**Case Number: 6000194/2024**


# EMPLOYMENT TRIBUNALS

Claimant: CL

Respondent: Mitie Limited

**Heard at: Southampton** **On: 21, 22, 23, 24, 25 July 2025**

**Before:** Employment Judge Dawson, Mr Richardson, Mr English

**Appearances**
For the claimant: Representing herself
For the respondent: Ms Duncan-Brown, counsel

# JUDGMENT

1. The claimant was harassed by the respondent by conduct related to sex, age and race.

2. The claimant's other claims are dismissed.

3. The question of remedy is adjourned to 24 October 2025.

4. Case management directions are given in a separate order.

# REASONS

## Introduction and overview

1. By a claim form presented on 21st January 2024 the claimant brought the following complaints;

    a. Unfair dismissal;

    b. Discrimination on the grounds of age, race and sex;

    c. Harassment related to age, race and sex;

    d. Victimisation;

    e. Detriment on the grounds of public interest disclosure;

2. By way of introduction, and without prejudice to the full findings and conclusions set out below, we give the following summary.

    a. CL, was employed as a Security Officer at Southampton University Hospital NHS Trust (at Southampton General Hospital).

    b. She alleges, amongst other things, that she was harassed by her colleagues due to sex, age and race and because she made protected disclosures.

    c. CL says that her colleagues behaved inappropriately towards other staff at the hospital and with unnecessary aggression towards vulnerable patients and others. She claims her suggestions for de-escalation were ignored in favor of aggressive tactics and that her grievance was mishandled.

    d. Mitie denies the allegations, asserting that CL participated in workplace banter and was not mistreated because of protected characteristics. It says that she was a difficult colleague to work with which may explain why colleagues treated her as they did. It also denies that was made protected disclosures and denies any retaliatory conduct.

    e. We largely accept CL's factual allegations and find that harassment occurred and that CL was constructively dismissed due to that harassment, but we dismiss the claims of whistleblowing and victimistion because we find that the proven acts of detriment were not because she had blown the whistle or done a protected act. The claims of direct discrimination fail.

## The issues

3. The issues were recorded in an order of Employment Judge Smail following a Case Management hearing which took place on 27 August 2024. They are reproduced in the Appendix to this judgment.

4. At the outset of the hearing, we went through the issues with the parties in detail. Subject to what is said below, all the parties agreed that the list of issues was accurate and set out the claims that we must determine.

5. The claimant sought to widen the claim of constructive dismissal to assert that all of the allegations of harassment, direct discrimination and victimisation should be regarded as allegations of repudiatory breach of contract by the respondent which led to her resignation. The respondent did not object to that application. We granted it.

6. The respondent sought to resile from the concession that the grievance of 6 November 2023 contained protected disclosures. The claimant objected to that. The grievance was in writing and could be read by us and the claimant told us that all of the evidence she would wish to call on the questions of whether she reasonably believed the disclosure was in the public interest and tended to show that there had been a criminal offence/breach of legal obligation/risk of health and safety was within her witness statement. We took the view that the prejudice to the respondent of not being able to withdraw its concession, being the inability to fully present its case, outweighed any prejudice to the claimant if it was permitted to withdraw its concession. We therefore allowed the respondent to withdraw the concession.

7. The parties agreed that the meeting referred to in in the list of issues as being on 12 September 2020 was, in fact, on 13 September 2023.

8. The claimant withdrew her argument that the allegation in issue 5.1.7 was an allegation of harassment, however she said that it was a reason for her resignation.

9. Much of the claimant's cross examination focused on the alleged failures of the grievance process and, in particular, the actions of Mr Butler and Mr Napier. The tribunal pointed out during the hearing that the issues as agreed did not make complaints about those parts of the grievance. In her closing submissions the claimant asked us to have regard to the further information provided by her on 20 August 2024 which runs to a significant number pages. Towards the end of that document reference is made to failures by Mr Butler and Mr Napier. We asked the claimant whether she was seeking to widen the list of issues and she stated that she was not. Given that the claimant did not ask us to widen the list of issues, we do not need to consider whether we would have allowed her to do so if she had asked. However, we observe that the case management hearing where the issues were decided took place after that further information had been sent and the subsequent case management order carried the statement that "The claims and issues, as

discussed at this preliminary hearing, are listed in the Case Summary below. If you think the list is wrong or incomplete, you must write to the Tribunal and the other side by **27 September 2024**. If you do not, the list will be treated as final unless the Tribunal decides otherwise." The claimant did not write to the tribunal. In those circumstances our provisional view is that we would have been reluctant to allow an amendment to the list of issues at the end of the case, even if those issues had been referred to in the further information which had been provided by the claimant.

## Conduct of the Hearing

*The evidence*

10. We were provided with a bundle of witness statements running to 68 pages and a bundle running to 555 pages. Except where otherwise stated, references to page numbers in this judgment are to the hearing bundle.

11. We heard evidence from the claimant and for the respondent we heard from

    a. Danny Ings, Security Manager at Southampton General Hospital,

    b. Gemma Parmar, Senior Operations Manager – South East and line manager for Mr Ings,

    c. Lucas Butler Site Operations Manager in Manston Kent,

    d. Louise Smith, Security Officer at Southampton Gen Hospital,

    e. Fabian Napier, Regional Manager, South East of England, line manager for Ms Parmar.

12. All job titles are as at the relevant time unless otherwise stated.

*Timetable*

13. The timetable which had been set down at the case management hearing on 21 May 2025 was discussed at the outset of the hearing and we explained to the parties the importance of sticking to it. The respondent finished cross-examining the claimant an hour earlier than necessary and we allowed the claimant to use that time for cross examination of the respondent's witnesses. We asked the claimant to give us a breakdown of how long she wished to be with each witness in cross examination and explained that we would stop the claimant at the end of that time but, if time permitted at the end of the respondent's case, we would allow witnesses to be recalled. We also explained the wisdom of asking the most important questions first. The claimant ran out of time for her cross examination of the respondent's first witness (Mr Napier) but did not do so with cross-examination of other witnesses. The cross examinations were completed within the overall timetable.

## The Law

14. We were referred to no authorities by either party. Whilst there is much to be said for referring only to the statutory provisions, in this case we have considered the principles laid down in a number of previously decided cases as set out below. The limited time available for concluding the hearing meant that we have not reverted to the parties with all of the cases set out below to ask them for their comments. We referred to some of them, or the principles arising from some of them, in the course of submissions, including the authorities on constructive dismissal. If either party considers that they would have wished to make particular submissions on the authorities which may have materially affected our judgment then that can be dealt with by way of application for reconsideration.

## Approach To Evidence

15. In Wisniewski v Central Manchester Health Authority [1998] PIQR 324, the Court of Appeal stated "Mr Grime accepted that there is a line of authority which shows that if a party does not call a witness who is not known to be unavailable and/or who has no good reason for not attending, and if the other side has adduced some evidence on a relevant matter, then in the absence of that witness a judge is entitled to draw an inference adverse to that party and to find that matter proved"

16. In Bennett (appellant) v MiTAC Europe Ltd (respondent) - [2022] IRLR 25 the EAT held, the context of an unfair dismissal claim where someone was expressly dismissed;

> While documentary evidence is likely to be important, because express evidence of discrimination is rarely available, much is likely to turn on the evidence of the decision maker(s). An important consequence of s136 EqA 2010 is that if the respondent chooses not to call the relevant decision maker it puts itself at considerable risk of an adverse finding, should there be sufficient evidence to shift the burden of proof, because it will face substantial difficulty in discharging the burden (para 51)

17. Efobi v Royal Mail Group Ltd [2021] IRLR 811 is authority for the proposition that an adverse inference can be drawn from the failure to call evidence- the Supreme Court stated:

> So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on

the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules.

**Discrimination**

18. The following are relevant sections from the Equality Act 2010.

**13 Direct discrimination**

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

**26 Harassment**

(1) A person (A) harasses another (B) if—

a) A engages in unwanted conduct related to a relevant protected characteristic, and

b) the conduct has the purpose or effect of—

i) violating B's dignity, or

ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B

…

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

a) the perception of B;

b) the other circumstances of the case;

c) whether it is reasonable for the conduct to have that effect.

5) The relevant protected characteristics are—

age;

…;

…;

race;

…;

sex;

….

**39 Employees and applicants**

(1) An employer (A) must not discriminate against a person (B)—

(a) …

(c) by dismissing B;

(d) by subjecting B to any other detriment.

**109 Liability of employers and principals**

(1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.

(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.

**110 Liability of employees and agents**

(1) A person (A) contravenes this section if—

(a) A is an employee or agent,

(b) A does something which, by virtue of section 109(1) or (2), is treated as having been done by A's employer or principal (as the case may be), and

(c) the doing of that thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).

**136 Burden of proof**

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

**212 General interpretation**

(1) In this Act—

…

> "detriment" does not, subject to subsection (5), include conduct which amounts to harassment;

*Causation*

19. In considering questions of causation, in Nagarajan [1999] IRLR 572, the House of Lords held that that if the protected characteristic had a 'significant influence' on the outcome, discrimination would be made out. The crucial question in every case was, 'why the complainant received less favourable treatment … Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?'

