



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr S Mokhammad

**Respondent 1:** Mersey and West Lancashire Teaching Hospitals NHS Foundation Trust

**Respondent 2:** NHS England

**Heard at:** Birmingham by CVP

**On:** 23<sup>rd</sup> and 24<sup>th</sup> September 2025

**Before:** Employment Judge Beck

## Representation

Claimant: In person, in attendance on the 23/9/25 and until 1.20pm on the 24/9/25

Respondent 1 and 2: Mr Sugarman (counsel)

# RESERVED JUDGMENT

1. The claimant is estopped from relying on allegations 4.2.1, 4.2.2, 4.2.3, 4.2.4. Those allegations are dismissed. Alternatively, they are dismissed as out of time.
2. Allegation 6.1.1 victimisation is dismissed as out of time.
3. The claimant is estopped from relying on allegations 6.1.2, 6.1.3, 5.2.1, 8.2, and any holiday pay complaint. Those allegations are dismissed. Alternatively, they are dismissed as out of time.
4. The notice pay complaint has no reasonable prospects of success and is struck out.
5. The claimant is estopped from relying on allegations 5.2.2, 5.2.3 and 5.4. Those allegations are dismissed. Alternatively, they are dismissed as out of time.
6. Allegation 6.1.4 victimisation is dismissed as out of time.
7. The claimant is estopped from relying on allegations 4.2.6 and 4.2.7. Those allegations are dismissed. Alternatively, they are dismissed as out of time.

8. The unfair dismissal complaints in respect of respondents 1 and 2 have no reasonable prospect of success and are struck out.
9. Issue 4.2.5, complaints of direct race, religious and disability discrimination have no reasonable prospect of success and are struck out.

## **Introduction**

1. The claimant was employed by the first respondent as a doctor between the 1/8/18 and 20/5/24. He presented his first claim form on the 8/8/24, under case number 6008025/24, in respect of the first respondent. Early conciliation commenced on the 7/6/24 and concluded on the 10/7/24.

2. In relation to the first respondent, the claimant pursues complaints of race, disability and religious discrimination, unfair dismissal and notice pay, holiday pay, arrears of pay and other payments. He referred to medical conditions of dyslexia and diabetes.

3. The second respondent is a non-departmental public body, responsible for the GP training programme. The claimant presented a second claim form, in relation to the second respondent, on the 15/8/24. Early conciliation started on the 7/6/24 and ended on the 16/7/25.

4. The claimant brings claims of unfair dismissal, race, disability and religious discrimination against the second respondent. He refers to medical conditions of dyslexia and diabetes.

5. A telephone case management hearing took place before Employment Judge Hindmarsh on the 15/1/25. She recorded that the claimant relied on medical conditions of diabetes, dyslexia / dyspraxia, myocardial infarction, stress, anxiety and depression. The claimant was requested to provide medical evidence of myocardial infarction, stress, anxiety, and depression by the 26/2/25. The respondent was to confirm by the 12/3/25 whether it accepted the claimant had those disabilities. The first respondent confirmed it accepted the claimant was disabled by reason of diabetes and knew of this from the 9/4/19. In relation to dyslexia, the first respondent accepted that the claimant had this disability from June 2021 and had knowledge of it from this time. The second respondent accepted diabetes was a disability at all relevant times, and dyslexia a disability from June 2021, and had knowledge of it from June 2021.

6. The case management order of the 15/1/25 noted the claimant required regular breaks. He did not have a solicitor representing him at the hearing.

7. In respect of case numbers 1303123/22 and 2602222/22 which involved the same claimant, the 2 respondents and a third respondent, a 9-day hearing took place in November 2023 with an additional day in February 2024, and a reserved judgment was handed down on 7<sup>th</sup> May 2024. Complaints of direct race and disability discrimination, harassment related to race and disability, failure to make reasonable adjustments, victimisation and unauthorised deductions from wages complaints were determined to be not well founded and dismissed.

8. The first respondent accepts it dismissed the claimant for some other substantial reason, a breakdown in the relationship of trust and confidence, based on findings

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made in the 2024 judgment. The first respondent accepts the unfair dismissal claim was in time; the second respondent's position is it was not the claimant's employer, so a claim should not be brought against it. The second respondent removed the claimant's national training number on receipt of the 7/5/24 judgment. The second respondents' position is that this decision was taken on the grounds it had lost trust and confidence in the claimant's suitability to continue the training.

9. A 2-day public preliminary hearing was listed by Employment Judge Hindmarsh on the 15/1/25, to take place by CVP on the 14<sup>th</sup> and 15<sup>th</sup> May 2025. This was to deal with identifying the issues in the claim, out-of-time arguments in respect of the discrimination claims, and the respondent's applications for strike out / or deposit orders.

10. On the 6/5/25 the claimant wrote to the tribunal requesting a postponement of the May hearing. He referred to his learning disabilities, that he needed a representative and was finding a representative, wanted to record the hearing, and wanted to make written submissions instead of attending a hearing. The respondents opposed this application on 8/5/25. On the 12/5/25 the tribunal of its own accord postponed the May hearing, due to clashes with judicial training. A provisional date of the 19/20 August 2025 was relisted and altered to the 23<sup>rd</sup> and 24<sup>th</sup> September 2025 at the respondents request due to counsels' availability.

11. On the 21<sup>st</sup> of August 2025, the claimant applied to have the hearing in September dealt with by written submissions due to his learning disability, with a 1/2-hour video hearing and he advised he had no representation available on those dates. Employment Judge Broughton wrote to the parties on the 9/9/25 refusing the claimant application, on the basis the claimant had not shown evidence of his efforts to instruct a solicitor, written submissions were not in the interests of justice, and the claimants oral evidence would need to be heard on time limit issues and his means.

## **Preliminary issues**

12. The parties have provided bundles for the 2 – day hearing which I have considered, the respondents bundle 311 pages and the claimant a separate bundle of 117 pages. Counsel for the respondent has provided a skeleton argument dated 23/10/25; the claimant had received the skeleton argument but had not had the opportunity to read it. The claimant confirmed he was familiar with all documents submitted, including both parties' agendas, 15/1/25 case management order, and the (page 213) list of issues relating to the 2022 proceedings.

13. The claimant made an application for a Pashto / Pashtoon interpreter to be provided to assist him in these proceedings. He explained that the tribunal used judicial language, which he found confusing, especially during the 2022 proceedings. The claimant explained he had been a UK citizen for 20 years, qualifying as a doctor in Russia in 1999, and had been a doctor in the UK for many years. He accepted he did not seek an interpreter in the 2022 proceedings, and confirmed as recorded in the bundle, he was fluent in 4 languages including English.

14. Counsel for the respondent drew the tribunal's attention to the fact that the claimant had conducted the 2022 proceedings without a solicitor and had not previously requested an interpreter. The claimant did not request an interpreter in

the case management hearing, which took place before Employment Judge Hindmarsh on the 15/1/25. Voluminous correspondence had been sent by the claimant in these and the previous proceedings. He obtained a postgraduate certificate in Glasgow in relation to pediatrics. The respondent's position was that the claimant did not require an interpreter.

15. I considered the claimant's application very carefully, aware of my duty to ensure the claimant can participate fully in proceedings and not be disadvantaged in any way. I took into account the claimant had been a doctor in the UK for 20 years and was fluent in 4 different languages. He had been involved in a final hearing in the Employment Tribunals in 2022, which ran for 10 days and involved him cross examining in person up to 10 witnesses called in those proceedings by the respondent. I noted that a request for an interpreter had not been made prior to today's hearing in these proceedings and had not been requested in the 2022 proceedings. Employment Judge Edmonds in her 2022 judgment at paragraph 95 noted the claimant was able to participate in proceedings, by answering questions put to him and being able to formulate questions for the respondent witnesses. I would find it surprising the claimant was able to do this if he required the services of an interpreter. Considering all the factors I have outlined in this paragraph, I refused the claimant's application for an interpreter, noting he had been able to communicate with the tribunal and counsel for the respondent without difficulty today. (23/9/25)

16. The claimant had in advance of this hearing, as outlined at paragraph 10 above, in May 2025 sought permission to record the hearing. He renewed that application today. He referred to his learning disability, and difficulties writing notes, advising he had been told to record meetings.

17. Counsel for the respondent pointed out that recording had been allowed in the 2022 proceedings, and the respondent's position was it remained neutral on this. Counsel reminded the tribunal of the criteria set out by the EAT in **Dr R Heal v The Chancellor of Oxford and others, 2020 WL 00606678**.

18. Considering the factors outlined in paragraph 27 of the Heal judgment, the claimant referred to his dyslexia but had not referred to any medical evidence relied on to support this application. In considering whether the disadvantage could be alleviated by other means, I asked the claimant if his wife, family member or friend could attend the proceedings to assist him. The claimant stated his wife's English was not good, and he did not have anyone else who could attend to help him.

