reflected in the wording of the list of issues, in particular: sections 13, 23, 26, 27 and 136 of the Equality Act 2010 ("EQA").

13. Although there must be detriment for there to be direct discrimination, there must also be less favourable treatment. Claimants must show that they were treated less favourably than the respondent treats or would treat others in a comparable situation and merely proving, without more, that respondents treated them badly is insufficient. "*To be treated less favourably necessarily implies some element of comparison: the complainant must have been treated differently to a comparator or comparators, be they actual or hypothetical*": *Harvey on Industrial Relations & Employment Law* L[235].

14. As to case law, we note in particular:

    14.1 paragraph 17 (part of the speech of Lord Nicholls) of the House of Lords's decision in **Nagarajan v London Regional Transport** [1999] ICR 877 and paragraphs 9, 10 and 25 of the judgment of Sedley LJ in **Anya v University of Oxford** [2007] ICR 1451;

    14.2 the recommendation of numerous appellate courts, e.g. the EAT in **Islington Borough Council v Ladele** [2009] ICR 387 at paragraph 40(5), that we should try wherever possible to identify the 'reason for the treatment';

    14.3 in relation to the concept of detriment and to what could broadly be termed 'causation' in the EQA, in relation to both direct discrimination and victimisation, paragraphs 48 to 51 and 61 to 74 of **Warburton v Northamptonshire Police** [2022] EAT 42;

    14.4 in relation to the harassment claim, paragraphs 8 to 23 of the decision of HH Judge James Tayler in **Logo v Payone Gmbh & Ors** [2025] EAT 95;

    14.5 as to the burden of proof and EQA section 136 more generally, paragraphs 36 to 54 of the decision of the Court of Appeal in **Ayodele v Citylink Ltd & Anor** [2017] EWCA Civ 1913. We are looking, first, for "*facts from which the court could decide, in the absence of any other explanation*" that unlawful discrimination or harassment or victimisation has taken place. Although the threshold to cross before the burden

[1] The Claimant has requested written reasons for certain decisions which were made. These will be provided in due course.

of proof is reversed pursuant to section 136 is a relatively low one – "*facts from which the court could decide*" – unexplained or inadequately explained unreasonable conduct and/or a difference in treatment and a difference in status[2] and/or incompetence are not, by themselves, such "*facts*". Further, section 136 requires us to look for facts from which it could be decided not simply that discrimination / harassment / victimisation is a possibility but that it has in fact occurred – see **South Wales Police Authority v Johnson** [2014] EWCA Civ 73 at paragraph 23.

15. We deal with the law relating to time limits separately, below.

The facts

16. Around the summer of 2022, the First Respondent – the Trust – advertised, interviewed and recruited for full-time, part-time, fixed-term, and permanent roles as Microbiology Laboratory Assistants ("MLA"s) to work in the County Hospital in Hereford. As we understand it, this recruitment exercise was undertaken because of Covid and the fixed-term roles in particular were designated 'Covid testing' roles. There were a lot more candidates than there were roles. The Claimant, who said at interview when asked (as all candidates were asked) that she was willing to undertake any role, was offered and accepted a full-time, 6-month fixed-term role and started on 19 September 2022. One other, a Mr Chenganna, was appointed to an identical fixed-term role and had started a fortnight earlier. They joined two others on Covid-testing fixed-term roles: a man and a woman who had started in those roles in 2021. Others got permanent roles, including the man identified by the Claimant as her comparator for the purposes of her direct sex discrimination claim about recruitment: Mr Syed Aamir. He started on 17 October 2022.

17. Individuals who interviewed the Claimant and others and decided who got what jobs included the Second Respondent, Mr Bhat (who has since gone to work for another NHS Trust), and Miss Thomas, now a Senior Laboratory Manager, but at the time a Senior Biomedical Scientist. Both of them were witnesses before us.

18. Between them, they gave what was, in the final analysis, substantially unchallenged evidence about who was recruited, to what roles, and when. They explained that four relevant individuals other than the Claimant, Mr Aamir and Mr Chenganna were recruited as part of the same round of recruitment: one man and one woman to permanent full-time roles and one man and one woman to permanent part-time roles. That meant that of the seven roles in total, three men and two women were recruited to permanent roles and one man and one woman (joining one man and one woman) to fixed-term roles.

19. In late November and early December 2022, the Claimant raised a concern through the Trust's 'Freedom to Speak Up' – FTSU – process. It was initially considered by the FTSU Guardian, Denise Macpherson, and was then passed on to Ms Jane James, a General Manager and another of the Respondents' witnesses, for it to be investigated. The Claimant has made no allegations of discrimination, harassment or victimisation against Ms James.

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[2] Or, in relation to victimisation, the fact that someone who did a protected act is treated worse than someone who did not do one.

20. The Respondents conceded that the Claimant did a protected act during her first meeting with Ms James, on 12 December 2022, in that she made non-specific allegations of sex discrimination. The FTSU complaint / concern is the one and only protected act the Claimant relies on for the purposes of her victimisation claim. (It has never in practice been the Claimant's case that she was subjected to a detriment because the Respondents believed she had done or might do a protected act.)

21. The course of Ms James's investigations is detailed in her witness statement and none of Ms James's evidence about that was challenged in cross-examination. (We should say that the Employment Judge explained to the Claimant several times during the hearing, at length, in plain language, the need for her, when cross-examining respondent witnesses, to put her case and to challenge evidence she disagreed with, including during Ms James's evidence.) She had a number of meetings with the Claimant and spoke to the few individuals against whom the Claimant had made specific allegations, such as Miss Thomas. Ms James ultimately concluded, albeit not in so many words, that none of the Claimant's concerns was well-founded. She explained her conclusions at a meeting with the Claimant and Mr Bhat on 16 March 2023, the contents of which were summarised in a letter dated 17 March 2023, to which we refer. The Claimant did not seek to take the FTSU complaint / concern any further, or otherwise challenge Ms James's conclusions during her employment.

22. Four things about the FTSU concern and what happened during the FTSU process are of particular relevance to her Tribunal claim.

    22.1 First, the Claimant made a broad allegation along the lines of the one she made in her Tribunal claim concerning colleagues allegedly using sexually discriminatory and sexualised language about her. She was, however, unwilling or unable to give any specifics, or even name an alleged perpetrator, except for one comment or set of comments, which we shall explain in just a moment. Generally during the FTSU process, she appears to have been very reluctant indeed to particularise many of her allegations to any extent. She has shown a similar marked reluctance during these Tribunal proceedings.

