



EMPLOYMENT TRIBUNALS

Claimant: Mrs Ilda Esteves

Respondent: 1. West London NHS Trust
2. Ms Elspeth Jefferson

Heard at: Watford Employment Tribunal
On: 24,25,26,27,28 November, 1 December 2025
2 and 3 December 2025 deliberation
4 December 2025 judgment and remedy

Before: Employment Judge Alliott
Members: Mr L Hoey
Mr D Sagar

Representation

Claimant: Mr Francisco Fernandes (husband)
Respondent: Mr Ben Jones (counsel)

JUDGMENT having been sent to the parties on 22 December 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. The claimant was engaged by the respondent as a Bank Band 2 Healthcare Assistant – Women’s Forensic Services on 14 September 2022. The offer letter stipulates that it did not constitute a contract of employment and was a zero hours contract. The claimant was sent a statement of principal terms and conditions of employment on 12 October 2022 which references “Following your conditional contract” and also references a contract of employment. The post title was Bank - Band 2 HCA. The parties disagree whether the claimant was an employee or worker but, if she was an employee, then it was clearly a zero hours contract on Bank terms that the respondent did not have to offer and the claimant did not have to accept shifts. The distinction is academic as all the claimant claims can be brought by a worker. Respondent accepts that the claimant was a worker.
2. By way of a first ET1 lodged on 13 October 2023, the claimant brings claims against the first respondent of:

- 2.1 Direct age discrimination: Section 13 Equality Act 2010.
 - 2.2 Direct race discrimination: Section 13 Equality Act 2010.
 - 2.3 Direct sex discrimination: Section 13 Equality Act 2010.
 - 2.4 Harassment related to age: Section 26 Equality Act 2010.
 - 2.5 Harassment related to sex: Section 26 Equality Act 2010.
 - 2.6 Detriment as a result of making a protected disclosure: Section 47B Employment Rights Act 1996
 - 2.7 Victimisation: Section 27 Equality Act 2010.
 - 2.8 Unlawful deduction of wages: Section 13 Employment Rights Act 1996
3. By way of a second ET1 lodged on 28 March 2024, the claimant brings claims against the second respondent of:
- 3.1 Direct race discrimination: Section 13 Equality Act 2010.
 - 3.2 Harassment related to race: Section 26 Equality Act 2010.
 - 3.3 Victimisation: Section 27 Equality Act 2010.
 - 3.4 Detriment as a result of making a protected disclosure: Section 47B Employment Rights Act 1996.
4. As of the date of the second claim the claimant remained employed/engaged by the respondent.
5. The respondent defends the claims.

The law

6. Sections 13, 23(1), 26, 27 and 136 of the Equality Act 2010 provide:-

“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.”

“23 Comparison by reference to circumstances

- (1) On a comparison of cases for the purposes of section 13, ... there must be no material difference between the circumstances relating to each case.”

“26 Harassment

- (1) A person (A) harasses another (B) if—
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

...

- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
- (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.
- (5) The relevant protected characteristics are—
- age;
 - disability;
 - gender reassignment;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.”

...

“27 Victimization

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

...

“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.”

7. Section 43B of the Employment Rights Act 1996

“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—
 - (a) that a criminal offence has been committed, is being committed or is likely to be committed,
 - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
 - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
 - (d) that the health or safety of any individual has been, is being or is likely to be endangered,
 - (e) that the environment has been, is being or is likely to be damaged, or
 - (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.
- (2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.”

The issues

(With the names “Ramnath” and “Oppong” corrected)

“JURISDICTION

Claim 1: Time

- 3. The Claimant contacted ACAS on 4 August 2023 (‘Day A’) and was issued with an ACAS Early Conciliation certificate on 15 September 2023 (‘Day B’). An ET1 was submitted to the Tribunal on 13 October 2023. Any allegations or claims relating to matters which occurred prior to **5 May 2023** are out of time.
- 4. In respect of those of the Claimant’s claims of victimisation and discrimination against the First Respondent that arose prior to 5 May 2023:

- a. Do any or all of those acts/omissions form part of a course of conduct by the First Respondent extending over a period of time such as to render them in time? S.123(3) EqA 2010
 - b. If not, then is it just and equitable to extend time in respect of those allegations? S.123(1)(b) EqA 2010
5. In respect of claims for unlawful deductions and detriment due to protected disclosures,
- a. Did the conduct complained of take place within three months less one day (taking into account any period of early conciliation) of the claim being presented to the tribunal?
 - b. Do they form a series of acts or series of deductions under s.23 or 48 ERA 1996?
 - c. Was the claim made within 3 months of the last such act or deduction?
 - d. If not, was it reasonably practicable for such claims to have been brought within time and if not, was it made within a reasonable period?

Claim 2: Time

6. The Claimant contacted ACAS on 21 January 2024 ('Day A') and was issued with an ACAS Early Conciliation certificate on 3 March 2024 ('Day B'). An ET1 was submitted to the Tribunal on 28 March 2024. Any allegations or claims relating to matters which occurred prior to **22 October 2023** are out of time.
7. In respect of the Claimant's claims under the Equality Act 2010 that arose prior to 22 October 2023:
- a. Do any or all of those acts/omissions form part of a course of conduct by the Second Respondent extending over a period of time such as to render them in time?
 - b. If not, then is it just and equitable to extend time in respect of those allegations?
8. In respect of claims for detriment due to protected disclosures,
- a. Did the conduct complained of take place within three months less one day (taking into account any period of early conciliation) of the claim being presented to the tribunal?
 - b. If not, was it reasonably practicable for such claims to have been brought within time and if not, was it made within a reasonable period?

Claim 2: Estoppel

9. Are any/ all of the allegations under claim 2 *res judicata* on the basis that:
- a. They are claims already advanced under claim 1; or

- b. They are claims that she should have brought under claim 1 (*per* the rule in *Henderson v Henderson*).

CLAIMS

Direct Discrimination (Age) s13 EqA

10. The Claimant asserts she is 61 years old. She relies upon a hypothetical comparator who is below the age of 50.
11. Did the First Respondent treat the Claimant less favourably than her hypothetical comparator, because of her age, by:
 - a. Pravin Ramnath saying that she was ‘not fit for this job’ on 16 June 2023.
 - b. Charles Oppong calling her ‘Auntie’ multiple times leading up to and on 7 September 2023 in Windrush office and corridor and saying she was a ‘good match for the older staff member’ on 26 June 2023 and 27 June 2023 in Windrush office.

Direct Discrimination (Race) s13 EqA

12. The Claimant describes herself as being of Indian heritage. She relies upon a hypothetical comparator who is Black or White
13. Did the First Respondent treat the Claimant less favourably than her hypothetical comparator, because of her race, by:
 - a. On 22 April 2023, Cynthia Buckle saying she doesn’t want to hear anything from the Claimant when she said she was from India.
 - b. On 7 May 2023, suspending the Claimant, cancelling 5 of her shifts and blocking her access to book shifts.
 - c. Ms Buckle being openly rude towards the Claimant and breaching confidentiality on 10 June 2023.
 - d. Steven Adeyemi shouting openly at the Claimant and being aggressive on 8 September 2023
 - e. For keeping the Claimant on levels for more than two hours at a time on 4 February 2023, 22 April 2023, 14 and 16 June 2023 and 8 and 9 September 2023.
 - f. On 2 August 2023, restricting the Claimant from booking further bank shifts in the Orchard unit and cancelling all her booked shifts and sending her for training unnecessarily.
 - g. Cancelling bank shifts (27 June, 1 July, 15 July (twice) 29 July 2023 in Pearl Ward and 5 August shift in Aurora Ward) and giving them away to others.
 - h. On 8 October 2023, Mr Faisal Konde did not uphold the Claimant’s complaint against Miskarat Ikuobolati and others dated 17 September 2023 despite there being evidence of some concerns.
14. Did the Second Respondent treat the Claimant less favourably than her hypothetical comparator because of her race, by:

- a. On 1 August 2023 circulating false and misleading information about the Claimant in an email to Hamedan Khan by:
 - i. reporting that the Claimant had volunteered to take a patient out on 16 July 2023.
 - ii. accusing the Claimant of staying over 1.5 hours with the patient on that occasion and not utilising a Unit mobile.
 - iii. accusing the Claimant of not taking a patient's consent before doing a bag search.
 - iv. accusing the Claimant of inappropriately touching a patient's bottom twice.
- b. On 2 August 2023, restricting the Claimant from booking further bank shifts in the Orchard Unit and cancelling all her booked shifts
- c. On 2 August 2023 sending the Claimant for Clinical Security training unnecessarily.

Direct Discrimination (Sex) s13 EqA

15. The Claimant describes herself as being female. She relies upon a hypothetical comparator who is male.
16. Did the First Respondent treat the Claimant less favourably than her hypothetical comparator, because of her sex, by:
 - a. Pravin Ramnath saying that she was 'not fit for this job' on 16 June 2023.
 - b. Charles Oppong calling her 'Auntie' multiple times leading up to and on 7 September 2023 in Windrush office and corridor and saying she was a 'good match for the older staff member' on 26.06.2023 and 27.06.2023 in Windrush office.

Harassment (Age or Sex) s26 EqA

17. Did the First Respondent engage in the following alleged unwanted conduct:
 - a. Pravin Ramnath saying that she was 'not fit for this job' on 16 June 2023.
 - b. Charles Oppong calling her 'Auntie' multiple times leading up to and on 7 September 2023 in Windrush office and corridor and saying she was a 'good match for the older staff member' on 26 June 2023 and 27 June 2023 in Windrush office.
18. Was the alleged conduct related to the Claimant's Age and/or Sex?
19. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
20. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading humiliating or offensive environment for her?

21. In deciding whether the conduct has the above effect, the Tribunal must take into account each of the following: (a) the perception of the Claimant; (b) the circumstances of the case; and (b) whether it is reasonable for the conduct to have that effect (s26(4) EqA).