19. The disadvantage to the claimant was that he could not take notes of the hearing. I considered the nature of this hearing, essentially the first part of the hearing being to clarify the claimants' claims, and the second part whether those claims could proceed / were out of time / should be struck out which could involve hearing evidence. In the 2022 proceedings, the claimant had used the tape recording at the end of the day, to help him consider witnesses evidence, and what questions he may wish to ask in cross examination. The nature of this hearing I consider to be different, and it did not seem to me to be helpful to the claimant to listen to the tape recording at the end of the day, because that would not help him clarify his claim as we proceeded through the claim forms. There would be a tape recording for official purposes that the tribunal would make.

20. Counsel for the respondent had his solicitor and trainee solicitor present during the hearing, the trainee solicitor taking notes. I asked counsel whether the

respondent would be prepared to share the trainee solicitors' notes, to help the claimant recap what had taken place in the hearing. The respondent did not object to that. It seemed more appropriate for the notes to be provided, and additional breaks given to the claimant to read those, to enable him to participate effectively in the proceedings. I also agreed to summarise the position we had reached after each break taken, to assist the claimant. In view of this, considering the respondents neutral stance, the nature of the proceedings, and ability to provide notes and additional breaks, I concluded that this would alleviate the disadvantage to the claimant, and was a preferable adjustment to the claimant recording the proceedings. The decision could be revised / reconsidered during the course of the hearing as required.

21. It was agreed the tribunal would break every hour, and the respondent would provide a copy of their notes at that point for the last hour, with times recorded, so it was apparent which periods of time the notes related to. The claimant would request any additional time required to read extra documents.

22. The claimant requested that the respondent provide representation for the claimant, and that the hearing should be adjourned for this to take place, the claimant referring to indemnity insurance. I refer to paragraphs 10 and 11 above, and requests made by the claimant for adjournments to secure representation, in May and August 2025. It is noted that a similar request was made in the 2022 proceedings (paragraph 85), and the claimant was advised that this was not possible and encouraged to bring someone to support him in those proceedings; this did not occur.

23. I indicated to the claimant I did not have any power to order representation to be provided for the claimant, and in view of the history of the case identified at paragraphs 10 and 11 above, I was not prepared to adjourn for the claimant to obtain representation.

24. The claimant was given a 35-minute adjournment to consider the respondents skeleton argument, and we recommenced the hearing at 12 noon. (23/9/25). A discussion took place regarding Res Judicata, and counsel for the respondent, and I assisted the claimant. I provided a description of the different circumstances in which a tribunal may determine complaints / certain factual findings from previous proceedings / matters which were not raised in previous proceedings but should have been, may not be pursued. The respondent indicated he would in due course raise those arguments, based on his submissions in his skeleton argument.

25. In relation to disability, the claimant refers to diabetes and dyslexia in his claim form. The first respondent accepts the claimant was disabled by diabetes, and the respondent had knowledge of this from the 9/4/19. It accepted that dyslexia was a disability from June 2021, and it had knowledge from June 2021. The second respondent accepts that diabetes was a disability at all relevant times. It accepted that dyslexia was a disability from June 2021 onwards, and it had knowledge of the effects from 25/6/21. Both respondents confirmed they accepted the claimant was disabled by virtue of stress and anxiety, in accordance with Employment Judge Hindmarsh's directions dated 15/1/25. This leaves the conditions of myocardial infarction and depression outstanding.

## **The Applicable Law**

## Time Limits

**Section 123 of the Equality Act (2010)**, which specifies time limits for bringing employment discrimination claims, provides so far as relevant that:

"(1) ... proceedings on a complaint ... may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable."

The language used ("*such other period as the employment tribunal thinks just and equitable*") gives the employment tribunal the widest possible discretion.

**Section 33(3) of the Limitation Act 1980** (power to extend time in personal injury actions) specified a number of factors that a court is required to consider when balancing the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

In **British Coal Corporation v Keeble [1997] IRLR 336**, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion' (**Southwark London Borough v Afolabi [2003] IRLR 220**).

The Court of Appeal in **Robertson and Bexley Community Centre (trading as Leisure Link) 2003 IRLR 434CA** made it clear that there is no presumption that time should be extended to validate an out of time claim unless the Claimant can justify the failure to issue the claim in time. The Tribunal cannot hear a claim unless the Claimant convinces the Tribunal that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.

In case of **Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640** the Court of Appeal however stated that the "*such other period as the employment tribunal thinks just and equitable*" extension indicates that Parliament chose to give the tribunal the widest possible discretion. Although there is no prescribed list of factors for the tribunal to consider, "*factors which are almost always relevant to consider are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent*". There is no requirement that the tribunal had to be satisfied that there was a good reason for the delay before it could conclude that it was just and equitable to extend time in the claimant's favour.

**Adedeji v University Hospital Birmingham NHS Foundation Trust [2021] EWCA Civ 23, [2021] ICR D5** the Court of Appeal stated that "*The best*

*approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) [Equality Act] is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular, "the length of, and the reasons for, the delay". If it checks those factors against the list in Keeble, well and good; but I would not recommend taking it as the framework for its thinking."*

## **Res Judicata**

Lord Sumption held in **Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd [2014] AC 160, SC** "res judicata" is a "portmanteau term which is used to describe a number of different legal principles with different juridical origins", which can overlap with each other. The principles include:

**a. Cause of action estoppel:** "once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings";

**b. Issue estoppel :** "the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties"

**c. The rule in Henderson v Henderson:** "...the principle first formulated by Wigram V-C in **Henderson v Henderson (1843) 3 Hare 100, 115**, which precludes a party from raising in subsequent proceedings matters which were not but could and should have been raised in the earlier ones.

In **Henderson v Henderson**, which Lord Sumption approved in *Virgin Atlantic Airways Limited*, Wigram V-C held: "...where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points on which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time ..."

Lord Sumption referred to Lord Keith's judgment in **Arnold v National Westminster Bank plc [1991] 2 AC 93, HL at 104D-105E**, which he did not regard as a Henderson type case: "Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to the law of England, permit the latter to be reopened ..."

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“Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to reopen that issue.”

Lord Sumption stated in *Virgin Atlantic Airways Limited, that **Arnold v National Westminster Bank plc [1991] 2 AC 93*** is authority for the following propositions.

(1) Cause of action estoppel is absolute in relation to all points which had to be and were decided in order to establish the existence or non-existence of a cause of action.

(2) Cause of action estoppel also bars the raising in subsequent proceedings of points essential to the existence or non-existence of a cause of action which were not decided because they were not raised in the earlier proceedings, if they could with reasonable diligence and should in all the circumstances have been raised.

(3) Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised but unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised.

In respect of Henderson abuse of process, Lord Sumption referred to Lord Bingham’s judgment in **Johnson v Gore-Wood & Co [2002] 2 AC 1**:

“Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.”

**Rule 38 Employment Tribunal Procedure Rules (2024) - Strike out**

(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds

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- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
  - (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
  - (c) for non-compliance with any of these Rules or with an order of the Tribunal;
  - (d) that it has not been actively pursued;
  - (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, response or reply (or the part to be struck out).
- (2) A claim, response or reply may not be struck out unless the party advancing it has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.
- (3) Where a response is struck out, the effect is as if no response had been presented, as set out in [rule 22](#) (effect of non-presentation or rejection of response, or case not contested).
- (4) Where a reply is struck out, the effect is as if no reply had been presented, as set out in rule 22, as modified by [rule 26\(2\)](#) (replying to an employer's contract claim).

**Wangtian Xie v E'Quipe Japan Ltd [2024] EAT 176** HHJ Tayler set out some of the key principles when considering a strike out -

- (i) striking out a claim is a draconian step only to be taken in clear cut cases;
- (ii) there is public interest in discrimination cases being heard on the merits albeit there is no absolute prohibition on strike out;
- (iii) a party's case should generally be taken at its highest when considering strike out; (This generally requires an assumption that the C will establish facts from which it is contended that discrimination should be inferred)
- (iv) strike out is rarely appropriate when there are core disputed facts;
- (v) and care should be taken when striking out a claim brought by a litigant in person.

The EAT gave guidance in **Cox v Adecco Group UK Limited 2001 ICR 1307** in relation to strike out applications against litigants in person. This case identified the following principles;

- (1) No-one gains by truly hopeless cases being pursued to a hearing;
- (2) Strike out is not prohibited in discrimination or whistleblowing cases; but special care must be taken in such cases as it is very rarely appropriate;
- (3) If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be

appropriate;

- (4) The claimant's case must ordinarily be taken at its highest;
- (5) It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is;
- (6) This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim;
- (7) In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing;
- (8) Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer;
- (9) If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.

The EAT in **Hasan v Tesco Stores UKEAT/0098/16** sets out the Tribunal must undertake a two-stage exercise when considering whether to strike out a claim.