    22.2 Secondly, the one set of specifics the Claimant gave was that she had allegedly overheard two colleagues calling her a "*psychopath*" and a "*whore*". Apart from naming the colleagues who allegedly did this, she doesn't seem to have given any further details at all. When she spoke to Ms James about this in December 2022, she said the two colleagues were Miss Thomas and Mr Bhat. However, when she met with Ms James and (apparently willingly) Mr Bhat in January 2023, she said it was Miss Thomas and a colleague called "Elaine", assumed to be someone called Elaine Andrews. She confirmed during this final hearing that it was indeed Miss Thomas and Elaine who she was making this allegations against, and not Mr Bhat

    22.3 Thirdly, once she had withdrawn that allegation against Mr Bhat, only one, relatively innocuous, allegation was made by the Claimant against him as part of the FTSU concern. It was not the kind of thing that we would expect Mr Bhat to be worried or annoyed about. In the circumstances, it is implausible that the Claimant raising the FTSU concern would have turned him against her, and we don't think it did.

22.4 Fourthly, one of the allegations in the Claimant's Tribunal claim is that Miss Thomas victimised her in or around mid to late February 2023 by telling her to f***-off. (She gave the date as March 2023 in the Grounds of Claim, but suggested a February 2023 date in her oral evidence, consistent with her assertion that the remark was made in response to her appealing against the termination of her fixed-term contract, something she did on 10 February 2023, as we shall explain later.) It is potentially noteworthy that she did not mention Miss Thomas allegedly doing this at the FTSU meeting on 16 March 2023, despite the fact that – as is clear from the post-meeting letter of 17 March 2023 – the Claimant had been asked at the meeting about her unparticularised allegations that colleagues were saying unpleasant things about her and otherwise behaving unpleasantly towards her.

23. Around Christmas 2022 there was a 'secret Santa' within the team and the Claimant is making a claim about that.

24. In or around late 2022 or early 2023, there was a discussion between Mr Bhat and the Claimant about whether she could do a particular training programme. He told her that she couldn't because it was only available to permanent staff. She is making a claim about that too. The training was in the end not given to anyone, because the Trust did not receive funding for it.

25. The continued employment of the four individuals on the fixed-term contracts, including the Claimant, was dependent on there continuing to be funding for Covid testing. The funding was due to run out on 31 March 2023. At some stage – we are not entirely sure when – the contracts of those individuals were extended to 31 March 2023. This was a 12 day extension to a 6 month contract in the Claimant's case. The notice period to which the four of them were entitled was 8 weeks, so they had to be given notice on or before 4 February 2023.

26. Following HR advice and guidance, Mr Bhat wrote to all four of them to invite them to meetings around the end of January 2023 to discuss the termination of their contracts and he then met with them. His meeting with the Claimant was on 27 January 2023.

27. All four of them were written to on or around 30 January 2023 giving them notice of termination, expiring on 31 March 2023. The Claimant has not made a claim about this.

28. On 10 February 23, the Claimant appealed against the termination of her contract. Subsequently, her contract was extended by a further 3 months, to 30 June 2023. She seems to think that the extension of her contract was the result of her appeal, but it wasn't – her appeal had nothing to do with it. What in fact happened was that the Trust secured a further 3 months worth of funding for the Covid testing.

29. All four of those on a fixed-term contract were therefore offered a 3 month extension. Two of them – a man and a woman – turned it down and left to work elsewhere from 31 March 2023. Two of them – the Claimant and someone called Konrad – accepted the extension, but Konrad left before 30 June 2023 as he got a job elsewhere.

30. The notice period on the extended contract remained 8 weeks, so the Claimant had to be given notice on or before 6 May 2023. Mr Bhat duly met with her on 5 May 2023 and gave

her notice and on 9 May 2023 he wrote to her confirming what had been discussed at the meeting and that her contract would terminate and her employment end on 30 June 2023. The letter included this, which repeated what the Claimant had been told at the meeting:

> *… the Trust will place you on partial redeployment. You will be put onto the redeployment register for the duration of your notice period. This means that the Recruitment team will email you a list of vacancies on a weekly basis of the roles that are being advertised. The Trust will guarantee you an interview for any vacancies that you are interested in at the same Band and where you meet the essential criteria on the person specification. If at the end of your notice period you have not secured an alternative position, your contract of employment will be terminated in the line with the Trust's Fixed Term Contract Policy…*

31. In or around the end of May 2023, some vacancies for MLA positions in the team came up. In line with what she had been told in the letter of 9 May 2023: the Claimant was notified of them, she applied for them on 1 June 2023, and she was guaranteed an interview. There were 3 posts in total. There were lots of job applicants, of whom 11, including the Claimant, were offered an interview, one of whom did not attend. Of the people interviewed, the Claimant was the only one who was on redeployment to any extent.

32. The interviews took place on 6 and 7 July 2023, after the Claimant's employment had terminated, on 30 June 2023. She was interviewed by a panel consisting of Mr Bhat and two others – a Mr Wilfred Nyoni who was known to the Claimant and a Mr Banham. In her evidence, the Claimant suggested no reason why either of them might have had something against her.

33. The interviews were scored in what appears to have been a conventional way. The Respondents' case is that they chose between the job candidates who were interviewed purely on the basis of their scores at interview. The three on the panel respectively gave the Claimant a score of 28 (that was Mr Banham), 30 and 30 marks out of a possible 45 marks maximum, making her average score – rounded up – 30. She was not successful. The average scores of the successful candidates – two women and one man – were 33, 34 and 37.

34. Meanwhile, in or around early June 2023, two of the Claimant's colleagues had complained about her. One of those colleagues was called Nicola Edmunds. The details of her complaint, which are given in Mr Bhat's statement, are not relevant for present purposes. What is relevant – because the Claimant is making a claim about it – is that the Claimant met with Mr Bhat and someone from HR called Andrea Jones on 19 June 2023 and the Claimant alleges that Mr Bhat subjected her to harassment related to sex by, supposedly, humiliating her at the meeting.

35. The Claimant raised a grievance broadly about the termination of her contract on 20 June 2023. She made no allegations of discrimination or victimisation in the grievance. The grievance was dealt with by a Dr Julie Davies, who had had no prior dealings with the Claimant and who the Claimant admits had no discernible reason to have anything against the Claimant. Although she no longer works for the Trust, we have a signed witness statement from her, and she was going to give evidence by videolink, but she was not available at the appropriate time and the Respondent decided at that point not to call her

to give oral evidence. She met with the Claimant on 27 June 2023. She decided not to uphold the grievance, giving detailed reasons in a letter dated 4 July 2023, to which we refer.