Harassment (race) s26 EqA

22. Did the Second Respondent engage in the following alleged unwanted conduct:
- a. The Claimant relies on the same alleged conduct as set out under her direct race discrimination claim at §14 above.
23. Was the alleged conduct related to the Claimant's Race?
24. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
25. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading humiliating or offensive environment for her?
26. In deciding whether the conduct has the above effect, the Tribunal must take into account each of the following: (a) the perception of the Claimant; (b) the circumstances of the case; and (b) whether it is reasonable for the conduct to have that effect (s26(4) EqA).

Victimisation s27 EqA

27. Did the Claimant do a protected act?
28. What was the protected act? The Claimant relies upon:
- a. On 18 June 2023, complaining to Kiran Samra (Temporary staffing manager) against Cynthia Buckle for victimising, bullying, harassing and singling her out because of her race.
- b. On 30 June 2023, in a meeting with Kiran Samra, raising the same concerns as in 28.a above.
- c. On 17 September 2023, raising concerns to Faisal Konde in writing.
- d. On 13 October 2023, bringing claim no. 3311669/2023 in the Employment Tribunal.
29. Did the First Respondent subject the Claimant to the following detriments?
- a. On 9 July, Danielle Murphy refused to make temporary arrangements to place the Claimant on other wards (because of 28.a. or b. above).
- b. Cancelling bank shifts (27 June, 1 July, 15 July (twice) 29 July 2023 in Pearl Ward and 5 August shift in Aurora Ward) and giving them away to others (because of 28.a. and/or b. above).
- c. On 1 August 2023, Elspeth Jefferson circulated false and misleading information about the Claimant to Hamedan Khan (because of 28.a. and/or b. above).

- d. On 2 August 2023, restricting her from booking further bank shifts in Orchard Unit until training was completed and cancelling all her booked shifts (because of 28.a. and/or b. above).
 - e. On 8 September 2023, Steven Adeyemi shouted openly at the Claimant and was aggressive to her (because of 28.c above).
 - f. On 9 September 2023, the Claimant was kept on levels twice for more than two hours on each occasion (because of 28.c. above).
 - g. On 11 September 2023, the Respondent cancelled the Claimant's bank shifts between 14 and 16 September 2023 in Windrush ward and gave away the shifts to others (because of 28.c. above).
 - h. On 8 October 2023, Mr Faisal Konde did not uphold the Claimant's complaint against Miskarat Ikuobolati and others dated 17 September 2023 despite there being evidence of some concerns (because of 28.c. above).
 - i. From 18 October 2023, Kiran Samra failed to allocate the Claimant a different place to work despite this being requested via Anne Rowe on 18 October 2023 (because of 28.a. and/or b. above).
 - j. From 18 October 2023, the Respondent failed, following a restorative resolution meeting with Ann Rowe, to look into the Claimant's complaint of 18 June 2023 formally (because of 28.a, b. and/or d. above).
 - k. On 3 January 2024, Rahma Mowlid held an investigation meeting with the Claimant but failed to give the Claimant representation rights in the investigation meeting (in that the Claimant was not informed that she could have a union representative or colleague support for that meeting) (because of 28.a. b. c. and/or d. above).
 - l. On 7 February 2024, Rahma Mowlid copied the grievance outcome to Kirstin Blackburn despite the fact she was not directly involved in decision making (because of 28.a. and/or b. above).
 - m. On 7 February 2024, Rahma Mowlid did not uphold the Claimant's complaint of 14 November 2023 against Elspeth Jefferson and Danielle Murphy despite there being evidence (because of 28.a. b. c. and/or d. above).
 - n. Matt Barnfield creating or preparing the outcome letter for Rahma Mowlid dated 7 February 2024 for the Claimant's complaint made against Elspeth Jefferson and Danielle Murphy (because of 20.a. b. c. and/or d. above).
 - o. On 7 June 2024 Ahmed Rujbally not upholding the Claimant's complaint against Elspeth Jefferson and Danielle Murphy, on a further review of that complaint (because of 20.a. b. c. and/or d. above).
 - p. On 14 June 2024, Harmeet Marway not upholding the Claimant's complaint dated 1 April 2024 and 10 April 2024 made against Windrush Ward and for not providing a copy of the investigation report despite multiple requests (because of 28.a. b. c. and/or d. above).
 - q. Matt Barnfield creating or preparing the outcome letter dated 14 June 2024 for Harmeet Marway for the Claimant's complaint made against the staff of Windrush Ward dated 1 April 2024 and 10 April 2024 (because of 28.a. b. c. and/or d. above).
 - r. For not providing most of the information requested under the Subject Access Request made on 21 March 2024.
30. Did the Second Respondent subject the Claimant to the following alleged detriments:
- a. C relies on the same alleged conduct as set out under her direct race discrimination claim at §14 above.
31. If so, was the Claimant subjected to that detriment because she had done a protected act (as delineated above)?

Protected disclosure s47(b) ERA

32. The Claimant relies on the following alleged disclosures:
- a. Claimant's email dated 18 June 2023 to Kiran Samra for keeping her on a level or to observe patients for more than 2 hours and even coming up to 3 hours.
 - b. In a meeting on 30 June 2023, the Claimant complained that she is being kept for more than two hours for levelling multiple times in her shifts and it's happening around the Trust.
 - c. On 8 September 2023, the Claimant verbally reported a breach of TESO and abuse of power to Faisal Konde regarding keeping her on levels for more than two hours, manipulation of patient observation notes by Miskarat Ikuobolati and an instance where a staff member was added to patient observation notes folder when in fact he was not doing such work.
 - d. On 17 September 2023, the Claimant raised the same concerns as on 8 September 2023 to Faisal Konde in writing and also raised concerns about Miskarat dragging a patient by arm who has no lower limbs and only one upper limb towards the bathroom to shower.
33. Did the Claimant make a protected disclosure in accordance with s43A Employment Rights Act 1996? For each alleged disclosure, the tribunal will need to consider:
- a. Was this a disclosure of information?
 - b. Did the Claimant reasonably believe it tended to show a breach of a legal obligation pursuant to s.43B(1)(b) ERA 1996? (The Claimant says that the legal obligations she considered were being breached were under the Mental Health Act 1983 (all alleged disclosures) plus the Data Protection Act 2018 (for alleged disclosures c and d) and both the Trust's Manual Handling Policy and the Equality Act 2020 (for alleged disclosure d).
 - c. Alternatively, did the Claimant reasonably believe it tended to show a breach of health and safety pursuant to s.43B(1)(d) ERA 1996?
 - d. Did the Claimant reasonably believe that such a disclosure was made in the public interest?
 - e. Was the disclosure made to the Claimant's employer pursuant to s.43C ERA 1996?
34. Was the Claimant subjected by the First Respondent to the following detriments on the grounds of having made a protected disclosure contrary to s47(b) ERA 1996?
- a. On 9 July 2023, Danielle Murphy refused to make temporary arrangements to place the Claimant on other wards (because of 32.a. or b. above).
 - b. Cancelling bank shifts (27 June, 1 July, 15 July (twice) 29 July 2023 in Pearl Ward and 5 August shift in Aurora Ward) and giving them away to others (because of 32.a. and/or b. above).
 - c. On 1 August 2023, Elspeth Jefferson circulated false and misleading information about the Claimant to Hamedan Khan (because of 32.a. and/or b. above).

- d. On 2 August 2023, restricting her from booking further bank shifts in Orchard Unit until training was completed and cancelling all her booked shifts (because of 32.a. and/or b. above).
- e. On 8 September 2023, Steven Adeyemi shouted openly at the Claimant and was aggressive to her (because of 32.c and/or d. above).
- f. On 9 September 2023, the Claimant was kept on levels twice for more than two hours on each occasion (because of 32.c. and/or d. above).
- g. On 11 September 2023, the Respondent cancelled the Claimant's bank shifts between 14 and 16 September 2023 in Windrush ward and gave away the shifts to others (because of 32.c. and/or d. above).
- h. On 8 October 2023, Mr Faisal Konde did not uphold the Claimant's complaint against Miskarat and others dated 17 September 2023 despite there being evidence of some concerns (because of 32.c. and/or d. above).
- i. From 18 October 2023, Kiran Samra failed to allocate the Claimant a different place to work despite this being requested via Anne Rowe on 18 October 2023 (because of 32.a. and/or b. above).
- j. From 18 October 2023, the Respondent failed, following a restorative resolution meeting with Ann Rowe, to look into the Claimant's complaint of 18 June 2023 formally (because of 32.a and/or b. above).
- k. On 3 January 2024, Rahma Mowlid held an investigation meeting with the Claimant but failed to give the Claimant representation rights in the investigation meeting (in that the Claimant was not informed that she could have a union representative or colleague support for that meeting) (because of 32.a. b. c. and/or d. above).
- l. On 7 February 2024, Rahma Mowlid copied the grievance outcome to Kirstin Blackburn despite the fact she was not directly involved in decision making (because of 32.a. and/or b. above).
- m. On 7 February 2024, Rahma Mowlid did not uphold the Claimant's complaint of 14 November 2023 against Elspeth Jefferson and Danielle Murphy despite there being evidence (because of 32.a. b. c. and/or d. above).
- n. Matt Barnfield creating or preparing the outcome letter for Rahma Mowlid dated 7 February 2024 for the Claimant's complaint made against Elspeth Jefferson and Danielle Murphy (because of 32.a. b. c. and/or d. above).
- o. On 7 June 2024 Ahmed Rujbally not upholding the Claimant's complaint against Elspeth Jefferson and Danielle Murphy, on a further review of that complaint (because of 32.a. b. c. and/or d. above).
- p. On 14 June 2024, Harmeet Marway not upholding the Claimant's complaint dated 01 and 10.04.24 made against Windrush Ward and for not providing a copy of the investigation report despite multiple requests (because of 32.a. b. c. and/or d. above).
- q. Matt Barnfield creating or preparing the outcome letter dated 14.06.24 for Harmeet Marway for the Claimant's complaint made against the staff of Windrush Ward dated 1 April 2024 and 10 April 2024 (because of 32.a. b. c. and/or d. above).