Firstly, it must consider whether if the grounds relied upon have been made out.

Secondly, if it finds that a ground is made out it must then decide whether to exercise its discretion to strike out a claim.

The EAT in **White v One Oval Limited 2022 EAT 56** stated that the tribunal in determining with whether a claim has no reasonable prospect of success, has to take the claimants case at its highest, and this applies to claims for unfair dismissal as well as whistleblowing and discrimination claims.

In **Blockbuster Entertainment Limited and James 2006 IRLR 630, CA**, for a strike out for unreasonable conduct, the tribunal had to be satisfied that the conduct involved a deliberate and persistent disregard of required procedural steps or has

made a fair trial impossible, and in either case, the striking out must be a proportionate response.

### **Rule 3 Employment Tribunal Procedure Rules (2024) - Overriding objective**

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing,

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,

(c) avoiding unnecessary formality and seeking flexibility in the proceedings,

(d) avoiding delay, so far as compatible with proper consideration of the issues, and

(e) saving expense.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules, or

(b) interprets any rule or practice direction.

(4) The parties and their representatives must—

(a) assist the Tribunal to further the overriding objective, and

(b) co-operate generally with each other and with the Tribunal.

### **Clarifying the claimant's claims**

26. The claimant pursues unfair dismissal complaints against both respondents. He stated that the respondents did not follow BMA policies and procedures and dismissed him after receiving the 2022 judgment, without any process being followed. He highlights no case manager was assigned, there was no formal investigation process, no formal evidence provided or findings of an investigation outlined, no formal disciplinary meeting held, or representative provided in any disciplinary hearing, Sam Ross was not an independent reviewer as required by policy, no alternative outcomes were explored or offered, and no appeal was held.

27. We started clarifying the claimant's complaints by using the 'table of allegations in claim 1 / 2' and 'table of allegations from further particulars' produced as part of the respondents' skeleton argument. Both parties agreed to this approach, and it seemed appropriate, counsel for the respondent had fairly reflected the contents of the 2 ET1 forms and the additional clarification to claim the claimant had given in a 2-page letter dated 29/8/24, following the tribunals letter dated 22/8/24. (page 37).

28. Employment Judge Hindmarsh began this process on the 15/1/25. I have included with the judgment a draft list of issues for clarity.

29. In respect of claim form 1, the claimant confirmed he sought to pursue a complaint (1) 'on the 19/7/19, Professor Rowland recorded leave that the claimant had taken as unauthorised, and then as being for a religious festival which

disclosed the claimant's religion to others'. This is a complaint about direct religious discrimination. The claimant describes his religion as Muslim.

30. The second complaint on claim form 1 related to (2) 'In December 2018, Dr Sellens verbally accused the claimant of shouting by using capitals in e mails, and Dr Farmer then told HR'. The claimant states this was an act of direct disability discrimination. He seeks to rely on the conditions of diabetes, dyslexia, and mental health.

31. The third complaint on claim form 1, relates to 'In 2019, Dr Sellens sought to influence the claimants' clinical supervisors, Dr Mukherjee, Dr Mohana, and Dr Muogbo against him, by writing an e mail after the 19/7/19 to tell his supervisors to provide a negative report and sought to influence his competency review'. The claimant confirms he seeks to pursue this complaint as an act of direct religious race and disability discrimination. He defines his race as Afghan Pashto / Pashtoon.

32. The claimant stated his 4<sup>th</sup> complaint on claim form 1 related to 'In July 2019, Dr Mohana and Dr Sellens bullied the claimant by writing the wrong information, and other information about his family in his E – portfolio.' Whilst claim form 1 deals with respondent 1, both Dr Sellens and Dr Mohana are with respondent 2. The claimant confirms he pursues this as a direct race discrimination complaint. The claimant states that Dr Sellers' behaviour took place over a longer period, up to the date of dismissal. A discussion took place concerning a possible amendment application in relation to this, as it was not specified in the ET1 that the behaviour was continuing.

33. The claimant made a generic statement in his first ET1, that 'whenever he made a complaint of bullying, blackmail and discrimination, he was involved in a disciplinary'. (5<sup>th</sup> complaint) The claimant gave further details as follows, indicating he wished to pursue victimisation complaints; counsel for the respondent pointed out that an amendment application would need to be made as the details were not contained in the ET1 form;

- (a) After 21/1/21 diagnosis of learning difficulties, the claimant asked in a meeting with Miss Ekling of the wellbeing team on the 9/11/23, for training for dyslexic people / new computer software. In summer 2024 after termination, he received a letter starting a disciplinary investigation;
- (b) In August 2019, the claimant e-mailed Dr Rowland complaining about bullying, after an incident on the pediatric ward where a registrar was shouting at him, this was followed by disciplinary action;
- (c) On 28/1/20, the claimant complained to Dr Smith and Dr Sellens about the wrong information being recorded in his E – portfolio and then received a letter from Dr Rowlands later in 2020 indicating he was subject of an investigation and disciplinary process.

34. The claimants 6<sup>th</sup> complaint on the first claim form related to October 2019, not being paid the night shift entitlement, due to medical exemption due to diabetes. The claimant stated respondent 1 should have allowed him flexibility to work until 10.00pm and retain his night shift allowance. After discussion, the claimant agreed he wishes to frame this complaint as a reasonable adjustment complaint. The PCP was identified as a policy of not paying night shift entitlement when the full nightshift could not be worked. The disadvantage was the effects of the claimant's disability diabetes prevented him from working a full night shift. The claimant states the steps

taken to avoid the disadvantage could have been allowing him to work part of the night shift, to receive a full night shift premium.

35. The 7<sup>th</sup> complaint on the first claim form relates to the claimant's statement that he was not paid correctly when he was off sick. Today, he stated this related to the period February, March, and April 2024, and that he was entitled to full pay for this period. The claimant went on to state he was also owed notice pay and holiday pay, saying he had not taken any holiday for 3 years, and was entitled to 32 days per year. Counsel for the respondent pointed out this was not referred to in the claim form and would need to be subject to an amendment application. (The claimant considered the wages complaint further overnight on the 23/9/25. He confirmed on the 24/9/25 he wished to pursue arrears of pay for May 2020, March, April, May, June, July 2022, January 2023). (The claimant also considered the holiday pay complaint he raised overnight on the 23/9/25 and confirmed on the 24/9/25 he wishes to pursue holiday pay for 33 days a year for 3 years but did not provide further quantification of this complaint). The claimant accepted this would need to be an amendment of claim.) (The respondent had provided overnight evidence of payment of notice pay on the 27/9/24)

36. In respect of the table of allegations in the second claim form, the claimant accepted allegation 1 in relation to Dr Sellens and the use of capital letters in e mails, was the same as complaint 2 on the first claim form. Similarly, allegation 2 in respect of unfairly influencing and intervening in education reports was mirrored by the third complaint on claim form 1. Entering wrong and personal information on the claimants' E portfolio was covered by the 4<sup>th</sup> complaint in claim form 1. The fourth complaint on the second claim form in respect of unfairly influencing the annual competency review was covered by the 3<sup>rd</sup> complaint on claim form 1. All 4 allegations related to allegations concerning the first respondent.

37. In respect of the 5<sup>th</sup> allegation, on the 27/5/24, Dr Sellars removing the claimant's training number unfairly and discriminately, the claimant sought to pursue this complaint. It was said to be an act of direct disability, race, and religious discrimination. Disability discrimination complaints are based on the claimants' conditions of diabetes, dyslexia, and mental health. The respondent accepts this is an in-time complaint.

38. Throughout this part of the hearing, we took breaks every hour, and the claimant was provided with copies of the respondents' notes of hearing. I summarised at the start of each resumption of the hearing what had been discussed and agreed during the last hour of the hearing. After both claim forms had been clarified, we concluded the hearing on 23/9/25 at 4.15pm.

39. On resumption of the hearing on the 24/9/25, we continued with hourly breaks, provision of type written notes from the respondent, and summaries from me as to what had been discussed during the previous 1-hour session.

40. The first allegation on page 33 of the bundle, the claimant letter 29/8/24 setting out further particulars, relates to Dr Sellan's not providing reasonable adjustments in the workplace from June 2021, after a diagnosis of learning difficulties. The claimant also seeks to rely on his diabetes. The 2 claim forms did not contain a reference to a reasonable adjustment complaint. The respondent would argue that an amendment application would need to be made.

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41. The claimant said dragon software should have been provided and training provided, due to the Occupational Health recommendations on the 19/12/22. The claimant identified the PCP as a failure by respondent 1 to implement breaks between patient appointment times. There was also a failure to provide an auxiliary aid, the provision of dragon software. The disadvantage was that the claimant struggled to see all the patients required, and it was stressful for him to try to maintain the notes required. Steps that could have been taken to avoid the disadvantage were the provision of dragon software, training on dragon software, frequent breaks for diabetes, and increasing appointment times.