20. In Chief Constable of Greater Manchester v Bailey [2017] EWCA Civ 425 it was held at para 12: "Both sections use the term "because"/"because of". This replaces the terminology of the predecessor legislation, which referred to the "grounds" or "reason" for the act complained of. It is well-established that there is no change in the meaning, and it remains common to refer to the underlying issue as the "reason why" issue. In a case of the present kind establishing the reason why the act complained of was done requires an examination of what Lord Nicholls in his seminal speech in Nagarajan v London Regional Transport [2000] 1 AC 501, referred to as "the mental processes" of the putative discriminator (see at p. 511 A-B). Other authorities use the term "motivation" (while cautioning that this is not necessarily the same as "motive"). It is also well established that an act will be done "because of" a protected characteristic, or "because" the claimant has done a protected act, as long as that had a significant influence on the outcome: see, again, Nagarajan, at p. 513B."

*The Burden of Proof and drawing of inferences*

21. In Madarassy v Nomura International plc [2007] IRLR 246, the Court of Appeal held, at paragraphs 56-57,

> "The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant 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.
>
> 57 'Could conclude' in s.63A(2) must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence

> of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory 'absence of an adequate explanation' at this stage (which I shall discuss later), the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like as required by s.5(3) of the 1975 Act; and available evidence of the reasons for the differential treatment.

22. In Laing v Manchester City Council [2006] IRLR 748 Elias P observed as follows:

> "71. We would add this. There still seems to be much confusion created by the decision in *Igen v Wong*. What must be borne in mind by a tribunal faced with a race claim is that ultimately the issue is whether or not the employer has committed an act of race discrimination. The shifting in the burden of proof simply recognises the fact that there are problems of proof facing an employee which it would be very difficult to overcome if the employee had at all stages to satisfy the tribunal on the balance of probabilities that certain treatment had been by reason of race.
>
> 72. The courts have long recognised, at least since the decision of Lord Justice Neill in the *King* case to which we have referred, that this would be unjust and that there will be circumstances where it is reasonable to infer discrimination unless there is some appropriate explanation. *Igen v Wong* confirms that, and also in accordance with the Burden of Proof directive, emphasises that where there is no adequate explanation in those circumstances, then a Tribunal must infer discrimination, whereas under the approach adumbrated by Lord Justice Neill, it was in its discretion whether it would do so or not. That is the significant difference which has been achieved as a result of the burden of proof directive, as Peter Gibson LJ recognised in Igen.
>
> 73. No doubt in most cases it will be sensible for a tribunal formally to analyse a case by reference to the two stages. But it is not obligatory on them formally to go through each step in each case. As I said in *Network Rail Infrastructure v Griffiths-Henry* [2006] IRLR 865 (at para 17), it may be legitimate to infer that a black person may have been discriminated on grounds of race if he is equally qualified for a post which is given to a white person and there are only two candidates, but not necessarily legitimate

to do so if there are many candidates and a substantial number of other white persons are also rejected. But at what stage does the inference of possible discrimination become justifiable? There is no single right answer and tribunals can waste much time and become embroiled in highly artificial distinctions if they always feel obliged to go through these two stages.'

23. In Bahl v The Law Society [2004] IRLR 799,e the Court of Appeal held

100

…

It has been suggested, not least by Mr de Mello in the present case, that Sedley LJ was there placing an important gloss on Zafar to the effect that it is open to a tribunal to infer discrimination from unreasonable treatment, at least if the alleged discriminator does not show by evidence that equally unreasonable treatment would have been applied to a white person or a man.

101

In our judgment, the answer to this submission is that contained in the judgment of Elias J in the present case. It is correct, as Sedley LJ said, that racial or sex discrimination may be inferred if there is no explanation for unreasonable treatment. This is not an inference from unreasonable treatment itself but from the absence of any explanation for it. However, the final words in the passage which we have quoted from Anya are not to be construed in the manner that Mr de Mello submits. That would be inconsistent with Zafar. It is not the case that an alleged discriminator can only avoid an adverse inference by proving that he behaves equally unreasonably to everybody. As Elias J observed (paragraph 97):

'Were it so, the employer could never do so where the situation he was dealing with was a novel one, as in this case.'

Accordingly, proof of equally unreasonable treatment of all is merely one way of avoiding an inference of unlawful discrimination. It is not the only way. He added (ibid).

'The inference may also be rebutted – and indeed this will, we suspect, be far more common – by the employer leading evidence of a genuine reason which is not discriminatory and which was the ground of his conduct. Employers will often have unjustified albeit genuine reasons for acting as they have. If these are accepted and show no discrimination, there is generally no basis for the inference of unlawful discrimination to be made. Even if they are not accepted, the tribunal's own findings of

fact may identify an obvious reason for the treatment in issue, other than a discriminatory reason.'

We entirely agree with that impressive analysis. As we shall see, it resonates in this appeal

*Compensation*

24. We are not deciding compensation at this stage but it may be helpful to record, that in Chagger v Abbey National Plc [2010] IRLR 47 the Court of Appeal held that "In assessing compensation for discriminatory dismissal, it is necessary to ask what would have occurred had there been no unlawful discrimination. If there were a chance that dismissal would have occurred in any event, even had there been no discrimination, then in the normal way that must be factored into the calculation of loss. The gravity of the alleged discrimination is irrelevant to the question of what would have happened had there been no discrimination" (taken from the head note).

**Law on Whistleblowing**

25. The law is found in different sections of the Employment Rights Act, according to whether a person is claiming to have been subjected to a detriment or unfairly dismissed.

26. S.103A Employment Rights Act 1996 provides that:

(1) An employee who is dismissed shall be regarded for the purpose of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) is that the employee made a protected disclosure

27. S.47B Employment Rights Act 1996 deals with detriments on grounds of making protected disclosures and provides that:

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

> (1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.
>
> (1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

28. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

29. Under section 48(2) of the Act, on a complaint to an employment tribunal it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

*Detriment due to Protected Disclosure*

30. In Fecitt v NHS Manchester [2012] ICR 372, the Court of Appeal held that the test of whether an employee has been subjected to a detriment on the ground that he had made a protected disclosure is satisfied if, "the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower"

31. In Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73 the Court of Appeal stated "Liability is not, therefore, established by the claimant showing that but for the protected disclosure, the employer would not have committed the relevant act which gives rise to a detriment. If the employer can show that the reason he took the action which caused the detriment had nothing to do with the making of the protected disclosures, or that this was only a trivial factor in his reasoning, he will not be liable under section 47B" (paragraph 31).

*Unfair Dismissal*

32. In respect of a claim of unfair dismissal, in Kuzel v Roche [2008] IRLR 530, the Court of Appeal held:

> 57. I agree that when an employee positively asserts that there was a different and inadmissible reason for his dismissal, he must produce some evidence supporting the positive case, such as making protected disclosures. This does not mean, however, that, in order to succeed in an unfair dismissal claim, the employee has to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason.

58. Having heard the evidence of both sides relating to the reason for dismissal it will then be for the tribunal to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence.

59. The tribunal must then decide what was the reason or principal reason for the dismissal of the claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the tribunal that the reason was what he asserted it was, it is open to the tribunal to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the tribunal must find that, if the reason was not that asserted by the employer, then it must have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily.

*Constructive Dismissal*

33. IDS Volume 14, para 6.40 states “A dismissal will only be automatically unfair under S.103A if the sole or principal reason for dismissal was that the employee had made a protected disclosure. However, where an employee claims that he or she was constructively dismissed contrary to S.103A, it is not strictly possible for a tribunal to examine the employer’s reason for dismissal, because the decision that triggers the dismissal is the employee’s resignation. Instead, the question for consideration is whether the protected disclosure was the principal reason that the employer committed the fundamental breach of the employee’s contract of employment that precipitated the resignation. If it was, then the dismissal will be automatically unfair.”

*Burden of Proof- Detriment*

34. Section 48(2) Employment Rights Act 1996 provides that 'it is for the employer to show the ground on which any act, or deliberate failure to act, was done'.

35. In Ibekwe v Sussex Partnership NHS Foundation Trust*, 2014 WL 6633439* the EAT stated “I do not accept that a failure by the Respondent to show positively why no action was taken on the letter of 5 April before the form ET1 was lodged on 12 June means that the section 47B complaint succeeds by default (cf. the position under the ordinary discrimination legislation, considered by Elias LJ in Fecitt )” (para 21)

**Law on Constructive Dismissal and Discrimination**

36. In Lauren De Lacey v Wechslen UKEAT/0038/20/VP it was held:

> [68]…in Williams v Governing Body of Alderman Davies Church in Wales Primary School [2020] IRLR 589, at paragraph 89, HHJ Auerbach said that a constructive dismissal should be held to be discriminatory "if it is found that discriminatory conduct materially influenced the conduct that amounted to a repudiatory breach." At paragraph 90, HHJ Auerbach said that the question was whether "the discrimination thus far found sufficiently influenced the overall repudiatory breach, such that the constructive dismissal should be found to be discriminatory." (my emphasis)
>
> [69]. I respectfully agree with the test as it is set out in paragraph 90 of the Williams judgment. Where there is a range of matters that, taken together, amount to a constructive dismissal, some of which matters consist of discrimination and some of which do not, the question is whether the discriminatory matters sufficiently influenced the overall repudiatory breach so as to render the constructive dismissal discriminatory. In other words, it is a matter of degree whether discriminatory contributing factors render the constructive dismissal discriminatory. Like so many legal tests which are a matter of fact and degree, this test may well be easier to set out than to apply. There will be cases in which the discriminatory events or incidents are so central to the overall repudiatory conduct as to make it obvious that the dismissal is discriminatory. On the other hand, there will no doubt be cases in which the discriminatory events or incidents, though contributing to the sequence of events that culminates in constructive dismissal, are so minor or peripheral as to make it obvious that the overall dismissal is not discriminatory. However, there will be other cases, not falling at either end of the spectrum, in which it is more difficult for an ET to decide whether, overall, the dismissal was discriminatory. It is a matter for the judgment of the ET on the facts of each case, and I do not think that it would be helpful, or even possible, for the EAT to give general prescriptive guidance for ETs on this issue."