- r. For not providing most of the information requested under the Subject Access Request made on 21 March 2024.
35. Was the Claimant subjected by the Second Respondent to the following alleged detriments on the grounds of having made one of the first two alleged protected disclosures (listed under §32 above) contrary to s47(b) ERA 1996?
- a. The Claimant relies on the same alleged conduct as set out under her direct race discrimination claim at §14 above.

Unlawful deduction from wages (s.13 ERA 1996)

36. Were any wages properly payable to the Claimant in respect of shifts on 7th, 8th, 12th, 13th and 14th May and 5th, 23rd and 24th August 2023?
37. If so, did the First Respondent fail to pay such wages to the Claimant?
38. If so, were any such deductions authorised within the meaning of s.13(1) ERA 1996?

REMEDY

39. For what period of loss should the Claimant be compensated?
40. If the Tribunal finds that the Respondent(s) unlawfully discriminated against, the Claimant, is the Claimant entitled to an award for injury to feelings, and if so, at what level (s124 EqA)?
41. Should the Tribunal make a recommendation that the Respondent(s) take steps to reduce any adverse effect on the Claimant? What should it recommend?
42. Should interest be awarded? How much? Claimant is unable to take interest payments due to religious reasons.”

The evidence

8. We had a hearing bundle of 1,901 pages. In addition, we were provided with Therapeutic Engagement and Supportive Observation (TESO) records for 22 April 2023 and metadata concerning when Faisal Konde made an entry dated 8 September 2023 on the progress notes. It showed the entry was originally recorded on 25 April 2024.
9. We were provided with an agreed chronology and an agreed cast list.
10. We had a witness bundle of 151 pages containing 14 witness statements and we heard from the following:-
- 10.1 The claimant.
 - 10.2 Ms Kiran Samra, Temporary Staffing Manager.

- 10.3 Mrs Elspeth Renny (nee Jefferson), second respondent and a Healthcare Assistant at the time.
 - 10.4 Ms Rahma Mowlid, Security Liaison Nurse.
 - 10.5 Mr Faisal Konde, Ward Manager, Windrush Ward.
 - 10.6 Ms Kirstin Blackburn, Temporary Staffing Team Leader.
 - 10.7 Ms Danielle Murphy, Senior Nurse Women's Forensic Services.
 - 10.8 Mr Charles Oppong, Staff Nurse, Windrush Ward.
 - 10.9 Ms Hamedan Khan, Ward Manager, Pearl Ward.
 - 10.10 Mr Steven Adeyemi, Healthcare Facilitator.
 - 10.11 Mr Ahmad Rujbally, Senior Nurse.
 - 10.12 Mr Pravin Ramnath, Staff Nurse, Windrush Ward.
 - 10.13 Ms Cynthia Buckle, Staff Nurse and Team Leader, Parkland Ward.
 - 10.14 Ms Harmeet Marway, Ward Manager, Berry Ward.
11. The respondent provided us with written closing submissions for which we are grateful. Both the respondent and claimant also made oral submissions

The facts

12. The respondent provides mental health and community services for adults across the London Boroughs of Ealing, Hammersmith and Fulham, and Hounslow in the community, in hospital and in specialist clinics and forensic (secure) units.
13. The claimant worked flexibly as set out in paragraphs 16 and 17 of the respondent's response.

“16. The claimant worked flexibly, choosing when and where she wished to work. She worked on different wards, undertaking different work, and did not hold a consistent shift pattern. The claimant was required in her role, as Bank Only Healthcare Assistant, to assist with and carry out assigned tasks including direct and indirect patient care, ensuring that care was provided using the principles of recovery under the supervision of a senior healthcare assistant and registered practitioner, to support, undertake and assist in the organisation of the day to day smooth running of the clinical environment, to escort service users as required and directed by the Nurse in Charge, and to complete physical health checks under supervision and guidance of a registered nurse. The claimant worked on a number of psychiatric wards, including Parkland Ward, where the claimant often worked in a Women's Enhanced Medium Secure Service, in which patients predominantly have a diagnosis of personality disorder with high levels of self-harm and violence towards others.

17. The claimant, within her bank worker role, was required to complete “level”; this refers to Therapeutic Engagement and Supportive Engagement (TESO) whereby patients are nursed on general observations (between 15 minutes and one hour, depending on the ward). If risk to self or others increases, then the level of TESO can also increase. This can be increased to intermittent TESO (15 or 30 minutes depending on the ward) or one to one within eyesight or arm's length, with increasing staff numbers.”

If a patient was in seclusion the patient would be in a locked room and the observation would be through a window in the door from outside.

16. The TESO policy in force at the time of the events of this claim provided:-

“8.5 An individual staff member should not undertake a continuous period of observation above the general level for longer than two hours.”
17. We note that the policy was reissued in September 2023 and now states (albeit that the copy we have suggests it was from the October 2019 version):

“Staff should not be on one service user’s observation for more than two hours but there may be times when you might have to wait a little to be relieved.”
18. The seclusion policy in force at the time of the events of this claim provided:-

“7.3.9 In line with the Trust Policy for Therapeutic Engagement and Supportive Observation Policy (Policy 01) the nurse in charge will ensure that wherever practicable an individual should not undertake a period of observation within eyesight observations for an uninterrupted period of longer than two hours.”
19. Shifts were posted online (The Hub) and bank staff could book shifts of their choice. It was also possible for bank staff to call ward managers and be asked to work shifts with the online booking completed later after they had begun working. It is clear to us that the system was a dynamic one with shifts being cancelled or changed by managers due to changing circumstances.
20. For example, we have evidence that the claimant booked a 7.00-13.00 shift for 27 June 2023 on Pearl Ward on 9 June 2023. Later, on 9 June, that shift was cancelled by Hamedan Khan due to a more experienced bank worker being required. The claimant had also booked herself on a 15.00-21.30 shift for 27 June 2023 on Tennyson Ward. She then cancelled that shift and booked a 7.00-21.30 “long day” (x 2 shifts) on the Windrush Ward which she then worked.
21. The claimant describes her race as Indian.
22. The claimant was born on 29 March 1962 and was therefore 61 years old at all material times.
23. We heard evidence from 13 witnesses for the respondent. Given the fact that the claimant is alleging race, age, and sex discrimination, we noted that there was significant diversity amongst the respondent’s witnesses. Without making any assumptions as to any of their ethnicities, we observe that 10 out of the 13 would probably be characterised as non-white. We heard oaths taken on the Bible, the Koran, the Gita, the Guru Grantha Sahib and by way of affirmation. Eight of the witnesses were female. Charles Oppong told us that he was shortly to turn 40 and Pravin Ramnath is probably in his 50s given he began his employment in 1992.
24. We consider that acknowledging the diversity of the respondent’s workforce is relevant given the wide-ranging nature of the claimant’s complaints and the number of individuals who she has accused of treating her badly.
25. Issue 13(a) is:

“On 22 April 2023 Cynthia Buckle saying that she doesn’t want to hear anything from the claimant when she said she was from India.”

26. In her witness statement the claimant says that this exchange took place on 22 April 2023. However, in the particulars of claim it is said to have occurred before 22 April 2023. That was reinforced by the claimant’s representative in his closing submissions. Cynthia Buckle gave evidence that she could not recall asking the claimant where she was from or being informed of where the claimant was from. In the circumstances we have looked at what contemporaneous evidence there is.
27. It is clear that there was interaction between the claimant and Cynthia Buckle on 22 April 2023 in the kitchen and in the office. The claimant escalated the matter to Abigail Kom, Acting Clinical Nurse Manager, on 25 April 2023.
28. On 2 February 2024 Abigail Kom provided a written report as follows:-

“I do recall Ilda Esteve [sic] coming to my office on 25/04/2023 to complaint about Cynthia Buckle being rude to her in the way she speaks to her and also clicking her fingers when talking to her. I re-assured Ilda as she wanted to cancel her shift and told her I will be speaking to Cynthia re the complaint and to resolve the problem. I spoke to Cynthia who denied the accusation and mentioned that she was only getting Ilda to do her job on the day as the Nurse in Charge. Cynthia stated she was never rude and did not have issues with Ilda which will make her to be rude to her. Cynthia did mention she has been asking other staff on duty to do their jobs as well and no one has complained of her except Ilda. I did tell Cynthia we could have a mediation if things are proving difficult between them but we never came round to it.”

29. We note there is no reference to the alleged pre 22 April 2023 exchange in that email.
30. The claimant states in her witness statement that:-

“I hold a degree and have professional experience across various sectors, including banking, accounting, administration, teaching, and nursing. I am well-versed in raising concerns and have previously done so in the public interest and in good faith specifically in relation to health and safety issues and data breaches. My actions were acknowledged by the Information Commissioner, who recognised me as a good citizen and thanked me for bringing the matter to their attention.”

31. On 18 June 2023, the claimant made a written complaint to Kiran Samra. This states:-

“I am writing to make a complaint about a member of staff named Cynthia who is a nurse working in the Parkland Ward.

...

On 22.04.23 shift, I finished with the response and came to check the office planner book to see my next task. When she saw me, she shouted at me was rude and said, “Go, go, go, do your level” by clicking her fingers and making hand gestures indicating get lost from here. This same day in the kitchen, I was looking for biscuits again she was rude, asking me what are you looking for? As if I am not supposed to be in the kitchen.

Another incident was while I was on the computer, she said, “Out, out, out you go” by clicking her fingers. Also, in another episode, I was kept for more than 2 hours for levelling, even coming up to 3 hours, contrary to the Trust TESO procedure.”

Again, we note no mention of the alleged pre 22 April 2023 exchange.

