



EMPLOYMENT TRIBUNALS

Claimant: Okiemute Ogoh

Respondent: Walsall Healthcare NHS Trust

FINAL HEARING

Heard at: Midlands West Employment Tribunal

On: 4th, 5th, 6th, 7th & 8th August 2025 (All parties in person)
11th, 12th, 13th, 14th & 15th August 2025 (All parties in person)
28th & 29th August 2025 (Deliberations with Members)
21st, 22nd & 23rd October 2025 (Judge alone)
24th October 2025 (All parties in person)

Before: Employment Judge Gidney
Tribunal Member Sonia Cambell
Tribunal Member John Kelly

Appearances

For the Claimant: 4th to 8th August 2025: Ms Naomi Bennett
(Equality for Black Nurses Representative)
For the Claimant: 11th to 15th August 2025: Miss Okiemute Ogoh (in person)
For the Respondent: Mr Kawsar Zaman (Counsel)

JUDGMENT

It is the Judgment of the Tribunal that:

- 1.1. The Claimant's claim of unfair dismissal, pursuant to s98 **Employment Rights Act 1996** is upheld, subject to a 25% reduction for contributory fault.
- 1.2. The Claimant's Public Interest Disclosure Detriment, pursuant to s47B **Employment Rights Act 1996** is dismissed.
- 1.3. The Claimant's claim of direct race discrimination, pursuant to s9 and s13 **Equality Act 2010** is dismissed.
- 1.4. The Claimant's claim of victimisation, pursuant to s27 **Equality Act 2010** is dismissed.

REASONS

[1] **Introduction**

2. The Claimant, who describes her ethnicity as Black African, commenced employment with the Respondent in the role of Registered Nurse on 22nd August 2021. By a letter dated 9th October 2023 **[HB276]**¹ the Respondent dismissed the Claimant, to be effective from the date it was said to have been orally communicated to the Claimant on 3rd October 2023. The actual effective date of termination (either 3rd or 9th October 2023) is a trial issue, to which we shall return later in this Judgment.

¹ This refers to page 276 in the main Hearing Bundle.

3. On 6th January 2024 the Claimant notified ACAS of a dispute with the Respondent. She received her Early Conciliation Certificate on 5th February 2024 [HB1]. By a Claim Form dated 5th March 2024 [HB2] the Claimant presented the following claims [HB7-8]:
 - 3.1. Unfair Dismissal: s98(4) **Employment Rights Act 1996** ('**ERA**');
3.2. Detriment for making a Protected Interest Disclosure: s74B **ERA**;
3.3. Direct Race Discrimination: s13 **Equality Rights Act 2010** ('**EgA**'); and,
3.4. Victimisation: s27 **EgA**.
4. The Respondent submitted an ET3 Response Form [HB18] and Grounds of Resistance [HB27] which denied all of the Claimant's claims. The Claimant provided a set of Further and Better Particulars of her Claim [HB39] and the Respondent provided an Amended Grounds of Resistance [HB83]. The matter was case managed by Employment Judge Faulkner on 6th August 2024 [HB42].

[2] Procedural issues at the Hearing

5. At the start of the hearing on day 1 (4th August 2025) the Claimant was represented by Naomi Bennett of Equality For Black Nurses ('E4BN') and the Respondent by Mr Zaman, Counsel. Additional documents were adduced and added to the Hearing Bundle by consent (see below). There was some discussion about applications to amend the claim and response. Ms Bennett mooted a possible application to add an indirect discrimination claim. Mr Zaman indicated that the Respondent wished to proceed with its prior written application to amend its grounds of resistance to include a defence of Judicial Immunity in respect of the Respondent's decision to refer the Claimant to the Nursing and Midwifery Council ('NMC'). Mr Zaman also mooted an application to determine an 'out of time' point in advance of hearing the evidence generally. The above points were resolved as follows:

- 5.1. The Claimant's application to include an indirect discrimination claim would be considered by the Tribunal if it was set out in writing and provided to the Respondent and the Tribunal. In the event no such written application was received;
 - 5.2. The Respondent withdrew its application to determine the 'out of time' point in advance of hearing the evidence generally, being content for the evidence to be heard and submissions made in the normal way;
 - 5.3. The Respondent's application to amend its defence to include a judicial immunity defence in respect of the decision to refer the Claimant to the NMC would be heard and determined at 2pm on day 1.
6. Thereafter the parties agreed the List of Issues as set out by Judge Faulkner **[HB52]** as the issues that we had to determine, as set out below (at paragraph 20).
7. The Tribunal then heard and determined the Respondent's application to add a judicial immunity defence to its Grounds of Resistance. The application had been made in writing on 24th July 2025, some 7 working days before the start of the hearing. Ms Bennett had provided a written response, objecting to the application. We were grateful to both sides for their written submissions. We gave an extemporary judgment rejecting the Respondent's application to amend its grounds of resistance to include a judicial proceedings immunity defence. Full reasons were provided orally at the hearing. A detailed summary of our reasons is recited as follows:
 - 7.1. The Claimant's Claim Form **[HB2]** dated 5th March 2024 presented claims of unfair dismissal and race discrimination. Box 8.2 **[HB8]** referred to victimisation of the Claimant, including her referral to the NMC. The referral to the NMC was identified as a complaint from the very outset;
 - 7.2. The Respondent has throughout been professionally represented. By its Grounds of Resistance dated 8th April 2024 **[HB27]** it denied (at paragraphs 39 and 40 **[HB34-35]**) that the Claimant's referral to the NMC had anything whatsoever to do with the Claimant's complaint of discrimination that she had set out in her grounds of appeal, which, the

Claimant asserted was both a protected act disclosure (s43 **ERA**) and a protected act (s27 **EqA**). The Grounds of Resistance said nothing about a possible Judicial Immunity Defence.

- 7.3. The Claimant then provided Further and Better Particulars of Claim, which repeated the claim that the referral was an act of victimisation **[HB40]**;
- 7.4. The various claims and defences were discussed at the Case Management Hearing before Judge Faulkner on 6th August 2024 **[HB42]**. The Judicial Immunity defence was not raised. Accordingly, it was not recorded as an issue in the List of Issues for determination at the final hearing **[HB52]**;
- 7.5. The Judge gave the parties until 20th August 2024 to write in if the List of Issues was incorrect **[HB47]**. The Respondent did not write in to assert that its Judicial Immunity Defence was missing.
- 7.6. The Respondent was given permission to amend its Grounds of Resistance, which it did do on 22nd August 2024 **[HB83]**. The amended defence made no reference to any Judicial Immunity Defence.
- 7.7. On 22nd August 2024 the Respondent did apply to amend its defence by asserting that the Claimant's effective date of termination was 3rd October and not 9th October, with the possible effect that the Claim Form had been presented out of time. That amendment application did not seek to add a Judicial Immunity defence.
- 7.8. The Respondent left its application to add a Judicial Immunity defence for over a year. It was not made until 24th August 2025, some 7 working days before the final hearing.
- 7.9. We reminded ourselves of the relevant law concerning amendments, including **Selkent Bus Co v Moore** [1996] IRLR 661, **Vaughan v Modality Partnerships** [2021] ICR 535, **Abercrombie v AGA Rangemaster** [2013] ICR 215. We also considered the authorities relied on by the Respondent, namely **White v Southampton University Hospital** [2011] EWHC 825 (a case concerning whether an NMC referral could be an actionable defamation) and the first instance Employment Tribunal decision **Gibbon v BG Solicitors** [2025] 2600625/2024. We considered the authorities relied on by the Claimant, namely **P v**

Commissioner of Police of the Metropolis [2017] UKSC 65 (to the effect that all persons have a right to equal treatment under the EU Framework Directive) and the first instance Employment Tribunal decision of **Kariega v Waterloo Manor Ltd** [2025] 1805529/2023 (at which Ms Bennett attended as the Claimant's representative) which determined that a referral to the NMC was not protected by Judicial Proceedings Immunity.

- 7.10. We concluded that the proposed amended defence had the potential to be a knockout blow and was thus a substantial amendment that was not minor or trivial. The Respondent candidly accepted this point.
- 7.11. The proposed amendment raised a completely new defence. We concluded that the timing and manner of the application reflected very poorly on the Respondent, who could have taken the defence from the outset, but did not do so, despite attending a Case Management Hearing, amending its defence on another point, and then waiting until 7 working days before the final hearing to apply.
- 7.12. We elected not to determine the merits of the extent of judicial proceedings immunity, save for noting that there was conflicting authority, with the balance leaning towards the defence not being available in cases concerning a referral to the NMC.
- 7.13. In considering hardship and injustice, we considered that the Respondent would not suffer any or any meaningful hardship and injustice if its amended defence was refused. This was because it had always argued that it referred the Claimant to the NMC because her conduct required a referral, and that this reason had nothing to do with her race or any complaint of race discrimination that she had made. That defence could proceed unencumbered;
- 7.14. We concluded that to add this defence, so close to trial, would present a risk of hardship and injustice to the Claimant. If that defence was to be taken, the Claimant was entitled to have known about it from the outset, or very shortly thereafter.

8. On day 2 (5th August 2025) the Tribunal read and digested the 14 witness statements that we had been provided with, as well as the documents referred to in those witness statements.
9. On day 3 (6th August 2025) there was some additional discussion, during which:
 - 9.1. The Claimant confirmed that for the purposes of her protected disclosure she was relying on a breach of a legal obligation not to discriminate;
 - 9.2. The Respondent accepted that the Claimant's letter of appeal [HB297] qualified as a protected act for the purposes of s27 EqA;
 - 9.3. The Respondent disputed that the letter of appeal qualified as a protected disclosure, for the purposes of s43B ERA on one ground only: that the disclosure was not in the public interest;
 - 9.4. Some additional documents were added to the bundle by consent.
10. For the remainder of day 3 and day 4, the Tribunal heard evidence from Deborah Eyitayo and the Claimant. At the end of day 4, Ms Bennett asked if she could re-examine the Claimant on day 5. As there was still time for re-examination to be completed on day 4, the Tribunal refused that application on the grounds that it would be better to complete the Claimant's evidence without an overnight break, when she would be unable to discuss the case with anybody. Ms Bennett then asked for a 10 minute break, which we granted, despite the time approaching 4.30pm. During that break we were informed by our clerk that the Claimant had become distressed. In the circumstances we ended the day before the Claimant's re-examination had begun.
11. On day 5 the Claimant returned to be re-examined by Ms Bennett. In re-examination the Claimant changed her answers to questions that she had given to the Tribunal the afternoon before. She asserted that on the morning of 25th April 2023 (the day of the incident with Patient A) she had asked why senior staff were given less patients than the black nurses but had not used the expression 'racial discrimination'. At the end of day 4 the Claimant had told us that no such complaint had been made. She also corrected her evidence from the day before to say that when asked by Mini Raju whether Patient A had

fallen, she had first replied '*the patient was on the floor, he might have tried to get up but had slipped onto the floor*'. We considered that the change in position overnight had the potential to adversely impact the Claimant's credibility, given the nature of the about turn during a period when she had been required not to discuss her case with others. No decision was made at that point as to whether it had, or not. The day continued with the evidence of Julie Corns for the Respondent and Evelyn Mensah and Irene Oluku for the Claimant. The day ended with Ms Bennett agreeing a timetable for the Claimant's last witness and the cross examination of the Respondent's remaining witnesses that would allow all of the evidence to be completed during the remainder of the trial window.

12. On day 6 (11th August 2025) we were informed that the Claimant had sacked Ms Bennett, from E4BN, over the weekend. She did so without having any alternative representation in place. The Claimant applied to vacate the hearing and start it again, from day 1, after she had had some time to secure new representation. In the alternative, she applied to vacate the hearing and continue it from day 6, after she had had some time to secure new representation. We were told that she was not in a position to continue with her own claim and that her final witness, Dorathy Chinweze, was no longer willing to be her witness. The Respondent objected to both applications to vacate the hearing.
13. We identified the following options:
 - 13.1. To vacate the hearing and relist it to start again, with new legal representation, beginning the case on day 1. This would amount to completely abandoning the 5 days that had already been spent on the case;
 - 13.2. To vacate the hearing and relist it, with new legal representation, continuing from day 6. This would mean that the 5 days evidence would not be wasted and would be carried forward to the next hearing dates;
 - 13.3. To continue, but vacate the rest of day 6, so as to enable the Claimant to marshal her preparations to take over the case as a litigant in person;
 - 13.4. To continue the case immediately, without any sort of break.