36. The Claimant appealed Dr Davies's decision. She did not allege discrimination or victimisation within the appeal itself. The appeal was dealt with by a panel chaired by a Mr McConkey, who was another of the Respondents' witnesses. The other panel members were Ms Jones and someone called Katherine Barker. They met with the Claimant on 20 September 2023. Their decision rejecting the Claimant's grievance appeal is contained in a letter dated 21 September 2023, which is something else we refer to.

Decision on the issues – general comments

37. Those are the basic facts.

38. We are now about to go through the Claimant's complaints in roughly chronological order. Before we do that we make some general comments

39. First, we repeat that many of the complaints in list of issues, including all victimisation complaints, are not in the claim form and are therefore not before the Tribunal.

40. Secondly, this entire claim seems to have come about because of the Claimant's genuine, if unfounded, perception of unfairness. The Claimant has brought complaints of direct sex discrimination, sex-related harassment, and victimisation. As we have sought to explain to the Claimant during this hearing, the fact that she is a woman who did a protected act does not mean that any unfair treatment she suffered is necessarily, or even presumptively direct discrimination, or sex-related harassment, or victimisation.

41. What the Claimant has not engaged with in the case she has presented to the Tribunal to any significant extent is what the allegedly unfair treatment she claims to have suffered had to do with her being a woman, or with the protected characteristic of sex more generally; still less to do with her having apparently done a protected act.

42. In relation to all of the Claimant's claims, we have to apply the burden of proof provision in EQA section 136. As mentioned earlier, this requires us to apply a two-stage test, with the first stage being whether there are "*facts from which we could decide, in the absence of any other explanation*" that unlawful discrimination or harassment or victimisation has taken place.

43. In short, on our findings, there are no such "*facts*"; there is nothing from which we could reasonably infer that the reason for the treatment to which the Claimant was subjected was anything to do with her being a woman – i.e. was because of or related to the protected characteristic of sex – or was because she had done a protected act. On the contrary:

    43.1 if we look, first, at her sex discrimination complaints – or, at least, most of them – there is every reason to think that sex had nothing to do with it. For example, some men were treated the same as her; and some women were treated more favourably than her and the same as the men who the Claimant is or might have been relying on as her comparators;

43.2 equally, in relation to the victimisation complaints, we have already mentioned the fact that the protected act – the FTSU concern – did not give the Second Respondent, Mr Bhat, a plausible motive for wanting to do the Claimant down. The only relevant person to whom it potentially gave such a motive was Miss Thomas; and the claims relating to her fail for other reasons, as we shall explain shortly.

Particular complaints – Claimant's original recruitment

44. With those matters in mind, we turn to the complaints being made. The chronologically first of these is also the first in the list of issues: a direct sex discrimination complaint that the Trust "*employ*[ed] *a male employee to do the same role as the Claimant on 17 October 2022, but appoint*[ed] *him on a permanent contract*". The "*male employee*" being referred to is Mr Aamir.

45. When setting out the facts, we highlighted the gender breakdown of the others who were recruited as part of the same recruitment as the Claimant and Mr Aamir and the fact that there was a roughly even male / female split between those appointed to fixed-term and those appointed to permanent contracts. This does not, of course, make direct sex discrimination in the recruitment of the Claimant impossible, but it does make it unlikely. In addition, the Claimant has not put forward any coherent basis for a finding of discrimination, beyond the bare fact that Mr Aamir is a man and she is a woman.

46. The Claimant's true case seems in fact to be that it was unfair for her not to have been offered a permanent contract – that had she known a permanent contract was potentially available, she would have asked for or demanded one. Even if it were, objectively, indisputably the case that she had been treated unfairly in that respect, it would not create a factual basis for saying that there was sex discrimination. And that is not, objectively, indisputably the case.

47. It is an obvious point, but one that has perhaps not occurred to the Claimant, that the Trust was recruiting for their own benefit, not for benefit of job applicants like her. Their priority was to fill the fixed-term 'Covid' roles. This meant that if someone was willing to do such a role and was appointable, that was the role they would get. It was not a situation where an employer was presenting to prospective employees a choice of roles from which they could freely select. That was a reasonable approach for the Trust to adopt, and the fact, already mentioned, that there was a roughly even male / female split in terms of who was appointed to different types of role supports the evidence of the Trust's relevant witnesses that they went about it in a non-sex-discriminatory way.

48. If the Claimant had said she could not, or would not, do a Covid role and would only take a permanent role, then she might well have got no role at all. This was a competitive job application process, with hundreds of applicants, and she may not have scored as highly as the other applicants who were unwilling or unable to take a Covid role. Moreover, although the Claimant had her own reasons, connected with her immigration status, for preferring a permanent role, the fixed-term roles were not necessarily less desirable than permanent ones. This is because they were much better paid. We know of at least one individual – a Mr Coggle-Smith – who chose to leave a permanent role in order to take a fixed-term one, presumably because, for him, the higher pay was more important than having the security of a permanent role.

49. We also note what happened to those in fixed-term roles. All four of them – the men and the women (including the Claimant) – were treated the same, in that: their fixed-term contracts were terminated; they were all offered contract extensions; two of them (the Claimant plus a man) accepted the offer; and none of them continued in employment as an MLA within this team at the County Hospital beyond 30 June 2023.

50. In summary and conclusion in relation this complaint about the Claimant's original recruitment, she was not recruited to a fixed-term role because of the protected characteristic of sex; her recruitment to a fixed-term role was not less favourable treatment, in that a man in the same position as her – similarly willing to undertake such a role – would have been appointed to one.

Sexual remarks allegation

51. Chronologically, the next complaint is the one that is not in the list of issues but is in the claim form, in paragraph 5: "*During the employment period a series of actions of harassment and humiliation was inflicted into the Claimant by co-workers calling her "crazy" or making sexual remarks or insinuating sexual nature facts.*" If this is any type of claim at all, it is sexual or sex-related harassment.

52. We do not know why this was not in the list of issues, but it may well be that what happened at the preliminary hearing where the list was discussed was that the Claimant was asked about this part of the claim form and she said to Employment Judge Fitzgerald something along similar lines to what she said in answer to questions during cross-examination at this hearing, namely (this was the gist): that she could not or would not say what the "*sexual remarks*" were, or what was said to her that constituted "*insinuating sexual nature facts*"; that she could not or would not say when, how, or in what circumstances the remarks or insinuations were made; and that she could not or would not say who allegedly made them.

53. On the basis of the Claimant's own evidence, then – what was in her claim form, witness statement and oral evidence – she has not begun to prove her case and her claim does not get off the ground; we cannot possibly be satisfied that anything was said to or about her that constituted sexual harassment, or harassment related to sex, or any other type of claim.