32. On 25 June 2023 Cynthia Buckle provided a response to the claimant’s 18 June 2023 complaint but did not address allegation 13(a) as it was not mentioned.
33. On 30 June 2023 Danielle Murphy, Kiran Samra and Chris Lee (Temporary Staffing Manager) met the claimant to discuss her complaints. Danielle Murphy gave oral evidence that at that meeting she asked for details of the claimant’s race related issues and there was no answer from the claimant.
34. In her witness statement Cynthia Buckle states, when referring to the interaction with the claimant on 11 June 2023:-

“16. I asked her to stay on the level (which is a 1 on 1 observation of a patient) however she refused and went home at 15.30. This was not a heated discussion, however I may have raised my voice as I often do when working and running a shift to ensure the efficient running of a very challenging ward where there is a lot of staff working.”

35. That belies the demeanour of Cynthia Buckle when giving evidence before us as she did so in a very soft voice. However, as staff nurse and team leader on the Parkland Ward, we find that Cynthia Buckle probably was, on occasions, abrupt and loud with staff if, for example, she found them in the office on the computer when they should have been on the ward and that she would direct the staff to go out and use hand gestures.
36. However, we find that this was Cynthia Buckle’s way of managing staff in a pressured working environment.
37. We find that Cynthia Buckle probably did not ask the claimant where she was from and did not say she doesn’t want to hear anything from the claimant because she was from India. We find this due to the lack of contemporaneous complaint from the claimant on the several opportunities she had for raising the issue. Accordingly, the treatment alleged in issue 13(a) is not proved.
38. Issue 13(c) is:

“Ms Buckle being openly rude towards the claimant and breaching confidentiality on 10 [should be 11] June 2023.”
39. It transpires that the claimant was not working on 10 June 2023 and so, by agreement, this allegation relates to 11 June 2023.
40. The claimant also raised this issue in the written complaint dated 18 June 2023. She states:-

“On 10.06.23, on my Saturday shift (08.00-16.00) in Parkland Ward, Cynthia was rude and disrespectful by shouting at me in a loud voice in front of the other members of staff; I felt humiliated and degraded by her unwanted conduct towards me which was

not new to me. I told her that I finished my shift at 16.00, but the shift Planner documented my name to do the levelling past my working hours (15.30 – 16.30) and her reply was, “JUST GO AND DO IT!” I told her politely, but I finish at 16.00 hours she became more furious. And when 05 minutes remained to complete my shift, she told me to go and do the General Observation, which also takes an hour or more. I said I am finishing in the next 05 minutes; she shouted again she said, “GO, GO, JUST GO HOME AND MAKE A COMPLAINT!” The staff nurse Chichi asked her “What complaint? An indication of her turning the staff against me. She was deliberately making me work past my hours when other staff could have done their bit. I am very distraught about her behaviour which bothers me til today.”

41. Cynthia Buckle’s response was:-

“Staff was allocated to do her last observation at 15.30 to finish it at 16.00 where someone will take over from her. Her hours were 08.00 to 16.00 plus half hour break which she had taken. She never explained that she had an appointment until she was allocated to take over an observation on a patient. She took up on herself and made an arrangement with the staff on the observation to do her half hour observation. We have other staff who have been allocated to work from 8-4 and 9-5 providing us with adequate staffing during the AM shift. Because the PM staffing is minimal we try to utilise these AM staff so the PM and long day staff can have their breaks before they leave. I was expecting to go on his break so when I saw EI sitting in the day area I asked her to take over from the staff. That was when she said to me that she has asked him to do her last observation. I then asked her to do the general observation until it was time for her to go home. I have never worked her over the hours and have always given her breaks.”

42. In the circumstances we have looked to see what other evidence there is.

43. On 9 November 2023 Chinyere Ede (“Chichi”) provided a statement as follows:-

“On 10/06/2023 I can only remember that staff IE was on 08.00-16.00 shift. The shift Planner was done and breaks allocated to everyone on the shift. Staff IE had her break on her slot time. However, at 15.30 hours she took her bag and said she was leaving, Staff CB asked her why? And she stated “I am going, my shift is finished” Staff CB reminded IE that she was meant to be on observation at 15.30 and had arranged for other staff to have their breaks and take over from her at 16.00. At this point IE stated that she has made an arrangement with another staff to do her slot of observation. She was told that, that would disorganise the shift planner as we don’t have enough staff for the late shift. She was asked to continue with the general observation but she insisted, she was going and CB now said to her if you insist that you want to go, go then. IE just worked (should be walked) out of the ward.

During the shift on that particular day, I can categorically state that Staff CB was very professional caring [should be carrying] out her duties.

I did not witness staff CB raising her voice, being rude or disrespectful to staff IE during their conversation. And I can’t remember asking staff IE what “complaint”? I equally did not witness staff CB clicking her fingers during their conversations.

As a matter of fact, staff IE was the one that was rude and disrespectful to staff CB the NIC [Nurse in Charge] of the shift by not adhering to the shift planner.”

44. An email from HR dated 6 November 2023 suggests that Chichi may not have

witnessed all the exchanges between the claimant and Cynthia Buckle on that day.

45. The alleged breach of confidentiality is not dealt with in the claimant's witness statement. We understand from the claimant that the alleged breach of confidentiality was sending the 18 June 2023 complaint to Cynthia Buckle for her comments. It is clear to us and we find that there was a disagreement between the claimant and Cynthia Buckle on 11 July 2023 as to whether the claimant had reached the end of her shift and could leave.
46. We find that the probable cause of this disagreement was that, as the claimant stated, the shift planner had her rostered on observation until 16.30 but her shift actually ended at 16.00.
47. The claimant leaving at 16.00 would clearly present a problem for Cynthia Buckle in covering the observation.
48. As already found, we consider that Cynthia Buckle was likely to be abrupt and loud when dealing with such a problem and probably did become angry and say to the claimant "Just do it" and later "Go, go home and make a complaint."
49. We find that Cynthia Buckle was rude to the claimant on this occasion in that her management should have been calmer and more measured. We find that sending the claimant's complaint to CB was not a breach of confidentiality but to be expected. It would be inevitable that Cynthia Buckle would be asked for her comments on the complaints against her.
50. To that extent, we find the facts alleged in issue 13(c) are proved.
51. We have taken as a hypothetical comparator a non-Indian healthcare assistant who was leaving her shift whilst still erroneously rostered to be on an observation. We find that such a comparator would have been treated exactly the same by Cynthia Buckle due to the misunderstanding. As such, we find that the treatment was not less favourable treatment and was not because of the claimant's race.
52. Issue 13(b) is:
 53. On 7 May 2023, the claimant was working on Parkland Ward and undertaking observation of a patient in seclusion.
 54. At 14.25 on 7 May 2023 Victoria Oladejo sent an email to Kiran Samra, Temporary Staffing, and Danielle Murphy as follows:-

"It was reported that bank staff Ilda Esteves left the patient who is currently being nursed in seclusion unattended. The reason being was that, the patient complain of chest pain and she panic and run to inform the nurse in charge instead of calling for help or using the radio or the emergency alarm,.

Both the unit coordinator and nurse in charge spoke with her that should not have left the patient sight and should have used the emergency alarm to summon for help.

Could you please support her to undergo further TESO training before she resume work as her action may have put the patient at significant risk to self. I have cc the Ward Manager Abigail Kom and Senior Nurse Manager Danielle Murphy in this email.”

55. The claimant did not really deal with what actually happened in this incident in her witness statement but put it as follows in answers to cross examination:

“I was on eyesight in seclusion.

I called on the telephone – no one answered so I panicked.

I went to the door and saw the nurse and [another] patient.

I quickly went and asked the nurse in charge – I need help – It took me six-seven seconds while keeping an eye on the patient.”

56. Further, the claimant told us that the nurse in charge (Nash) did not want to escalate the matter but that a Grade 3 Healthcare Facilitator, Rachel Yearwood, said she had to escalate it. The claimant told us the nurse in charge told Victoria Oladejo.

57. In her witness statement the claimant advances a proposition that is so fanciful that, in our judgment, it adversely affects her credibility across the board. She identifies the patient as EI. She has suggested that Rachel Yearwood and EI had an unusually close relationship. In her statement she asserts:

“...Rachel leveraged her connection with the patient EI. As explained above, the relationship between EI and Rachel may have influenced EI to feign illness, thereby creating grounds for my suspension.”

58. We find it utterly improbable that a patient would be persuaded to feign illness to try and get the claimant into trouble.

59. On receipt of Victoria Oladejo’s email, on 8 May 2023 Danielle Murphy emailed temporary staffing stating:-

“I will arrange to meet with Ilda prior to her resuming work. She should not work in the Orchard [unit] until I have met with her.”

60. On 9 May 2023 Taran Marway, of Temporary Staffing, replied:-

“We will make contact with the Bank staff and request they undergo TESO training as soon as possible. We will restrict the Bank worker from booking into shifts pending completion of the TESO training.”

61. At 12.44 on 9 May 2023, Taran Marway sent an email to the claimant stating:-

“Please be informed due to an incident which occurred Parkland Ward on Sunday 7 May 2023 you have been restricted trust-wide pending investigation.

You will be required to undergo mandatory TESO training for restrictions to be lift.

...

Please be informed restrictions are in place due to the significance of the incident which compromises both patient and staff safety.”