14. The Tribunal heard the submissions from the parties and rose to consider its decision. The Tribunal refused the Claimant's applications to vacate the hearing generally but did agree to vacate the rest of day 6. Full reasons were provided orally at the hearing. A detailed summary of our reasons is as follows:
- 14.1. At 8.44pm on Sunday 10th August 2025 the Claimant emailed Naomi Bennett to sack E4BN. The Claimant thanked Ms Bennett for her work and stated that her change in legal strategy did not reflect any dissatisfaction with Ms Bennett's work. At 5.31am on Monday 11th August (day 6) Ms Bennett contacted the Tribunal to say that she was no longer representing the Claimant and had been asked not to attend.
- 14.2. The Claimant stated that she would need to get a new representative and had not considered the possibility that the Tribunal would refuse her application to vacate or postpone the hearing. She had spoken to a solicitor's firm but had not instructed them due to financial considerations.
- 14.3. The Respondent objected to the postponement and asserted that exceptional reasons would be needed to postpone at this stage and that none were present.
- 14.4. The Claimant was not relying on ill health as a reason to postpone. By sacking her representatives mid-trial with no alternative provision arranged any prejudice suffered by the Claimant was entirely self-inflicted.
- 14.5. The Respondent's nine witnesses had faced discrimination allegations since March 2024, in respect of an incident occurring in April 2023. On enquiry with Listing a resumed 5 day hearing could not be listed until January 2026 at the earliest (this is before checking the availability of the Respondent's witnesses and the Tribunal panel members). We note that Tribunal Member Kelly is due to retire in January 2026, and whilst he could be recalled from retirement to complete a part-heard case, this factor supports rejecting the postponement application. The delay would compound the anxiety of the remaining witnesses. Furthermore central to the case was the determination of what was said during the oral

exchange between the Claimant and Mini Raju on 25th April 2023. This determination would be degraded by an additional long period of delay.

14.6. Postponement is a power available to Tribunals as part of their general case management powers, in Rule 32 of the Tribunal's Rules of Procedure. Where a party makes an application to postpone less than 7 days before the hearing (which would include an application made at the beginning of day 6) the Tribunal can only postpone where:

14.6.1. All parties consent and the postponement is necessary to give the parties a chance to resolve their differences and it is otherwise in accordance with the overriding objective;

14.6.2. The application is necessitated by the actions of the Tribunal or the other party to the litigation;

14.6.3. There are exceptional circumstances, which may include ill health relating to a pre-existing long term health condition.

14.7. The Presidential Guidance confirms that Tribunals have the power to adjourn and that applications must state why they are made and why it accords with the overriding objective to grant them. If illness is relied on, the application must be supported by medical evidence confirming that the proposed advocate is too unwell to conduct the hearing. If the reason is due to a change of representative details must be provided as to when the representative withdrew, the circumstances of it and steps taken to find alternative representation.

14.8. The Claimant has not explained why she sacked E4BN, other than alluding to Ms Bennett referring to a disability when she asked for time to find a document.

14.9. The Claimant sacked E4BN without a back-up plan in place. It is clear that the Claimant thought she could sack her lawyers and start her case again, 6 months later, without considering the waste of Tribunal resources and Respondent's legal costs that such a course of action would waste, be that starting from fresh or at day 6.

14.10. Parties cannot simply stop a case and start it months later because they wish to pursue a different legal strategy. We recognise that refusing the

postponement request and requiring the Claimant to continue at the start of day 7 (giving her the afternoon of day 6 to prepare) may cause her some challenge, but as stated, this is of the Claimant's own making. We also note that the Claimant is better placed than a lawyer to know why she believes she was treated unfairly and treated in a discriminatory manner, so we consider that she could put those concerns to the Respondent's witnesses with little additional preparation.

14.11. We consider that the hardship on the Respondent would be considerable because:

- 14.11.1. Additional legal fees incurred by the Respondent for Counsel and Solicitors fees which may, in practice be difficult to recover;
- 14.11.2. A degradation of memory for the Respondent's witnesses surrounding oral conversations dating back to April 2023 in which the Claimant and her witnesses had given evidence on those conversations in August 2025 and the Respondent would not be able to do so until January 2026 at the earliest;
- 14.11.3. Additional anxiety to the Respondent's witnesses who have had a discrimination 'Sword of Damocles' hanging over their heads since March 2024, which would continue until January 2026;
- 14.11.4. Time wasted by 9 Respondent witnesses, 6 of whom have clinical rolls and whose absence is likely to impact healthcare provision at the Trust.

14.12. For all of the above reasons we rejected the Claimant's application to postpone the hearing. To take stock, we did vacate the rest of day 6 (the afternoon) to enable the Claimant to prepare for taking over the advocacy of her case, on day 7.

15. At 10am on the morning of day 7, 12th August, the Claimant renewed her application to vacate the hearing. The Respondent, in its response to the application to vacate on day 6, observed that the Claimant was not relying on

any ill health, which could be a reason to postpone. On day 7 the Claimant added ill health as a reason. The Claimant adduced an Med3 fitnote, which stated that she had been assessed that day by Dr Upasana and deemed unfit to work due to anxiety and depression from 12th August 2025 for 4 weeks. No other medical evidence was provided. Dr Upasana had not considered whether the Claimant was unfit to present her own Claim.

16. The Respondent considered that this application was an abuse of process. It asserted that the Claimant had made no reference to being unwell on her day 6 application to postpone, but having heard being unwell could be a reason to vacate, had returned on day 7 to assert that she was now unwell.
17. The Tribunal dismissed the Claimant's second application to postpone the hearing. In short form, it relied on the reasons it had given in refusing the application made on day 6. In addition it noted that the Claimant had made no reference to being unwell on day 6, and the medical evidence that she had adduced on day 7 said nothing about her ability to present her case and/or describe why she felt she had been discriminated against and treated unfairly. We had no medical evidence that the Claimant was unable to put her case. We observed again that the Respondent had not caused or contributed to the current situation at all and that the current situation was entirely of the Claimant's own making.
18. That said, we noted that the Claimant and her witnesses had already given their evidence, so she would not face the stress of doing so going forward. We noted that we were an experienced panel, very used to dealing with litigants in person. We had all of the documents, all of the Claimant's witness evidence and had read all of the Respondent's witness evidence. As an adjustment for the Claimant we agreed to ask our questions of the Respondent's witnesses first, to which she could supplement with any of her own cross examination afterwards. This was to assist the Claimant's appreciation of the issues we had to determine.
19. That adjustment remained in place for the first two Respondent witnesses to be called. We reverted to the standard practise of having the Claimant cross

examine first, before our questions, because after the first two Respondent witnesses it was clear that the Claimant was very capable of putting her case, taking the witnesses to documentation not previously considered and asking appropriate questions to test their evidence.

20. We turn now to the List of Issues that we had been tasked to determine.

[3] The List of Liability Issues

21. The List of Issues was identified and recorded by Employment Judge Faulkner **[HB52]**. The issues contained both liability and remedy issues. We have recited the liability issues only at this stage, to include ACAS Code breach issues. Some have been rephrased slightly to reflect discussions with the parties:

Time limits

1. *Given the date the Claim Form was presented (5th March 2024) and the date that ACAS was notified of a dispute by the Claimant (6th January 2024) any complaint that happened before 7 October 2023 may not have been brought in time.*
2. *What was the Claimant's effective date of termination? Was it 3rd October 2023 or 9th October 2023?*
3. *Were the unfair dismissal and public interest disclosure detriment complaints raised out of time, as defined in s111 **ERA**? The Tribunal will decide:*
 - 3.1. *Did the complaint made to the Tribunal occur on or after 7th October 2023?*
 - 3.2. *To the extent not, was the complaint made within such further period as the Tribunal considers reasonable, in a case where it is satisfied that it was not reasonably practicable for the complaint to have been presented in time?*
4. *Were the discrimination and victimisation complaints raised out of time, as defined in s123 **EgA**? The Tribunal will decide:*
 - 4.1. *Did the complaint made to the Tribunal occur on or after 7th October 2023?*
 - 4.2. *To the extent not, was there conduct extending over a period which ended on or after 7th October 2023?*

- 4.3. *To the extent not, was the complaint made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide: (i) Why was the complaint not made to the Tribunal in time? (ii) is it just and equitable in all the circumstances to extend time?*

The ACAS Code of Practice on Disciplinary Procedures

5. *The ACAS Code of Practice on Disciplinary Procedures applied.*
6. *Did the Respondent unreasonably fail to comply with it?*
7. *If so, would it be just and equitable to increase the Claimant's basic and compensatory awards? By what proportion?*

Unfair dismissal

8. *What was the reason or principal reason for dismissal? The Respondent says the reason was conduct. The Tribunal will need to decide whether the Respondent genuinely believed the Claimant had committed misconduct.*
9. *If the reason was misconduct, did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:*
- 9.1. *There were reasonable grounds for that belief.*
- 9.2. *At the time the belief was formed the Respondent had carried out a reasonable investigation.*
- 9.3. *The Respondent otherwise acted in a procedurally fair manner, including in relation to the appeal against dismissal.*
- 9.4. *Dismissal was within the range of reasonable responses.*
10. *If the Claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct? If so, would it be just and equitable to reduce the Claimant's basic and compensatory award? By what proportion?*

Protected disclosure

11. *Did the Claimant make one or more qualifying disclosures as defined in s43B **ERA**? The Tribunal will decide:*
- 11.1. *What did the Claimant say or write? When? To whom? The Claimant says she made a disclosure as follows by way of a formal complaint of*

- race discrimination on 19th October 2023 in her appeal against dismissal.
- 11.2. Did the Claimant's appeal disclose information?
 - 11.3. Did the Claimant believe the disclosure of information was made in the public interest? She says that she complained of discriminatory practices affecting herself and others.
 - 11.4. Was that belief reasonable?
 - 11.5. Did she believe it tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation, namely, to comply with the Equality Act 2010?
 - 11.6. Was that belief reasonable?
 - 11.7. Was the disclosure made to the Claimant's employer.

Detriment

- 12. The Respondent (by the actions of Christian Ward) did refer the Claimant to the Nursing and Midwifery Council ('NMC') on 20th October 2023.
- 13. By doing so, did it subject the Claimant to a detriment?
- 14. If so, was it done on the ground that she made a protected disclosure?

Direct race discrimination

- 15. The Claimant describes her race as Black African.
- 16. Did the Respondent do the following things:
 - 16.1. By Mini Raja (Ward Manager), on or around 25 April 2023, failing to provide bereavement support to the Claimant in relation to the death of Patient A;
 - 16.2. By Rachel Tomkins (Deputy Divisional Director), on 28 April 2023, suspending the Claimant whilst she was writing her care plan in relation to Patient A (which she thus could not complete). It is accepted she was suspended.
 - 16.3. By Christian Ward (Deputy Chief Nursing Officer), on 3 October 2023, dismissing the Claimant with effect from 9 October 2023. It is accepted that the Claimant was thus dismissed.
 - 16.4. By Mr Ward taking into account the NMC Code of Conduct, in deciding to dismiss the Claimant.
 - 16.5. By Mr Ward, referring the Claimant to the NMC. It is accepted that it did.
- 17. Was that less favourable treatment? The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. 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. The Claimant relies on a hypothetical comparator, namely:

- 17.1. *A White nurse whose patient had died in materially similar circumstances to those in which Patient A died;*
- 17.2. *A White nurse who conducted themselves in the same or a materially similar way to the Claimant.*
- 18. *If so, was it because of race?*
- 19. *Did the Respondent's treatment amount to a detriment?*

Victimisation

- 20. *The Claimant did a protected act when she raised a formal complaint of race discrimination on 19th October 2023 in her appeal against dismissal.*
- 21. *The Respondent did refer the Claimant to the NMC.*
- 22. *By doing so, did it subject the Claimant to a detriment?*
- 23. *If so, was it because the Claimant did the protected act?*

[4] The Evidence

- 22. We were provided with an agreed Hearing Bundle **[HB]** which ran to 464 pages and an agreed Disciplinary Investigation Bundle **[DIB]** which ran to 286 pages. Over the course of the hearing we granted permission for the following documents to be added:

- 22.1. Claimant's Payslips;
- 22.2. Equality for Black Nurses email to the NMC dated 14th December 2024;
- 22.3. Mitigation evidence relating to post dismissal job applications;
- 22.4. Letter from NMC to the Claimant dated 17th March 2025 with attachments;
- 22.5. NHS Staff Survey Benchmark report 2023 (extract);
- 22.6. Workforce Race Equality Standards ('WRES') survey (extract);

- 22.7. NMC's Together in Practice Ambitious for Change report 20th October 2020 (extract);
 - 22.8. NMC Independent Culture Review July 2024 (extract);
 - 22.9. The NHS Just Culture guide;
 - 22.10. The NMC's Raising Concerns guidance (extract);
 - 22.11. NMC's Advice and information for employers of nurses and midwives (extract);
 - 22.12. The Investigation Report with Ms Glienke-Hammet's annotated notes of the disciplinary hearing;
 - 22.13. The Investigation Report with Mr Ward's annotated notes;
 - 22.14. Ms Glienke-Hammet's manuscript notes of the appeal hearing;
 - 22.15. UK Visa & Immigration website screenshots;
 - 22.16. Incident report for Patient A;
 - 22.17. Falls Risk Assessment and Falls Care Plan (said to relate to Patient A).
23. We were provided with the following witness statements on behalf of the Claimant:
- 23.1. Okiemute Ogoh, the Claimant. She gave oral evidence and was cross examined on her statement;
 - 23.2. Evelyn Mensah, an Equality for Black Nurses representative. After discussion with the parties it was agreed that her witness statement would be taken as read, and not subject to cross examination, as it did not assist the Tribunal with the issues it had to decide;
 - 23.3. Irene Oluku, a nurse. She gave oral evidence and was cross examined on her statement;
 - 23.4. Deborah Eyitayo, a nurse. She gave oral evidence and was cross examined on her statement;
 - 23.5. Dorathy Chinweze, a nurse. By an email sent at 5.55pm on 11th August 2025, she asked to withdraw her evidence and did not attend to give oral evidence. Her statement was treated as another document in the bundle for which limited weight was attached by the Tribunal.