37. In Driscoll v & P Global EA-2020-000876-LA it was held that a constructive dismissal is, in principle, capable of constituting an act of harassment, within the meaning of section 26 of the Equality Act 2010.

*Affirmation*

38. In *Omilaju v Waltham* [2005] ICR 481 Dyson LJ said:

> 14 The following basic propositions of law can be derived from the authorities.
>
> 1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Ltd v Sharp [1978] ICR 221.

2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example, Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606, 610 e- 611a (Lord Nicholls of Birkenhead), 620 h- 622c (Lord Steyn). I shall refer to this as "the implied term of trust and confidence".

3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract: see, for example, per Browne-Wilkinson J in Woods v W M Car Services (Peterborough) Ltd [1981] ICR 666, 672 a. The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.

4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Mahmud , at p 610 h, the conduct relied on as constituting the breach must

"impinge on the relationship in the sense that, looked at objectively , it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer" (emphasis added).

5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put in Harvey on Industrial Relations and Employment Law , para DI [480]:

"Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship."

…

19 The question specifically raised by this appeal is: what is the necessary quality of a final straw if it is to be successfully relied on by the employee as a repudiation of the contract? When Glidewell LJ said that it need not itself be a breach of contract, he must have had in mind, amongst others, the kind of case mentioned in the Woods case at p 671 f- g where Browne-Wilkinson J referred to the employer who, stopping

short of a breach of contract, "squeezes out" an employee by making the employee's life so uncomfortable that he resigns. A final straw, not itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.

20 I see no need to characterise the final straw as "unreasonable" or "blameworthy" conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.

21 If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.

22 Moreover, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective (see the fourth proposition in para 14 above).

## Analysis

39. It is not in dispute that the claimant commenced employment with the respondent in July 2023. She signed her contract on 24 July 2023 (page 101). She was employed as a Security Officer at Southampton University Hospital NHS Trust (at Southampton General Hospital).

40. Between 10 August 2023 and 4 October 2023, the claimant was within a team managed by Jamie Baynes[1] which consisted of colleagues named Lamin Ceesay (Lameen), Lionel Kabsele (Leo), Ramone Bradshaw-Edwards, Osilaja Olwadamilare (Darie), Jude Radwan and Louise Smith. This was referred to as team A. That was not disputed and we find accordingly.

41. From 5 October 2023 until 4 November 2023, the claimant was within a team managed by Scott Cluett, which consisted of Brendan Benton, Steven Walkay (Donk), Ben Weyman, Graham Evans, Alexander Scott and Jujaar Potiwal (Jazz). This was referred to as team B. That was not disputed and we find accordingly.

42. We find that the members of each team knew and interacted with the members of the other team and would, for instance, greet each other on changeover. On at least one occasion, according to claimant's evidence, which we accept, Ben Weyman and Lionel Kabsele were working together (see our findings in relation to issue 5.1.8).

43. There is no dispute that the claimant was excellent at her job, there were no issues with her work and she was particularly good at de-escalating difficult situations without having to resort to physical restraint.

44. The claimant makes a number of complaints about the way she was treated at work by colleagues in both team A and team B.

45. Louise Smith was called as a witness by the respondent. She still works for the respondent and told us (and we have no reason to doubt and therefore accept), that Mr Olwadamilare, Mr Cluett, Mr Walkay and Mr Potiwal still work for the respondent.

46. The claimant gives detailed evidence in her witness statement about the way that she was treated. That evidence largely repeats the information which was set out in the further information provided by her on 20 August 2024. Thus, the respondent was on notice that it was likely that the claimant would give evidence to the tribunal about those matters, at least to the extent that they were relevant to the issues identified by Judge Smail. The respondent, for

1. _____

[1] There are a number of different spellings of names in the bundle. Where possible we have taken the spelling from the respondent's cast list. Mr Bradshaw-Edwards' name is taken from the respondent's grievance investigation.

reasons which have not been explained to us, has not called any of the four people we have referred to in the previous paragraph.

47. As set out below, it is likely that Mr Potiwal would have given evidence which was, at least in part, supportive of the claimant. The respondent criticised the claimant for not calling him as her witness but we do not find it particularly surprising that a person representing themselves would not seek to call somebody as a witness who still works for their previous employer. On the other hand, we do think that this is a case where, in circumstances where the respondent has given us no explanation for failing to call employees who still work for it, we are entitled to have regard to the principle in Wisniewski and have done so to the extent that we consider appropriate and as set out below.

48. It is not realistic to recount all of the evidence we have heard and read in determining this case. We limit ourselves to setting out our findings by reference to the list of issues, with further background information as far as necessary. Where we have not dealt with evidence it is because we do not consider it necessary to do so in order to resolve the issues which we must determine.

49. In an attempt to keep this judgment accessible, we set out our findings in relation to each head of claim and, at the same time, our analysis and conclusions before moving onto the next head of claim.

50. We start by considering the allegations of harassment, then the allegations of direct discrimination, then the allegations of victimisation, then the allegations of being subjected to a detriment because of making a protected disclosure and finally the allegations of constructive dismissal.

**Harassment**

*Findings of Fact*

*5.1.1 Regularly refer to her insultingly as 'Mummy'*

51. The claimant told us that colleagues frequently referred to her as "mummy" and that it was offensive to her because she was called that name on account of both her sex and her age.

52. In the grievance investigation carried out by Mr Butler between 3 November 2023 and 12 December 2023, he interviewed a number of the claimant's colleagues. Mr Evans, when being interviewed, stated that he often asked the claimant if she did her "mummy" thing but said that it was complimentary because he knew she had children and thought it made her better at her role in that she was great at dealing with patients. Although that is the only reference in the investigation report to the term "mummy", in his outcome letter dated 15 December 2023 Mr Butler writes "When discussing the use of the term "mummy", various team members state that this was used in a

complimentary way to describe your excellent ability to defuse and deescalate hostile situations."

53. In her evidence, the claimant was asked by the tribunal which members of staff referred to her as "mummy" and said Ben had done so on a couple of occasions and Brendan might have done once or twice, she then referred to Mr Evans. The only clear evidence that any individual had used the phrase "mummy" is the evidence in relation to Mr Evans. We did not find the claimant's evidence about Mr Weyman and Mr Benton persuasive. It seemed to us that she was thinking back over a long period of time and we were not confident that her recollection was accurate in this respect. Nevertheless we do find that Mr Evans used the term "mummy".

54. It is also necessary for us to consider the context in which the term was used. We will go on below to set out our findings that the claimant was ostracised and was subject to sexist comments, as well as witnessing the use of racist and sexist language while at work. It is also the case that the claimant was part of a team, some members of which considered it more appropriate to use physical restraint in respect of disruptive patients or visitors than the claimant did. In those circumstances, we do not find that Mr Evans used the term in a complimentary fashion.

*5.1.2 – Regularly insulted her about her height*

55. It is not in dispute that the claimant's height was regularly referred to. In the investigation into the claimant's grievance, Mr Walkay stated that the claimant was teased about her height but says that one day she said no more jokes and the team stopped joking with her (page 386). Mr Potiwal stated that he had witnessed numerous comments about the claimant's height and that one day she blew up but that the comments stopped after that time (page 386) and Mr Weyman recalled the claimant saying that she had had enough of people joking about her height, but he says it stopped afterwards (page 387). We find that jokes were made about the claimant's height. They included asking the claimant to pick things up from the floor because she was closer to them and asking the claimant to deal with a patient because she was the same height as him.

56. However, the claimant's evidence is that those jokes did not stop when she asked for them to. In circumstances where the respondent has not called the witnesses that it could have called, we see no reason to doubt the claimant's evidence. Moreover, there is some, largely contemporaneous, support for the claimant's allegations in that in her grievance of 5 November 2023 she referred to continuous jokes about her height (page 152). In those circumstances we find that the claimant's colleagues did regularly make jokes about the claimant's height.

*5.1.3 Regularly ostracise her, in that the Security Guards (all or nearly all male) would greet each as 'Bro' and leave at the end of the shift by saying 'Good bye, Gents'*

57. We deal with this allegation by firstly considering the allegation of ostracism and secondly the way in which colleagues greeted each other.

58. There is no dispute that the claimant spoke to Mr Ings on 13 September 2023 about her unhappiness within team A. It is fair to say that the notes of that meeting are extremely brief but we find that it is likely that the claimant referred to feeling excluded. We make that finding not only having regard to the minutes at page 113 – 114 but also the email from Mr Baynes to Mr Ings on 3 October 2023 and Mr Ings's reply. Mr Baynes wrote

> Hi Danny,
>
> I noticed when we started shift tonight when everyone was coming in that although lamin Jude and dare all greeted each other they all blanked [CL] when she said hello to everyone.
>
> I believe [CL] wants to make things official now as she said it can't go on like this.
>
> (Page 118, sic)

59. We find, from the tone of the email, that the issue of exclusion of the claimant would not have been new to Mr Ings. The email reads as if it is part of an ongoing discussion as to how colleagues were treating the claimant.

60. The reply from Mr Ings states "Again, I do not think we can force anyone to speak to anyone else they don't wish to" (page 117). His reply suggests that not only had there been discussions about this issue before (see the reference to "again") but also that the respondent was doing nothing proactive about stopping it happening, apart from being willing to move the claimant to another team.