62. It is accepted that a number of the claimant’s shifts were cancelled and this could have been five shifts.
63. The claimant had a meeting with Abigail Kom and Yoke Wong on 12 May 2023 and they were happy with the claimant’s understanding of the incident and policy. As a result, Danielle Murphy sent an email on 16 May 2023 to Temporary Staffing unrestricting the claimant so she could resume bank duties. In fact, the claimant worked a shift on 15 May 2023 so was already unrestricted.
64. We have an email from Danielle Murphy dated 20 June 2023 (clearly responding to the claimant’s 18 June 2023 complaint) wherein she states:-

“In terms of her suspension, she has reported it inaccurately. She left a patient in seclusion and walked onto the ward.”
65. We find that the word “suspension” is not necessarily the correct one to describe the respondent’s actions on or about 7 May 2023. We find that the claimant was restricted, up to five of her shifts were cancelled and she was blocked from booking shifts until 15/16 May 2023. To that extent, we find the facts alleged in issue 13(b) are proved.
66. We find that the claimant has sought to minimise what she did on 7 May 2023 by suggesting that she only left her position for six/seven seconds but kept the patient under observation. We find that she did leave the patient unobserved and went out onto the ward to seek assistance. The fact that the claimant has attempted to suggest a conspiracy to set her up suggests to us that she is well aware that she acted incorrectly at that time.
67. The claimant has proposed a Mr Mohammad Elshaef as a comparator. Mohammad Elshaef is a black healthcare assistant who walked away from a one to one TESO observation on 15 April 2023. The claimant asserts that he received no disciplinary response.
68. Danielle Murphy told us that Mohammad Elshaef was restricted and his next shift on 17 April 2023 was cancelled. However, Mohammad Elshaef was not told his shift had been cancelled and when he attended on 17 April 2023 Danielle Murphy took the opportunity to meet him to take him through TESO training understanding and, following that, then he was unrestricted. Danielle Murphy’s account is corroborated by an email she sent on 9 May 2022 to Abigail Kom which states:-

“Abi, can you speak to Ilda and arrange for us to meet with her this week? We can go through the TESO leaflet like we did with the other guy. I don’t want her to be restricted longer than necessary.”

69. We find that Mohammad Elshaef was treated exactly the same as the claimant and, as such, the claimant was not less favourably treated. As it is, we have a document setting out all the restrictions imposed on numerous bank staff between 1 January 2023 and 4 October 2025. The claimant is on it. The remaining bank staff names have been redacted but it demonstrates that restriction is a routine measure taken by the respondent when faced with a conduct issue. We have found that the claimant had committed a breach of the TESO policy and we find this was the reason for her restriction and cancelled shifts and was not her race.
70. Issues 11(a), 16(a) and 17(a) are:-
- “Pravin Ramnath saying that she was “not fit for this job” on 16 [should be 19] June 2023.”
71. In fact, the comment is alleged to have been made on 19 June 2023 following an incident on 16 June 2023.
72. On 16 June 2023, the claimant was working a “long day shift” on the Windrush Ward from 07.00 until 21.30.
73. At 19.25 on 16 June 2023 a staff member went to relieve the claimant from seclusion and the claimant appeared slumped in a fainted manner. Assistance was tendered and her vital signs checked. The claimant declined to go to A & E and was picked up by her husband at 19.55 hours. The claimant’s next shift was on 19 June 2023.
74. Pravin Ramnath was told by a colleague on 16 June that the claimant had been unwell on that shift and had had to go home.
75. On the next shift on 19 June 2023, Pravin Ramnath and the claimant had a conversation about her dizzy spell. The respondent has admitted the words alleged. However, in her oral evidence the claimant told us that Pravin Ramnath asked her what had happened and that she told him that she felt dizzy. She then said that Pravin Ramnath said, “So you are not fit for work.” In her witness statement the claimant confirms that whatever was said by Pravin Ramnath it was in response to her explaining that she had become dizzy during her shift. Whilst both the claimants and Pravin Ramnath’s English was good, neither had English as their first language. We find that there is considerable scope for misunderstanding. We find that the initial enquiry by Pravin Ramnath must have been towards her wellbeing. We find that it is improbable that Pravin Ramnath would have intended to suggest anything other than that she may not have been fit for the job on that day. However, we find that the facts alleged in issues 11(a), 16(a) and 17(a) are proved.
76. We have gone on to consider whether a hypothetical comparator would have been treated any differently. We have taken a hypothetical comparator of a younger or male colleague who had had a dizzy spell on a preceding shift. We find that any such comparator would have been treated the same with Pravin Ramnath asking after their health and whether they were fit to work. Further, we

find that any such comment was not because of the claimant's age or sex. We find it was because of concern for her wellbeing.

77. We have considered whether the facts alleged were unwanted. At best, this was a misunderstanding from the claimant's perspective and, as such, we are prepared to find that it was unwanted conduct.
78. However, as already found, we find it was not related to her sex or age.
79. Issues 14(a) and 22(a) are:-

“On 1 August 2023 circulating false and misleading information about the claimant in an email to Hamedan Khan by:

- i. Reporting that the claimant had volunteered to take a patient out on 16th July 2023.
- ii. Accusing the claimant of staying over 1.5 hours with the patient on that occasion and not utilising a unit mobile.
- iii. Accusing the claimant of not taking a patient's consent before doing a bag search.
- iv. Accusing the claimant of inappropriately touching a patient's bottom twice.”

80. Issues 29(c) and 34 (c) are:-

“On 1 August 2023 Elspeth Jefferson circulated false and misleading information about the claimant to Hamedan Khan.”

81. Issue 13(f) is:-

“On 2 August 2023 restricting the claimant from booking further bank shifts in the Orchard Unit and cancelling all her booked shifts and sending her for training unnecessarily.”

82. Issues 29(d) and 34(d) are:-

“On 2 August 2023 restricting her from booking further bank shifts in Orchard Unit until training was completed and cancelling all her booked shifts.”

83. On 16 July 2023, the claimant worked on Pearl Ward. A service user was to be escorted to church. The claimant was asked to be the escort and agreed to do so. In that sense she volunteered to undertake the task. We attach no significance to the fact that the later email of 1 August 2023 from Elspeth Jefferson referred to the claimant volunteering.
84. The claimant was given the wrong start time for the church service by Elspeth Jefferson who freely acknowledged her error at the time and subsequently.
85. Although reference is made to the church leave beginning at 9.30, we have evidence that the service user and the claimant left at 9.50. As such, Elspeth Jefferson probably mistakenly thought the church service was at 10.00 instead

of it actually being at 10.30.

86. The 'section 17' leave for the service user was for one hour's leave.
87. The claimant told us that when they arrived at the church the service did not begin initially and the service user had coffee and chatted with other attendees and the vicar.
88. The claimant had been given a unit mobile but did not call to ask what to do in light of the wrong church service start time.
89. The claimant returned with the service user having been out for about 1 hour and 25 minutes from 9.50 to 11.15.
90. On the claimant's return, and subsequently, Elspeth Jefferson had concerns about the claimant's understanding of escorting and searching procedures. She escalated her concerns to Hamedan Khan the next day orally and was later asked by Hamedan Khan to put it in writing. This Elspeth Jeferson did in an email dated 1 August 2023. This states:-

“As discussed in person –

On Sunday 16th July Sonia and I worked a shift with bank HCA IE, and had some concerns as to whether she needs some additional or further training assistance.

She volunteered to take out A for their church leave. An error on my part meant they left earlier than the church time (I thought church leave was 9.30 but it turns out it is 10.30 for the ground leave).

Instead of returning within the one hour section 17 leave or calling the ward to check on what to do she remained out with A for the rest of the church service, meaning the church leave was over 1.5 hours; I requested that in future she utilise a unit mobile and communicate with us so we could agree a plan.

On returning to the unit with A she came straight back to the ward without searching her, and was called back by reception. She explained that she did not see the reason why a search was necessary on ground leave and when she had been to the hospital church..

On the return of two other patients later in the same day Sonia requested I go with IE to do the search. I asked IE if she felt comfortable searching and she said yes she was search trained. She searched patient C first on several occasions I needed to intervene to request that she ask consent, adjust how she searched bags safely, and also adjust how she did personal search. I was concerned also that she touched the patient's bottom twice despite my telling her it was not appropriate to do so.

I also suggested later on to IE that she re look at her RIO training in addition to the search training, as she attempted to put her daily notes on the “add comment” section of the “access reason” section of the client record.

I am concerned following this shift that IE has not had enough support or does not feel comfortable perhaps to ask for support where needed to safely carry out some of her duties, and particularly with patient contact it could get them into trouble or receive

complaints.”

91. The claimant is asserting that parts of the email are false and misleading. In particular, the claimant disputes touching a patient’s bottom twice inappropriately.
92. In our judgment, as already found, we do not consider referring to the claimant as volunteering when she had been asked to undertake the escorting renders the report false or misleading. Further, we find that the reference to over 1.5 hours when the documentation indicates 1 hour 25 minutes again does not render the report false or misleading. The issue was staying out for more than one hour.
93. The claimant asserted that she did not need to have patient consent as she assumed that Elspeth Jefferson had already obtained it and denied touching a patient’s bottom twice.
94. Elspeth Jefferson was clear that the claimant, when undertaking searches, did need to obtain consent and that the claimant did touch a patient’s bottom twice. It has never been suggested that the claimant’s touching of a patient’s bottom was in any way sexual. It may have been inadvertent but that would still make it inappropriate.
95. We find that Elspeth Jefferson was a very impressive witness who came across as utterly credible. She readily accepted that she had got the church service time wrong and apologised for it. It was quite clear to us that her motive in reporting the issue was to support the claimant and protect her from potentially being the subject of patient complaints.
96. Although the issue references being sent for training unnecessarily, the claimant went out of her way in her evidence to us to stress that she was unused to escorting and searching and it was clear to us she did need training.
97. We find that the events described by Elspeth Jefferson in the email dated 1 August 2023 were true and not misleading as that is what we find happened.
98. Accordingly, the facts alleged in issues 14(a), 22(a), 29(c) and 34(c) are not proved.
99. Issues 14(b) and (c) were withdrawn by the claimant. Consequently, all the claims against the Second Respondent are dismissed.
100. On 2 August 2023 Danielle Murphy was informed of the concerns about the claimant and she informed Temporary Staffing that the claimant needed to attend clinical security training again prior to undertaking further shifts on the Orchard Unit.
101. On 2 August 2023 Danielle Murphy sent an email to all ward managers as follows:-

“Bank staff Ilda Esteves has been restricted from working in the Orchard due to

concerns raised with escorting and searching service users. She is required to re-do her Clinical Security Training before re-commencing shifts within the unit.”

102. Following this, the claimant’s booked shifts on Orchard Unit (which includes the Aurora Ward) were cancelled, one of which was 5 August 2023 on Aurora Ward.