42. The respondent explained it would argue that an amendment application would need to be made in respect of the reasonable adjustments' complaint. Counsel pointed out that their view was that this matter had already been litigated as part of the 2022 proceedings. The claimant became very upset at this point, shouting that he had been blackmailed by counsel's colleague at the last hearing, and had been blackmailed by everyone last time, lawyers, the tribunal and doctors.

43. The claimant mentioned he was ill yesterday during the hearing. I stated to the claimant that I did not recall him mentioning he felt ill yesterday, and checked my notes of hearing, which did not record this. The claimant requested a break at 10.50am (24/9/25), which I granted, and the hearing resumed at 11.05am.

44. We resumed the hearing and continued the hearing considering the further particulars. The claimant did not indicate he felt unwell. (24/9/25).

45. The claimant confirmed he sought to pursue the second allegation in the further particulars, that Occupational Health on the 19/12/22 (and also in 2024?) recommended the claimant should have a representative in the disciplinary hearing, but this was not provided by Dr Sellens or Dr Rowland. This should have been allowed as a reasonable adjustment. This was not mentioned in the 2 claim forms. Counsel for the respondent pointed out that a disciplinary hearing did not take place in 2024, and that he would argue this issue had been considered in the 2022 proceedings.

46. Complaint 3 in the further particulars related to the generic statement that 'everytime he made a complaint in recrimination he was involved in MPHS investigation / disciplinary. The claimant explained his complaint as victimisation, he had complained to Dr Sellens, Dr Palmer, Dr Rowland, Ms Hickling and Dr Bullock that reasonable adjustments had not been made on the 9/11/23, and on the 6/8/24 an MPHS investigation commenced. The claimant stated that both respondents 1 and 2 were involved in this. This was not referred to in either ET1 form.

47. In respect of complaint 4 detailed in the further particulars letter, the claimant accepted this was the same as complaint 1 on claim form 1.

48. Complaint 5 relates to a generic statement 'Dr Sellens and Dr Mohana used it for claimant assessment and annual competencies degradation unfairly and discriminately.' The claimant said his complaint was one of direct race and religious discrimination. He states both doctors provided false documents in his assessment

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on the 19/7/19, which resulted in an unfair grading. The allegation is not referred to in the claim forms and would require an application to amend to pursue. The respondent states this allegation was made in the earlier 2022 proceedings and can't be pursued.

49. The claimant accepts that allegation 6 in the further particulars letter is replicated by allegation 3 in the first claim form.

50. In relation to complaint 7 in the further particulars letter, the claimant accepts this is pursued as the second complaint in claim form 1.

51. The claimant accepts that allegation 8 in the further particulars letter, is already pursued as allegation 5 on the second claim form.

52. I refer to the list of issues attached to this judgment. In summary, the claimant seeks to pursue complaints of direct race, religious and disability discrimination 4.2.1, 4.2.2, 4.2.3, 4.2.4, reasonable adjustments at 5.21, victimisation at 6.1.1, 6.1.2 and 6.1.3, and unauthorised deductions at 8.1 and 8.2, as set out in the first claim form. In relation to the second claim form, direct race, religious and disability discrimination as set out at 4.2.5. The further particulars document dated 29/8/24 contains the complaints of direct race and religious discrimination at 4.2.6, reasonable adjustments at 5.2.2, 5.2.3 and 5.4, and victimisation at 6.1.4.

53. The claimants bundle includes a statement dated 19/9/25, which repeated many of the allegations above. The claimant referred to paragraph 54 of his statement which referred to Dr Sellen stopping Dr Reeds investigation into the claimant's complaint of bullying in 2020. The claimant confirmed he wished to pursue a complaint of direct race and religious discrimination, that Dr Sellen stopped Dr Reeds' investigation into the claimant's complaint of bullying and discrimination against the claimant in January 2020. The claimant accepted this was not contained in his claim forms and would need to be the subject of an amendment application. This is in the list of issues at 4.2.7.

**Amendment application / strike out application / out of time points**

54. Having clarified the claimant's complaints as above, I turned to the remainder of the issues identified for determination at this hearing, set out at paragraph 3 of Employment Judge Hindmarsh's order dated 15/1/25; whether the claimant's complaints were out of time/ was it just and equitable to extend time limits; whether any part of the claim should be struck out as having no reasonable grounds of success; should a deposit order be considered.

55. I considered that the claimant would be required to make amendment applications in respect of some of the complaints he sought to pursue above. We have spent 1 ½ days clarifying the claimant's complaints. I have summarised the complaints the claimant sought to pursue both to the claimant and summarised in paragraphs 52 and 53.

56. I suggested to the claimant I was minded to hear an oral application to amend his claim next and hear the respondent's application for strike out alongside this, and consider the out of time points and any evidence on oath in respect of this. I said I would explain to the claimant the factors to consider in **Selkent Bus Company and Moore (1996) ICR 836** regarding amendments and allow the claimant some time to consider what he wanted to say in respect of his amendment application. I explained I thought this was a fair approach, as the tribunal had spent a considerable amount of time clarifying the claimants complaints, so he was well placed now to know whether he was arguing matters were contained on the claim forms, and if not why an amendment should be allowed. Whilst I appreciated the claimant had not provided a statement in respect of either amendments or out-of-time points, I felt dealing with the issues step by step would not be prejudicial to him.

57. The claimant stated he wanted to make an application to amend his claim in writing. Counsel for the respondent's position was that he did not feel an adjournment for a written application was necessary, and that the claimant could say why his claim should be amended and the grounds for it. I noted that the proceedings had been ongoing since August 2024 and we had only just reached the point of clarifying the claimant's complaints. There have been several requests for adjournments for legal advice, and for written submissions to be made instead of a hearing, which had been refused. I considered the claimant's disabilities, and made appropriate adjustments, and proposed to continue summarising the stage in proceedings we were at, asking the respondent to provide the notes of hearing, and allowing the claimant time to formulate his arguments. I explained the Selkent Bus Company factors, the balance of hardship test and explained the just and equitable power a tribunal has to hear out of time claims. I also explained the overriding objective in rule 3 to deal with proceedings fairly and justly, ensuring that parties are on an equal footing, and avoiding delay where possible. I concluded that the case would proceed with oral submissions from the claimant regarding his amendment application.

58. The claimant indicated he would not give oral evidence and had been bullied in oral evidence at the last tribunal hearing. He stated he would make an application to amend in writing. He then indicated he needed a solicitor to proceed with the hearing, and that he couldn't proceed and had told me he was ill this morning. I advised the claimant that my notes from earlier in the morning recorded he said that he felt ill yesterday. There was no mention of feeling ill this morning. I asked the claimant to explain how he felt ill today. He stated he did not sleep well last night, needed to take a break, had cramps in his legs from sitting all day, and referred to dyslexia, heart disease and mental health. He indicated he would not give oral evidence this afternoon, make oral submissions or participate in the proceedings, and wanted an adjournment. I indicated that I proposed to proceed this afternoon as described and hoped the claimant would reflect over the lunch break and rejoin the hearing after lunch in a position to progress matters. (24/9/25 - 1.20pm)

59. The claimant did not attend the resumed hearing at 2.20pm, I made checks with the tribunal office, and the claimant has not contacted the tribunal / or submitted anything further over the lunch break. Counsel for the respondent asked

the tribunal to continue in the claimant's absence, and in the absence of an oral application to amend, to consider the Res Judicata arguments and if the complaints / issues are not estopped, to consider the out of time arguments. In respect of the unfair dismissal claims, to strike them out on the grounds they have no reasonable prospect of success.

60. It was not appropriate to adjourn the case as requested by the claimant prior to lunch, and I had already indicated this to the claimant. He had referred to feeling ill, in my view, only after I had advised him of my intention to proceed with hearing oral submissions from him on his amendment application/ oral evidence on out of time points. He did not give any specific information which made me concerned he was not well enough to continue the hearing. I took the view that he did not wish to accept my decision that I would proceed with oral submissions. I consider the claimant has voluntarily absented himself from the proceedings, without good reason, and in those circumstances, I propose to proceed to hear the respondent's applications. In reaching this conclusion, I recognised the claimant's health difficulties, and the need for reasonable adjustments, which I made. I have summarised the complaints the claimant sought to pursue, summarised above in paragraphs 51 and 52. I also considered the overriding objective in rule 3 to deal with proceedings fairly and justly, ensuring that parties are on an equal footing, and avoiding delay where possible.

## **Respondent's applications**

61. Counsel for the respondent addressed me on each of the complaints which had been identified by the claimant as those he wanted to pursue. He pointed out that I did not, in view of the claimant's lack of attendance in the afternoon session, have any oral / other amendment application before me, or any oral evidence on out of time points /means which may be relevant to potential deposit orders.