24. We were provided with the following witness statements on behalf of the Respondent:

- 24.1. Julie Corns, Matron in the Acute Medicine Unit ('AMU'). She gave oral evidence and was cross examined on her statement;
- 24.2. Michael Gedling, Porter. He gave oral evidence and was cross examined on his statement;
- 24.3. Mini Raju, band 7 nurse and Clinical Lead in the AMU. She gave oral evidence and was cross examined on her statement;
- 24.4. Rachel Tomkins, Divisional Director of Nursing for Medicine and Long Term Conditions. She gave oral evidence and was cross examined on her statement;
- 24.5. Matthew Carrolan-Smith, Matron and Investigating Officer. He gave oral evidence and was cross examined on his statement;
- 24.6. Rebecca Harding, HR Advisor to Matthew Carrolan-Smith. She was not called to give oral evidence. Her statement was treated as another document in the bundle for which limited weight was attached by the Tribunal.
- 24.7. Christian Ward, Deputy Chief Nursing Officer and Disciplinary Hearing Officer. He gave oral evidence and was cross examined on his statement;
- 24.8. Weronika Glienke-Hammett, People Partner and HR Advisor to Christian Ward. She gave oral evidence and was cross examined on her statement;
- 24.9. Lisa Carroll, Chief Nursing Officer and Appeal Hearing Officer. She gave oral evidence and was cross examined on her statement.

25. We now turn to our findings of fact:

[5] Findings of Fact

26. We have not recited every fact in this case or sought to resolve every dispute between the parties. We have limited our analysis to the facts that were relevant

to the Issues that we were tasked to resolve. We made the following findings of fact on the basis of the material before us, taking into account contemporaneous documents, where they exist and the conduct of those concerned at the time. The Tribunal resolved such conflicts of evidence as arose on the balance of probabilities, taking into account its assessment of the credibility of the witnesses and the consistency of their evidence with the surrounding facts. Our conclusions on facts that are central to the issues we have to resolve are set out in our Conclusions section below. Our general findings of fact are as follows:

27. The Claimant, who was known by many as Alexis, commenced employment with the Respondent on 16th August 2021. She is a Nigerian national and was able to live in the UK by reason of a work Visa that named the Respondent as her sponsor. If the Claimant were to lose her job her right to remain the UK would be jeopardised. The Claimant is a qualified Band 5 Staff Nurse, who, at all material times worked on the Respondent's Acute Medical Unit (AMU). This ward catered for very poorly patients. Typically patient stays in that ward were of short duration, with patients transferring to a general ward once their need for acute care had passed.
28. At 5.27pm on 24th April 2023 Patient A attended at the Respondent's Emergency Department. He was admitted at 9.45pm **[DIB16 & DIB167]**². His daughters raised concerns over weight loss, chest pain, generally feeling unwell and just looking different. At 2.30am on 25th April 2023 Patient A was transferred to the AMU. A Falls and Deconditioning Risk Assessment was completed at the time in which 'no' had been recorded against all the assessed risks of fall **[HB568]**.
29. In the afternoon of 25th April a Hospital Porter, Michael Gedling, was returning a bed to bay 5 in the AMU when he heard a crash coming from bay 4 **[DIB31]**. On investigation he saw that Patient A was on the floor. He called the Claimant, who was covering bay 4 and helped her get Patient A back into bed. He then

² Refer to pages within the Disciplinary Investigation Bundle.

reported to the Progress Chaser, Amanda Grieve, that the patient in bed 4.2 had had a fall.

30. At 6.45pm on 25th April, the Nurse in Charge, Mini Raju, completed a Clinical Incident report regarding a 'Fall unwitnessed at bedside' incident with Patient A, recorded as occurring at 4.30pm. The incident description stated:

'Progress Chaser on duty called me and said patient had fall. I went in to see patient with progress chaser, however the nurse on the Bay denied about patient fall. Patient was on the bed and he was alert. Advised her to observe the patient to prevent fall. Therefore, I came out from the Bay and carried on with other duties in the clinical area.'

31. The RCA Report [548], completed by the Ward Manager, Melissa Perry, on 27th April 2023 said:

'Progress chaser Amanda Grieve and Abby Law informed Nurse in Charge Mini Raju of what the Porter had informed them of. Nurse in charge approached Staff Nurse to have an update regarding patient falls to which Band 5 responded that patient had not had a fall. He was about to have a fall, but the patient sat back down.'

32. The RCA report recorded that the Medical Emergency Team were called at 5.24pm after the nurse doing observations alerted that the patient had stopped breathing. CPR was commenced. Unfortunately CPR was not successful and Patient's A's death was recorded at 5.48pm.

33. The Vital Pac system's record of Patient's A treatment that day (25th April) had its last entry (made by the Claimant) at 4.53pm [DIB98]. It recorded a number of clinical observations including pulse, respiratory rate, oxygen saturation. The patient's post fall neurological observations (limb mobility, pupils, Glasgow coma score) had not been inputted.

34. The Claimant's clinical notes for Patient A reveal the following: At 5.53pm the Claimant recorded [DIB116] (summarised at [DIB19]) *'I was informed by a member of staff (Porter) that patient was sat on the floor. On arrival, patient was sat on the upright floor. ... patient observations were done and he was helped*

back into bed. ... The fall was escalated to nurse in charge who came in'. The Claimant continued 'whilst assessing the patient I asked assistance from Donna McKensie, the Clinical Support Worker, to help assess the patient. I noticed the patient got blanked. Pulled the buzzer ... cardiac compression was commenced'.

35. We find on the balance of probabilities that the Claimant did check for injuries, and finding none, Mr Gelding did run his arms under Patient A's armpits and carefully lift the patient up from his position by the bed, onto the bed, and as he rose the Claimant swung his legs onto the bed. The Respondent asserted that this was an unsafe procedure that could have further injured the patient and that the lift (rather than the fall) could have contributed to the patient's death shortly afterwards. As a matter of fact we know that it did not. The Respondent asserts that Mr Gedling and the Claimant should have used a hover jack device which would have enabled the patient to be lifted without risk of further injury.
36. The Respondent's Moving and Manual Handling Policy contains a section on controversial manual lifting techniques **[HB201]**. It does not outlaw them. The policy states at paragraph 5.6:

'Colleagues must use their professional knowledge and judgement to assess the situation and make a balanced decision, considering the best interests of the person and their own health and safety. On no account should a manual lift be undertaken as common practice. It is to be done as a last resort after all other options are being considered or if faced with an unforeseeable or emergency event.'

Controversial techniques are known to have the potential to cause injury to both employees and patients and should not be used (Drag lift, Australian lift, etc). It cannot be over emphasised that manual lifting of patients involves some risk of postural stress and if these risks are to be reduced, staff must stop using them.'

37. We find as a fact that there was no hover jack on bay 4. The Respondent told us that there would have been a hover jack on the AMU, however it failed to provide any evidence to support that. Mr Gedling told us during cross examination³ that it did not occur to him to ask for or use a hover jack and that

³ At 12.20pm on day 7, 12th August 2025

after the event he was not disciplined or given training on the use of a hover jack.

38. Given the wording of paragraph 5.6, which does outlaw manual lifting as common practice but allows for professional knowledge and judgment to be used, specifically in unforeseeable or emergency situations, which Patient A's fall clearly was, at best, unforeseen, we did not consider that the manual lifting of Patient A, in those circumstances, can fairly be described as misconduct or acting in breach of policy.
39. The Medical Examiner, Jay Gupta, recorded severely decompensated heart failure as the primary cause of death, with pneumonia associated with Covid-19, hypertension, diabetes, chronic kidney disease and normocytic ananemia. The Medical Examiner went on to record **[HB550]**:

'It does appear that this gentleman who was getting increasingly frail had severe heart failure with preserved ejection fraction and the fall was the direct effect of the same process that led to his death and did not cause his death as it appears that he was already deteriorating rapidly. Postural instability and falls would be expected with the cerebral hypoxia that his heart failure would be leading to. I do not feel the fall caused or contributed to the death.'

40. An issue arose as to whether the Claimant had escalated the fall and whether the Claimant had denied to Mini Raju that the patient had fallen at all. The Ward Manager, Melissa Perry, commenced an initial investigation without speaking to or obtaining an account from the Claimant. She obtained 5 statements, which are all contemporaneous to the events they describe. The most salient stated:

40.1. Mini Raju (Nurse in Charge) **[DIB29]** stated that she had been told by the Progress Chaser Abby Law that the patient in bay 4, bed 2 had fallen. On arriving at bay 4 the Claimant said the patient didn't have a fall but he was about to fall and he sat down. Mini Raju asked the Claimant twice more but she said that no patient had fallen.

40.2. Amanda Grieve (Progress Chaser) **[DIB32]** stated that she had just returned with the Porter from transferring a patient to Ward 14 and was in

the MDT room on the computer, when the Porter came to the reception desk to say the patient in bay 4-2 had just fallen and he had helped the nurse get the patient back into bed. She and Abby Law went to find the Nurse in Charge, and then Abby and Mini went to bay 4.

- 40.3. Abby Law (Flow Nurse) **[DIB33]** stated that at 4.45pm Amanda Grieve told her that the Porter had found Patient A on the floor and then helped the Claimant get him back into bed. She escalated this to Mini Raju. On arriving at Bay 4 Mini Raju said that she had been told Patient A had fallen, to which the Claimant said 'he didn't fall he just tried to get out of bed'.
- 40.4. Donna McKensie (Clinical Support Worker) patient notes **[DIB44]** which recorded that at about 4.55pm the Claimant had asked her to help do a bladder scan on Patient A. As she went to get the bladder scan she recalled the Claimant saying that the patient had fallen, and when she asked who, the Claimant said bed 4.2 (Patient A). She recalls Patient A seemed vacant, and after neither got a response from calling Patient A, the Claimant pulled the emergency buzzer.
- 40.5. Laura Evans, Band 7 nurse, was with Mini Raju when the Claimant was observed writing up patient notes **[DIB50]**. She confirmed that she did not see the Claimant dispose of any notes.
41. Following the initial fact-find undertaken by Melissa Perry, on 26th April 2023 a risk assessment for exclusion or temporary redeployment of the Claimant **[HB126]** was undertaken by Rachel Tomkins (Deputy Divisional Director for Nursing) and Weronika Glienke-Hammett (People Partner). It concluded that there was an extreme risk to patient safety as the Claimant had not escalated a clinical incident and initially denied a patient fall, such that the Trust was unable to ascertain the Claimant's integrity in reporting an incident of a deteriorating patient. This led to the Claimant's suspension on 1st May 2023 **[HB245]**. The letter of suspension stated:

'The following allegations have been made:

- A patient fell whilst in your care and you did not escalate to the nurse in charge or medical staff.*
- The patient's condition deteriorated and you did not take any observations or escalate to the nurse in charge or medical team.*
- The above breached the NMC code of conduct.*
- You did not follow the Trust's internal policies / procedures.'*

42. On 25th May 2023 Rachel Tomkins wrote to the Claimant **[HB145]**. She told her that the incident did not meet the serious incident criteria, but that an investigating officer had been appointed.

43. On 1st June 2023 the Respondent's People Partner, Ms Glienke-Hammet emailed Rachel Tomkins, Matthew Carrolan-Smith, Rebecca Harding and Melissa Perry about the Claimant **[HB150]**. Extracts from that email reveal that she said:

'[The Claimant] is a member of the Royal College of Nurses so not sure if she will be supported at any formal meetings. I do have a feeling she might be difficult. Personal view, regardless of the coroner report, it is not looking good for her.'