103. Save that we find that the re-training was not unnecessary, we find that the claimant was restricted from booking shifts on the Orchard Unit from 2 August 2023 and her booked shifts were cancelled. To that extent, we find the facts alleged in issues 13(f), 29(d) and 34(d) are proved.

104. We have gone on to consider whether the facts proved were less favourable treatment. We have taken a hypothetical comparator as a non-Indian colleague about whom similar concerns had been raised. We find that such a hypothetical comparator would have been treated in exactly the same way. Consequently, we find that it was not less favourable treatment. Further, we find that the treatment was not because of her race. We find it was because of concerns over her capability.

105. Issue 13(e) is:-

“For keeping the claimant on levels for more than two hours at a time on 4 February 2023, 22 April 2023, 14 and 16 June 2023 and 8 and 9 September 2023.”

106. Issues 29(f) and 34(f) are:-

“On 9 September 2023 the claimant was kept on levels twice for more than two hours on each occasion.”

107. We have been shown a number of the TESO observations records but do not have all of them for the stated days. One column is to describe the “Taken over/handed over” time. The next column records the “allocated member of staff.” The claimant suggested that on occasions the member of staff being relieved would sign the observation chart at that time but then leave and that could be the actual start time for the next member of staff. As such, the exact time on a level may not be able to be calculated from the form.

108. However, the respondent accepts that on numerous occasions the claimant did work for more than two hours on levels.

109. We have an observation record which, on the face of it, shows the claimant doing a 2 hour level and two other colleagues, Narmin and Elizabeth doing 2 ¼ hour levels.

110. The observation records we have for 22 April 2023 show the claimant doing a 2 hour level at best, a 1 hour level and a 1 ¼ hour level but there may be another record we do not have showing her doing a longer level.

111. The observation records we have for 14 June 2023 may show her doing a 2 ¼ hour level and another 2 ¼ hour level. The observation record we have for 16 June 2023 may show her doing a 2 ¼ hour level and a 2 ½ hour level. We note

that colleagues “Banjo” did 3 hours, “Chucks” did 2 ½ hours and “Mench” did 3 hours.

112. The observations record we have for 8 September 2023 show the claimant doing a 2 hour 20 minutes level and a 2 hour level. We note that a colleague “Kamal” did 2 ½ hours.
113. The shift planner for 9 September 2023 rostered the claimant for a 2 hour and a 3 hour level although we heard the roster could change on the day.
114. In her witness statement the claimant refers to a Richard Vellapan doing a 5 hour TESO level.
115. On the basis that the claimant might have done levels for more than two hours on the stated days, we find the facts alleged in issues 13(e), 29(f) and 34(f) are proved.
116. We have gone on to consider whether the facts found proved constituted less favourable treatment. We have taken actual comparators being the claimant’s numerous colleagues who did TESO’s in excess of two hours. Whilst we do not know their races, we infer that many of them were not Indian. We find that the claimant was treated exactly the same as her colleagues in being required to undertake levels in excess of two hours on occasions. We find that this was due to operational necessity and staffing levels and was not because of her race.
117. Issues 13(g), 29(b) and 34(b) are:-

“Cancelling bank shifts (27 June, 1 July, 15 July (twice), 29 July 2023 in Pearl Ward and 5 August 2023 shift in Aurora Ward and giving them to others.”
118. We have already dealt with the cancelled shift on 5 August 2023 in Aurora Ward.
119. The shifts on 22 June, 1, 15 (x 2) and 29 July on Pearl Ward were cancelled by Hamedan Khan. As such, we find the fact alleged in issues 13(g), 29(b) and 34(b) are proved.
120. Hamedan Khan gave evidence that the shift on 27 June was cancelled as a more experienced bank worker was required. The 1 July shift was cancelled “recalled” meaning cover was later not needed. The 15 July shifts were cancelled. The first one was given to a substantive (permanent staff member) and the second was “recalled” as cover was later not needed. Danielle Murphy gave evidence that the 29 July shift was cancelled as a new substantive staff member was available.
121. We note that the claimant was able to book other shifts after being cancelled. On 27 June she worked a “long day” double shift on Windrush Ward and on 29 July 2023 she worked a “long day” double shift on Aurora Ward.
122. We accept the evidence of Hamedan Khan and Danielle Murphy as to the reason for the shifts being cancelled. It is clear to us that demands of staffing were very fluid and that shift cancellation was a fact of life for all bank staff.

123. We have considered whether the facts found proved constituted less favourable treatment. We have taken a hypothetical comparator namely a non-Indian colleague who had booked shifts but the requirements for a bank staff had changed. We find the comparator would have been treated exactly the same. We find that the claimant was not treated less favourably. We find that the treatment was not due to the claimant's race but was due to operational requirements.

124. Issues 11(b), 16(b) and 17(b) are:-

“Charles Oppong calling her “Auntie” multiple times leading up to and on 7 September 2023 in Windrush office and corridor and saying she was a “good match for the older staff member” on 26 June 2023 and 27 June 2023 in Windrush office.”

125. Charles Oppong has always agreed that he did call the claimant Auntie on one occasion. We accept that “Auntie” is a term of respect for older people in Ghanaian culture (Mr Oppong has Ghanaian heritage).

126. The claimant has given evidence that Charles Oppong used the term “Auntie” on a number of occasions despite her asking to be referred to by her first name. In addition, she states that the comment about being a good match for an older colleague, who she referred to as George, was made on two occasions.

127. Charles Oppong denied the claimant's allegations.

128. In the circumstances, we have looked at what contemporaneous evidence there is. The claimant wrote an email on 17 September 2023 complaining of unwanted conduct. This contains the following:-

“A staff member called me Auntie multiple times despite telling him to call me by my name. He said you want to be young then! I am 70, you know. He also commented on my lipstick and said I would be a good match for a member of staff named George.”

129. Notwithstanding our concerns about the claimant's credibility, we found Charles Oppong's evidence to be poor. He was reluctant to acknowledge that there was a George working on his ward, he claimed not to know George's age and would not give an estimate, he did not remember how many shifts he may have worked with the claimant when she had done 29 on his ward and he was planning shifts with only 10 staff members including bank staff. Strangely, he did not want to answer questions about TESO. We found him evasive and vague.

130. We find that Charles Oppong probably did refer to the claimant as Auntie on a number of occasions and probably did make the comment about her being a match for an older colleague. We find that Charles Oppong as a staff nurse responsible for leading the teams should not have made such comments.

131. Accordingly, we find the facts alleged in issues 11(b), 16(b) and 17(b) are proved.

132. We find that the facts found proved constituted unwanted conduct.

133. We find that it did relate to the claimant's age and sex. The term “Auntie” was because she was older and the reference to a match with George was probably

because he was older, and was due to her sex.

134. We find that Charles Oppong's purpose was probably an offensive attempt at humour.

135. We find that the claimant did perceive it as creating an offensive environment.

136. We find that the circumstances of the comments being made in the office and in the corridor and at handover were such that it had the effect of creating an offensive environment. We find that it was reasonable for the comments to have that effect.

137. Consequently, the claimant's claim of harassment on this ground succeeds.

138. Pursuant to section 212(1) Equality Act as detriment cannot include conduct which amounts to harassment, so the direct discrimination claim based on this treatment cannot succeed as well.

139. Issues 13(d), 29(e) and 34(e) are (with slightly different wording):

“On 8 September 2023 Steven Adeyemi shouting/shouted openly at the claimant and being/was aggressive to her.”

140. On 8 September 2023 both the claimant and Steven Adeyemi were working on the Windrush Ward. The claimant was doing a 1 to 1 level observation. She had done in excess of two hours and wanted to be relieved. There was an exchange between Miskarat Ikuobolati and the claimant. In the claimant's complaint dated 17 September 2023 sent to Faisal Konde, she puts it as follows:-

“I am writing concerning the matter I brought to your attention on 08.09.23 regarding Miskarat's unwanted conduct. I also would like to bring further concerns that happened following the reporting of her unwanted conduct. I feel the staff treated me less favourably, harassed and discriminated because of my Race and Age.

I told you I was on the level (1:1) for more than two hours and that she accused me of shouting for just inquiring. I also notified you that Miskarat had already written Olabissi's name on the patient folder book to show how he was doing/did his level at 17.30 when he did not even do the level. Olabissi John came to the office at 17.20 and went on the computer looking for shifts on “Employee Online” as I could see his screen and was also chatting with Miskarat when she was supposed to take over from me.

As more than two hours of my level had already passed, I asked Miskarat at around 17.55, who was taking over from me. She said “I don't know,” and then I asked her whose name was on the planner book. She replied, “I don't know, don't ask me whoever is there will come, don't shout at me.” Following your discussion with Miskarat she apologised in your office in front of you.”

141. She goes on:

“Following this, a member of staff named Steve came out of nowhere in the office and shouted at me for what happened between Miskarat and me; he said to me YOU KEEP QUIET, DON'T TALK JUST LISTEN, YOU DID SHOUT. When I tried explaining to him he told STOP, JUST STOP, NOT A WORD. He was rude and made big eyes

at me. I was upset, scared, and shaken about his inappropriate behaviour and unprofessionalism. I felt as if he was going to slap me.”

142. In his evidence Steven Adeyemi told us that he had witnessed the exchange between Miskarat Ikuobolati and the claimant and the claimant had been shouting for staff to come out and relieve her for about 10 minutes. When Miskarat Ikuobolati arrived, he says he overheard the claimant referring to wicked staff leaving her on levels. He said Miskarat Ikuobolati was not rude or abusive towards the claimant.
143. Later, Steven Adeyemi says he overheard the claimant reporting Miskarat Ikuobolati to Patricia Williams, Clinical Team Leader, in the office. He says that because he disagreed with the claimant’s account so he went into the office.
144. It is clear that this event took place even though it is difficult to reconcile when both Steven Adeyemi and the claimant may have been able to go to the office given the times they are recorded as being on observations on the TESO records.
145. In the circumstances we have looked at what other contemporaneous evidence there may be.
146. Faisal Konde investigated the claimant’s complaint in September 2023 and Steven Adeyemi denied shouting or being aggressive towards the claimant.
147. Patricia Williams made a statement signed on 9 February 2024 as part of a later investigation. She reports:-

“On that day, staff Ilda and myself (Patricia) were in the office, she was explaining to me about the incident that happened between herself and staff Miskarat. She declared that staff Miskarat was shouting at her and that she has been on the level for some time now (15 minutes extra).