62. In respect of complaint 1, at 4.2.1 in the list of issues, direct religious discrimination regarding unauthorised leave for a religious festival, the respondent refers to paragraph 183 of the 2022 judgment, where the tribunal made findings about this incident in 2019, what happened and the circumstances of his absence that day. Page 216, the list of issues, contains reference to issue 3.1.21, an allegation of direct race discrimination concerning the 19/7/19 and the entry of the claimants personal e mail on his portfolio. Paragraph 461 was also referred to in the judgment, which detailed an investigation interview on the 18/9/19, concerning Mr G Neild asking the claimant questions about his ethnic origin, as the claimant had raised this in his e mail of the 19/7/19. This was found not to be harassment related to race as set out in the list of issues at 6.1.7.

63. Counsel referred to paragraph 479 of the judgment which found that disciplinary proceedings were commenced against the claimant in respect of the 19/7/19 incident. Paragraph 225 of the judgment refers to the claimant stating a letter sent by Steven Preece to Professor Rowland on 20/2/20, was an act of religious discrimination, although the tribunal noted this was not part of his pleaded claim. The tribunal commented that nothing in the letter was inappropriate, and

there was an erroneous suggestion that there was a religious festival on the date of the incident. Counsel suggested that the claimant was issue estopped from proceeding with this complaint, and if not, it could and should have been raised in earlier proceedings and therefore should be estopped as it fell within the Henderson abuse of process definition. Counsel invited me to consider, if it fell within neither forms of estoppel, that the complaint was out of time, dated from 2019, and any complaint prior to the 8/3/24 would be out of time, the claimant had not put forward it was a continuing act or any just and equitable grounds on which time limits should be extended.

64. In submissions on issue 4.2.2, on claim form 1, counsel referred to paragraph 121 of the judgment, in which the tribunal had referred to the e mail in some capital letters as 'being somewhat aggressive'. It was also referred to in paragraph 153 of the judgment, the claimant being given guidance, the use of capital letters being the equivalent of shouting and should not be used. Counsel points out that claim relates to the first respondent, and the allegation the claimant makes is against Dr Sellens, who works for respondent 2. Both respondents' position is the claimant did not like the outcome of the 2022 case and seeks to relitigate it again. They argue it should be estopped as Henderson abuse of process, on the basis it could have and should have been raised in previous proceedings. If this argument was unsuccessful, the respondent would argue the complaint is out of time, dated from 2018, not part of a continuing act, and no just and equitable grounds had been put forward that time limits should be extended. Failing this, it should be struck out as having no reasonable prospect of success.

65. Regarding allegation 3, 4.2.3 in the list of issues, in the first claim form, the respondent points out the 2022 judgment at paragraph 3.1.19 notes in the list of issues, an allegation of direct race discrimination, based on his educational supervisor assessing him as unsatisfactory. Paragraph 393 of the judgment contains the tribunal's findings that there was no less favourable treatment when considering a hypothetical comparator; the complaint was dismissed. Counsel highlights the tribunal found the unsatisfactory rating to be reasonable, paragraph 364 describing the contents as aligning to the evidence the tribunal had seen from oral and documentary evidence about the claimant's performance and conduct at work. Whilst the respondent conceded the issue was not dealt with squarely, counsel represented that the complaint should be issue estopped or failing that fell within the Henderson abuse of process estoppel. If it was neither form of estoppel, the complaint was out of time, and in the absence of a continuing act argument or grounds on which time limits should be extended on just and equitable grounds, it should be dismissed.

66. In respect of allegation 4 (4.2.4 list of issues) regarding Dr Sellens and Professor Mohana bullying the claimant in his e – portfolio, the respondent points out this complaint has already been dealt with in the 2022 proceedings, as issue 3.1.14, an allegation of direct race discrimination. It is also referred to as a further complaint of harassment related to race at 6.1.4 in the list of issues, and at 7.1.3 as harassment related to disability. This was deemed not to be an act of direct race discrimination as outlined in paragraph 396, or harassment, paragraph 457. Counsel for the respondent submits the claimant is cause of action estopped from pursuing this complaint, and if not cause of action estopped, he could and should

have brought his complaint earlier, so would fall within Henderson abuse of process definition. If neither of the 2 forms of estoppel applied, the respondent argues the complaint from 2019 is out of time and should not be allowed to proceed.

67. Counsel accepted that the first allegation of victimisation (6.1.1 list of issues) in respect of the 9/11/24 meeting did not squarely fall within the estoppel grounds. However, the claimant was not present to make an oral application to amend his claim, or to explain why it should be allowed. The respondent would argue that the claim form was presented in August 2024, and the 14/2/24 e mail complaining about aggressive conduct in the 9/11/23 meeting, refers to a complaint which is out of time. On the basis the claimant has not attended and put forward grounds on which it would be just and equitable to extend the time limits; the complaint should be dismissed out of time.

68. The second allegation of victimisation (6.1.2 list of issues) relating to the August 2019 e mail alleging bullying, the respondent draws the tribunals attention to the list of issues, paragraphs 8.1.1 and 8.2.2, allegations of victimisation in relation to written complaints on the 14/8/19 and the 12/8/20. Paragraph 481 of the judgment explains the tribunals findings that the first respondent had provided a non-discriminatory reason for commencing a disciplinary investigation, because the claimant had taken time off work on the 19/7/19 at short notice without a satisfactory reason. The respondent argues cause of action estoppel applies, and if not, it would fall within Henderson abuse of process estoppel. Should those arguments fail, the respondent puts forward the complaint is out of time, and just and equitable grounds to extend time limits have not been presented.

69. Considering the third allegation of victimisation, (6.1.3 list of issues) in January 2020, the respondent submits this has been dealt with in the list of issues at 8.2.4, where the claimant alleged victimisation by respondent 1 conducting a disciplinary hearing on the 12/12/22 in the claimant's absence and giving him a final warning. Findings as paragraph 491 state the tribunal did not find discrimination, rather the respondent was attempting to conclude disciplinary matters which had been ongoing for 3 years. The respondent argued that cause of action estoppel applied, or if it did not, it fell within the remit of Henderson abuse of process. The claimant should not be allowed to pursue the complaint, there was a long delay here, and it would also be out of time, in the absence of just and equitable grounds to extend time limits.

70. Complaint 6 (issue 5.2.1 - reasonable adjustments – list of issues) related to not being paid a nightshift entitlement in May 2019. The respondent's position was that the claimant should have complained about this earlier; he had complained about a lack of adjustments. Paragraph 171 of the judgment refers to the claimant referring to nightshift payments, although this was not part of his claim in the 2022 proceedings. The respondent states the claimant could and should have put this complaint forward earlier and therefore it falls within estoppel as Henderson abuse of process. If this argument is unsuccessful, it would be out of time, and ought to be dismissed as just and equitable grounds to extend time have not been advanced. If this argument was not persuasive, the respondent argued the complaint should be struck out on the grounds it had no prospect of success.

71. The claimant put forward as complaint 7 (issues 8.1, 8.2 list of issues) that he did not receive full pay for the period February, March, and April 2024. Overnight he clarified that he pursued additional dates in 2020 and 2022. The respondent pointed out that some of the dates in 2022 the claimant sought to recover in relation to were covered by issue 10.1 in the list of issues. The respondent would argue that some of those dates had been dealt with, and there was not any explanation as to why the claimant did not put forward the additional dates in the 2022 proceedings. In relation to the 2024 dates, the respondent conceded he could not make out of time arguments or res judicata submissions in respect of them.

72. The claimant had referred to a holiday pay claim and accepted it was not contained in his claim form and would need to be subject to an amendment application, which had not been made. The respondent submitted this should not be allowed to proceed, as an oral amendment application had not been made.

73. In respect of any potential notice pay claim, the respondent referred to the pay slip it produced dated 27/9/24 recording a payment in lieu of notice being made in the sum of £9,760.61.

74. The respondent made further representations concerning complaint 5.4 in the list of issues, reasonable adjustments. Regarding complaint 1, June 2021, and a failure to make reasonable adjustments after learning difficulties were diagnosed, the respondent referred to paragraph 275 of the 2022 judgment. It referred to a needs assessment report in 2022 and recommendations for dragon software. Findings were made by the tribunal in paragraph 276 that it had been ordered in a reasonable time, and paragraph 277 that the claimant had been provided with the software but had not undergone the training. There were further findings in paragraph 437 that the claimant had failed to organise attending the training to be able to use the software. An additional finding in paragraph 449 details that the respondent did provide equipment to support the claimant, and delays were due to access to work and the claimant not completing training. There was no failure to make reasonable adjustments. The respondent argued that the complaint required an amendment which had not been applied for, was res judicata and failing that was raised out of time without an explanation.

75. Considering issue 5.2.3, failure to make reasonable adjustments, the respondent drew the tribunals attention to paragraph 420 of the 2022 judgment, which contained a finding that the respondent did not have a PCP of not allowing legal representation at disciplinary hearings. In view of this, the respondent argued that this complaint would be res judicata and would also be out of time.