44. These observations are likely to cause the readers (including the investigating officer) to form a negative view of the Claimant. We do not consider that they were appropriate observations to make, and in doing so Ms Glienke-Hammet showed poor judgment.

45. On 5th June 2023 Matthew Carrolan-Smith wrote to the Claimant to invite her to an investigation meeting **[HB154]**. It set out 4 allegations of potential gross misconduct, namely (i) denying a patient had fallen, (ii) not escalating a patient fall to the Nurse in Charge or medical team, (iii) not completing the post falls policy and (iv) falsely documenting in notes following a cardiac arrest.

46. On 7th June 2023 Occupational Health reported that the Claimant displayed symptoms of low mood due to the investigation process **[HB162]**. It concluded that the Claimant was fit to work but recommended that the investigation be

concluded as quickly as possible as the ongoing investigation was difficult for her to deal with.

47. On 8th June 2023 Melissa Perry emailed Mr Carrolan-Smith with an account of the incident provided by Irene Oluku that day **[HB167]**. It recalled after the shift handover (circa 7.30pm) seeing the Claimant in the staff room 'really upset'.
48. Mr Carrolan-Smith conducted an investigation in which he interviewed a number of people. The salient parts of those investigations revealed:
 - 48.1. Mini Raju, the Nurse in Charge (interviewed on 12th June) said that on getting to bay 4 she asked who had the fall and the Claimant said, 'no, nothing, he didn't fall'. Mini Raju then referred to returning between 5pm and 5.30pm during the cardiac arrest. After the attempts to resuscitate Patient A had failed, she said that Sarah Brown, Outreach Nurse, said that she had heard that the patient had had a fall. Mini Raju said this made her angry and she confronted the Claimant, who, this time, said yes, the patient had had a fall. Mini Raju then said that she saw the Claimant again at about 7.30pm, having asked her to complete her notes. She says that the Claimant tore up her notes and put them in the bin.
 - 48.2. Michael Gelding, the Porter (interviewed on 15th June 2023 **[DIB35]** and again on 4th July 2023 **[DIB73]**). He confirmed the details of his fact find statement and added that he had found Patient A lying on the floor flat, near enough on his side **[DIB36]**. He said that the Claimant unravelled the drip, and then he lifted the patient from under his arms and helped him onto the bed, whilst the Claimant swung his legs round onto the bed.
 - 48.3. The Claimant (interviewed on 21st June 2023 **[DIB75]**). This was the first occasion that the Respondent had engaged with the Claimant to establish her account of what happened. She confirmed that the porter had told her that a patient was on the floor. She found him sitting on the floor. Having established no signs of injury, she and the Porter got

Patient A back into bed. She recalls being joined by Abby Law and Mini Raju, and when asked, confirmed that Patient A had indeed been found on the floor, having had an unwitnessed fall. She goes on to confirm that during a bladder scan the patient was unresponsive and the emergency buzzer was activated. She confirmed that she began the process of inputting her post fall observations into a Vital Pac (an iPad like device for inputting clinical records). The battery was low and the machine switched off during the process. She was then able to complete her patient notes. She denied falsifying any of the patient notes. Later, at the shift handover at about 7.30pm she described how Mini Raju escorted her out of the AMU ward, as part of the investigative process. She recalls Mini Raju telling her to check her pockets as she (the Claimant) would not be coming back onto the ward.

- 48.4. Abby Law, Flow Nurse (interviewed on 4th July 2023 **[DIB94]**). She added some detail to her first account of arriving in bay 4. She said '*we were told the patient had a fall*' and the Claimant said '*no, he tried to get out of bed, but we got there in time*'. She went on to say that she witnesses Mini Raju 'ask at least 3 times' whether Patient A had fallen, which the Claimant denied.
49. Rebecca Harding (on behalf of the investigation) emailed Irene Oluku on 3rd July 2023 asking for her account of the incident, as she had been on shift at the time. Ms Harding sent Ms Oluku a chaser email on 13th July 2023 as no response had been received **[DIB271]**. Ms Harding also asked and chased Deborah Eyitayo for her account, and Olivia Richardson for her account, in both instances without success **[DIB272-273]**.
50. We have seen some undated investigation notes prepared by Mr Carrolan-Smith **[HB190]**. The notes contained a query whether Deborah Eyitayo should be questioned as the Claimant had said that she had asked to borrow Ms Eyitayo's Vital Pac as the battery on hers was running low.
51. Mr Carrolan-Smith then submitted his investigation report, dated 'July 2023' **[DIB287]**. Of the four allegations Mr Carrolan-Smith concluded **[DIB297]** that:

- 51.1. there was a case to answer on denying a patient had fallen, given the evidence of Mini Raju and Abby Law;
 - 51.2. there was a case to answer on not escalating a fall to the Nurse in Charge, given the evidence of Mini Raju and Abby Law;
 - 51.3. there was a case to answer on not completing post falls policy as there was no record of neurological observations on the Vital Pac system;
 - 51.4. there was no case to answer on falsifying notes following a cardiac arrest as there was no other witness to corroborate the allegation.
52. Having set out which allegations should proceed to a disciplinary hearing, Mr Carrolan-Smith made the following recommendations **[DIB299]**:
- 'In respect to [the Claimant] as a nurse this case details a breach of the Code of Conduct and potentially requires a referral to the Nursing and Midwifery Council (NMC). The investigating team is not aware of any referral being made to the NMC in relation to this matter. The investigating team would recommend that the disciplinary manager makes the information within this report available to the NMC for consideration.'*
53. On 18th August 2023 Rachel Tomkins invited the Claimant to a disciplinary hearing **[DIB274]**. It warned her that she faced gross misconduct allegations. The allegations had been reframed since the suspension and now referred to:
1. Denying a patient had fallen.
 2. Not escalating a patient fall to the nurse in charge or medical team.
 3. Not completing post fall policy to maintain patient safety.
 4. Falsely documenting in notes following cardiac events.
54. Inexplicably the disciplinary invitation letter still contained allegation No.4 (Falsely documenting in notes following cardiac events) notwithstanding the conclusion of the investigator that the allegation should be dropped as there was no evidence to support it. On 18th September 2023 Ms Tomkins sent out the same invitation letter (still containing allegation 4) **[HB 250]** but this time setting the date of the disciplinary hearing for 3rd October 2023.

55. On 29th September 2023 Mr Carrolan-Smith wrote again to Ms Eyitayo asking her to provide evidence for the investigation [HB260]. Ms Eyitayo replied the day before the disciplinary hearing [HB259]. She confirmed that Patient A had fallen in Bay 4, that she was sharing with the Claimant. Ms Eyitayo was not in Bay 4 when the fall happened, but on her return saw the Claimant attending to Patient A. She recalls that the Claimant told her that the patient had had an unwitnessed fall. The Claimant was doing the patient's vitals and had asked to borrow Ms Eyitayo's Vital Pac, which she gave to the Claimant. She recalls that after Patient A's cardiac arrest the Claimant told her that she (the Claimant) had been unable to update the patient observations on the Vital Pac due to a flat battery. She told the Claimant to document the observations in the patient notes.
56. The disciplinary hearing proceeded on 3rd October 2023. It was attended by the disciplinary hearing decision maker, Christian Ward, the Claimant, Jaqueline Taylor, the Claimant's RCN representative and Weronika Glienke-Hammet, a People Partner from Human Resources. Remarkably no notes of the meeting were taken, save for Mr Ward's manuscript notes, which covered only 1½ pages [HB261] and Ms Glienke-Hammet's equally sparse handwritten note, also covering 1½ sides [HB544 & HB543]. Mr Ward noted a difference in account between the Porter and the Claimant on discovering Patient A on the floor. His notes appeared to contain a concession from the Claimant that she acknowledged that she should have done what she was expected to do and that she took responsibility for not pulling the bell or calling a doctor [HB262]. They made no reference to any exploration of the discussions between Mini Raju and the Claimant as to whether Patient A had fallen. On any analysis these meeting notes were insufficient.
57. The hearing was adjourned for a short period. In that time Mr Ward wrote out a decision script to read to the Claimant when the meeting resumed [HB263]. It said:

'Having listened to all the evidence and your accounts I have found the following: that you have given differing accounts in relation to the fall that [Patient A] had on 25th April 2023. The significant issue is that Mini Raju asked

you 3 times and on these 3 occasions I have a staff member providing confirming statements that you state that the patient did not fall. These were not 'yes' and 'no' answers but extended narrative with no room for confusion. Balance of probability is that you have given a false account to Mini Raju. You also failed to complete / follow the post fall to maintain patient safety. Therefore, I find allegations one to three found.

I have considered mitigation, but you are up to date with the relevant training, had sufficient staff in attendance, and had the correct equipment to deal with the situation. This is gross misconduct and I find that I am unable to continue your employment due to patient safety and your character not meeting our standards of probity. Therefore, I'm dismissing you with eight weeks' notice and annual leave accrued.'

58. At some point after the original writing of that manuscript note, it is clear that an additional phrase was added to the last line by Mr Ward. The late addition, written in tiny letters above the line into which it was to be inserted, was as follows: *'Therefore, I'm dismissing you with eight weeks' notice **paid in lieu** and annual leave accrued'.*
59. We consider that the manuscript addition was made after the meeting was concluded and not read to the Claimant when the decision was delivered at the resumed hearing. We have reached this conclusion on two grounds. The first is that it is clear that the expression 'paid in lieu' was added after the original script had been written. The second reason is that the first page of Ms Glienke-Hammet's manuscript notes [HB544] of the disciplinary hearing record that the Claimant was supported by Jaquie Taylor and that the meeting started with Matt (Carrolan-Smith) reading from his report. In the top right hand corner of her notes, Ms Glienke-Hammet added the text *'dismissed 8 weeks notice + AL'*. We conclude that this was her one line record of the decision, namely dismissed on 8 weeks' notice plus annual leave. It made no reference to notice being paid in lieu or that the dismissal was with immediate effect. It directly contradicts any such suggestion that the dismissal was with immediate effect.
60. At 9.02pm that night Ms Glienke-Hammet emailed Mr Ward to say that she would write up the letter of dismissal. She noted that Mr Ward had a good summary of the decision and asked for it to be scanned to her to populate the decision. At 2.21pm the following day (4th October) Mr Ward emailed Ms

Glienke-Hammet stating that he had typed up his handwritten dismissal script for her. The email contained a typed version of what Mr Ward said was his dismissal script [HB283]. The typed version was significantly more detailed than the manuscript version written at the time. This suggests to us that Mr Ward did not consider his handwritten dismissal script to be sufficient for the formal record. He made a number of important additions to it. The expression 'paid in lieu' had been promoted to the main body of the text and did not appear as a late addition. The typed version referred to a right of appeal and ended by saying '*I will be referring your case to the NMC for their consideration*'.

61. On 4th October 2023 Ms Glienke-Hammet emailed Vivian Brobbey to ask what the process was regarding Visas and the Trust's sponsorship when an employee's contract is terminated due to a formal disciplinary hearing [HB270]. She was told by Ms Brobbey that the Trust had to notify the Home Office within 10 working days. She replied to that, also on 4th October, [MB269] by stating that the Claimant had been dismissed on 3rd October but had 21 days to lodge an appeal. She then asked 'How quickly will the Home Office contact her regarding deportation?' It is clear that Ms Glienke-Hammet was well aware that the Claimant was not just losing her job, but also faced losing her career following the NMC referral as well as deportation following the cessation of her employment which was directly linked to her right to remain in the UK.
62. On 9th October 2023 the dismissal outcome letter was sent to the Claimant. It was signed off by Mr Ward, but its author was Ms Glienke-Hammet. It had been further amended to give it even more detail and polish. It said, for the first time:

'You also did not follow manual handling as taught to you in relation to managing patients who had fallen, which could have caused more harm'.

*'I have no other option but to dismiss you for gross misconduct **with immediate effect**. In lieu of notice you will receive 8 weeks paid and any outstanding annual leave you had accrued up to the 3rd of October 2023. I will refer this matter on the outcome to the NMC for consideration. I will do this within the next 7 days'.*

63. Whilst the Claimant did not face an allegation of using the incorrect lifting technique, it does appear to have been included in the factual matrix of the matters held against the Claimant.
64. We have seen a screenshot from the UK Visa & Immigration website. It recorded that the Sponsor (the Respondent) had stopped sponsoring the migrant worker (the Claimant) having dismissed her on 3rd October 2023 **[MB275]**.
65. We should note that the possibility that the Claimant's dismissal had been tainted by race and /or was said to be race discrimination does not appear anywhere in Mr Ward's brief meeting notes or Ms Glienke-Hammet's brief meeting notes, or the various incarnations of the dismissal outcome referred to above. We conclude that neither the Claimant or her RCN representative, Ms Taylor, suggested that the Claimant's dismissal had been tainted by race discrimination. Had it have been, we think that point would have appeared somewhere in the documentary evidence of the disciplinary hearing.
66. On 19th October 2023 the Claimant submitted an appeal against her dismissal **[HB297]**. She was no longer represented by Ms Taylor from the RCN. Her new representative was Naomi Bennett, founder of the organisation Equality 4 Black Nurses ('E4BN'). The appeal opened with '*This appeal has been made because we firmly believe that racial discrimination and unfairness played a significant role in the decision making.*' It was rightly accepted by the Respondent that this appeal qualified as a protected act for the purposes of the victimisation provisions within s27 **Equality Act 2010**.
67. Some 10 days had passed since the dismissal letter which informed the Claimant that a referral to the NMC would be made 'within the next 7 days'. On 20th October 2023 (some 11 days since the disciplinary outcome, and 1 day after the appeal) Mr Ward did submit his referral of the Claimant to the NMC **[HB423]**. This had the potential to end the Claimant's nursing career. The referral was acknowledged on 23rd October 2023 **[HB313]**.