I tried to explain to her that sometimes, the ward becomes very busy and we don’t even have time to explain or communicate with each other about what is going on in the ward. I apologised to her for leaving her a bit longer (15 minutes extra) on her level and she took it on board.

While we were discussing, staff Steven Adeyemi entered the office and was listening to our discussion, staff Steven Adeyemi intervene and said in his normal tone of voice, “I WAS ON THE OTHER LEVEL CLOSE TO YOU, I heard everything that you and Miskarat were discussing. Miskarat did not shout at you, she was trying to explain the reason why it was late to change her (staff Ilda) from her level, but staff Ilda was not listening, instead staff Ilda was shouting that she is going to cancel all her shifts in the ward in a loud tone of voice.

Steven Adeyemi did not shout he said, while explaining the office, he was talking in a low volume with his normal tone of voice. There was no shouting that transpires during that discussion and no inappropriate behaviour as at that moment when we were in the office discussing.”

148. We prefer the evidence of Steven Adeyemi and Patricia Willaims (albeit the latter

is untested hearsay). Clearly the claimant and Steven Adeyemi disagreed with each other's account at the time but we find that Steven Adeyemi probably did not shout openly and was not aggressive. Accordingly, the facts alleged in issues 13(d), 29(e) and 34(e) are not proved.

149. Issues 13(h), 29(h) and 34(h) are:

“On 8 October 2023 Mr Faisal Konde did not uphold the claimant's complaint against Miskarat Ikuobolati and others dated 17 September 2023 despite there being evidence of some concerns.”

150. The claimant sent an email dated 17 September 2023 to Faisal Konde raising several concerns. We have quoted part in paragraph 140 above.

151. Faisal Konde investigated the complaint and on 8 October 2023 emailed the claimant stating:-

“I am sorry to hear that you had a bad experience on Windrush Ward. As stated in your email, when you brought these concerns to me, we had a meeting myself, you and Miskarat. My understanding was that this was resolved when Miskarat apologised to you. I would like to assure you that on Windrush Ward we value Banks staff and we do not discriminate anyone. We have bank staff who are permanently based on the ward. I have spoken to them none has had your experience. I addressed your concerns with staff and my response is as below.”

152. The response was in the format of a colour coded reply to each of the claimant's complaints in her email. Whilst there was no outright decision not to uphold the claimant's complaints, he states that he did not find any evidence to uphold the allegations that the claimant had been discriminated against or harassed on the grounds of age or sex. He said he found some allegations had occurred and had been appropriately addressed.

153. Obviously enough, there was some evidence from the claimant of some concerns.

154. We find that Faisal Konde did, effectively, not uphold the claimant's complaints. As such, we find that the facts alleged in issues 13(h), 29(h) and 34(h) are proved.

155. We have gone on to consider whether the facts found proved constituted less favourable treatment. We have taken a hypothetical comparator of a non-Indian colleague who had raised similar complaints. We find that such a comparator would have been treated exactly the same. We find that the claimant was not less favourably treated and that the reason for the treatment was not the claimant's race but the considered outcome of Faisal Konde's investigation.

156. Issue 28 alleges four protected acts.

157. The claimant's complaint dated 18 June 2023 complains of being victimised,

bullied, harassed, and singled out because of her race. We find that that is a protected act.

158. Kiran Samra agrees that a meeting was held with the claimant on 30 June 2023 to discuss the 18 June complaint. Although Danielle Murphy gave evidence that the claimant did not mention any race issue, we find that the meeting was a protected act as her other complaints were addressed. In addition, the respondent has conceded that it was a protected act.
159. The complaint dated 17 September 2023 to Faisal Konde alleged harassment and discrimination because of the claimant's race and age and we find that that was a protected act.
160. The presentation of the first claim to the employment tribunal on 13 October 2023 was obviously a protected act.
161. Since the detriments alleged for both the victimisation claim and the protected disclosure (whistleblowing) claims are the same, so we consider the protected disclosures. There are four alleged in issue 32.
162. The 18 June 2023 complaint did complain about being kept on a level for more than two hours and up to three hours contrary to TESO procedure. We find that that was the disclosure of information. We accept the claimant had a reasonable belief that a legal obligation to safeguard service users and staff had been breached and/or that it tended to show a breach of health and safety. We find that whilst it clearly served the claimant's purposes it was also in the public interest as it dealt with health and safety.
163. We find the disclosure was made to the claimant's employer. Consequently, we find that issue 32(a) was a protected disclosure.
164. As the TESO complaint was discussed at the 30 June 2023 meeting so , for the same reasons, we find that issue 32(b) was a protected disclosure.
165. On 8 September 2023, the claimant raised her TESO concerns with Faisal Konde. In addition, she alleged falsification of medical records by Miskarat Ikuobolati. The same issues were raised in one of the claimant's emails to Faisal Konde on 17 September 2023. In the other email of 17 September 2023, the claimant alleged mistreatment of a patient by Miskarat Ikuobolati.
166. We find that these were disclosures of information. We find that the claimant reasonably believed that it tended to show a breach of a legal obligation to safeguard service users and staff and/or that it tended to show a breach of health and safety. We find that it was in the public interest as it related to health and safety. We find that it was a disclosure to the claimant's employer. We find that issues 32(c) and (d) were protected disclosures.
167. Issues 29(a) and 34(a) are:

“On 9 July Danielle Murphy refused to make temporary arrangements to place the claimant on other wards.”

168. We have an email dated 9 July 2023 from Danielle Murphy to the Night Co-ordinator and the Unit Co-ordinator stating:-

“Ilda Esteves has shifts booked on the hub and has requested to not work on Parkland due to issues with a staff member there. If you can, please allocate her to another ward. However, I will advise her that this is not always possible, given the nature of the hub.”

169. We find that Danielle Murphy did not refuse to make temporary arrangements. We find that she did. Accordingly, the facts alleged in issues 29(a) and 34(a) are not proved.

170. Issues 29(b) and 34(b) we have found proved. We find that the treatment was not a detriment but just part of the reality of being a bank worker. In any event, we find that the treatment was not because she had done a protected act or had made a protected disclosure but was because of the reasons we have previously found.

171. Issues 29(c) and 34(c) have not been proved.

172. Issue 29(d) and 34(d) have been proved. We find the treatment was a detriment.

173. We find that the treatment was not because she had done a protected act or made a protected disclosure but was for the reasons previously found.

174. Issues 29(e) and 34(e) have not been proved.

175. Issues 29(f) and 34(f) regarding 9 September 2023 have been proved.

176. We find the treatment was a detriment.

177. We find that the treatment was not because she had done a protected act or had made a protected disclosure but was for the reasons we have previously found.

178. Issues 29(g) and 34(g) are:-

“On 11 September 2023 the respondent cancelled the claimant’s bank shifts between 14 and 16 September 2023 in Windrush Ward and gave away the shifts to others.”

179. On 11 September 2023, the claimant emailed Temporary Staffing stating:-

“I am unwell. Could you please cancel my tomorrow’s long day shift of 12/9/23 in Windrush Ward.”

This was done.

180. Pravin Ramnath told us he called the claimant and explained that since she had called in sick and he did not know when she might return, he had to cancel her shifts. He told us she accepted this.

181. In her oral evidence, the claimant suggested that she was fit to work after 13 September but later changed her evidence to say she was sick when it was pointed out to her that in her witness statement she stated:-

“In addition my shifts on 14, 15 and 16 September 2023 were also cancelled and not marked as sick leave.”

182. We find that this change in her evidence adversely affects her credibility.
183. We note that the claimant’s cancelled shifts were re-offered on the Hub and that, had the claimant been fit for work, she could have re-applied for them. She did not. We find that the claimant’s bank shifts between 14 and 16 September 2023 were cancelled and re-offered. Accordingly, we find the facts alleged in issues 29(g) and 34(g) are proved.
184. We find that the treatment proved was not a detriment as the claimant was sick and could not work the shifts.
185. Issues 29(h) and 34(h) have been proved. We find that the treatment was a detriment. We find that the detriment was not because the claimant had done a protected act or on the ground of making a protected disclosure but was for the reasons we have previously found.
186. Issue 29(i) and 34(i) is:-
- “From 18 October 2023 Kiran Samra failed to allocate the claimant a different place to work despite this being requested via Ann Rowe on 18 October 2023.”
187. Ann Rowe was an Assistant Support Manager and RCN representative brought in by HR as a facilitator to help reconciliation between all parties.
188. We have no evidence that Ann Rowe requested Kiran Samra to allocate her a different place to work. Kiran Samra told us that Ann Rowe did not speak to her about putting the claimant in a different department. It was not her role to allocate bank staff work.
189. In any event, the claimant could apply for shifts in outer London on wards outside the Orchard Unit. Had the claimant wanted to apply for Hammersmith and Fulham, all she would have had to do was to complete a separate form for payroll processing. She did not do this. We find the facts alleged in issue 29(i) and 34(i) are not proved as there was no failure.
190. Issues 29(j) and 34(j) are:-
- “From 18 October 2023, the respondent failed, following a restorative resolution meeting with Ann Rowe to look into the claimant’s complaint of 18 June 2023 formally.”
191. On 19 October 2023 Ann Rowe forwarded to Kiran Samra that the claimant wanted her complaint of 18 June 2023 dealt with formally. Kiran Samra escalated the complaint to her manager Amrit Lochab and Irfan Khan (HR).
192. The respondent candidly accepted that nothing further was done and that this was an oversight. Accordingly, issues 29(j) and 24(j) are proved.