76. Regarding the complaint of bullying / victimisation at 6.1.3 list of issues, the respondent stated this needed to be an amendment application. The tribunal's attention was drawn to 4.1.3 and 4.1.5 in the list of issues, in which the tribunal was asked to make determinations on a failure to investigate and appoint an independent investigator. If the complaint the claimant seeks to bring is now wider, then he could and should have brought this as part of the 2022 proceedings, it would fall within Henderson abuse of process, and the claimant would be estopped

from pursuing it. Failing this, the complaint would be out of time and no just and equitable grounds for its extension had been put forward.

77. The respondent refers to direct race and religious discrimination list of issues 4.2.6, and the allegation of the provision of false documents, stating this is covered in the list of issues (2022 judgment) at 3.1.5. Conclusions are drawn at paragraph 364 where the report is described as measured. The outcome of his ARCP was found to be reasonable at paragraph 399 of the judgment; the respondent relies on this to put forward the argument that this specific allegation had been touched on, so res judicata arguments would apply. If this argument was not successful, the respondent relies on the complaint being substantially out of time, without grounds as to why it would be just and equitable to extend time limits being advanced.

78. Considering the complaint in the claimant's statement dated 19/9/25, (issue 4.2.7 list of issues) where he alleged Dr Sellens prevented Dr Reed continuing to investigate the claimants' allegations of bullying in 2020, the respondent highlighted the claimant had not made an application to amend as required. Paragraph 204 of the judgment was referred to, where the tribunal made findings of fact concerning Dr Reed withdrawing from the investigation because of a potential conflict. The respondent's position is this has already been litigated on, and issue estoppel would prevent the claimant pursuing this complaint. If this was not correct, then the issue could and should have been raised and would fall within Henderson abuse of process.

79. The respondent requested the tribunal strike out the unfair dismissal complaint against respondent 2, on the grounds it had no reasonable prospect of success, as respondent 2 was not the claimant's employer.

80. In respect of the unfair dismissal claim against respondent 1, the respondent argued that the claimant has no or little prospect of success. The respondent accepts it did not undertake an investigation, make findings or hold a meeting at which the claimant was invited to make his representations. The judgment was carefully reviewed by the respondents. The respondent accepted the tribunal's findings that the claimant had lied on oath. He made false accusations that documents had been fraudulently produced by the respondent. The respondent's position was that it was not reasonable for them to undertake an investigation in the circumstances. There was a breakdown in trust and confidence on both sides. The respondent regarded any procedure after the tribunal decision as utterly futile; the inevitable outcome was the claimant's dismissal, which also included the removing of his national training number.

81. The respondent argued the claimant did not ought to be allowed to pursue a complaint of direct race, disability and religious discrimination concerning the removal of his training number, stating that his complaint was baseless. It was also pointed out that the tribunal in 2022 had concluded that the claimant had a propensity to claim discrimination when faced with an adverse decision. This complaint the respondent alleged was a further example of that, and ought to be struck out on the basis it had no / little reasonable prospect of success.

82. The respondent requested that if the strikeout arguments were not successful, in respect of the unfair dismissal complaints and direct discrimination complaint regarding the training number, deposit orders should be considered.

83. The tribunal was also asked to consider whether the complaints should be struck out on the grounds; a fair hearing was not possible/ the claimant had exhibited unreasonable behaviour in the previous proceedings. The tribunal's attention was drawn to paragraphs 66 – 83 of the judgment, which referred to comments made by the claimant in those proceedings about causing harm to himself and others. Counsel referred to the claimant denying comments the tribunal recorded he had made about causing harm. Witnesses had to give evidence via video link due to concerns about their safety. The respondent was concerned that those witnesses would be reticent to give evidence at any unfair dismissal hearing. Counsel for the respondent also highlighted the claimant's behaviour during this hearing, refusing to make oral applications to amend, or give evidence about out of time points, and absenting himself from the hearing. The respondent asked the tribunal to consider the claimant's behaviour in the context of whether a fair hearing was possible.

## **Findings and conclusions**

**Issue 4.2.1 –On the 19/7/19, Professor Rowland recorded leave that the claimant had taken as unauthorised, and then as being for a religious festival which disclosed the claimant's religion to others; (direct religious discrimination);**

84. Turning now to consider the res judicata / out of time and strike out submissions from the respondent, I reminded myself that I did not have any oral application to amend the claimant's claim before me, I had given him the opportunity to make his application orally, and he had not done so. Additionally, I had indicated I would give him the opportunity to give oral evidence in respect of any application to extend time limits on just and equitable grounds, and he had not done so.

85. I refer to the draft list of issues I attach to this order. Complaint 1 relates to direct religious discrimination on the 19/7/19 and the recording of unauthorised leave as being for a religious festival, 4.2.1 on the list of issues below. The tribunal in the 2022 case made detailed findings about what occurred on the 19/7/19, at paragraphs 183 – 190 of the judgment, including it was appropriate for the unauthorised absence to be flagged to the claimant's educational supervisor. The claimant had pursued a direct race discrimination complaint at 3.1.21 in the list of issues in the 2022 judgment, relating to the educational supervisor putting the claimant's personal e mail on his portfolio on the 19/7/19. Issue 6.1.7 in the list of issues from 2022 related to harassment based on race claim, Mr Geff had asked the claimant questions based on ethnic origin on the 18/9/19, in relation to the 19/7/19. The judgement in paragraph 225 touches on a letter dated 20/2/20, and an allegation from the claimant that this was an act of religious discrimination, although this was not part of the claimant's pleaded claim. The tribunal referred to the absence from work on the 19/7/19 and the wording 'visited by friends on a

religious festival', stating it found nothing in the e mail inappropriate, save that there was an erroneous suggestion there was a religious festival on the date of the incident.

86. It appears that the claimant was raising issues of religious discrimination during the previous hearing, but it was not part of his pleaded claim. I note paragraph 90 of the judgment also refers to a comment the claimant made on the second day of the hearing, about one of the respondent's witnesses. 'He was the one to do religious and racial discrimination to me'. The claimant was advised he had not brought a claim of religious discrimination, and the claimant stated he would add this. He was advised that he would need to submit a written application to amend; he had not made an application to amend, and the tribunal proceeded.

87. The tribunal in 2022 made a finding that the entry on the 19/7/19 contained an error regarding the applicability of a religious festival to the date 19/7/19. The claimant seeks to pursue a different cause of action, in these proceedings, namely direct religious discrimination, to which this finding is relevant. I find that this comes within *res judicata*, and the claimant is issue estopped from relying on this complaint.

88. If I am wrong about that, the complaint in my view could also fall within Henderson abuse of process definition. Paragraphs 90 and 225 refer to religious discrimination being discussed with the claimant, and he was advised he would need to make a written application to amend, which he did not do. He had the opportunity to seek to amend his complaints during the previous proceedings and had been advised on how to do so. The issues relating to what happened on the 19/7/19 were an important part of the issues in the case, the claimant could have raised this complaint, and should have, bearing in mind all witnesses were present to give evidence, or the claimant could have sought an adjournment to amend his claim.

89. If my conclusions about *res judicata* are wrong, I consider the respondent's arguments that the complaint is out of time. ACAS conciliation on claim form 1 began on the 7/6/24, so any incidents relied on prior to 8/3/24 would be potentially out of time. This complaint relates to the 19/7/19, 5 years ago. The claimant has not provided any grounds on which it is just and equitable to extend time limits. On the basis the burden of proof is on the claimant, and I have not been presented with any reasons why the complaint is presented now, or any argument about a continuing act, I dismiss the complaint as presented out of time, the time limits cannot be extended.

**Issue 4.2.2 - In December 2018, Dr Sellens verbally accused the claimant of shouting by using capitals in e mails, and Dr Farmer then told HR; (direct disability discrimination) (diabetes, dyslexia and mental health relied on)**

90. The claimant has not made an application to amend his complaint, as this was a complaint raised on claim form 1 in respect of respondent 1, and Dr Sellens is employed by respondent 2, this point is applicable to the following 2 complaints also, in respect of influencing clinical supervisors and bullying in E – portfolios. The

tribunal in 2022 was asked to make findings about the claimant's use of e mails, and the claimant now seeks to pursue this complaint as a direct disability complaint. The tribunal's findings at paragraph 121 are that the tone of the e mail was somewhat aggressive, further findings were made at paragraph 153 that the claimant was supported with guidance in writing e mails. The claimant did raise 7 other complaints of direct disability discrimination in the 2022 proceedings, spanning dates 4/4/19 - June 2022, which were considered and not found proven. This complaint predates the first complaint made in the list of issues at 4.1.1, relating to jokes about the claimant clerking patients slowly between 4/4/19 - 4/8/19. It is also noteworthy that some of the complaints made of direct race discrimination, in the issues list at 3.1.1 - 3.1.4 cover dates in 2018.