68. On 30th November 2023 the Claimant submitted a doctor's letter which requested a virtual appeal hearing on account of the Claimant's stress and anxiety **[HB358]**.
69. The appeal hearing was conducted by Lisa Carroll on 5th February 2024 **[HB462]**. The Claimant attended with her E4BN representative, Naomi Bennett. The allegations of race discrimination were explored at the hearing **[HB463]**.
70. Lisa Carroll dismissed the Claimant's appeal by letter dated 8th February 2024 **[HB405]**. Her rationale centred on the Claimant's perceived lack of probity. Ms Carroll concluded:

'You did not show proper behaviour to patient safety, showed no further insight on whether you should have told the truth at the time and [we] concluded that dismissal was necessary due to a breakdown of trust and confidence following this patient safety incident; this was a matter of probity, and lack of assurance that similar insufficient candour would not occur again. On this basis, the appeal panel concluded that the finding of dishonesty goes to the very heart of the employment contract and your professional obligations, and the sanction was a reasonable one.'

71. The Claimant has found it difficult to find new employment as a Registered Nurse, with her applications often failing at the point references were taken. In October 2024 she was able to secure a part-time 2 day a week position as a live in Carer, earning £240.00 per week **[HB476]**. As at 17th March 2025 the NMC investigation into the Claimant's fitness to practice was still ongoing.
72. Having set out the factual history of this matter, it is now necessary to set out the legal principles that guided our analysis of the issues in this case.

[6] The Law

73. The law that is relevant to the Claimant's claims are as follows:
74. **Ordinary Unfair Dismissal.** The starting point is s98 **ERA** which states:

98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show: (a) the reason (or, if more than one, the principal reason) for the dismissal, and (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it ... (b) relates to the conduct of the employee,

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer): (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case.

75. The correct approach for the Tribunal to adopt in considering section 98(4) of the **ERA** (as set out in **Iceland Frozen Foods v Jones** [1982] IRLR 439) is as follows:

(1) the starting point should always be the words of [s 98(4)] themselves;

(2) in applying the section an Industrial Tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the Industrial Tribunal) consider the dismissal to be fair;

(3) in judging the reasonableness of the employer's conduct an Industrial Tribunal must not substitute its decision as to what the right course to adopt for that of the employer;

(4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;

(5) the function of the Industrial Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.'

76. The ACAS Code of Practice on Disciplinary and Grievance procedures sets out matters that may be taken into account by tribunals when assessing the reasonableness of a dismissal on the grounds of conduct, as follows:

'Employers and employees should raise and deal with issues promptly and

should not unreasonably delay meetings, decisions or confirmation of those decisions. Employers and employees should act consistently. Employers should carry out any necessary investigations, to establish the facts of the case.

When investigating a disciplinary matter take care to deal with the employee in a fair and reasonable manner. The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee's case as well as evidence against it. Be careful when dealing with evidence from a person who wishes to remain anonymous. In particular, take written statements that give details of the time, place, dates as appropriate, seek cooperative evidence check that the person's motives are genuine, and assess the credibility and weight to be attached to their evidence.

Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made. Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.

If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct. And its possible consequences to enable the employee to prepare to answer the case of the disciplinary hearing. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements within the notification. At the meeting, the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should also be given a reasonable opportunity to ask questions, present evidence, and call relevant witnesses. They should also be given the opportunity to raise points about information provided by witnesses.

Employers should allow an employee to appeal against any formal decision made.

77. For guidance on the level of investigation and on the Respondent's belief that an act of misconduct has occurred, the guidelines provided in **British Home Stores v Burchell** [1979] IRLR 379 still applies:

'What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that

the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.”

78. As at the time of the Claimant's dismissal, the Tribunal is to ask (i) did the Respondent believe the Claimant was guilty of the misconduct alleged, (ii) if so, were there reasonable grounds for that belief, (iii) at the time it had formed that belief had it carried out as much investigation into the matter as was reasonable in the circumstances, and (iv) was the decision to summarily dismiss the Claimant within a range of reasonable responses open to an employer in the circumstances (Yorkshire Housing Ltd v Swanson [2008] IRLR 609)? The range of reasonable responses test applies as much to the procedure which is adopted by the employer as it does to the substantive decision to dismiss (Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23).
79. The employer cannot be said to have acted reasonably if he reached his conclusion in consequence of ignoring matters which he ought reasonably to have known and which would have shown that the reason was insufficient (W Devis & Sons Ltd v Atkins [1977] IRLR 314, HL).
80. It will be possible for an employee to challenge the fairness of a dismissal if an agreed procedure was not correctly followed (Stoker v Lancashire County Council [1992] IRLR 75).
81. The Tribunal should be satisfied as to the appropriate thoroughness of the investigation in career ending cases or where some form of professional status is in jeopardy or where the *consequences* to the employee of a finding of guilt are likely to be severe. Additional care in the investigation is likely to be required (Roldan v Royal Salford NHS Foundation Trust [2010] IRLR 721) in which the Court of Appeal stated:

‘Section 98(4) focuses on the need for an employer to act reasonably in all the circumstances. In A v B [2003] IRLR 405, the EAT (Elias J presiding) held that the relevant circumstances include the gravity of the charge and their potential

effect upon the employee. So it is particularly important that employers take seriously their responsibilities to conduct a fair investigation, where, as on the facts of that case, the employee's reputation or ability to work in his or her chosen field of employment is potentially apposite. In **A v B** the EAT said this: *'The investigator charged with carrying out the inquiries should focus no less on any potential evidence that may exculpate, or at least point towards the innocence of the employee, as he should on the evidence directed towards proving the charges against him'* and ... *'there will be cases where it is perfectly proper for the employers to say that they are not satisfied that they can resolve the conflict of evidence and accordingly do not find the case proved. In my view, it would be perfectly proper in such a case for the employer to give the alleged wrongdoer the benefit of the doubt without feeling compelled to have to come down in favour of one side or the other'*.

82. If it is established that the dismissing officer had a reasonable belief in the Claimants' guilt, it is necessary to consider whether his response to that guilt fell within a reasonable range of responses. In considering the severity of the sanction, it is important that the tribunal does not ask whether a lesser sanction would have been reasonable, but asks instead whether the sanction of dismissal was reasonable (**Securicor Ltd v Smith** [1989] IRLR 356, CA).
83. It will be a very rare case where an employer can reasonably take the view that there could be no explanation or mitigation which would cause him to alter his decision to dismiss (**Sillifant v Powell Duffryn Timber Ltd** [1983] IRLR 91).
84. Finally the fairness of the procedure adopted by an employer is to be assessed at the end of the internal process, which includes any appeal process. (**Taylor v OCS Group Limited** [2006] IRLR 613). The process must be considered in the round. Smith LJ stated:

'If [the Tribunal] find that an early stage of the process was defective and unfair in some way, they will want to examine any subsequent proceedings with particular care. But their purpose in so doing will not be to determine whether it amounted to a rehearing or review, but to determine whether due to the fairness or unfairness of the process procedures adopted, the thoroughness or lack of it of the process and the open mindedness or not, of the decision maker, the overall process was fair, notwithstanding any deficiencies at the earliest stage'.

85. **Polkey and Contributory Fault.** In the event of an unfair dismissal the Tribunal must determine what would have been likely to occurred in the event of a fair procedure being adopted, in accordance with the guidance in **Software 2000 Ltd v Andrews** [2007] IRLR 569. The EAT stated:

'If the employer seeks to contend that the employee would or might have ceased to be employed in any event, had fair procedures being followed, or alternatively, would not have continued in employment indefinitely, it is for him to reduce relevant evidence on which he wishes to rely. ... However, there will be circumstances where the nature of the evidence which the employer wishes to reduce or which he seeks to rely, is so unreliable that the Tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on that evidence can properly be made'.

86. Section 123(6) of the Act states: *'Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding'*. A Claimant guilty of culpable, blameworthy and/or foolish conduct is likely to be the author of his own downfall, which ought to be reflected in no or substantially reduced compensation (**Nelson v BBC** [1979] IRLR 346).

87. **Public Interest Disclosures.** Whistleblowers are protected from suffering any detriment or dismissal from their employer as a consequence of making a public interest disclosure of alleged wrongdoing. The relevant provisions from s43B of the **ERA** state:

43B Disclosures qualifying for protection

- (1) *In this Part a "qualifying disclosure" means any disclosure of information which in the reasonable belief of the worker making the disclosure, is made in the public interest and, tends to show one or more of the following:*
- (b) *that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*

88. A protected disclosure may be made during the employment, but also after its termination (**Onyango v Berkley Solicitors** [2013] IRLR 338 EAT).
89. In **Babula v Waltham Forest College** [2007] 346 the Court of Appeal set out three matters for Tribunals to consider when assessing public interest disclosures. *'The first is whether or not the employee believes that the information he is disclosing meets the criteria set out in one or more of the subsections in ERA 1996, section 43B(1)(a)-(f). The second is to decide objectively whether or not that belief is reasonable. The third is to decide whether or not the disclosure is made in good faith'*. The 'reasonable belief' statutory test is a subjective one.
90. In **Korashi v Abertawe Bro Morgannwg University Local Health Board** [2012] IRLR 4, EAT the Court of Appeal stated *'as to any of the alleged failures, the burden of proof is upon the Claimant to establish upon the balance of probabilities, any of the following, (a) there was in fact, and as a matter of law, a legal obligation or other relevant obligation on the employer in each of the circumstances relied on; (b) the information disclosed tends to show that a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he is subject.'*
91. Qualifying disclosures must involve a disclosure of information, ie must convey facts, rather than merely raise an allegation. In **Williams v Michelle Brown AM** [2019] UKEAT/0044/19 the EAT stated *'If the Tribunal properly concludes that the factual content of the claim disclosure cannot reasonably be construed as tending to show a criminal offence [or other relevant breach of section 43B(1)] then that conclusion will by itself be fatal to the proposition that there was a qualifying disclosure relying on section 43B(1). That will be so regardless of what the Claimant subjectively believed, and regardless of whether or the other elements are shown'*.
92. The distinction between information and comment or assertion was illustrated by Slade LJ in **Cavendish** as follows:

'the ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around." Contrasted with that would be a statement that "You are not complying with Health and Safety requirements". In our view this would be an allegation not information.'

93. The question is whether there is sufficient by way of information to satisfy section 43B. This will be very much a matter of fact for the Tribunal. The more the statement consists of unsupported allegation, the less likely it will be to qualify, but this is as a question of fact, not because of a rigid information/allegation divide.
94. It is then necessary to determine that the worker has a *reasonable belief* that the disclosure *is in the public interest* and tends to show one of the six statutory categories of 'failure'. The definition of a qualifying disclosure is '*disclosure of information which, in the reasonable belief of the worker, is made in the public interest*'. Disputes that are essentially personal contractual disputes are unlikely to qualify (**Millbank Financial Services Ltd v Crawford** [2014] IRLR 18 EAT). It is not sufficient that the Claimant has simply made *allegations* about the wrongdoer especially where the claimed whistleblowing occurs within the Claimant's own employment, as part of a dispute with his or her employer (**Cavendish Munro Professional Risks Management v Geduld** [2010] IRLR 38).
95. **Detrimental treatment for raising a public interest disclosure.** It is for the Claimant to show that he was subjected to a detriment by an act or a deliberate failure to act by his employer or co-worker. The claim would only be made out if the Claimant was subjected to the detriment on the ground that he had made the protected disclosure. The relevant test is whether the protected disclosure materially influenced, in the sense of being more than a trivial influence, the treatment of the Claimant (**Fecit & Others v NHS Manchester** [2011] IRLR 111). Section 48(2) of the Act states that the onus is on the employer to show the ground on which the act or deliberate failure to act is done. The 'on the

ground that' test focuses on the relevant decision-makers mental processes. The test is not satisfied merely because there was some relationship between the protected disclosure and the detriment complained of, or because the detriment would not have been imposed but for the disclosure (**London Borough of Harrow v Knight** [2003] IRLR 140).