61. The emails are clear evidence of exclusion. We find that the claimant was excluded on more than one occasion, and she was excluded in a very obvious way when her colleagues all greeted each other but ignored her and, indeed, ignored her even though she said hello to them.

62. We also find that the claimant's colleagues greeted each other with the words "bro" and "gents". We do not consider that in the modern workplace such words are necessarily gender specific. Ms Smith told us that she had not been called "bro" but that she did not consider that in this day and age the word was primarily used by men to men and we agree.

63. We find that the claimant was ostracised by the way that her colleagues ignored her.

64. We do not find that the claimant was ostracised because her colleagues used terms such as “bro” and “gents”. We consider it likely that had the claimant’s colleagues been including her, they may well still have referred to each other as “bro” and “gents” and may have included the claimant in such greetings. But that was not, in fact, the case- they were simply ignoring her and doing so deliberately.

65. Further, we accept the claimant’s evidence, in her witness statement, that when she was on patrol, her colleagues would ignore her over the radio. That was her evidence in paragraph 17 of her witness statement which was not challenged in cross examination. We must, however, be somewhat careful not to read too much into a failure to challenge the claimant on any particular part of her evidence; the claimant’s statement is lengthy and the respondent’s counsel was under the pressure of a timetable. Nevertheless, not only is it the case that the claimant was not specifically challenged on this point, the respondent has failed to call any evidence to contradict that evidence or give any explanation of why. Given the fact that it is clear from Mr Baynes’ email to Mr Ings that the respondent’s colleagues were going out of their way to ignore her and exclude her, it is more likely than not that they were doing so over the radio and we so find.

*5.1.4 Regularly subject her directly or indirectly to sexist “banter”, such as “all women and money are evil”.*

66. The claimant’s witness statement gives a number of examples of the use of sexist language and discussions about sex.

67. In paragraph 19 of her statement the claimant states that Mr Radwan stated that he would get his girlfriend to run his baths and cook his dinners.

68. In paragraph 20, the claimant describes Mr Radwan, in circumstances where he had been forced to go on patrol with a woman, approaching her stating “oi girl come with me”.

69. In paragraph 22, the claimant refers to Mr Olwadamilare speaking to others and stating “remember the guard that was sacked for sexual harassment, he must have been sex starved” to which Lamin Ceesay replied “he was married”, leading Mr Olwadamilare to say “well maybe he wanted more”.

70. In paragraph 24, the claimant recounts Mr Radwan, when the claimant was sitting by the doorway to the kitchen, stating “I’m going to sit with the lads”.

71. In paragraph 42, the claimant recounts Mr Weyman and Mr Benton in the presence of Mr Cluett observing a female doctor or nurse on a camera and Mr Weyman stating “we have to go down there she’s lovely she likes talking about sex and I like sex”.

72. In her statement the claimant also makes reference to the conversation on 4 October 2023 when she states that Mr Kabsele, Mr Radwan and Mr Ceesay

were in a huddle with Mr Baynes when Mr Radwan showed his phone to Mr Kabsele who stated "if my woman dressed like that she would be disrespecting me", Mr Radwan stated that all women are to blame for cheating and Mr Ceesay stood up with his hands in the air and stated "all women and money are evil." She records that Mr Baynes did nothing.

73. Again, the respondent has called no evidence to contradict those parts of her witness statement. The claimant did not make reference to all of those matters in her grievance on 5 November 2023, but she did refer to being called mummy, the reference to "all women and money are evil", disrespect for women and inappropriate conversations taking place. We have set out our findings on the "mummy" comments already.

74. In her witness statement, Ms Smith states that she had worked for three years for the respondent and not experienced any discrimination or poor treatment because she is a woman. We accept that evidence as being true, however, that does not mean that the language we have found proved was not used, nor does the fact that Ms Smith was not treated badly because she is a woman mean that all women were treated in the same way.

75. Mr Baynes stated in his interview about the claimant's grievance with Mr Butler that "Sexual comments do happen a lot towards the female nurses, but men are men and they do talk about this" (p340). The fact that a supervisor so willingly minimises those matters not only supports the claimant's case but should be a matter of concern to the respondent and the managers of the hospital, as it is to the tribunal.

76. On the balance of probabilities, we accept the evidence of the claimant in respect of this issue.

77. It is important for the tribunal to take account of the fact that most employees do not wish to work in a sterile atmosphere where humorous banter is not permitted. It might be that a small number of the comments that we have referred to would, in isolation, and depending upon the context, be acceptable, but we find that given the volume of comments and the nature of some of them, they not only went beyond what was acceptable but tend to show a level of disrespect for women which we think is likely to have manifested itself in the way that the claimant's colleagues, and in particular those we have referred to above, treated her.

78. It is, also, important that we note the danger of generalisations. We are not finding that every member of team A or team B treated the claimant in the way we have found. Indeed, even on the claimant's own evidence it is unlikely

that some of her colleagues, including Mr Potiwal, Mr Scott[2] and Ms Smith did so, but we find that this allegation is made out.

79. We will return to issue 5.1.5 (regularly ignoring her entreaties to deal with patients to de-escalation and instead use violence) after we have considered issues 5.1.6, 5.1.7 and 5.1.8.

*5.1.6 On or about 3 November 2023 Ben of Team B in front of the Claimant and others referred to a Chinese doctor as a 'Chinese Cunt';*

80. The claimant's witness statement states:

> On the 3rd of November into the 4th of November at 0517 hours, most officers were in the room waiting to go home there was Ben, Brendon, Jazz, Alex and Graham. Scott was sat at his desk as usual; When out of nowhere Ben and Brendon were positioned in front of the CCTV when Ben looked up and said out loud pointing to the CCTV, "see that Chinese cunt doctor, not because he is a doctor and Chinese "but he is Chinese and a cunt", then Brendon looked up and said he could be Korean", then Ben said "ok Asian Cunt". Jazz who is Asian was sat a foot away just behind them when they said this. I was horrified. This was confirmed as happening by (Jazz) himself (Page 386-387) Jujaar Potiwal. This was the moment I had no choice but to leave because I could not work in this environment.

81. This allegation is supported by the evidence of Mr Potiwal in the grievance investigation. The notes record that Mr Potiwal "frequently hears inappropriate comments and was witness to Ben describing a doctor as a Chinese cunt. He says that as everyone was in the room at the time, he expected the Supervisor (Scott [Cluett]) to speak up and was surprised when he didn't" (p386-387).

82. As we have indicated, both Mr Potiwal and Mr Cluett still work for the respondent and have not given evidence.

83. The claimant's grievance contains the statement "*Referring to a Dr as a chinese/Asian ####. There was an Asian member of staff sat next to them*" (page 152).

84. The respondent places significant weight on differences in the claimant's account in her witness statement and that in her grievance. We do not find the differences to be significant.

85. The respondent also points to differences in the minutes of the meeting which the claimant had with Ms Smithson on 9 November 2023 and other documents. However, this point carries little weight since the claimant pointed out from an early stage that she did not accept those notes were accurate

1. ———————————

[2] Although he was responsible for the biscuit incident.

(p293). In any event there is little difference between the notes at page 217 and the claimant's statement.

86. We do not think that the claimant came to the tribunal to mislead us and it is likely that when she wrote her grievance she would have had a reasonably good recollection of events. Her evidence is supported by the comments of Mr Potiwal. In those circumstances we accept her evidence on this point.

*5.1.7 On or about 3 November 2023 Brendan of Team B, seeing a handcuffed patient arriving on CCTV, said in front of the Claimant and others that he would 'Chin the Cunt*

87. The claimant's evidence is as follows:

> Around the 3/11/23, I was in the control room with some other officers, Graham, Scott, Ben and Brendon. Ben and Brendon were watching the cameras when Ben observed a female doctor/nurse on the camera where he said "we have to go down there she's lovely she likes talking about sex and I like sex". Brendon had noticed the male that was brought in in handcuffs at same time when he looked up and said "this should be fun and if he starts then I can chin the cunt". Again, no one said anything.

88. It was put to the claimant that Mr Benton denied this allegation, but no evidence was called to that effect from him. We were given no information as to whether the respondent had attempted to locate him and call him to give evidence. When he was interviewed by Mr Butler, he denied making any similar comments (page 385).

89. The allegation is recorded by the claimant in her grievance in so far as it states "Before attending to a call out a member of staff said "this should be good can chin the ####". The claimant also had a call with Ms Parmar on 3rd November 2023 the notes of which record "[CL] also alleged that team members state when patients come in with the police for treatment already handcuffed it means 'Game on', explaining that it means they can be heavy handed with no concerns and 'if the patient reacts they can chin them.'

90. We repeat that we do not think that the claimant came to the tribunal to mislead us and it is likely that when she wrote her grievance and spoke to Ms Parmar she would have had a reasonably good recollection of events. We accept her evidence in this respect.

*5.1.8 On or about 3 November 2023, Ben and Lee in front of the Claimant and others played back CCTV gleefully, marvelling at how they restrained an elderly patient.*

91. It was agreed that the reference to Lee in this allegation should be a reference to Leo (Mr Kabsele).

92. The claimant's witness statement states:

> Around the same time, Leo had come from Jamie's team to Scotts team, and immediately he came for his shift Ben looked up to him and said "I'm working with you we are the A-Team. During the shift Jazz and I attended to an elderly patient, and whilst we were there, we kept him calm and had no issues with this person. After an hour Leo, and Ben went down to look after him. and whilst they were with him, they restrained him. When they came back to the control room, they began to review themselves restraining the patient. I felt sick because they thought it was funny discussing what they did. They also had no lawful reason to review this.