91. As part of the tribunal's enquiries into the facts of the case, it made findings about the e mail referred to. I consider that the claimant could have raised this complaint earlier and should have done considering it formed part of the facts that the previous tribunal had identified and was considering. It predated other allegations of direct disability discrimination pursued and should have been raised at an earlier point. I find that this would fall within the definition of Henderson abuse of process, and the claimant is estopped from relying on this complaint.

92. If I am wrong about the res judicata estoppel, I would find that the complaint is out of time, and adopt the reasons given in paragraph 89 above to dismiss the complaint as presented out of time.

**Issue 4.2.3 - In 2019, Dr Sellens sought to influence the claimants' clinical supervisors, Dr Mukherjee, Dr Mohana, and Dr Muogbo against him, by writing an e mail after the 19/7/19 to tell his supervisors to provide a negative report and sought to influence his competency review; (direct race, religious and disability discrimination)**

93. The claimant pursued a direct race discrimination complaint in the list of issues at 3.1.19, that the educational supervisor assessed the claimant as unsatisfactory in his report dated July 2019. The tribunal concluded in paragraph 364 that the report was measured, and the conclusions in the report accord to the oral and documentary evidence seen by the tribunal. The claimant now seeks to allege that Dr Sellens influenced this report (Dr Sellens is employed by respondent 2). The findings made by the tribunal would be relevant to the questions of any influence applied by Dr Sellens, in the production of the report. It may be difficult to argue there was undue influence because of the finding. I note also paragraph 145/146 of the judgment; the tribunal concluding the negative comments in the report did not relate to the claimant's complaint of bullying and discrimination. They related to feedback from the claimant's colleagues about his work. The claimant pursued 29 complaints of direct race discrimination spanning 1/8/18 - June 2022. This new complaint about direct race discrimination sits in the middle of this period.

94. Considering this complaint as one of direct religious discrimination, I consider my findings as paragraph 86 relevant here, the claimant was raising issues of religious discrimination in the previous hearing but did not pursue an amendment to his claim.

95. In respect of a direct disability discrimination claim, the claimant pursued 7 allegations spanning 4/4/19 - June 2022. This complaint sits within the start of that time span.

96. I consider that issue estoppel applies here, to all 3 types of discrimination alleged. The findings made about the fairness of the report, and information on which it was based would be relevant to these complaints of race / disability / religious discrimination. I consider that the claimant is seeking to reopen this issue by pursuing 3 different causes of action, and this is prevented by issue estoppel.

97. If I am wrong that issue estoppel applies to this complaint, then I consider it would also fall within Henderson abuse of process. The claimant was alleging racial discrimination as the basis of the unfavourable report. If he was alleging another person unduly influenced by the report writer on racial / religious / disability grounds, this could and should have been raised earlier, as it is closely connected factually with the complaints which were made. Paragraphs 90 and 225 of the judgment are also relevant. When the tribunal discussed religious discrimination, the claimant had an opportunity to raise it and seek an amendment of his complaints.

98. If my conclusions about res judicata are wrong, I consider the respondents out of time arguments. For the reasons given in paragraph 89, I would dismiss the complaints as out of time.

**Issue 4.2.4 - In July 2019, Dr Mohanna and Dr Sellens bullied the claimant by writing the wrong information, and other information about his family in his E – portfolio; (direct race discrimination)**

99. I have considered issue 3.1.14 from the 2022 hearing, direct race discrimination complaint, 'Dr Mohanna wrote irrelevant information in the claimant's e portfolio in 2019, specifically that the claimant's wife and child visited Pakistan'. Also issue 6.1.4, harassment related to race, 'the claimant's educational supervisor, Dr Mohanna put the claimant's personal e mail onto his eportfolio'. In addition, issue 7.1.3, harassment related to disability, 'the claimant's educational supervisor, Dr Mohanna, put the claimant's personal e mail on the 19/7/19, R1, R2 and R3 were responsible'.

100. Dr Sellens is referred to in the previous allegations related only to Dr Mohana. Both Doctors work for respondent 2, and this complaint is made in claim form 1 regarding respondent 1. Paragraph 157 contains a finding that the reference to the claimant's wife and child going to Pakistan, was because his wife's father was very ill, and it was recorded in the context of providing pastoral support for the claimant. Paragraph 396 in relation to direct race discrimination concludes, that Dr Mohanna did include the claimant's e mail address on the e portfolio. He was dealing with a conduct issue, and it was reasonable in the circumstances to do that. It was not found to be less favourable treatment; the complaint of direct race discrimination failed. Paragraph 457 found that there was no link to race in relation to harassment, and that complaint failed. Paragraph 460 concluded that there was no evidence of harassment related to disability.

101. I have considered the definition of cause of action estoppel, and consider that this complaint of direct race discrimination has already been determined by the tribunal as an issue, in accordance with the list of issues at 3.1.14, 6.1.4 and 7.1.3. Whilst those complaints were framed in relation to Dr Mohanna only, I consider the claimant, if pursuing the same complaint against Dr Sellen, should in all the circumstances have pursued it at the time.

102. If I am incorrect concerning my conclusion this is cause of action estoppel, I would rely on Henderson abuse of process. The actions in relation to records in the e portfolio stemmed from the claimant's absence from work on the 19/7/19, and it was inevitable the tribunal would have to consider this. The claimant could have raised these issues earlier, especially in relation to Dr Sellen, and should have done, as the complaint pursued in relation to him is identical to Dr Mohanna.

103. If my conclusions are wrong regarding res judicata, I consider the respondents' arguments that the complaint is out of time. For the reasons identified in paragraph 89 above, I would dismiss the complaint out of time.

**Issue 6.1.1 - Victimisation - After 21/1/21 diagnosis of learning difficulties, in a meeting with Miss Ekling of the wellbeing team on the 9/11/23, the claimant requested training for dyslexic people / new computer software;**

104. The details of this act of victimisation, which the claimant alleges resulted in him receiving a letter in summer 2024, after termination commencing disciplinary procedures, were given verbally by the claimant during the hearing. The details were not contained in the claim form. I considered that the claimant would need to make a verbal application to amend his claim. The claimant has not done this. The respondent conceded that res judicata arguments do not apply to this complaint.

105. I consider this complaint is not properly before the tribunal, as an amendment application has not been made or determined. It is apparent in the paperwork submitted, that a letter was received by the claimant on the 14/2/24 referring to an investigation into aggressive conduct at the 9/11/23 meeting. Even if that date was used as the date of the detrimental treatment, the claim form was presented on the 8/8/24, any incident prior to the 8/3/24 would be potentially out of time. The claimant has not remained to give evidence as to why it is just and equitable to extend time scales; I would dismiss any complaint as out of time on this basis.

**Issue 6.1.2 - Victimisation - In August 2019, the claimant e-mailed Dr Rowland complaining about bullying, after an incident on the pediatric ward where a registrar was shouting at him**

106. The claimant verbally set out this complaint during the hearing; it was not contained in his ET1 form. He alleged that this e mail was followed by disciplinary action. I considered that the claimant would need to make an oral amendment application in relation to this complaint, and he had not done so. The respondent submits that res judicata arguments, cause of action estoppel, Henderson abuse of process and / or out of time arguments apply.

107. It is apparent from the tribunal's findings at paragraph 201, that around August 2019 the claimant had appealed his ARCP rating, and made complaints of bullying, discrimination and unfair treatment. The findings refer to the reason for absence on the 19/7/19, there being no family emergency and this leading to disciplinary action being taken. Paragraph 203 refers to Dr Rowland on the 7/8/19, writing to the claimant about his request for a transfer, and about his allegations of bullying, discrimination, and unfair treatment.

108. I have noted in the list of issues under victimisation at 8.1.1, referring to a protected act of a written complaint on the 14/8/19, and a written complaint to R2 on the 12/8/20. The detriments are referred to as 8.2.1 R1 commencing disciplinary proceedings against him on the 19/7/19, 8.2.2 R1 taking disciplinary action against the claimant and 8.2.3 R1 and R2 commencing an investigation against the claimant. Paragraph 477 of the judgment records that the complaint on the 14/8/19 was to Ms Murtaza and on the 12/8/20 to Dr Smith. A complaint to Dr Rowland is not mentioned in the list of issues, although the detriment is alleged to be the same, the commencement of disciplinary action.

109. I do not consider that this complaint is properly before the tribunal, as an amendment application has not been made or determined. It is not clear from the information provided, exactly when in August 2019, the claimant made a complaint to Dr Rowland. The findings and chronology given by the tribunal in its judgment covering the 2019 period are extensive, paragraphs 154 until at least paragraph 203. It is surprising that, if the claimant did make a complaint to Dr Rowland at this time, it is not referred to. Considering one of the victimisation complaints dated from the same month, August 2019, I find Henderson abuse of process applies, as this complaint could have and should have been raised earlier. This is particularly so given that the detriment said to flow from it is identical to the detriment said to flow from the complaint on the 14/8/19 to Ms Murtaza. The claimant should not be able to pursue this further complaint of victimisation in those circumstances, and I find he is estopped from doing so.