96. The Court of Appeal decision in **Jesudason v Alder Hay Childrens NHS Foundation Trust** [2020] IRLR 374 stated '*It is now well established that the concept of a detriment is very broad, and must be judged from the view point of the worker. There was a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment*'.

97. **Time for Unfair Dismissal and Public Interest Disclosure Detriment.** The time limit for presenting a complaint of unfair dismissal is 3 months. S111(2) **ERA** states:

- '(2) *An Employment Tribunal shall not consider a complaint under this section unless it is presented:*
- (2a) *Before the end of the period of three months, or,*
- (2b) *within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to have been presented before the end of that period of three months.'*

98. The time limit for presenting a complaint of detrimental treatment for whistle blowing is the same, save for the addition of a 'continuing act' point. S48(3) **ERA** states:

- '(2) *An Employment Tribunal shall not consider a complaint under this section unless it is presented:*
- (2a) *Before the end of the period of three months, beginning with the date or act or failure to act to which the complaint relates, or where that act or failure to act is part of a series of similar acts or failures, the last of them, or*
- (3b) *within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to have been presented before the end of that period of three months.'*

99. The Claimant must establish that each complaint was presented within the time limit specified by those sections, or that it was not practicable to do so **and** that the complaint was then presented within a reasonable period following the expiry of the primary time limit. The test of reasonable practicality is a strict one (**Palmer v Southend on Sea Borough Council** [1994] ICR 372). It is a high bar test to extend time under this rule. May LJ stated that the overall test is whether it was '*reasonably feasible*' to present the complaint to the employment tribunal within the relevant three months. An Employment Tribunal investigate what was the substantial cause of the employee's failure to comply with the statutory time limit; whether he had been physically prevented from complying with the limitation period, for instance by illness or a postal strike, or something similar. Factors to consider are:

- 99.1. When did the employee knew that he had the right to complain that he had been unfairly dismissed?
- 99.2. Had there has been any misrepresentation about any relevant matter by the employer to the employee?
- 99.3. Was the employee being advised at any material time and, if so, by whom; of the extent of the adviser's knowledge of the facts and of the nature of any advice which they may have given to him?
- 99.4. Has there been any substantial fault on the part of the employee or his adviser which has led to the failure to comply with the statutory time limit?

100. **Time for Race Discrimination and Victimisation.** The statutory time limit in discrimination cases is whether it would be just and equitable to extend the time limit to allow the claims to proceed. The onus lies on the Claimant to seek the exercise of the Tribunal's discretion to extend the time limit. The ET should consider all relevant factors including the balance of convenience and the chance of success: **Rathakrishnan v Pizza Express (Restaurants) Ltd** [2016] ICR 283, EAT.

101. The list of factors set out in s33 **Limitation Act 1980** may be of some use, as long as it is not used formulaically as a check list: **Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 27. Those factors are:
- 101.1. the length of, and the reasons for, the delay on the part of the Claimant;
 - 101.2. the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the Claimant or the Respondent is or is likely to be less cogent than if the action had been brought within the time limit;
 - 101.3. the conduct of the Respondent after the cause of action arose, including the extent (if any) to which it responded to requests reasonably made by the Claimant for information or inspection for the purpose of ascertaining facts which were or might be relevant to the case;
 - 101.4. the duration of any disability of the Claimant arising after the date of the accrual of the cause of action;
 - 101.5. the extent to which the Claimant acted promptly and reasonably once she knew whether or not the act or omission of the Respondent;
 - 101.6. the steps, if any, taken by the Claimant to obtain legal or other expert advice and the nature of any such advice he may have received.
102. In **Logo v Payone GMBH & Others** [2025] EAT 95 HHJ Taylor overturned a determination that it would not be just and equitable to extend time for the necessary 18 month required, for two acts of race related harassment that the Tribunal found had occurred. The Respondent had accepted one incident and had not been prejudiced by the delay in defending the other. The Claimant, on the other hand suffered the prejudice of having proved acts of race related harassment dismissed.
103. **Direct Race Discrimination.** The Claimant bears the initial burden of proof (**Ayodele v Citylink Limited** [2017] EWCA Civ. 1913). Section 136 **EqA** states:

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.*

104. Unreasonable behaviour of itself is not evidence of discrimination (**Bahl v The Law Society** [2004] IRLR 799). Once a Tribunal has determined that there are facts from which it could decide, in the absence of any explanation, that race discrimination had occurred, in order to discharge that burden it is necessary for the Respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the Claimant's race.

105. The **EgA** defines direct discrimination as:

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

106. This requires a comparative analysis to be undertaken by the Tribunal between the treatment of the Claimant and the treatment of another person that does not share his protected characteristic. That person may be an actual or hypothetical comparator. There must be no material difference between the circumstances relating to each case: **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285 HL at para 108 (Lord Scott) and s23(1) **EgA**10.

107. The circumstances which are material are those which are relevant to the decision or treatment in question. Whether a comparator in materially the same circumstances was treated more favourably is interlinked with the reason for the treatment in question. Whether there was less favourable treatment and whether it was because of race are aspects of a single question, not separate questions. Tribunals can focus primarily on the reasons for the treatment, from which the appropriate inference as to less favourable treatment will then naturally flow. **Shamoon** at paras 8-12, 53-54, 125 and 134-136.

108. If the Tribunal is satisfied, having heard all the evidence, including the explanations provided by the decision-makers, that race played no part whatsoever in the decision, then it is not necessary to have recourse to the burden of proof provisions: **Hewage v Grampian Health Board** [2012] ICR 1054, SC, para 32 Lord Hope. Otherwise, the Claimant bears an initial burden of proving facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondents directly discriminated against the Claimant because of race (**EqA**, s136). If the Claimant proves such facts the burden shifts to the Respondents to prove that they did not directly discriminate against him because of race.
109. In applying the shifting burden of proof, a two-stage approach is required. At the first stage, the burden is on the Claimant to establish facts from which, in the absence of another explanation, a finding of direct discrimination could be made. It is not sufficient for the Claimant to lead evidence from which it might be possible to find direct discrimination, he must prove the primary facts from which the Tribunal could (in the absence of another explanation) find that discrimination has occurred: **Igen v Wong** [2005] ICR 931, CA, at paras 17, 25-33 Peter Gibson LJ.
110. The tribunal needs to consider all the evidence relevant to the discrimination complaint, ie (i) whether the act complained of occurred at all, (ii) evidence as to the actual comparators relied on by the Claimant to prove less favourable treatment, (iii) evidence as to whether the comparisons being made by the Claimant were of like with like, and (vi) available evidence of the reasons for the differential treatment: **Madarassy v Nomura International plc** [2007] ICR 867, CA para 65-72. This will include evidence as to the Respondent's knowledge or perception of the Claimant's race. It will be for Claimant to prove on the balance of probabilities that the discriminators did know or form a perception as to his race: **Efobi v Royal Mail Group Ltd** [2021] ICR 1263, SC para 45.
111. Having made relevant primary findings, the Tribunal should step back and consider all the relevant facts in the round in order to determine what inferences

it could in the absence of another explanation: **Qureshi v Victoria University of Manchester & another** [2001] ICR 863, EAT, at paras 875F-876B. It is not sufficient to shift the burden of proof for the Claimant merely to prove a difference in race and a difference in treatment; he must also prove additional primary facts which could in the absence of another explanation support an inference that mental processes of the individual alleged discriminators were materially influenced by race: **Kohli v Department for International Trade** [2023] EAT 82, at para 71(d).

112. The Claimant must show that that their circumstances were materially the same and that there is some basis for inferring that race materially influenced the selection: **Virgin Active Ltd v Hughes** [2023] EAT 130, at para 68-69.
113. Unreasonable conduct in relation to the Respondent's decision would not be sufficient to support an inference of direct discrimination: **Glasgow City Council v Zafar** [1998] ICR 120, HL, at para 124A-E. Unreasonable behaviour is not necessarily discriminatory. A charge of discrimination is a very serious matter to find established against anyone: any such finding must have a proper evidential basis: **Bahl v The Law Society** [2003] IRLR 640, EAT at para 134. The Respondents' non-discriminatory explanation for its treatment does not have to be a good one in the sense of one that satisfies some objective standard of reasonableness. If the burden shifts, then to discharge that burden the Respondents must show that the treatment in question was *'in no sense whatsoever'* because of the protected characteristic: **Nagarajan v London Regional Transport** [1999] ICR 877, HL at para 510H-511H.
114. Cogent grounds are required to support a finding of subconscious bias. Such a conclusion cannot be reached on the basis of speculation, but only where there is clear evidence to support such an inference: **Bahl** at para 127. If the Tribunal accepts the decision-maker's assessment as honest and credible, that is an end of the matter unless there is a proper basis for a finding of subconscious discrimination: **Kohli** at paras 59-65.

115. The comparison in direct discrimination cases must be a comparison focussing on the individual claiming to have been discriminated against (**Her Majesty's Chief Inspector of Education, Children's Services and Skills v Interim Executive Board of C School** [2017] EWCA Civ 1426). There are two aspects to direct discrimination. One is less favourable treatment and the other is the reason for it. There be no material difference between the people being compared either actually or hypothetically.
116. The characteristic (in this case, the Claimant's race) needs to be a substantial or effective cause of the discriminatory treatment, but doesn't need to be the sole or intended cause of it (**R v Commission for Racial Equality, ex parte, Westminster City Council** [1984] IRLR 230).
117. In every case the tribunal has to determine the reason why the Claimant was discriminated against. (**Nagarajan v London Regional Transport** [1999] IRLR 572 at 575, HL). Lord Nicholls stated '*this is the crucial question*'. It is for the Claimant to prove the facts from which the Tribunal could conclude an unlawful act of discrimination (**Igen Ltd & Others v Wong** [2005] IRLR 258 CA).
118. The burden of proof does not shift to the Respondent simply on the Claimant establishing her characteristic and acts unfavourable treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that the Respondent had committed an unlawful act of discrimination (**Madarassy v Nomura International Plc** [2007] IRLR 246 CA). 'Could conclude' must mean that 'a reasonable Tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the Claimant in support of the allegations of victimisation. It would also include evidence adduced by the Respondent contesting the complaint. The tribunal needs to consider all the evidence relevant to the discrimination complaint, ie whether the detrimental acts complained of occurred at all, and any available evidence of the reasons for the unfavourable treatment.

119. **Victimisation:** The relevant provisions of s27 of the **EqA** state:

- 27(1) *A person (in this case any of the Respondents) victimises another person (in this case the Claimant) if [the Respondent] subjects [the Claimant] to a detriment because [the Claimant] does a protected act.*
- 27(2) *Each of the following is a protected act ... (d) making an allegation that [the Respondents] has contravened [the EqA].*

120. A protected act must be a complaint that the **EqA** has been contravened, in other words a complaint of discrimination (in this case race discrimination) **Khan v Trident Safeguards Ltd** [2003] EWCA Civ 1239 CA). The primary object of the victimisation provision is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory rights or are intending to do so (Lord Nicholls in **Chief Constable of the West Yorkshire Police v Khan** [2001] IRLR 830 at paragraph 16).

121. It is for the Claimant to prove (i) the fact of the incidents of unfavourable or detrimental treatment said to have occurred, and (2) that the reason for the incidents or unfavourable or detrimental treatment was because she had raised a discrimination complaint. Causation is central to this determination Lord Justice Slade held in **Aziz v Trinity Street Taxis Ltd** [1988] IRLR 204: *"If the necessary causal link is to be established, it must be shown that the very fact that the protected act was done by the complainant 'under or by reference to' that legislation [the EqA], influenced the alleged discriminator in his unfavourable treatment of the complainant"*.

122. The explanation for the unfavourable treatment does not have to be a reasonable one; it may be that the employer has treated the Claimant unreasonably. The mere fact that the claimant is treated unreasonably does not suffice to justify an inference of unlawful victimisation (**London Borough of Islington v Ladele** [2009] IRLR 154). Where the Claimant has proved facts from which conclusions may be drawn that the Respondent has treated the Claimant less favourably on the ground of the protected act then the burden of proof moves to the Respondent (s136 **EqA**). It is then for the Respondent to prove that it did not commit, or as the case may be, is not to be treated as having committed, that act. To discharge that burden it is necessary for the

Respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected act. That requires the tribunal to assess not merely whether the Respondent has proved an explanation but that it is adequate to discharge the burden of proof on the balance of probabilities that the protected act was not a ground for the treatment in question.