54. We could simply leave this complaint there. However, we note that during the cross-examination of Miss Thomas, an allegation the Claimant had made against her as part of the FTSU process was explored. It is the only specific allegation the Claimant has made at any stage with any clarity – whether during her employment or during the Tribunal proceedings – that potentially falls into the catefory of "*sexual remarks*" or "*insinuating sexual nature facts*". It is the allegation, referred to in paragraph 22.2 above: that on an unspecified date (but presumably before the Claimant raised the FTSU concern, since it was or became part of that concern), in a conversation in the laboratory which the Claimant overheard between Miss Thomas and "Elaine", Miss Thomas referred to the Claimant as a "*whore*" – or, possibly, the word "*whore*" was used and the Claimant assumed it was being used in reference to her. (We note it was not suggested at this hearing, nor ever, to our knowledge, within the proceedings, that Elaine and/or Miss Thomas allegedly referring

to the Claimant as a "*psychopath*"[3] or – as set out in the claim form – unspecified "*co-workers calling her "crazy"* " was sex discrimination, sex-related harassment, victimisation or any other type of claim she was, or thought she was, making in the Tribunal.)

55. Miss Thomas was cross-examined about this by the Claimant. That questioning consisted just of the Claimant alleging that Miss Thomas had called her a whore and Miss Thomas denying this. The Claimant was encouraged by the Tribunal to explore this issue in more depth, and to ask questions that put her case about the context within which the remark was allegedly made and, for example about what she thought Miss Thomas might be referring to, and so on. The Tribunal was unable to help the Claimant to formulate questions to ask Miss Thomas about this, because we did not and do not know what her case is in this respect. Nevertheless, we provided this encouragement, because during the FTSU process, she had told Ms James that (to quote from Ms James's statement, paragraph 6), "*she believed the senior staff in the team knew something about her personal life – although it was not clear what she meant by this, and she did not tell me – and were using this against her*", and she has referred to staff as being "*judgmental*". She was, though, unwilling or unable to do more than simply put to Miss Thomas that Miss Thomas had used the word.

56. Because she was unwilling or unable to do more than that, we were left with, on the one hand, no witness evidence at all from the Claimant on the point (because a question asked during cross-examination is not evidence[4], something we made clear to the Claimant), coupled with the fact that when she first made this allegation as part of her FTSU concern, it was in one significant respect different from what it became, in that she originally alleged Mr Bhat was involved; and, on the other hand, clear and compelling and consistent evidence from Miss Thomas to the effect that she had not and would never have referred to the Claimant or anyone else as a "*whore*" because she never uses that word or any other gendered derogatory term.

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[3] See paragraph 22.2 above.

[4] The Employment Judge has seen it suggested that claimant litigants in person should be sworn in as witnesses at the start of a hearing and that everything they say at any stage during a hearing should then be treated as part of their evidence. This is, so it is said, to help litigants in person who may find the distinction between what they say when formally giving evidence and other things they say during a hearing difficult to grasp. That may in certain cases be a valid approach, but it is not what we did here. There are many reasons why it might be inadvisable. They include the potential for unfairness to be caused to the respondent by the fact that, if that approach is adopted: there is no end to the claimant's evidence, which will continue throughout the respondent's witnesses' evidence and beyond; and the claimant will often be 'giving evidence' that the respondent has no opportunity to challenge by cross-examining the claimant about it (assuming it is something the claimant says after finishing formally giving evidence) and/or with evidence of its own (assuming it is not something put to a witness, e.g. is something said during submissions). It is difficult to see how fairness to the respondent could be achieved other than by giving unchallengeable 'evidence' of this kind very little weight. If it is to be given very little weight: the claimant has potentially been misled into thinking that something is going to be considered as evidence to a more than de minimis extent when in reality it isn't going to be; and there is in practice no point to admitting it as evidence at all. There may be circumstances where a claimant litigant in person says something during a hearing, after they have finished formally giving evidence, which is potentially so important that to do justice it is necessary formally to recall them as a witness. No such circumstances arose in the present case.

57. We also take into account the fact that none of the three of us on this panel can remember ever hearing anyone call someone else a "*whore*" outside of a film or tv drama or stage play. It is just not a word that people use in everyday speech in Britain in the 21st century.

58. We have no hesitation in finding that Miss Thomas did not call or refer to the Claimant as a whore; if the Claimant genuinely thinks she did, as she appears to, she is mistaken.

59. This complaint or claim therefore fails.

Secret Santa allegation

60. The next complaint we shall deal with is the one about 'secret Santa' at Christmas 2022. It is in the list of issues as:

> *4.2.3 A colleague telling the Claimant to take back the Christmas gift that she had bought as part of the group purchase of gifts in December 2022. The Claimant believes that this was the Second Respondent.*

61. It is a victimisation complaint. As with all such complaints – see paragraph 7 above – it is not in the Grounds of Claim as a victimisation complaint; and in addition, this particular complaint is not in the Grounds of Claim even as an allegation of fact – it is not there at all. It is not mentioned in the Claimant's witness statement either. Nevertheless, as indicated earlier, we shall proceed as if it is a complaint that is part of the Claimant's claim and properly before us.

62. Employment Judge Fitzgerald gave the Claimant 14 days to confirm any changes to this allegation. She provided clarification in an email of 25 October 2024: "*The Claimant was informed about the laboratory custom to provide gifts (no more that 5 pounds) to the colleagues as an appreciation gesture. Claimant had bought a set of 4 glasses and put her name on the gift, as on a different date would be a random drawing name tag to give and receive gifts.*" In the email, she went on to say that she wasn't working when gifts were exchanged, which she thought was on 26 December 2022. The email continues: "*On 28 December 2022, she was informed by the Manager Srikanth Bhat, that they did not see the gift bought by the Claimant and was not included in the custom exchange of gifts, and that she can take it back. She did not* [receive] *any gift because she did not participate into the gift exchange.*"

63. We find that Mr Bhat did not make the alleged comment.

    63.1 His evidence was clear that he did not make it.

    63.2 The Claimant was not sure at the preliminary hearing before Employment Judge Fitzgerald on 11 October 2024 that it was Mr Bhat; she did not become sure about this until late October 2024, nearly 2 years after this incident allegedly happened.

    63.3 The Claimant did not mention it during the FTSU process.

    63.4 If it happened on 28 December 2022, it can't have been Mr Bhat as he was not in work and travelling home from holiday with his family on that day.