93. The claimant's grievance refers to "reviewing CCTV to watch themselves restraining patients" which provides some support for this allegation. Mr Weyman was not asked about this allegation according to the notes of the investigation (page 387) and nor was Mr Kabsele (page 395). That may, of course, be because they were not named in the claimant's grievance, but it does not appear that any of interviewees were asked about the allegation of reviewing CCTV to watch themselves restraining patients.

94. The way that we have found Mr Weyman behaved in respect of the Chinese doctor gives some limited support for the assertion that he behaved in this way.

95. Again, we see no reason to disbelieve the claimant in this respect. In the absence of contradictory evidence from the respondent we accept the claimant's version of events.

*5.1.5 Regularly ignore her entreaties to deal with patients through de-escalation and instead use violence;*

96. There is no doubt that the claimant had a policy of preferring the de-escalation of situations to the use of force. Mr Ings agreed that was the best way to deal with matters and we consider that to be a statement of the obvious. That, of course, does not mean that the use of force is never necessary and, it may be, that in hospitals it is more often necessary than in other situations.

97. The claimant's statement gives the following example:

> On another occasion I went with Leo to escort a patient for a cigarette, Leo did not talk to the patients either and on this occasion the female wanted to do something that could have hurt her and as I am explaining to her why she can't do something, Leo came over grabbed the female and dragged her down the corridor to her room, Cand when he got to the room he slammed her to the bed. It again was out of the blue and very aggressive. Jamie had to come to this incident as also because Leo grabbed her the way he did and did not communicate with me, he ended up with a fractured wrist. [sic]

98. The claimant did not strike us as someone who would easily keep her views to herself. Indeed, much of the respondent's questioning of the claimant was on that basis. It seems to us to be likely that the claimant did share her views

on the desirability of de-escalation over the use of force. The claimant was recognised for her skill in using those techniques and Mr Ings states in his statement that when discussing the issues with the claimant on 13th September "I suggested to her that her excellent approach to that situation and similar might have put some people's "noses out of joint" including others who were unable to achieve the same outcome, and that may be causing an issue."

99. The respondent has not called any evidence from the claimant's colleagues to suggest that they felt their noses had been put out of joint which is why they were treating her in the way that they were and so we must regard Mr Ings comments as no more than speculation; but his speculation, as a manager, lends support to the claimant's assertion that her colleagues ignored her entreaties to deal with patients through de-escalation.

100. The evidence of Mr Ings and our findings above mean that we accept the claimant's case on this point and find that although the claimant did suggest to her colleagues that they should use de-escalation, she was ignored.

*5.1.9 On 17 November 2023 Louise Smith texted the Claimant calling her a fucking nut case and a cunt*

101. The claimant and Ms Smith had worked together on no more than three occasions but it is apparent from the text messages that we have seen they generally got on well. They had not seen each other since very early November 2023 when Ms Smith went off sick. The claimant had confided in Ms Smith about her unhappiness at work and on 17 November 2023 Ms Smith messaged "hi mate how are things? You still there?". Within a minute the claimant replied stating "R u a joke like the rest of them… Ignore me when u want answer when u want… seriously"

102. The answer sent by the claimant was unnecessary, the claimant explains it by saying that she was in a low place at the time. The conversation continued with Ms Smith sending a reasonable message pointing out that she had been off sick.

103. The claimant then stated "I heard everything about what u said and you were the only person I told… So look… Don't mess me about I'm done with everyone… I liked u.. I trusted u but oh my god.. The only person I told stuff to and the last thing I said u repeated… So go back to your mates and stand yourself tall… No one keeps taking the piss out of me" (p547).

104. We find that the claimant believed that the contents of her discussion with Ms Smith had been relayed by Ms Smith to others. However, there is no evidence that it had been and we were presented with no compelling case to that effect. We find that Ms Smith had not breached any confidence of the claimant and in that context, and no doubt with some emotion, replied as follows

> well I certainly didn't I didn't speak to anyone that night! And like I said I haven't been there! Whatever woman be like that your a fucking nutcase!!! It's obviously a running theme with you and your insecurities of being a female! You blame everything on that and the reason men don't like you but actually have you ever thought is just that your personality sucks and your just a cunt!!" (Page 547)

105. We find that Ms Smith was reacting in anger to a situation which had unnecessarily been caused by the claimant in the way that she messaged Ms Smith.

*5.1.10 Constructively dismiss the Claimant*

106. We will return to this allegation as a separate part of our consideration below.

*5.2 Was that unwanted conduct?*

107. The respondent's case is that the claimant was a willing participant in banter. When called upon for specific examples the respondent asserted, through its counsel, that it believes:

a. on occasion the claimant had joined in with mocking Mr Benton about the size of his ears and the way he walked,

b. the claimant had referred to herself as a trans-person,

c. the claimant used people's nicknames such as "donk".

108. Mr Butler, in his conclusions in respect of the claimant's grievance, concluded that she had taken part in pranks (page 388). In his evidence he conceded that there was no evidence that the claimant had taken part in pranks and he had used the word inappropriately.

109. The claimant denies that she joined in with mocking Mr Benton about his ears and the way he walked. Having observed the claimant give evidence we think it is unlikely that she has the sort of personality that would join in with such banter, but we must remember that we are observing her some time after the events which she has complained of and when the stresses and strains of litigation have, inevitably, taken their toll on her. However, again, despite having the opportunity to do so, the respondent has not called evidence from anybody who can give first-hand testimony of such mocking. In those circumstances we accept the evidence of the claimant,

110. The claimant explained to us that in relation to referring to herself as trans, she was trying to overcome the sexism which she had been experiencing at work. When people were saying "bro" to each other she said to them "oh you do realise I was born a man" because she was hoping that their attitude would change. She denies that she was making a joke, she was

trying to say that it makes "no difference whether you are male or female, people should just be professional". We accept that evidence as being true. Whether the claimant was going about things in the best way or not, we do not find that the reference to being trans indicated that the conduct was wanted.

111. The claimant says that she referred to people by their nickname because that was how they were introduced to her. Again, we accept the claimant's evidence.

112. We find that all of the conduct that we have found proved was unwanted.

*5.3 Did it relate to a protected characteristic, e.g. the Claimant's sex, her age (being over 40) or the race of a Chinese Doctor?*

113. We find that calling the claimant "mummy" was related to both her age and her sex. It is an obviously female term and, in context, showed that the claimant was regarded as being older than at least some of her colleagues. An email from Mr Ings dated 25 September 2023 shows that both team A and team B had younger people in it and that team B had a divide between older and younger people (p115).

114. In respect of the insults about the claimant's height, we approach this issue with some care. We find it likely, on the evidence we have heard, that the claimant's colleagues would have mocked men if they were short. Thus, the immediate cause of "teasing" the claimant was not her sex but her height. However, the claimant was shorter than her colleagues because she was a woman and women, generally, are shorter than men. Thus, on balance, we find that this comment did relate to sex.

115. We find that the claimant was regularly ostracised, at least in part, because she was female. The culture of both team A and team B was one which was somewhat hostile to women for the reasons we have given. Whilst certain women, such as Ms Smith, may have escaped such hostility, we have no doubt that the claimant would have been more accepted within both teams if she had been a man.

116. The sexist banter which we have found proved was obviously related to sex.

117. We do not find that when the claimant's colleagues ignored her entreaties to deal with patients through de-escalation they did so because she was a woman. We find that they simply preferred a more aggressive approach to the provision of security. Those colleagues who ignored her would have done so regardless of whether she was male or female.

118. The incident regarding the Chinese doctor was clearly related to race.

119. As we have said, at the outset the claimant withdrew her argument that allegation 5.1.7 was an allegation of harassment.

120. Although we have found that Mr Weyman and Mr Kabsele did play back CCTV to watch how they had restrained an elderly patient, we are not satisfied on the evidence that they did so because that person was elderly. The claimant has not proved facts from which we could conclude that it was because they were elderly. We think it likely (and we find) that they would have been just as likely to replay the CCTV footage of their restraining any person. Thus, this allegation does not succeed.

121. The message sent by Ms Smith was not sent because the claimant was female. We are entirely satisfied it was sent simply because the claimant had riled Ms Smith. The claimant's complaint only refers to her being called a f-ing nutcase and a c-t (the abbreviations being ours to avoid unnecessary repetition of upsetting language). Although there is some language in the text message which does relate to sex, the specific language which the claimant complains about is not related to sex. Both men and women, in the modern day, are sometimes referred to as f-ing nutcases and c-ts and the fact that the latter is, in some circumstances, regarded as a gender specific term, does not, in our view, mean that those words were related to sex. They were related to the fact that the claimant had unjustly accused Ms Smith of breaching her confidence, eliciting a (very) angry response. Thus, this allegation does not succeed.

*5.4 & 5.5 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?*

122. In respect of issue 5.1.1 (regularly referring to the claimant as mummy) the tribunal is not unanimous in its view as to whether the conduct had the purpose or effect of violating the claimant's dignity. The majority, being Mr Richardson and the judge, believe that in context, where the claimant was being excluded and where at least some of the claimant's colleagues were not willing to de-escalate situations, the claimant has proved facts from which we could conclude that the purpose of Mr Evans was to create a hostile or offensive environment for the claimant. The respondent has called no evidence to show that that was not the purpose. Mr English is not so satisfied, however, he concludes that the effect of the comments was to create a hostile, degrading, humiliating or offensive environment for the claimant. Moreover, he reaches that conclusion taking into account the perception of the claimant, all of the circumstances of the case and whether it was reasonable for the conduct to have that effect. If the majority are wrong in their analysis, they would agree with Mr English as to his views on the effect of the conduct. Thus, this allegation is proved as an allegation of harassment.