123. It is necessary for the Claimant to prove that the alleged victimiser knew of the protected act (**South London Healthcare NHS Trust v Al-Rubeyi** [2010] UKEAT/0269/09). The employee must be subjected to a detriment, ie placed at a disadvantage. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment (**Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 HL). The detriment relied upon by the Claimant, must be linked to the protected act.
124. Having reminded ourselves of the relevant law, our conclusions on the Issues before us are as follows:

[7] Our Conclusions

125. We now turn to our conclusions on the various claims and the List of Issues that we have been tasked to resolve.

Time limits

126. What was the Claimant's effective date of termination? Was it 3rd October 2023 or 9th October 2023?
- 126.1. In considering this we have reminded ourselves of the evidence in chief of Christian Ward **[GW23]**, Weronika Gilienke-Hammet **[WGH5]** and Matthew Carrolan-Smith **[MCS31]**. Mr Ward said he used the expression 8 weeks' notice paid in lieu. Mr Carrolan-Smith recalls

that at the hearing on 3rd October the Claimant was told that she was being dismissed. He says nothing about notice and whether it was to be worked or paid in lieu. Ms Gilienke-Hammet told us Mr Ward delivered the decision based on the note he had written.

- 126.2. The Claimant told us that she did not recall being told I was dismissed at hearing on 3rd October. She told us that the first time she knew of her dismissal was when she received Mr Ward's letter 9th October **[OO3]**.
- 126.3. Rebecca Harding prepared a witness statement which confirmed that the Claimant was told that she was being dismissed with immediate effect **[RW4&6]**. That expression does not appear in either Mr Ward's handwritten or typed dismissal script. Ms Harding did not attend as a witness and could not be questioned on that point. We concluded that we could not attach any weight to her testimony. **[RW4&6]** (not present as a witness).
- 126.4. As we referred in our findings of fact, Mr Ward's handwritten notes of the dismissal script **[HB263]** clearly show that the expression 'paid in lieu' was added after the event.
- 126.5. Ms Gilienke-Hammet manuscript notes **[HB544]** of the hearing contain an annotation of the decision added at the top right hand corner of the first page. We find that she heard the decision and noted it as it was said. Her note recorded 'dismissed 8 weeks' notice plus AL'. This makes no reference to notice being paid in lieu and would contradict any suggestion that the dismissal was with immediate effect. We consider this top right hand corner annotated note to be strong evidence of what the Claimant was told.
- 126.6. By the time the typed decision had gone out **[HB279]** it bore the expression dismissed with immediate effect. We do not believe that this expression was used at the meeting on 3rd October 2023.
- 126.7. In answer to a question from me, Mr Ward told me 'this is what I said, 8 weeks notice in lieu'. However, his original handwritten script, written in a short adjournment on 3rd October clearly had 'paid in lieu' after the event. Ms Gilienke-Hammet recorded the outcome that was read to the Claimant on 3rd and her record makes no reference to to being

paid in lieu or being dismissed with immediate effect.

- 126.8. As we have already observed the Respondent did not take a note or record of the disciplinary hearing, in circumstances in which the Respondent was well aware that a dismissal was not going to just end the Claimant's job, but was also likely to end her career and directly lead to her deportation. It is for the Respondent to prove both the reason to dismiss and the fairness of that dismissal. The Respondent's assertion that Mr Ward told the Claimant she was being dismissed on that day, 3rd October, is weakened by its remarkable failure to take or provide any notes of hearing, which would have demonstrated what the Claimant was told. Given the clear late addition to Mr Ward's dismissal script and Ms Gilienke-Hammet's note of the decision making no reference to being paid in lieu or being dismissed with immediate effect, we find on the balance of probabilities that the Claimant was not told her dismissal being with immediate effect until 9th October.
- 126.9. In the circumstances the Claimant's Effective Date of Termination is 9th October 2023. Given the notification to ACAS on 6th January 2024 the out of time date is 6th October 2023. As such all claims based on the Claimant's dismissal were presented in time.
- 126.10. The first two allegations of race discrimination (Mini Raju failing to provide bereavement support on or around 25th April 2023 and Rachel Tomkins suspending the Claimant on 28th August 2023) were presented approximately 5½ months out of time. We have considered whether they formed part of the same continuing act as later acts of discrimination and/or whether it would be just and equitable to extend the time limit by the necessary 5½ months as part of our substantive deliberations on those claims.
- 126.11. The last three allegations of race discrimination (Mr Ward dismissing the Claimant on 9th October, Mr Ward taking into account the NMC Code of Conduct when deciding to dismiss and Mr Ward referring the Claimant to the NMC) were all presented in time.

Unfair dismissal

127. What was the reason or principal reason for dismissal?

127.1. The Respondent relies on 'Conduct' as the potentially fair reason for the dismissal, pursuant to s98(2)(b) **Employment Rights Act 1996** ('**ERA**').

127.2. We accept that conduct was the potentially fair reason for the dismissal.

128. In all the circumstances (including the Respondent's size and administrative resources) did the Respondent act reasonably or unreasonably, in treating the Claimant's conduct as a sufficient reason to dismiss her?

128.1. We approach this issue mindful of the Court of Appeal's guidance provided in **Roldan v Royal Salford NHS Foundation Trust** [2010] IRLR 721, referred to at paragraph 72 above. The Tribunal should be satisfied as to the appropriate thoroughness of the investigation in career ending cases or where some form of professional status is in jeopardy or where the *consequences* to the employee of a finding of guilt are likely to be severe. Additional care in the investigation is likely to be required. We have found that the Respondent knew that a dismissal would not just end her job, but following the Respondent's NMC referral her career, and following the Home Office notification her right to remain in the UK. It is hard to conceive of a more severe outcome for the Claimant.

128.2. Were there reasonable grounds for the Respondent's belief in the Claimant's misconduct? We conclude that there was not reasonable grounds for that belief, both in terms of the investigation by Mr Carrolan-Smith and the disciplinary conclusions reached by Mr Ward and the appeal analysis of Ms Carroll.

128.3. The evidence demonstrates that the porter, Mr Gedling helped patient A back into bed, with the Claimant assisting, after she had checked him for injury. Mr Gedling goes to the desk and tells Amanda Grieves who tells Abby Law that Patient A had had a fall **[DIB33]**. Mini Raju &

Abby Law (believing a patient had fallen) go to bay 4.2 **[MR5]**.

128.4. Ms Raju asserts that she asked three times whether Patient had had a fall **[DIB29]**. Abby Law recalled the Claimant saying there had been 'no fall' once **[DIB94-95]** & **[DIB39]**. The Claimant's account was that she confirmed Patient A had had a fall **[DIB78-79]**. We looked for evidence from sources other than the Claimant or Ms Raju as to what was said at the time. The following independent evidence was before us:

128.4.1. Sarah Brown (Outreach Nurse) after Cardiac arrest, confirmed to Mini Raju she had been told by the Claimant previously (ie prior to the cardiac arrest) that patient A had had a fall **[DIB39]**. This is an important finding of fact made by Mr Carrol-Smith in the summary of his investigation conclusions that he provided for the appeal hearing (point 5 at **[HB321]**). Under cross examination⁴ Mini Raju confirmed that Sarah Brown told her that it was the Claimant who had told her (Ms Brown) of the fall.

128.4.2. Dawn McKensie (Clinical Support Worker) told the investigation that the Claimant mentioned Patient's A's fall at the time **[DIB45]**.

128.4.3. Irene Oluku (Staff Nurse) heard the Claimant tell Ms Raju that patient was found on the floor **[IO page 1]**. Ms Oluku only provided this evidence for the hearing, so whilst it was capable of assisting us in our findings of fact, it was not before Mr Carrol-Smith or Mr Ward.

128.4.4. Deborah Eyitayo told Mr Ward by email prior to the disciplinary hearing **[HB259]** that prior to the cardiac arrest she '*saw Alexis with the patient and she told me that the patient had an unwitnessed fall.*'

128.5. There is absolutely no evidence that Mr Ward considered the evidence of Sarah Brown, Dawn McKensie or Deborah Eyitayo (all of which was

⁴ At 2.50pm on day 7, 12th August 2025

before him) that the Claimant was open about Patient A's fall, prior to the Cardiac arrest. There is no evidence that it was discussed or considered at the disciplinary hearing and no evidence that it was discussed or considered by Lisa Carroll at the appeal, notwithstanding Mr Carrol-Smith confirming Sarah's Brown evidence in the summary of his investigation that he gave her at the appeal. That failure by Ms Carroll is important as her primary reason for upholding the dismissal was the Claimant's lack of probity, but it appears that she failed to consider the exculpatory evidence. This was important as there is no evidence that Mr Ward did either, so Ms Carroll was in a position to correct a serious procedural failing by Mr Ward yet failed to do so.

- 128.6. No-one asked the question, 'if the Claimant told Dawn Mckensie, Deborah Eyitayo and Sarah Brown that Patient A had fallen, and she told them prior to his cardiac arrest, why would she lie about it when questioned by Abby Law and Mini Raju, also prior to the Cardiac arrest? At that point there had been no change of circumstances to justify switching from a truthful account to a dishonest one.
- 128.7. No-one considered whether this was a case of the Claimant and Mini Raju using different definitions of the expression 'fallen'. It is possible in the moment of the discussion with Mini Raju, the Claimant, having found Patient A sat on the floor by his bed, with no one witnessing how he got there, might have considered it an overstatement to say he had fallen. This created the possibility that even if the Claimant had tried to better describe how she found Patient A, she was not being dishonest in her answer. Neither Mr Ward nor Ms Carroll considered the possibility of the exchange between the Claimant and Ms Raju not involving a lack of probity or candour.
- 128.8. In light of paragraph 5.6 of the Respondent's moving and handling policy (which allows for a manual lift in unforeseen or emergency situations) it was unfair to add a failure to correctly lift Patient A into the factual matrix of matters relied on to justify a dismissal, particularly when that allegation had not been formally put to the Claimant as an allegation that she faced.
- 128.9. Given the consequences of a dismissal for the Claimant (potential loss

of career and deportation) the failure to explore this by all involved in the process renders their conclusion of misconduct an unreasonable conclusion to reach.

129. Did the Respondent otherwise act in a procedurally fair manner, including in relation to the appeal against dismissal?

129.1. We consider that the dismissal was not conducted in a procedurally fair manner. There was no explanation provided as to why Melissa Perry, who conducted the initial fact find interviews to determine whether a formal disciplinary investigation should be started, took statements from Mini Raju [DIB29], Michael Gedling [DIB31], Amanda Grieve [DIB32] Abby Law [DIB33] and Irene Oluku [DIB34] and yet elected not to obtain a contemporaneous account from the Claimant.

129.2. We were deeply concerned that on 1st June 2023, prior to Mr Carroll-Smith starting his investigation, Ms Glienke-Hammet emailed him [MB150] to say *'I do have a feeling she might be difficult. Personal view, regardless of the coroner report, it is not looking good for her.'* This is the Respondent's HR department pre-judging the outcome of any investigation and telling the investigator of that pre-judgment before the investigation starts.

129.3. An Employer acting reasonably in its disciplinary process would have sent the Claimant, in time for her to consider it prior to the deadline for submitting an appeal, the notes of the disciplinary hearing for the Claimant to agree. Not only were notes not sent, no notes were taken. This is an important failure in process, which undermines the fairness of the disciplinary hearing and the appeal.

130. Was dismissal within the range of reasonable responses?

130.1. Had a registered nurse lied about care they provided to a patient, this is capable of being a summary dismissal offence. However in all of the circumstances in this case, that conclusion was not fairly reached.

131. If the Claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?

131.1. We have concluded, that whilst the Claimant's dismissal was unfair, there were aspects of her conduct that day that did contribute to the circumstances that led to her dismissal.

131.2. We find that there was an element of fault because, once the Claimant had established that Patient A was safe (albeit still next to his bed on the floor) she should have escalated that to the Nurse in Charge Mini Raju before taking any other step. Instead, she began patient observations, leaving the Porter to escalate the patient's fall. It is a matter of speculation when she would have escalated the fall had Mr Gedling not done so. However, once he had, it did not need to be escalated again.

131.3. In addition to this we find that the Claimant did not complete the patient's neurological observations as she was required to do. She told us that the battery on her Vital Pac had died. We find that she asked for and had access to Ms Eyitayo's Vital Pac, but she told us during cross examination⁵ that she did not use it to complete the recording of the neurological observations, which was a well established part of the post fall process.

131.4. We have not found that the Claimant lied to Mini Raju. On balance we prefer the Claimant's account on this (given the support of three other individuals as to the Claimant's candour). At it highest there may have been a misunderstanding between the two as to what was said and what was heard, and what was understood. In the circumstances the issue of (i) lying and (ii) the decision to manually lift Patient A, does not feature in our deliberations on the issue of contributory fault.

131.5. In the circumstances it is our judgment that it would be just and equitable to reduce the Claimant's basic and compensatory award. Taking all of the above factors into account we consider that the appropriate reduction to the basic and compensatory awards should be **25%**.