193. We find that the treatment was a detriment.

194. It is clear that at this time the respondent was aware that the claimant had contacted Acas. In our judgment, that would make it more likely that the claimant's complaint would be dealt with rather than ignored because of the protected acts/disclosures. Further, the claimant put in a grievance on 14 November 2023 which was investigated in full. We find that the probability is that this was an innocent oversight and not because of the claimant doing a protected act or making a protected disclosure.

195. Issue 29(k) and 34(k) is:-

“On 3 January 2024 Rahma Mowlid held an investigation meeting with the claimant but failed to give the Claimant representation rights in the investigation meeting (in that the Claimant was not informed that she could have a union representative or colleague support for that meeting).”

196. On 14 November 2023, the claimant submitted a grievance. Rahma Mowlid was tasked to deal with the complaint. On 7 December Rahma Mowlid contacted the claimant as she wanted to get some detail from her. On 21 December 2023, the claimant contacted Rahma Mowlid. Following a phone call, a meeting was arranged on 3 January 2024. The meeting was by Teams and Kirstin Blackburn took notes. Rahma Mowlid gave evidence that it was an informal meeting to discuss the complaint and that the claimant did not request trade union or colleague support.

197. The claimant had no statutory or policy right to be accompanied.

198. We find there was no failure to give the claimant representation rights. Accordingly, issues 29(k) and 34(k) are not proved.

199. Issues 29(l) and 34(l) are:-

“On 7 February 2024 Rahma Mowlid copied the grievance outcome to Kirstin Blackburn despite the fact that she was not directly involved in decision making.”

200. On 7 February 2024 Rahma Mowlid did copy the grievance outcome letter to Kirstin Blackburn as well as Kiran Samra, Chris Lee, and Sweety Khosla (HR). All the other three were in Temporary Staffing. Kirstin Blackburn had been at the investigation meeting and so would have been fully aware of all issues.

201. We find that the fact alleged in issues 29(l) and 34(l) are proved.

202. We find that copying in Kirstin Blackburn was not a detriment. We find that as she was part of the Temporary Staffing Team it was entirely appropriate for her to be aware of the outcome of a bank staff grievance.

203. Issues 29(m) and 34(m) are:-

“On 7 February 2024 Rahma Mowlid did not uphold the claimant's complaint of 14 December 2023 against Elspeth Jefferson and Danielle Murphy despite there being evidence.”

204. On 7 February 2024 Rahma Mowlid did not uphold the claimant's grievance. Accordingly, issues 29(m) and 34(m) are proved.
205. We find that, from the claimant's perspective, that was a detriment.
206. We have already found that, whilst there was evidence from the claimant, the overwhelming evidence was that Elspeth Jefferson and Danielle Murphy acted entirely appropriately regarding the security breach. It may be that some other aspects of the claimant's grievance were not investigated by Rahma Mowlid. However, we find that Rahma Mowlid was unaware of the protected act or protected disclosures.
207. We find that the detriment was not because of or on the grounds that the claimant had done a protected act or had made protected disclosures. We find that it was a decision based on the merits.
208. Issues 29(n) and 34(n) were withdrawn by the claimant.
209. Issues 29(o) and 34(o) are:-
- “On 7 June 2024 Ahmad Rujbally not upholding the claimant's complaint against Elspeth Jefferson and Danielle Murphy on a further review of that complaint.”
210. On 3 April 2024, the claimant emailed HR to complain about the outcome of her 14 November 2023 complaint.
211. On 7 June 2024 Ahmad Rujbally sent the claimant an outcome letter of 7 pages with 13 appendices. The claimant's concerns were not upheld.
212. We find that the fact alleged in issues 29(o) and 34(o) are proved.
213. We find that from the claimant's perspective, the facts proved were a detriment.
214. We find that the detriment was not because of or on the grounds that the claimant had done a protected act or made a protected disclosure. We find it was due to a detailed investigation of the merits and an objective decision.
215. Issues 29(p) and 34(p) are:-
- “On 14 June 2024 Harmeet Marway not upholding the claimant's complaint dated 1 April and 10 April made against Windrush Ward and for not providing a copy of the investigation report despite multiple requests.”
216. On 1 April 2024, the claimant complained that an email dated 17 September 2023 alleging mistreatment of a service user by Miskarat Ikuobolati had not been dealt with.
217. On 10 April 2024, the claimant requested a formal review of her other complaint of 17 September 2023 including a complaint about the disclosure of her personal mobile number and her complaints about Charles Oppong.
218. On 14 June 2024 Chris Lee sent the claimant the outcome letter. It is dated 31

May 2024 and is brief. It states:-

“I am writing to update your [sic] regarding your complaint into Windrush Ward (per your email date 1st and 10th April 2024). This was passed onto the Senior Nurse who had instructed an independent manager to look into your complaint. The independent manager has completed the investigation and this is to inform you that there will be no further action.”

219. As such, we find that Harmeet Marway did not uphold the claimant’s complaints dated 1 April 2024 and 10 April 2024. We find the first part of issues 29(p) and 34(p) is proved.
220. On 16 June 2024, the claimant emailed Chris Lee expressing concerns regarding the handling of her complaint/grievance and requesting a copy of the investigation report.
221. The claimant chased up her request on 23 June 2024.
222. On 25 June 2024 Sweetie Khosla (HR) asked Irfan Khan (Head of HR) if he was happy for the fact find to be disclosed as it was not normal practice.
223. On 26 June 2024 Irfan Khan replied that the Dignity at Work policy provided that the report could be requested.
224. On 5 July 2024, the claimant requested the report again as a Subject Access Request.
225. The report was provided to the claimant on 18 July 2024. The report is eight pages long with an appendix.
226. We find that the claimant did make a number of requests for the report and that it was eventually provided. Accordingly, we find the second part of issue 29(p) and 34(p) is not proved.
227. We find that the first part of issue 29(p) and 34(p) from the claimant’s perspective, was a detriment.
228. We find that the detriment was not because of or on the grounds that the claimant had done a protected act or made protected disclosures. We find that it was due to a detailed investigation of the merits and an objective decision.
229. Issues 29(q) and 34(q) were withdrawn by the claimant.
230. Issue 29(r) and 34(r) are:-

“For not providing most of the information requested under the Subject Access Request made on 21 March 2024.”

231. The claimant made a Subject Access Request on 21 March 2024. Nine categories of documents were requested.
232. On 5 July 2024, the claimant complained that she had not received 1,2,3,4,5 and

8 which we take to indicate she had had 6,7 and 9.

233. On 7 August 2024, the claimant was informed there was nothing disclosable for 1,4 and 8. 2, 3 and 5 had been provided. The delays were caused by the respondent having to seek clarification from the claimant, for example on 27 March 2024.
234. The Subject Access Request was dealt with by the Information Governance Team, a completely different team to the ward manager, HR, and Temporary Staffing Teams who the claimant had complained about.
235. We find that, from what has been placed before us, most of the information requested made under the Subject Access Request, if not all of it, was provided.
236. As such, we find that issues 29(r) and 34(r) are not proved.
237. Issue 36 is:-

“Were any wages properly payable to the claimant in respect of shifts on 7th, 8th, 12th, 13th, 14th May and 5th, 23rd and 24th August 2023?”

238. The claimant did work on 7 May and 23 August 2023 and was paid for that work.
239. The claimant did not work any of the other shifts and so no wages were properly payable for them.
240. As regards the harassment claim we have found proved, all treatment is in time. Due to our findings on all other claims, we do not deal with the time issue.

Remedy

241. The claimant’s remedy is confined to injury to feelings.
242. We have taken into account the general principle set out in the case of Prison Service and others v Johnson [1997] ICR 275, EAT wherein the EAT summarised the general principles that underlie awards for injury to feelings:
- Awards for injury to feelings are designed to compensate the injured person fully but not to punish the guilty party.
 - An award should not be inflated by feelings of indignation at the guilty party’s conduct.
 - Awards should not be so low as to diminish respect for the policy of the discrimination legislation. On the other hand, awards should not be so excessive that they might be regarded as untaxed riches.
 - Awards should be broadly similar to the range of awards in personal injury cases.
 - Tribunals should bear in mind the value in everyday life of the sum they

are contemplating, and

- Tribunals should bear in mind the need for public respect for the level of awards made.

243. In our judgment, the following factors are relevant. The harassment involved only one person. The claimant has highlighted two occasions on which an inappropriate comment was made in relation to her being a match for an older colleague. In addition, the claimant has established that she was called “Auntie” contrary to her wishes on a number of occasions. We have taken into account that “Auntie” is, in fact, a term of respect in Ghanaian culture (since the harasser had Ghanaian heritage) but, nevertheless, since it was against her wishes it would have been offensive to her. The period of the harassment was of short duration being approximately two and a third months long. We accept that the claimant’s feelings were injured, albeit against the background where there were many other issues we have not found in her favour and the fact that she was also bringing a claim against Imperial Hospital NHS Trust for broadly similar matters (i.e. the claimant’s feelings were injured by other treatment outside the respondent’s control at the same time).

244. In our judgment, in all the circumstances, the correct level for injury to feelings is at the bottom of the lower Vento band. The relevant Vento band at the time was £1,200-£11,700. In our judgment an appropriate award for injury to feelings is £1,200.

245. We have taken the date of the harassment as being the mid-point between 26 June and 7 September 2023, namely 1 August 2023. 2 years 126 days would add 18.76%. Consequently, we award interest of £225.12.

246. The total award is therefore £1,425.12.

Anonymity order

247. At the outset of this hearing the claimant applied for an anonymity order on the basis that the emails sent on 1 August 2023, which contained an allegation that the claimant had inappropriately touched a service user’s bottom, was false or misleading. We have found that the email was accurate and true. Consequently, we consider that the public interest in the open administration of justice outweighs any of the claimant’s convention rights. Accordingly, the anonymity order is denied.

Approved by:

Employment Judge Alliott

Date: 26 February 2026

Case Number: 3311669/2023 and 3303553/2024

JUDGMENT SENT TO THE PARTIES ON

3 March 2026

FOR THE TRIBUNAL OFFICE