123. In respect of issue 5.1.2, the tribunal is unanimous in its findings that the purpose of the claimant's colleagues in insulting her about her height was to create a hostile or degrading atmosphere for her. Further, and in any event,

the effect of the conduct, taking account of the perception of the claimant, the circumstances of the case and the question of reasonableness, was to create a degrading or humiliating atmosphere. Thus, this allegation of harassment succeeds.

124. In respect of issue 5.1.3 we are, again, unanimous in our view that the purpose of the claimant's colleagues in excluding her was to create a hostile atmosphere for her. Again, in any event, the effect of the conduct, taking account of the perception of the claimant, the circumstances of the case and the question of reasonableness, was to create a degrading or humiliating atmosphere. Thus, this allegation of harassment succeeds.

125. In respect of issue 5.1.4, in cross-examination and closing submissions counsel for the respondent drew our attention to the particulars of claim and said that the claimant had simply said that she felt uncomfortable. That is a misreading of the particulars of claim. The reference to feeling uncomfortable is in paragraph 18, however that paragraph does not deal with the entirety of this allegation. In paragraph 22 the claimant deals with the allegation of 2nd October when the comment "all women and money are evil" was made. There she describes her shock at the comment and how she went on to escalate matters.

126. The tribunal is, again, not unanimous in its analysis in this respect.

a. The minority, being Mr Richardson, concludes that the comments were made with the purpose of creating a intimidating, hostile, degrading, humiliating or offensive environment for the claimant. He makes that finding based on the knowledge of the claimant's colleagues that she was in the room, their willingness to ostracise her and their willingness to continue to speak about women in derogatory terms.

b. The majority, being Mr English and the judge, find that when the claimant's colleagues spoke in the way that they did, it was because doing so was the way of those teams. It is more likely than not that they were speaking in that way before the claimant joined the teams and continued to speak in that way after the claimant had left the teams. Thus, the unwanted conduct was not for the purpose of creating the proscribed atmosphere for the claimant. However the majority find that, taking into account the perception of the claimant, the circumstances of the case and the question of reasonableness, the effect was to create a degrading or humiliating atmosphere. Although the majority have not analysed this issue in the same way of Mr Richardson, the tribunal is unanimous in its view that the nature and volume of the comments were wholly unacceptable.

Thus, this allegation of harassment succeeds.

127. In respect of issue 5.1.6, the tribunal are unanimous that the comment was not made for the purpose of violating the claimant's dignity or creating

the proscribed atmosphere but we find that it had that effect. The claimant describes the level of offence which she experienced in her witness statement and we accept her evidence. This was a serious and unacceptable act of racism and we express our surprise at the lack of real action taken by the respondent in respect of it. We are unable to understand the conclusions of Mr Butler and Mr Napier that the comment did not happen when they had first hand evidence from Mr Potiwal and the claimant that it did. However, their actions are not within the issues which we must decide and for that reason we say no more about them. This allegation of harassment succeeds.

128. In respect of issue 5.1.7, we find that for the claimant, who was conscientious in her work and skilled at it, to witness another security guard talking about chinning handcuffed patients, in circumstances where the supervisor did nothing, would have the effect of creating an offensive environment for her. It was reasonable for her to feel that way. Indeed, any right-thinking person would have felt the same way. Likewise we find that the act of Mr Weyman and Mr Kabsele gleefully watching back how they restrained an elderly patient would have reasonably created an offensive environment. However, we remind ourselves that issue 5.1.7 was not pursued as an allegation of harassment and issue 5.1.8 was not related to a protected characteristic on our findings above.

129. We do not need to address issue 5.1.9 further because we have not found that the text message from Ms Smith was related to sex or age or race.

*5.1.10 Constructively dismiss the Claimant*

130. After the claimant raised her concerns with Ms Parmar through the grievance process, she indicated that she did not feel able to return to the hospital to work. In those circumstances Ms Parmar suggested redeployment to vacant roles, one at DP world and one at Estée Lauder. The claimant found both alternatives unacceptable, the former because she did not wish to sit in a container all day (which requirement was disputed by Ms Parmar) and the latter because of the travelling distance. Ms Parmar sought to persuade the claimant to take the roles on an interim basis while her grievance was being investigated. An email exchange took place whereby the claimant expressed her dissatisfaction with the suggestions but Ms Parmar stated that there were no alternative opportunities and that returning to the hospital was also an option.

131. On 10 November 2023, the claimant wrote to Ms Parmar stating that she had been humiliated and belittled and she could not believe that Ms Parmar would suggest that she should return to the hospital with the same people. She said that in those circumstances she was resigning and would go to an employment tribunal. She wrote “how can you possibly think I can return the job I wanted safely and without the issues I have raised has completely baffled me. So in light of what you have said, I am now resigning and will go to an employment tribunal…” (Page 242, sic)

132. The claimant was then sent a letter inviting her to reconsider her resignation (page 264) and she did so on 19 November 2023 (page 317). She explained that she had not been well.

133. On 21 November 2021 Ms Parmar wrote to the claimant stating that if she did not wish to return to the hospital or take up the other suitable alternatives offered there would be a need for her to have unpaid time away from work. She indicated that the alternative roles were still open to the claimant. On the same day Mr Butler wrote to the claimant stating Ms Smithson would no longer be dealing with the investigation but he would. The claimant had already met with Ms Smithson to go through her grievance.

134. The claimant's evidence which we accept was "Due to the way I felt I was being treated and the letters Gemma and Lucas sent I finally handed in the official letter to resign on 21/11/24 and sent this to Gemma Parmer because of the way they just did not seem to care and passing me around to anyone and everyone".

135. The claimant wrote to Ms Parmar stating "in light of your letter today and the position you've put me in, it saddens me to say that you have left me no alternative but to resign my position and refer this matter to an employment tribunal." (Page 376). This time the resignation was not retracted.

136. The claimant does not have qualifying service in order to bring a claim of ordinary unfair dismissal under the Employment Rights Act 1996, however, it may be an act of discriminatory dismissal, under section 39 Equality Act 2010, if a person resigns in response to repudiatory breaches of contract which happen because of sex, race or age.

137. We find that the allegations of harassment which we have found proved, amounted to a breach of the implied term of trust and confidence. We also find that they formed a significant part of the decision by the claimant to resign.

138. The respondent argues that in retracting her resignation the claimant affirmed the contract. Whilst that may be so, it does not mean that the acts of harassment are to be ignored. In accordance with the principles laid down in Omilaju v Waltham, we must consider whether the decision by Ms Parmar to require the claimant to take unpaid leave and/or the decision by Ms Smithson to cease dealing with the grievance are acts which are capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence. We find that they did. They may not have been unreasonable, but in circumstances where the claimant was the subject of sexual harassment, to tell her that she must take unpaid leave or move to a different location while her claims were investigation did add to the repudiatory breach. The swapping of the officer hearing the grievance, which meant that either the claimant would have to recount her experience again to a new person, or not address Mr Butler directly, also added to the repudiatory breach.

139. Further, in accordance with the principle in Lauren De Lacey v Wechslen we find that the acts of harassment sufficiently influenced the overall repudiatory breach so as to render the constructive dismissal discriminatory.

140. Thus the acts of harassment amounted to a constructive dismissal of the claimant which was a discriminatory dismissal. For the purposes of clarity, this claim is not a claim of ordinary unfair dismissal under the Employment Rights Act 1996, it is one of discriminatory dismissal under the s39 Equality Act 2010.

**Direct Discrimination**

141. By virtue of section 212 Equality Act 2010, if a tribunal finds a particular acts amount to harassment, it cannot also amount to a detriment for the purposes of direct discrimination. In those circumstances the allegations in issues 6.2.1, 6.2.2 and 6.2.4 cannot be acts of direct discrimination.

142. Issue 6.2.3 (regularly ostracizing the claimant, in that the Security Guards (all or nearly all male) would greet each as 'Bro' and leave at the end of the shift by saying 'Good bye, Gents') requires further consideration because we only found that the ostracism part of the allegation amounted to harassment; we did not find that the greetings of "bro" and "gents" amounted to harassment. However, for the reasons we have given, we are satisfied that a man or a younger person in the same position as the claimant would have been treated in the same way as she was. That is to say their colleagues would have been greeted with "bro" and "gents"; those comments were not, we find, because of sex or age, but general greetings which would have been used regardless of the sex or age of the people in the room. This claim of direct discrimination is, therefore dismissed.

143. Issue 6.2.5 is not a direct repetition of the matters alleged to amount to harassment. However, insofar as we accept that the claimant's peers failed to respect her professionalism, we find they did so by the acts of harassment that we find proved. Therefore, in respect of those matters the claimant cannot succeed in a claim of direct discrimination. In respect of issues 5.1.5 and 5.1.7 and 5.1.8, which did not succeed as allegations of harassment, we are entirely satisfied that those things would have been done regardless of the sex or age of the claimant, a man in the same position as the claimant would have experienced the same things.

144. In summary, therefore, to some extent the claimant's peers did fail to respect her professionalism, but to the extent that they did so because of her sex or age, those matters have succeeded as claims of harassment. Thus they cannot succeed as claims of discrimination.

145. Mr Ings did not fail to respect the claimant's professionalism, quite the contrary, he went out of his way to praise her professionalism. It is regrettable that he did not stop the harassment, but that is a different issue. There is no

evidence that any of the other managers failed to respect the claimant's professionalism and it was not suggested that they did so.