64. We are prepared to accept that maybe someone – not Mr Bhat – did suggest to the Claimant that she take back her secret Santa present. We are also prepared to speculate that the most likely explanation for why all this happened is that the Claimant misunderstood how a secret Santa works. She thought the giver of the gifts put their initials on the present and then the gifts were given out at random. She therefore put her initials on the gift she brought. In all probability, when the secret Santa gifts were distributed, which was on a day when neither the Claimant nor Mr Bhat were in work, the Claimant's initials were seen on the present and it was assumed it was a gift for the Claimant and so was left for her.

65. In addition, the Claimant was unable to explain how or why she believes any such comment by Mr Bhat, or by anyone else, was because of the protected act, nor why the comment (which is what this complaint is supposedly about; not, for example, the way it was supposedly said), as distinct from anything else, was detrimental to her. Based on the Claimant's own account in her email to the Tribunal of 25 October 2024, given that her gift had not been taken by anyone else, what other option was there than for the Claimant to take it back? The Claimant was unable to explain what whoever it was who made the comment did wrong by suggesting she take it back.

66. In conclusion on this complaint, there was no relevant detriment and what happened was nothing to do with the Claimant's FTSU concern.

Training allegation

67. The next complaint is against both Respondents and is about training. It appears in the list of issues as an allegation of victimisation that:

> *4.2.1 The Second Respondent denied the Claimant training in line with the First Respondent's standard training programme.*

68. The Claimant does not deal with this allegation in her witness statement. The way she put the allegation in her Grounds of Claim was:

> *In December 2023*[5] *the Claimant ask*[ed] *the Manager Srikanth Bhat about training promoted in the Microbiology Lab annually, but she was refused training at the job as a biomedical scientist because of the short term contract she had.*

69. The allegation in the list of issues – about the or a "*standard training programme*" – is not, then, the allegation in Grounds of Claim. It is the allegation in the claim form that is the claim we have to deal with. In any event, when she was being cross-examined, the Claimant confirmed that this allegation was about, and only about, a conversation relating to a particular training programme that is referred to in paragraphs 13 and 14 of Mr Bhat's witness statement (to which we refer), a conversation that does seem to have taken place in December 2022 or early 2023.

70. Moreover, when this allegation was discussed with the Claimant when she was cross-examining Mr Bhat (it was being discussed because the Tribunal was trying to assist the

[5] 2023 is a typographical error – it should be 2022.

Claimant to put her case properly), it became clear that what she was actually complaining about in relation to the 'standard training programme', or to training generally, was what she saw as the unequal provision of training throughout her employment, i.e. from before she did any protected act. If the alleged detriment pre-dated the protected act, and did not worsen after the protected act (which was not the Claimant's case – in fact she seemed at one point in her oral evidence to be suggesting the situation had improved after she did a protected act), it was not victimisation.

71. As set out in her Grounds of Claim, she was told that the reason she was being denied this particular training opportunity in or around December 2022 was that she was on a fixed-term contract. Mr Bhat's evidence is that that was indeed the reason and in his written and oral evidence he gave a reasonably detailed and plausible explanation for why this was so, the substance of which was not challenged in cross-examination, and which the Claimant was anyway in no position to challenge as she had no knowledge about it.

72. When asked by the Tribunal to explain the basis upon which she was asking us to decide that what Mr Bhat was telling us was not true, the Claimant was unable to do so. We remain in the dark as to why the Claimant thinks (if she does think this) it had anything to do with her FTSU concern. There is no basis in the evidence for us to find that it was anything to do with it. There is anyway no good reason for us to reject Mr Bhat's evidence in this respect; and we accept it.

73. This complaint therefore fails: the reason for any relevant detriment was not the Claimant doing a protected act.

Swearing allegation

74. The next complaints – harassment / alternatively direct discrimination and victimisation complaints – concern (according to the list of issues):

> *Jane Thomas making a complaint when she was in the lab alone with the Claimant – saying "F*** Off" to express her frustration at the Claimant raising complaints to the FTSU Guardian and also the Claimant raising an appeal against the first decision to issue her notice. The Claimant contends that this comment would not have been made if she was a man.*

75. We find that Miss Thomas did not swear at the Claimant as alleged.

76. We start by looking at the inherent plausibility of this. The Claimant's oral evidence was short on detail or context that would make sense of what she is alleging. On the Claimant's case: she was in the laboratory, working alone; Miss Thomas came in, sat down at a computer terminal and started work; then Miss Thomas, with her back to the Claimant, apropos of nothing, said "*f*** off*".

77. Assuming there was a reason to think that Miss Thomas was speaking to the Claimant (rather than, for example, swearing at the computer she was using) – and if there is a reason, we don't know what it is – it would be a bizarre thing for anyone to do. Amongst other things, if Miss Thomas was minded to 'have a go at' the Claimant, she would surely have done so as soon as she came into the laboratory and saw the Claimant.

78. The Claimant's case as to the date and the reason this comment was made was confused. During cross-examination, after considerable to-ing and fro-ing, she suggested it had been made on 14 February 2023. This was seemingly on the basis that this was the first day she might have encountered Miss Thomas after she [the Claimant] had submitted her appeal against the decision to serve notice to terminate her fixed term contract, which she did on 10 February 2023. That, in turn, led to us wondering what the alleged connection was between the remark and the FTSU process, if the trigger was her appealing against the termination of the fixed term contract; and given that Miss Thomas's only involvement with the FTSU concern was to be questioned by Ms James nearly a month before 14 February 2023.

79. In her Grounds of Claim, the Claimant put this claim in the following way:

> *In March 2023 she witness a co-worker Jane Thomas, that was very upset about the Claimant extension of contract appeal after which the co-worker came into the Claimant covid testing room and facing a computer she said loudly f..ck off. In the room was only the Claimant and Jane Thomas. She wanted to curse the Claimant to go away in an utterly disrespectful manner*

80. The fact she wrote in her claim form, in February 2024, that the alleged comment was made in March 2023, but at the hearing, for the first time, over 18 months later, pinpointed it to 14 February 2023, coupled with the fact that in the claim form the allegation is that Miss Thomas was upset about an extension of contract appeal (rather than anything else), undermines the credibility of the allegation. We have also already noted that the Claimant did not mention this incident when speaking to Ms James in relation to her FTSU concern in March 2023, as we would have expected her to have done had the incident occurred.

81. Our decision is, then, that it did not occur, as alleged, or at all.

82. If it did occur:

    82.1 as above, the Claimant's own case in the Grounds of Claim seemed to be that it was connected with her appealing the termination of her contract rather than with the FTSU concern;

    82.2 we have no idea of the basis for the Claimant's assertion that such a remark would not have been made to a man, nor any other basis for saying it was because of or related to protected characteristic of sex;

    82.3 even if it were true that Miss Thomas said it and said it to the Claimant, the allegation is that she did so on this single occasion. It would not, we think, by itself have the required effect in accordance with EQA section 26(1)(b).