⁵ At 4.10pm on Day 3, 6th August 2025

132. Should there be a reduction to compensation to nil or a smaller figure on the grounds that had any unfairness in the process been corrected, the Claimant would still have been dismissed (the **Polkey** argument).
- 132.1. The failures in this case have been identified above. They include the failure to consider the evidence of the three health care professionals that all gave evidence that the Claimant told them of Patient A's fall, before his cardiac arrest. This evidence, independently given, raised considerable doubt as to why the Claimant would suddenly start to lie about it to Mini Raju. It is impossible for us to reach a conclusion on the outcome had that evidence been considered. In the circumstances the Respondent has failed to establish that the Claimant would have still been dismissed, had the exculpatory evidence been considered.
- 132.2. Given the failure to follow the Trust's policy on manual lifting was included in the factors used to justify summary dismissal, and our finding that the Claimant's actions of helping patient A did not breach that policy, we cannot say what would have happened, had the Trust concluded the policy had not been breached. In the circumstances the Respondent has failed to establish that the Claimant would have still been dismissed, had that exculpatory evidence been considered.
- 132.3. Finally, the failure to take a note of the disciplinary hearing in a job ending and potentially career and UK residency ending dismissal was a significant failure, which denied the Claimant the opportunity to present a fair appeal and demonstrate the failings of analysis by Mr Ward and Ms Glienke-Hammet. It is not possible for us to reconstruct what would have happened at the appeal, had the Claimant been able to take Ms Carroll through the disciplinary hearing notes. It is not possible to conclude that the same lack of probity conclusion would have been reached.
133. In the circumstances we reject any submission that the Claimant's compensation should be cancelled or reduce on the grounds that had any unfairness been corrected, the decision to dismiss would have been the same (namely the **Polkey** grounds).

134. Did the Respondent unreasonably fail to comply with the ACAS Code of Practice on Disciplinary Procedures?

134.1. Whilst we have found the investigatory process to have been unfair, the Claimant was informed of the allegations, and investigation was undertaken, a disciplinary hearing held and a right of appeal exercised. In the circumstances we find that there was no breach of ACAS code on disciplinary hearings.

134.2. No adjustment or reduction of the Claimant's compensation shall be adjusted on this ground.

Protected disclosure

135. Did the Claimant make qualifying disclosures as defined in s43B **ERA**?

135.1. The Claimant relies on her formal complaint of race discrimination raised on 19th October 2023 in her appeal against dismissal [**HB297**]. That letter of appeal, drafted by Ms Bennett of E4BN does disclose information which tends to show failure to comply with the legal obligation not to discriminate against employees, as set out in s13 **Equality Act 2010**.

135.2. We find that the Claimant did reasonably believe in the factual information contained in her appeal.

135.3. Did the Claimant believe the disclosure of information was made in the public interest?

135.4. The Claimant relies on her appeal against her dismissal as a disclosure which qualifies for the protection offered by s43B of the **ERA**. For this protection the disclosure must have been made (and reasonably believed by the Claimant) to have been made in the public interest. We are reminded that disputes that are essentially personal contractual disputes (for example appeals against dismissal) are unlikely to qualify (**Millbank Financial Services Ltd v Crawford** [2014] IRLR 18 EAT). It is not sufficient that the claimed

whistleblowing occurs within the Claimant's own employment, as part of a dispute with his or her employer (**Cavendish Munro Professional Risks Management v Geduld** [2010] IRLR 38). There is no public interest in the Claimant's employment. We do not consider that this legal mechanism is the correct vehicle for the Claimant to use, noting that she also relies on the same appeal as an act of victimisation.

- 135.5. In the circumstances the public interest detriment claim fails and is dismissed on the grounds that the Claimant has failed to establish that her appeal against her dismissal was in the public interest.

Direct race discrimination

136. The Claimant describes her race as Black African. We start our analysis by determining whether the five allegations of direct discrimination occurred, or occurred in the way the Claimant asserts. Did the Respondent do the following things:
- 136.1. By Mini Raja (Ward Manager), on or around 25 April 2023, failing to provide bereavement support to the Claimant in relation to the death of Patient A. The Respondent accepts that Mini Raju did not provide bereavement support to the Claimant following the death of Patient A. This allegation is therefore made out on its facts.
- 136.2. By Rachel Tomkins (Deputy Divisional Director), on 28 April 2023, suspending the Claimant whilst she was writing her care plan in relation to Patient A (which she thus could not complete). It is accepted that Ms Tomkins suspended the Claimant at the meeting on 28th April, as confirmed in the letter dated 1st May **[HB245]**. However this was three days after the Claimant had left the AMU and thus it had no impact whatsoever on the Claimant's ability to complete her notes. We think it is likely that the Claimant has conflated her suspension by Ms Tomkins on 28th April 2023, with being asked, on the instruction of Julie Corn on 25th April, to leave the AMU whilst the Claimant was writing up the patient notes. However, we cannot change the issues in the case to

align with our findings of fact and we have found that Ms Tomkins suspension of the Claimant did not occur as she was writing up Patient A's notes. In the circumstances this allegation fails on its facts and is dismissed.

- 136.3. By Christian Ward (Deputy Chief Nursing Officer), on 3 October 2023, dismissing the Claimant with effect from 9 October 2023. It is accepted that the Claimant was thus dismissed. This allegation is made out on its facts.
 - 136.4. By Mr Ward taking into account the NMC Code of Conduct, in deciding to dismiss the Claimant. Mr Ward accepts he did **[CW45-48]**. This allegation is made out on its facts.
 - 136.5. By Mr Ward, referring the Claimant to the NMC. It is accepted that he did. This allegation is also made out on its facts.
137. We find that the four acts that occurred, (i) the lack of bereavement support, (ii) the dismissal, (iii) taking into account the NMC Code in dismissing the Claimant and (iv) referring the Claimant to the NMC were all acts of detriment.
138. It is now necessary to determine the reason for the 4 matters set out above which we have found occurred. Did the reason for the treatment have 'nothing whatsoever' to do with the Claimant's race? Was the Claimant treated less favourably than someone who was not black was or would have been treated?
- 138.1. The Claimant relies on a hypothetical comparator, namely a white nurse whose patient had died in materially similar circumstances to those in which Patient A died; and/or a white nurse who conducted themselves in the same or a materially similar way to the Claimant.
 - 138.2. We do find as a fact that Mini Raju showed no empathy to the Claimant following Patient A's death and made no offer of formal bereavement support. However we accept the Respondent's explanation that within the high dependency AMU ward, patient death was not uncommon, occurring approximately once a week. Whilst it was accepted that sometimes patients become close to staff, the average patient stay on the AMU ward was about 48 hours, so emotional attachments between

staff and patients were unusual.

- 138.3. The Respondent did not, as a result, offer bereavement support to staff on the ward, regardless of their race. We were told that bereavement support was offered to family members of patients, but not to staff. On the balance of probabilities we find that a white nurse in the same circumstances as the Claimant would have been treated in the same way, ie not offered bereavement support. It follows that this allegation of direct race discrimination fails and is dismissed. We add that whilst we have found that Ms Raju offered no empathy to the Claimant after Patient A's death, we find there was an element of concern over whether death was linked to the fall or the post fall care, and that in the moment Ms Raju was acting to protect evidence and isolate the Claimant from affecting that investigation. We conclude that she would have shown the same lack of empathy to a hypothetical white comparator in the same circumstances as the Claimant.
- 138.4. In respect of the dismissal, we have already found that it was unfair. Was it also discriminatory? An unfair dismissal is not necessarily also a discriminatory one. We have accepted that the Claimant's misconduct was the potentially fair reason relied on by the Respondent, and that the Claimant's own conduct contributed, by a factor of 25%, to the circumstances that led to her dismissal. The concern that the Claimant might have lied over patient care was real and, if fairly established, it would have amounted to a fair dismissal. For all of the reasons stated we find that the Claimant has failed to prove facts from which we could conclude that her race was the reason for her dismissal. We think a white comparator, in the same circumstances, would have been treated in the same way. This allegation fails and is dismissed.
- 138.5. The third matter which we accept occurred, is that Mr Ward referred to and relied on the NMC's Code of Conduct. Mr Ward accepted this as a fact **[CW46]**. He referred to the introduction of the NMC's Code **[DIB122]** which states '*The Code contains the professional standards that registered nurses, midwives and nursing associates must uphold. Registered nurses must act in line with the Code ... The values and*

principles set in the Code can be applied in a range of different practise settings, but they are not negotiable or discretionary'. If a nurse, of any race or nationality, faced a disciplinary hearing, it would be necessary to consider whether the behaviour complained of was covered by the NMC's Code of Conduct. The code contained a race neutral flow chart to be followed when considering misconduct or lack of competence [HB537]. It's focus is on establishing risks to patient safety and identifying any previous conduct or competence concerns. We can see nothing discriminatory about it and we consider that the Code would have been referred to in the investigation and framing of the disciplinary case, and by the disciplinary hearing officer, regardless of the race of the nurse concerned. We think a white nurse in the same situation would have been treated in the same way. This allegation fails.

- 138.6. The final incidence said to be race discrimination is the referral by Mr Ward of the Claimant to the NMC on 20th October 2023 [HB423]. As we have found, Mr Ward did make the referral.
- 138.7. Did he do so because of the Claimant's race? We have been referred to the NMC's guidance on Raising Concerns [HB529]. It said '*As a nurse, midwife or nursing associate, you have a professional duty to report any concerns from your workplace which put the safety of the people in your care or the public at risk*'. The NMC's Advice to Employers [HB537] states '*You must always report a case to us if you believe the conduct competence, health or character of a nurse or midwife presents a risk to patient safety*'. Mr Ward notes that Mr Carrol-Smith noted in his investigation that if the allegations were upheld he would be required to make a referral. Mr Ward also asserts [CW48] that at no stage in the process did the Claimant, her RCN Rep Ms Taylor, or Naomi Bennett from E4BN suggest that a referral to the NMC would be discriminatory.
- 138.8. We consider that the Respondent would have referred any nurse, regardless of their race, that they had concluded had lied about a patient care matter and thus committed an act of gross misconduct. A white nurse in the same circumstances would have been treated in the same way.

138.9. The Claimant has failed to prove facts from which we could conclude that a contravention of the **Equality Act** had occurred. This last allegation of race discrimination fails and is dismissed.

Victimisation

139. The Respondent accepts that the Claimant did a protected act, as defined by s27(2) **Equality Act 2010** when, on 19th October 2023, she raised a formal complaint of race discrimination in her appeal against dismissal.

139.1. The Respondent referred the Claimant to the NMC on 20th October 2023 **[423]**.

139.2. There is no question that by doing so, it subjected the Claimant to a detriment. The referral had the potential to end the Claimant's career as a nurse.

139.3. The Claimant asserts that the reason for the referral was the fact that she had asserted, in her appeal, that her dismissal was tainted by race discrimination.

139.4. The appeal was submitted on 19th October 2023 **[HB297]** and the referral was sent by Mr Ward the very next day, on 20th October 2023 **[HB423]**.

139.5. We have no hesitation in concluding, given our previous findings, that the reason for the referral was the Respondent's belief that the referral was required by the NMC in cases involving the dismissal of registered nurses for gross misconduct offences. This was identified in both the investigation report and the letter of dismissal.

139.6. We were invited to consider the timings, however. The dismissal letter, dated 9th October, stated that the referral would be made in the next 7 days, ie by 16th October. No such referral was sent on 16th, 17th or 18th October. The protected letter of appeal was submitted on 19th October, and the referral then followed on 20th October.

139.7. Mr Ward candidly accepted in questions from the Tribunal that he knew he had to make the referral on 9th October and that it was on his list, but that the appeal (being the next communication from the Claimant)

did remind him that the referral was outstanding. This explains the timings, but it does not alter the fact that the reason for the referral was the Claimant's dismissal not her appeal. In the circumstances the victimisation claim fails and is dismissed.

[8] Our Judgment (in summary)

140. It is the Judgment of the Tribunal that:

- 140.1. The Claimant's claim of unfair dismissal, pursuant to s98 **Employment Rights Act 1996** is upheld, subject to a 25% reduction for contributory fault.
- 140.2. The Claimant's Public Interest Disclosure Detriment claim, pursuant to s47B **Employment Rights Act 1996** is dismissed.
- 140.3. The Claimant's claim of direct race discrimination, pursuant to s9 and s13 **Equality Act 2010** is dismissed.
- 140.4. The Claimant's claim of victimisation, pursuant to s27 **Equality Act 2010** is dismissed.

Judgment delivered orally on 24th October 2025
Written reasons approved on 3rd December 2025

Employment Judge Gidney
Tribunal Member Cambell
Tribunal Member Kelly