146. In those circumstances the claim of direct discrimination fails and there was no dismissal caused by direct discrimination. It follows there can have been no constructive dismissal by way of direct discrimination.

**Victimisation**

147. For the purposes of this judgment we assume, without deciding, that the claimant's acts set out in paragraphs 7.1.1 and 7.1.2 of the list of issues were protected acts and turn to consider whether the respondent did the alleged acts of detriment and, if so, whether it did them because of the alleged protected acts. We set out our findings on each allegation collectively but we bear in mind the importance of a staggered analysis, firstly to decide what facts have been proved, secondly to decide whether those facts amounted to a detriment and, finally, if so whether the detriment was because of the protected act.

*7.2.1 Fail to respect the confidentiality of the disclosures of 12 September 2023 and the grievance of 6 November 2023*

148. The claimant believes that Ms Parmar failed to keep her grievance confidential. She also believes that Mr Ings failed to keep confidential what she said to him on 13 September 2023. The claimant has not set out in any detail why she has reached those conclusions.

149. There is no doubt that Ms Parmar contacted Mr Ings after she had received the claimant's grievance and asked him questions. She told us that she simply asked him to share with her any information, emails, meetings or communications with the claimant that he had. She did not tell him that the claimant had met with her or that the claimant had raised a complaint.

150. The claimant can point to no evidence to contradict Ms Parmar's evidence and there is no evidence in the bundle which suggests that Ms Parmar had done more than she tells us.

151. It would be surprising if an employee could raise a grievance and then, when the grievance is investigated, assert, without more, that there has been a breach of confidentiality because the grievance has been investigated. We find that in speaking to Mr Ings as she did, Ms Parmar behaved professionally and was motivated by her desire to advance the grievance in an appropriate fashion. She properly shared the grievance with HR and after she had given her initial report she took no further part in matters.

152. The claimant complains that Ms Parmar sent a newspaper article to HR which showed that she had made a complaint of sex discrimination some years before (there is no evidence she bought tribunal proceedings). Ms Palmer says that she was told about the newspaper article by somebody, but

she could not remember who. She could not remember the context. There must be a suspicion that Ms Palmer had only been told about that newspaper article because she had been speaking to somebody about the claimant's grievance. However, even if that was the case, it does not follow that the claimant was subjected to a detriment. The claimant was not being penalised for raising a grievance, it was simply the case that in the course of dealing with the grievance, evidence came to light about the claimant's previous complaints.

153. We do not find, therefore, that the behaviour of Ms Parmar amounted to a detriment.

154. There is no evidence from which we could conclude that Mr Ings had disclosed the contents of the discussion of 13 September 2023 to members of the claimant's team. He facilitated the move of teams because he wanted to assist the claimant. That is obvious from the emails at pages 115-117. He was not seeking to do the claimant down. The claimant, as we understood her case on this point, asks us to infer that there was a breach of confidentiality because the second team (B) was hostile to her. The respondent suggests that the claimant's behaviour was more likely to be the cause of team B's behaviour. In this respect we have some sympathy with the respondent's arguments. We find it is likely that the claimant was not an easy team member. Where she found things that she disagreed with it is likely that the claimant expressed unhappiness to her colleagues. That was likely to rub colleagues up the wrong way. That in no way justifies the behaviour of certain colleagues within the team, but it means that we are unable to conclude that any unhappiness on the part of team B was because Mr Ings had breached confidentiality. There is simply no evidence that he did. Thus, we do not find that there was a detriment in this respect.

155. This allegation of victimisation fails because we do not find that the behaviour of the respondent amounted to a detriment to the claimant.

*7.2.2 Ostracise the Claimant by the Security Teams;*

156. There is no evidence from which we could conclude that these the teams were aware of the protected acts of the claimant, much less that they ostracised the claimant because of them. Our findings are that the claimant was ostracised because she was female and because she was, at least to some extent, a difficult team member.

*7.2.3 Spiking of the Claimant's biscuits with chilli sauce on or around 3 November 2023;*

157. It is not in dispute, and we find accordingly, that the claimant was given a biscuit on which very hot chili sauce had been put. The claimant did not wish to be treated in that way and therefore this was a detriment.

158. Having heard the evidence of the respondent, we accept that the claimant was not singled out for such treatment, giving people biscuits with chilli sauce was considered to be a humorous prank which others had been or would be subjected to. It was done by Mr Scott. There is no evidence at all that Mr Scott was aware of the alleged protected acts and there are no facts from which we could conclude that he did what he did because of those acts. This allegation of victimisation fails.

*7.2.4 The sending of a personally abusive text by Louise Smith on 17 November 2023.*

159. We repeat our findings set out above. Again, there is no evidence at all that Ms Smith was aware of the alleged protected acts; she denied any knowledge in evidence and had been off sick from early November. We are entirely satisfied that when she sent the message she did so because she was annoyed by the way the claimant had messaged her. This allegation of victimisation fails because even if the message was to the claimant's detriment, it was not sent because of a protected act.

*7.2.5 Fail adequately to investigate the Claimant's grievance with Grace Smithson declining to complete the investigation she started.*

160. The grievance investigation was initially placed with Ms Smithson for resolution. After she had interviewed the claimant, the claimant was notified that Mr Butler would be taking it over. We were told by Ms Parmar that Ms Smithson ceased dealing with the grievance because she was due to go on annual leave and had other workload matters to deal with and thus would not be able to conclude the grievance in a timely manner. Mr Butler was part of a specialist grievance investigation team.

161. Mr Butler did not bother to speak with the claimant personally about her grievance but instead relied upon the notes taken by Ms Smithson. That is regrettable and was to the claimant's detriment. It is also generally desirable for the same person to deal with a grievance throughout.

162. However, there is no evidence from which we could conclude that Ms Smithson declined to continue dealing with the grievance because the claimant had done protected acts. There is no evidence that Ms Smithson was unhappy with the fact that the claimant had done protected acts and was seeking to do the claimant down by dropping out of the grievance process. We have no reason to doubt, and we accept, the evidence of Ms Parmar and we find that Ms Smithson stopped working on the grievance because of her workload. This allegation, therefore, fails.

*7.2.6 Constructively dismiss the Claimant.*

163. It follows from our findings that the claimant was not dismissed by any acts of victimisation.

**Detrimental treatment because of making a protected disclosure**

164. As with victimisation, we proceed on the basis, without deciding, that the alleged protected disclosures were made and amounted to protected disclosures.

165. Again we remind ourselves of the importance of taking a staged approach even though we deal with the allegations collectively.

*4.1.1 Fail to respect the confidentiality of the disclosures of 12 September 2023 and the grievance of 6 November 2023 resulting in ostracization of the Claimant by the Security Teams; the spiking of the Claimant's biscuits with chilli sauce on or around 3 November 2023; a personally abusive text from Louise Smith on 17 November 2023*

166. These allegations are a repetition of the allegations that we have already dealt with in respect of the claim of victimisation. For the same reasons we have given in relation to victimisation, in respect of all of the matters referred to in this issue, we do not find that they were because the claimant had made protected disclosures. In those circumstances this part of the claimant fails.

*4.1.2 Fail adequately to investigate the Claimant's grievance with Grace Smithson declining to complete the investigation she started.*

167. As we have set out, we find that Ms Smithson declined to complete the investigation because of holidays and workload. The claimant has not pointed to any evidence to suggest that that explanation is untrue. Therefore, we do not find that she stopped working on the grievance because the claimant had made protected disclosures.

168. In those circumstances the claim of detriment because of making a protected disclosure fails.

**Constructive automatic unfair dismissal**

169. As set out above, initially there were only two allegations of repudiatory breach of contract which the claimant relied upon in this respect. In fact, when paragraphs 2.1.1 and 2.2.2 of the list of issues are read properly, it is one allegation split over two parts, namely that when Ms Smithson stopped investigating the claimant's grievance, the respondent thereby failed to take her grievance sufficiently seriously. As a result of the amendment of her claim form, that has been widened to include all the allegations of discrimination.

170. It is important to remind ourselves that the claimant does not bring an ordinary unfair dismissal claim. She lacks the two years' service which is necessary in order for her to do so.

171. Again, we approach this issue on the basis of assuming that the claimant did make protected protected disclosures.

172. For the reasons we have given, we find that Ms Smithson stopped investigating the grievance because of annual leave and workload, not because the claimant had made a protected disclosure. We find that her decision was in no way influenced by the protected disclosure. Therefore even if Ms Smithson's decision amounted to a repudiatory breach of contract (which we doubt) it was not because of the protected disclosure.

173. We must then consider whether the acts of harassment which we have found proved were because the claimant made protected disclosures. As we have set out above, there is no evidence that any of the claimant's peers were told about her disclosures and there is no evidence that any of them were aware of her disclosures.

174. The burden of proof is on the respondent to show the reason for the acts of detriment (in this case the acts of harassment) which we have found proved. However, whilst the respondent has not called the harassers to give evidence, we must look at the totality of the evidence in reaching our conclusions in this respect. Doing so, we find that the actions of harassment which we have found proved were because those people who did them had little respect for women, little respect for the people to whom they were providing security services and no respect for the claimant. Had those people been aware of the claimant's disclosures, we think it highly likely that they would have mentioned that to the claimant directly or when interviewed in respect of the grievance. There is no suggestion in any of the evidence that they were aware of the disclosures or acted because of them. We are satisfied that the acts of harassment which we have found proved were not in any way influenced by the alleged disclosures. It follows that the principal reason that the employer committed the repudiatory breaches of the claimant's contract of employment was not because of the protected disclosure.