83. The three complaints made about this alleged comment therefore fail.

19/6/23 meeting allegation

84. We move onto the complaint about the meeting on 19 June 2023, which is paragraph 3.3 in the list of issues and is a sex-related harassment complaint against both Respondents:

> *The Second Respondent humiliated the Claimant in front of HR (Andrea Jones HR Business Partner) when complaints against her by colleagues were discussed on or around 19 June 2023.*

85. The allegation does not appear at all in the ET1 Claim Form. As with other such allegations, we shall continue as if it were there.

86. The Claimant did not cover this allegation in her witness statement.

87. During her oral evidence, the Claimant seemed to have great difficulty saying what it was that Mr Bhat had supposedly said or done that was humiliating. Eventually – and her case in this respect did not fully crystallise until closing submissions – she confirmed that the one and only thing Mr Bhat did at the meeting to which this claim relates was telling her that, as set out in the letter sent on 19 June 2023 confirming the outcome of the meeting, "*for your remaining time at the Trust you do not have any further conversations with Nicola*" (Nicola being a colleague who had complained about the Claimant, leading to the meeting taking place).

88. The reason Mr Bhat gave for giving the Claimant this instruction was that (to quote form his witness statement), "*we were concerned about the impact that Ramona's* [the Claimant's] *interactions with Nicola were clearly having and therefore asked her not to have any further conversations with her.*" In his oral evidence he expanded on this and said it was to avoid future conflict and to manage the situation.

89. Based on our recollection and notes of the evidence, we think the Claimant did not directly challenge that part of Mr Bhat's evidence. In any event, they were plausible and reasonable explanations that Mr Bhat gave; and we accept them, having no good reason to do otherwise.

90. It was certainly not put to Mr Bhat by the Claimant that the "*purpose*" of giving this instruction was to violate her dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her. In terms of whether it had that effect, applying the partly subjective / partly objective test we have to apply:

    90.1 looking at it subjectively – that is, from the Claimant's point of view – we are not satisfied that even the Claimant herself, at the time, felt that telling her not to have further conversations with Nicola violated her dignity or created the requisite environment. What seems to have upset her, with hindsight rather than contemporaneously, is that she feels, looking back, that it was implicit in giving her that instruction that she was not going to be working with or near Nicola for very much longer and therefore that she was not going to get the job she had applied for, for which she was interviewed in early July 2023 (see paragraphs 31 and 32 above);

90.2 even if we are wrong about what the Claimant herself felt at the time, applying the objective part of the test and thinking about whether it was reasonable for Mr Bhat's conduct to have that effect, we find it is plainly not the case that just saying 'don't have further conversations with Nicola' had the effect in accordance with EQA section 26(1)(b).

91. Before us, the Claimant seemed to be wanting to expand this complaint to take in alleged behaviour of Ms Jones during the meeting. In her oral evidence, the Claimant alleged that at the meeting Ms Jones accused her of behaving contrary to NHS core values. Even if it doesn't matter that the complaint against Mr Bhat that is in the list of issues is not made in claim form – and we think it does matter[6] – on any reasonable view, the Claimant can't go outside what is in the list of issues without amending her claim. Whatever else, to permit her to do so would be unfair to the respondent, which would no doubt have called Ms Jones as a witness had it know that she was potentially being accused of sex-related harassment. There is no allegation made against Ms Jones in the list of issues.

92. Anyway, we do not accept that Ms Jones did say what the Claimant alleges she said. What Mr Bhat told us about this is much more plausible, namely that he and Ms Jones had (to quote from his statement) simply reminded the Claimant "*of her obligations under the Trust's Dignity and Respect at Work Policy and the Trust's CARE values and was provided with further information*" about those things. The likelihood is that the Claimant has misconstrued what was said to her, just as she has misconstrued policies and a number of other things during her employment and during these Tribunal proceedings, including at this final hearing.

93. Finally, even if we were looking at a broad complaint involving what both Mr Bhat and Ms Jones allegedly said and did, and what happened immediately before the meeting as well as at the meeting itself, and even if everything happened just as the Claimant alleges, there would still be no basis whatsoever for the Claimant's allegation that any unwanted conduct related to the protected characteristic of sex.

94. This complaint therefore fails.

2023 termination & recruitment allegation

95. The next claim we shall deal with is possibly the Claimant's main one. It is a direct sex discrimination and victimisation claim that is set out in the list of issues as: the Respondents restricted "*the Claimant's access to a permanent position by giving her notice on 5 May 2023 and then failing to appoint her to the new role she applied for on 6 July 2023*".

96. The first question that arises in relation to this is: what is the claim actually about? It appears in Grounds of Claim within the following sentence: "*The Claimant was subjected to direct discrimination by Manager Srikanth Bhat, the panel for grievance and appeal regarding the recruitment process and the redeployment policy process, as she was*

[6] See paragraph 7 above.

restricted to access a permanent position as stated in Equality Act 2010, s 13(1) and/or harassment related to sex contrary to the Equality Act 2010, s 26(1)".

97. The Claimant, evidently, sensibly agreed at the case management preliminary hearing in October 2024 that these were not viable as harassment complaints and so limited them to direct sex discrimination complaints.

98. Yet again, where the victimisation complaints about these things in the list of issues come from is an unanswered question.

99. The thing this claim seems to be about is, then, what the Grounds of Claim refer to as the "*recruitment process and redeployment policy process*". It is made primarily against Mr Bhat. (We shall deal with the grievance and grievance appeal later.)

100. In terms of precisely what the Claimant meant in the Grounds of Claim, she was questioned at length about the phrase "*restricted to access a permanent position*". She was also, with reference to the list of issues (the contents of which must have come from what she told Employment Judge Fitzgerald at the preliminary hearing) specifically asked how giving her notice might have done that [restricted her access to a permanent position]. From her answers – or, more exactly, from her inability to give a comprehensible answer – it became reasonably clear that she had used the wrong word when she wrote "*restricted*" and that what she was actually referring to was two things:

    100.1 that she was not automatically given a new job in May / June 2023 but had to go through a competitive interview process;

    100.2 that she was unsuccessful in that process.

101. As to not automatically giving her a new job, her dissatisfaction is based on her interpretation of the Trust's Redeployment Policy. Her case on this in practice – and the same goes for her complaints about the grievance and grievance appeal – begins and ends with her assertion that the Respondents got the redeployment process wrong by not following her interpretation of the Redeployment policy. She has been unable to explain in any coherent way why, even if they got it wrong, it was sex discrimination (or in any way related to the protected characteristic of sex) or victimisation. Despite being strongly encouraged by the Tribunal to do so if this was her case, she did not put to any relevant witness that they did not genuinely believe in their interpretation of the Redeployment Policy and that they were only adopting that interpretation because of her sex and/or because she raised the FTSU concern, or anything along those lines.