**A Further Note on Detriment because of a Protected Disclosure**

175. For the purposes of fullness, we note that the claimant did not ask us to widen the claim of detriment because of a protected disclosure, to include all the allegations of harassment within that claim. However, we have, of necessity, had to consider that question in order to consider whether the claimant's constructive dismissal was because of protected disclosures. There are, of course, different tests to be applied. In respect of the dismissal the question is whether the sole or principal reason for the breaches was because of the protected disclosures; in respect of the detriment claim, the test is whether the protected disclosures materially influenced (in the sense of being more than a trivial influence) the harassment. In our analysis above, we have used the material influence test since if we are not satisfied that the protected disclosures materially influenced the harassment, it follows that we cannot be satisfied that they were the sole or principal reason for it.

## Overall Summary

176. At risk of over-simplification, we summarise our judgment as follows:

177. The following allegations of harassment are well founded and the claims succeed:

a. Regularly referring to the claimant as 'Mummy' (5.1.1);

b. Regularly insulting the claimant about her height (5 foot 3 inches) (5.1.2);

c. Regularly ostracising the claimant (part of 5.1.3);

d. Regularly subjecting the claimant directly or indirectly to sexist 'banter', such as 'All women and money are evil' (5.1.4);

e. On or about 3 November 2023 Ben of Team B in front of the Claimant and others referred to a Chinese doctor as a 'Chinese C-t' (5.1.6);

f. Constructively dismissing the Claimant (5.10).

178. In respect of those allegations of harassment which have not succeeded

a. [colleagues] regularly ignoring her entreaties to deal with patients through de-escalation and instead using violence (5.1.5),

b. on or about 3 November 2023, Brendan of Team B, seeing a handcuffed patient arriving on CCTV, said in front of the Claimant and others that he would 'Chin the Cunt' (5.1.7) and

c. on or about 3 November 2023, Ben and Le[o] in front of the Claimant and others played back CCTV gleefully, marvelling at how they restrained an elderly patient (5.1.8)

we have not disagreed with the claimant about what happened or the seriousness of those actions, but we do not find that they were because of sex or race or age.

179. The claims of whistleblowing (unfair dismissal and detriment) fail because we have decided that even if the claimant made protected disclosures on 13 September and in her grievance, the alleged detriments to her were not because of those disclosures.

180. The claim of victimisation fails because we have decided that the alleged detriments were not because of her complaints on 13 September or in her grievance.

181. The claim of direct discrimination fails because the things that the respondent and its employees did wrong because of sex or age or race are

properly classed as harassment and it is not possible for them to be classed as direct discrimination as well.

182. We direct that a copy of this judgment is sent to the Chief Executive Officer of the University Hospital Southampton NHS Foundation Trust. We take that exceptional step because we think it is important that the Trust is aware of our findings as to how security guards were behaving in the Southampton General Hospital in relation to its staff and patients at the time to which our judgment relates. We give no directions as to what action, if any, the Trust takes, that is a matter for it.

Employment Judge Dawson

Original Date 1 August 2025
Redacted version: 4 November 2025

JUDGMENT SENT TO THE PARTIES ON
29 August 2025

FOR THE TRIBUNAL OFFICE

**Notes**

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

# APPENDIX

## LIST OF ISSUES

**1. Time limits**

1.1 The claim form was presented on 21 January 2024. The claimant commenced the Early Conciliation process with ACAS on 10 January 2024 (Day A). The Early Conciliation Certificate was issued on 11 January 2024 (Day B).

1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

**2. Constructive automatic unfair dismissal**

2.1 The Claimant claims that the Respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence. The breach(es) was / were as follows;

2.1.1 Grace Smithson, having started to investigate the Claimant's grievance of 6 November 2023, which the Respondent accepts contained protected disclosures, and having interviewed the Claimant, then declined to continue investigating the grievance, citing workload.

2.1.2 The Respondent thereby failed to take the Claimant's grievance sufficiently seriously.

2.2 The Tribunal will need to decide:

2.2.1 Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent, without reasonable cause, and

2.2.2 Whether the reason or principal reason for this was that the Claimant had made protected disclosures in her grievance.

2.3 Did the Claimant resign because of the breach? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

**3. Protected disclosure ('whistle blowing')**

3.1 Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Respondent concedes that the Claimant's grievance letter of 6 November 2023 contained one or more protected disclosures.

3.2 In addition, the Claimant says she made protected disclosures in a meeting with her supervisor/manager on 12 September 2023 relating to the sexist culture of the security teams and the unprofessional and overly aggressive nature of the provision of security services.

3.2.1 Were the disclosures of 12 September 2023 disclosures of 'information'?

3.2.2 Did she believe the disclosures of 12 September 2023 were made in the public interest?

3.2.3 Was that belief reasonable?

3.2.4 Did she believe it tended to show that:

3.2.4.1 a criminal offence had been, was being or was likely to be committed;

3.2.4.2 a person had failed, was failing or was likely to fail to comply with any legal obligation;

3.2.4.3 a miscarriage of justice had occurred, was occurring or was likely to occur;

3.2.4.4 the health or safety of any individual had been, was being or was likely to be endangered;

3.2.4.5 the environment had been, was being or was likely to be damaged;

3.2.4.6 information tending to show any of these things had been, was being or was likely to be deliberately concealed.

3.2.5 Was that belief reasonable?

3.3 If the Claimant made a qualifying disclosure, was a protected disclosure because it was made to;

3.3.1 to the Claimant's employer?

**4. Detriment (Employment Rights Act 1996 section 47B)**

4.1 Did the Respondent do the following things:

4.1.1 Fail to respect the confidentiality of the disclosures of 12 September 2023 and the grievance of 6 November 2023 resulting in ostracization of the Claimant by the Security Teams; the spiking of the Claimant's biscuits with chilli sauce on or around 3 November 2023; a personally abusive text from Louise Smith on 17 November 2023.

4.1.2 Fail adequately to investigate the Claimant's grievance with Grace Smithson declining to complete the investigation she started.

4.2 By doing so, did it subject the Claimant to detriment?

4.3 If so, was it done on the ground that he had made the protected disclosure(s) set out above?

**5. Harassment related to sex, age and the race of another, (Equality Act 2010 s. 26)**

5.1 Did the Respondent, its servants or agents (especially its Security Teams A and B) do the following things:

5.1.1 Regularly refer to her insultingly as 'Mummy';

5.1.2 Regularly insult her about her height (5 foot 3 inches);

5.1.3 Regularly ostracise her, in that the Security Guards (all or nearly all male) would greet each as 'Bro' and leave at the end of the shift by saying 'Good bye, Gents';

5.1.4 Regularly subject her directly or indirectly to sexist 'banter', such as 'All women and money are evil';

5.1.5 Regularly ignore her entreaties to deal with patients through de-escalation and instead use violence;

5.1.6 On or about 3 November 2023 Ben of Team B in front of the Claimant and others referred to a Chinese doctor as a 'Chinese Cunt';

5.1.7 On or about 3 November 2023 Brendan of Team B, seeing a handcuffed patient arriving on CCTV, said in front of the Claimant and others that he would 'Chin the Cunt';

5.1.8 On or about 3 November 2023, Ben and Lee in front of the Claimant and others played back CCTV gleefully, marvelling at how they restrained an elderly patient.

5.1.9 On 17 November 2023 Louise Smith texted the Claimant calling her a fucking nut case and a cunt.

5.1.10 Constructively dismiss the Claimant.

5.2 If so, was that unwanted conduct?

5.3 Did it relate to a protected characteristic, e.g. the Claimant's sex, her age (being over 40) or the race of a Chinese Doctor?

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

5.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

**6. Direct sex and age discrimination (Equality Act 2010 section 13)**

6.1 The Claimant is a female in the above 40 bracket. Her colleagues in Security Teams A and B were male and in their 20s and 30s.

6.2 Did the Respondent by its servants of agents do the following things:

6.2.1 Regularly refer to her insultingly as 'Mummy';

6.2.2 Regularly insult her about her height (5 foot 3 inches);

6.2.3 Regularly ostracise her, in that the Security Guards (all or nearly all male) would greet each as 'Bro' and leave at the end of the shift by saying 'Good bye, Gents';

6.2.4 Regularly subject her directly or indirectly to sexist 'banter', such as 'All women and money are evil';

6.2.5 Generally, failed to respect her professionalism.

6.2.6 Constructively dismiss the Claimant.

6.3 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

6.4 If so, was it because of sex/age?

**7. Victimisation (Equality Act 2010 s. 27)**

7.1 Did the Claimant do a protected act as follows:

7.1.1 Raise discrimination in a meeting on 12 September 2023 with her supervisor/manager;

7.1.2 Raise the grievance dated 6 November 2023.

7.2 Did the Respondent do the following things:

7.2.1 Fail to respect the confidentiality of the disclosures of 12 September 2023 and the grievance of 6 November 2023;

7.2.2 Ostracise the Claimant by the Security Teams;

7.2.3 Spiking of the Claimant's biscuits with chilli sauce on or around 3 November 2023;

7.2.4 The sending of a personally abusive text by Louise Smith on 17 November 2023.

7.2.5 Fail adequately to investigate the Claimant's grievance with Grace Smithson declining to complete the investigation she started.
7.2.6 Constructively dismiss the Claimant.

7.3 By doing so, did the Respondent subject the Claimant to detriment?

7.4 If so, was it because the Claimant had done the protected acts?