102. As it happens, we agree with the Respondents' interpretation of the Redeployment Policy; and even if their interpretation is erroneous, it is a reasonable one and there is no good reason we are aware of for us to think that they did not truly believe that their interpretation was right or that the reason they believed in that interpretation was anything to do with the FTSU concern or the protected characteristic of sex.

103. The Respondents' interpretation of the Redeployment Policy relies on the fact that the Policy specifically deals with people in the Claimant's situation, on fixed-term contracts, saying this about them: "*An employee whose fixed-term contract is ending cannot be*

automatically redeployed or slotted into a role. They can, however, be guaranteed an interview where their skills, knowledge and experience match the minimum requirements stated in the person specification for the role. If successful at interview a trial period would not apply." In other words, employees on fixed-term contracts have lesser rights under the policy than those on permanent contracts. This is almost certainly what was being referred to in the letter of 5 May 2023 terminating the Claimant employment (that we quoted from earlier, in paragraph 30) by placing the Claimant on "*partial redeployment*". The Claimant's case ignores this part of the Policy, being, in effect, that, she had exactly the same rights as a permanent employee and that she should have been automatically redeployed or slotted into a role. We note that when she was orally making closing submissions, the Tribunal suggested to her that she seemed to be saying she should have been automatically slotted into a role and she was asked to explain her position, in light of what was written in the Policy. She was unable to do so.

104. The Claimant was and is relying on a bullet point in a general section of the policy headed "*STATEMENT OF INTENT*": "*The Trust has an obligation to try and find suitable alternative employment for its own staff who therefore should be given priority over other candidates*". Looking at the Policy as a whole, what we think that meant in relation to fixed-term contract employees like the Claimant was that they would be "*given priority*" over other candidates who were not covered by the Policy by – unlike those other candidates – being guaranteed an interview and by not having a trial period in their new roles if successful at interview. Manifestly, it did not mean that they had the right to be put into any vacant role for which they met the minimum criteria and for which there were no competing candidates also on redeployment, which is what the Claimant is alleging. It can't have meant that because that would involve them being "*automatically redeployed or slotted into a role*", something the Policy specifically said they were not entitled to.

105. As we have already said, putting the grievance and grievance appeal to one side, this is, on the face of what is in the Grounds of Claim, a claim about what Mr Bhat, and not anyone else, did. We therefore need to ask ourselves: why did he adopt and follow the interpretation of the Policy that he adopted and followed? The answer is, simply, that he was following HR advice.

106. As it happens, it was HR advice that we think was correct, but that is secondary. It is theoretically possible that correct advice was given and/or followed for discriminatory or victimising reasons. That is not what the Claimant's case before the Tribunal is. But the more important and primary point is that: Mr Bhat following HR advice in relation to the Redeployment Policy was not, on the evidence, anything to do with Claimant being a woman (or otherwise with the protected characteristic of sex) or having done a protected act; there is no discernible basis for us to conclude that it was, nor for us to make a finding that either or both of those things was the reason why the HR advice was given.

107. Also, in relation to the victimisation complaint about this, we once again note the fact that the evidence provides no good reason for us to think that anyone involved in these events of May / June 2023 was remotely worried or annoyed or in any way bothered by the Claimant's FTSU concern of November / December 2022.

108. In conclusion on this claim:

108.1 the complaint about Mr Bhat subjecting the Claimant to direct discrimination and victimisation "*as she was restricted to access a permanent position*" and/or "*by giving her notice on 5 May 2023*", in so far as it is a coherent complaint and about anything all, is about not giving the Claimant a new job in May / June 2023 without an interview and without her having to compete with other candidates;

108.2 the reason this happened was that the Respondents were correctly following the Trust's Redeployment Policy;

108.3 irrespective of whether their interpretation of the Policy was right, the Respondents' actions had nothing to do with the protected characteristic of sex, or with her FTSU concern;

108.4 the claim therefore fails.

July 2023 interview allegation

109. The Claimant is claiming direct sex discrimination and victimisation about her lack of success at interview in July 2023.

110. In short: her complaints about this have no more objective basis than any of her other complaints; just as with other complaints, when we asked the Claimant to explain what the basis for them was, the only thing she said that we could make sense of was her repeating something to the effect that they were based on her belief that what happened was discrimination and victimisation; it follows that the complaints fail.

111. The Claimant did assert during the hearing, for the first time, that she had been deliberately given lower scores by the interviewers than she merited to avoid her getting one of the three jobs on offer. There is no evidence at all to support that, let alone to support any allegation that, if this happened, it happened because of sex and/or because she did a protected act.

112. The fact that the successful candidates were two women and a man makes it inherently unlikely that the reason the Claimant was unsuccessful was the protected characteristic of sex.

113. We have already commented that the FTSU concern was not something that provided a plausible motive for Mr Bhat to want to victimise her; and not even the Claimant herself has suggested a reason why the FTSU concern (or anything else) might have turned the other two panel members against her.

114. The reason the Claimant was not appointed to the role was because, without conscious or unconscious sexism or victimisation, she was judged by all three panel members not to have performed as well as the successful candidates at interview.

Grievance & grievance appeal allegation

115. The last two claims – both of them consisting of complaints of direct sex discrimination and victimisation against the Trust only – concern the decision not to uphold the Claimant's grievance and the decision not to uphold the grievance appeal.

116. The grievance was decided by Dr Davies. She did not, as we have said, give oral evidence at this final hearing. That inevitably affects the weight we can give the evidence in her witness statement. If the burden of proof were reversed in relation to the complaints about Dr Davies's grievance decision in accordance with EQA section 136, the Trust would be in difficulties. However, the burden of proof is not reversed. As with all other complaints, there is no basis at all in the facts for a finding of direct sex discrimination and/or of victimisation.

117. We have already commented that the Claimant's case on the grievance and grievance appeal seemingly begins and ends with her mistaken belief that the Redeployment Policy was misinterpreted. She has not put forward a coherent case, and no evidence to support any such case, to the effect that the reason it was supposedly misinterpreted was sex or her doing a protected act.

118. Even though Dr Davies did not give oral evidence, her signed statement is admissible evidence and there is nothing in any other evidence that is before us that leads us to doubt that the reasons she did not uphold the grievance were the reasons she gave in the grievance outcome letter, as confirmed in her statement.

119. The complaints about the grievance decision therefore fail and are dismissed.

120. Almost everything we have just said about the complaints about the grievance decision applies equally to those about the grievance appeal decision. The main difference of significance is that there was oral witness evidence from one of the decision-makers, making the Claimant's position weaker and the Trust's position stronger than it is in relation to the grievance.

121. We have no idea of the basis of, and cannot discern any basis for, the Claimant's allegation that the decision was direct sex discrimination, if that is what she genuinely believes.

122. We turn to the victimisation claim. There were, as we explained earlier (paragraph 36 above), three panel members: Mr McConkey; Ms Barker; Ms Jones. The claimant was previously unknown to Mr McConkey and, to the rest of our knowledge, to Ms Barker too. The Claimant herself did not allege that either of them had anything against her. Mr McConkey's evidence that he was unaware at the time of her FTSU concern and that no one mentioned it during the panel's discussions was not seriously challenged in cross-examination and we accept it.

123. The Claimant was unable to explain how or why she believes anything to do with the grievance appeal was because of the protected act. She did, though, spend some time at this hearing speculating about the potential role of Ms Jones, given her presence at the meeting on 19 June 2023 where there was supposedly sex-related harassment by Mr Bhat (see from paragraph 84 above).

124. As best we can tell, the thing that relates to Ms Jones that the Claimant thinks is relevant to this claim is the allegation that she told the Claimant at the meeting on 19 June 2023 that she had behaved in a way that was contrary to core NHS values. The Claimant's case is that that showed that Ms Jones was against her and she seems to be wanting to suggest that Ms Jones influenced the other panel members not to uphold the grievance appeal as a result.

125. Even if all of that were true – and our finding is that it isn't true (and we also note our previous findings – paragraph 92 above – about the 19 June 2023 meeting) – it would still provide no basis for us to decide that the decision on the grievance appeal was sex discrimination or victimisation. The supposed fact that Ms Jones did not like the Claimant, and/or thought she was unsuitable for NHS employment, would not begin to show that the reason she did not like the Claimant and/or thought she was unsuitable for NHS employment was something to do with the protected characteristic of sex and/or with the Claimant having raised the FTSU concern.

126. In conclusion, this claim, like every other claim being made, fails on its merits.

Time limits

127. Finally, for the sake of completeness, we shall say something about time limits.

128. Given the dates of early conciliation and the date the claim form was presented, anything that happened before 20 September 2023 happened outside of the primary (3 months plus any extension for early conciliation) time limit period in EQA section 123.

129. We cannot deal fully with time limits issues as: all the complaints have failed on their merits; and time limits are intimately tied up with the merits of the complaints, in terms of whether there was any relevant "*conduct extending over a period*" and therefore in terms of which complaints are out of time, and which complaints need an extension of time on a "*just and equitable*" basis, and if so for how long.

130. Nevertheless, we can say that none of the complaints was presented within the primary time limit unless a complaint about the grievance appeal succeeded and there was relevant conduct extending over a period. It would then be a question of whether we were persuaded that it would be just and equitable to extend time; and we were not persuaded of that.

131. This is because:

    131.1 the Claimant provided no explanation, let alone evidence to support any such explanation, as to why she waited to present her claim. In particular, although we can guess that if she had given evidence about this she would probably have said something to the effect that she was suffering from poor mental health and was ignorant of relevant procedural and substantive law, we don't know what she is saying about what changed between her being so unwell and/or ignorant that she did not start the claim process on time and her starting it in December 2023;

131.2 it is true that the absence of an evidenced explanation for why a claim was presented late doesn't mean that an extension of time must be refused and we note in particular what the EAT said about this in **Concentrix CVG Intelligent Contact Ltd v Obi** [2022] EAT 149. In practice, though, and certainly on the facts of this case, it is difficult for the Claimant to satisfy us that it would be just and equitable to extend time if she is not prepared to say why she didn't put the claim in sooner and have whatever she says about that scrutinised in cross-examination;

131.3 what could reasonably be said on the Claimant's behalf in support of extending time boils down to a submission that the Respondents aren't majorly prejudiced by extending time whereas she is, because she would like to bring her claim and because a delay of up to a year or so[7] in presenting the claim form did not severely damage the quality of the evidence before the Tribunal or otherwise adversely affect the Respondents' ability to defend themselves. Even if we entirely accepted that submission, this would not be enough by itself to satisfy us that it would be just and equitable to extend time. It could be said in almost any case where the delay in bringing a claim was measured in weeks or months rather than in years. Accepting it would in practice make extending time the default position and put the onus on Respondents to show real prejudice or some other particular reason why it was <u>not</u> just and equitable to extend time;

131.4 anyway, the Respondents clearly are prejudiced to some extent, at least in relation to complaints about things other than the grievance and the 2023 redeployment process and termination. Memories clearly have faded and documentation, particularly documentation about the original recruitment of the Claimant and others in 2022, which would have been available in early 2023, had been destroyed or lost by the time the Claimant started early conciliation, in December 2023;

131.5 in addition, there has been a full trial of all out of time complaints and had we made a decision in the Claimant's favour in relation to everything except time limits, that would, we assume, have given her a certain amount of vindication and satisfaction, even if the overall judgment was against her.

132. Lastly, whatever the position vis-à-vis the First Respondent Trust, it would not be just and equitable to extend time in relation to the complaints against Mr Bhat, the Second Respondent. The complaint against Mr Bhat that is chronologically the latest relates to the Claimant's lack of success at interview in July 2023 and therefore all claims against Mr Bhat were presented outside the primary time limit. The reason it would not be just and equitable to extend time in relation claims against Mr Bhat even if it would be so to extend time against the Trust is that no real prejudice at all would be caused to the Claimant by her not being able to mount a claim against him personally. We do not know why the Claimant has continued to prosecute her claims against Mr Bhat. The Trust has never raised any technical defence, such as the so-called 'statutory defence' in EQA section 109(4), which might explain why she has felt the need to do so. The Trust is solvent – insofar as any part of the health service can be said to be solvent. Had we decided the claim against the Trust in her favour, this would necessarily have involved us, in a decision

[7] The chronologically first complaint is about what happened in or before early September 2022.

in public, naming Mr Bhat, making findings about his behaviour, and labelling him personally a discriminator, harasser and victimiser. A decision in her favour against both Respondents would in practice give her nothing, whether in terms of remedy or anything else, that she would not get from a victory against the Trust alone. For example, Mr Bhat would not in practice be paying her compensation himself.

133. In those circumstances, all claims against Mr Bhat personally would fail for time limits reasons even if they had succeeded on their merits.

Employment Judge Camp

Approved on 10 November 2025