110. I would also agree with the respondent that the complaint should be treated as out of time, for the reasons set out in paragraph 89.

**Issue 6.1.3 - Victimisation - On 28/1/20, the claimant complained to Dr Smith and Dr Sellens about the wrong information being recorded in his E – portfolio**

111. The claimant referred to this act of victimisation verbally in the hearing; it was not contained in his ET1 claim form. He indicated that the detriment was receiving a letter from Dr Rowlands in 2020, advising him he was subject to a disciplinary process.

112. On reviewing the 2022 judgment, the tribunal at paragraph 237 records that on the 12/8/20 the claimant e mailed Aliya Murtaza concerning an incorrect entry in his e – portfolio. The tribunal specifically states that the content was added in January 2020, but the claimant did not see it until August 2020. It further states that the claimant e mailed Dr Smith and others on the 13/8/20, concerning Ms Murtaza entering incorrect, misleading and wrong information in his e- portfolio,

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referring to the treatment as discriminatory. The tribunal made findings at paragraph 244 that the claimant was investigated because he wrote highly unprofessional e mails using a threatening and aggressive tone, it was not because he had made a complaint.

113. In the list of issues at 6.1.8, harassment related to race, the complaint is recorded as ' on the 31/1/20, Alya Murtaza entered incorrect information into the claimant's e – portfolio in respect of his attendance at VTS training teaching session The claimant says R1, R2 and R3 are responsible'. Paragraph 108 above sets out the victimisation complaint at 8.1.2 'a written complaint to R2 on 12/8/20 about bullying in his e-portfolio'.

114. The tribunal concluded at paragraph 467 in relation to harassment related to race, that the complaint failed, and it was a clear example of how the claimant simply assumes everything he is unhappy about must be related to his race, and that on his own evidence, he had no basis for considering that her treatment of him was connected to his race, yet that allegation he immediately made. The tribunal at paragraph 481 made findings in relation to victimisation, that the first respondent had commenced disciplinary action in respect of the claimant not because of any complaint, but because the claimant had not attended work on the 19/7/19, without a satisfactory reason.

115. It is not clear if the claimant has got the date of this complaint wrong (28/1/20), in view of the contents of paragraph 112 above. If the claimant has got his dates wrong, and this complaint is about what happened in August 2020, then I would conclude the claimant is cause of action estopped from proceeding with this complaint, as it has already been determined.

116. If the claimant is correct about the date, and he is referring to a complaint on the 28/1/20 in relation to his e- portfolio (I can find no reference in the list of issues or judgment about this), then I find that Henderson abuse of process would apply. The detriment relied on it the same, taking disciplinary action. If this was a separate protected act relied on, then it could have been raised earlier, and should have been considering the same detriments relied on by the claimant.

117. If those conclusions were not correct, I would rely on the complaint being significantly out of time, and the conclusions drawn in paragraph 89 to dismiss the complaint out of time.

**Issue 5.2.1 - Reasonable adjustments – PCP A policy of not paying night shift entitlement when the full nightshift could not be worked;**

118. The claimant alleged the disadvantage to him was his diabetes prevented him from working a full night shift. This disadvantage could have been avoided, if he was allowed to work part of the nightshift and receive the full night shift premium. This complaint of failing to make reasonable adjustments was not contained in the list of issues in the 2022 case. The claimant argued at 5.2.1 there was a requirement by R1 and R3 to work nightshifts, and he was put on the rota even when occupational health advised he should not be. The tribunal found at

paragraph 419 that the claimant did not work those nightshifts therefore no PCP was applied to him.

119. It appears this complaint was being considered by the claimant in 2022, as paragraph 171 of the judgment refers to the claimant providing, alongside his closing submissions, a document entitled 'unlawful pay deduction and underpaid due to disability claimant was deprived from night shift entitlement'. It appears in claimant was arguing he was entitled to night shift payments in stated months in 2020, 2022, 2023, and 2024. The tribunal made it clear that this was not part of the claimant's pleaded claim.

120. I consider that this complaint is caught by Henderson abuse of process, and the claimant is estopped from pursuing this complaint. He had attempted to raise it at the very end of the hearing in the 2022 proceedings. He had written documentation he produced at that time referring to the complaint. He had been advised in those proceedings when he raised religious discrimination, at paragraph 90, that he would be required to make an amendment application. This complaint was clearly in the claimant's mind during those proceedings; he could have raised it as an amendment; he had his complaint in writing and should have raised it.

121. If I am wrong about the complaint being estopped, then I would accept that the complaint has been pursued out of time, and there are not just and equitable grounds to extend time limits, adopting my reasoning in paragraph 89.

**Issue 8.2 - Did the claimant have deductions made from his salary in May 2020, March, April, May, June, July 2022, January 2023 and February, March and April 2024?**

122. The claimant stated that he was not paid correctly when he was off sick. Unlawful deductions were considered as part of the 2022 proceedings in the list of issues at paragraph 10.1 'the claimant says he was entitled to be paid 6 months full pay and six months half pay whilst on sick leave between the following dates: June and July 2020 and March 2022 to May 2022'. Also connected issues of direct race discrimination at 3.1.28 and 3.1.29 and direct disability discrimination at 4.1.6 and 4.1.7 in relation to underpayments.

123. It is apparent the tribunal looked at the claimant's sickness absence very carefully, paragraph 226 refers to a sickness chronology being provided to the tribunal by the respondent during the hearing. It refers to absence from 2/4/20 - 9/7/20. In paragraph 232, the tribunal makes findings that the respondent had made an error in the claimant's length of service for sick pay purposes, which resulted in an under payment, but this was rectified by 13/6/22 when £7,926,95 was repaid. Paragraph 495 dismisses the claimant's complaints of unauthorised deductions being made, on the basis the respondent had repaid the shortfall, and the claimant had not established that additional sums were due to him, he did not accept the respondent's calculations.

124. The claimant cannot pursue this complaint in relation to March, April, May 2022 as they have been determined by the tribunal in the 2022 proceedings as described above; the claimant is cause of action estopped from proceeding.

125. In respect of May 2020, this is a new complaint which is the month prior to June and July 2020, which formed part of the complaints in the 2022 proceedings. It appears from the dates given in paragraph 226, that the tribunal considered the absence period 2/4/20 - 9/7/20, which would include May. It is implicit in the tribunal's finding, at paragraph 232, that the payment on the 13/6/22 covered all underpayments to date, which would have included May 2020. On this basis, I find the claimant is cause of action estopped in relation to the May 2020 complaint. If I am wrong about this, I would in the alternative find that Henderson abuse of process applies, and estops the complaint. May 2020 predates the first allegation of underpayment, and it could have been raised earlier and should have been raised, bearing in mind the dates of the claimant's sick leave 2/4/20 - 9/7/20. If this argument fails, I find the complaint is out of time, and there are not just and equitable grounds advanced to allow the complaint to proceed.

126. The claimant seeks to expand his complaint from March – May 2022, which was dealt with in the 2022 proceedings, to include June and July 2022. It is noted that the direct race and disability discrimination complaints at 3.1.29 and 4.17 refer to a reduction in the claimants' salary on 28/3/22 to June 2022. As identified above, the tribunal found repayments occurred on 13/6/22. The allegations of direct race and disability discrimination were referred to in paragraph 7 of the judgment. It was highlighted that no separate deductions from wages claim were pursued in relation to those dates, and the claimant would have been required to make an amendment application, which he did not do. The tribunal commented that this claim would have failed if it had been brought, as the tribunal did not find the basic salary paid was less than it should have been.

127. In relation to the complaint dates June and July 2022, I find that Henderson abuse of process applies, and the claimant is estopped from pursuing this complaint. They could have and should have been raised in the earlier proceedings. A specific discussion took place at the hearing, which is recorded in the judgment, that the claimant would need to make an application to amend to pursue as an unpaid wages claim. If I am wrong about this, I would accept the respondents' arguments that the complaints are out of time, and grounds have not been put forward to demonstrate it is just and equitable to extend time limits.

128. Considering the additional complaint in January 2023, the claimants' previous ET1 forms in the 2022 proceedings were presented on the 1/7/22 and 24/9/22. There appears to be a gap between July 2022 and January 2023 in which no underpayment is alleged; this appears to be an individual date, which postdates the ET1 forms. The final hearing commenced on the 13/11/23, and the claimant had not made an application to amend his claim to include it in those proceedings, as far as I am aware. The claimant has not subsequently made an application to amend his claim, to include this complaint. In the circumstances I am not satisfied this complaint should be allowed to proceed and would dismiss it on the grounds it is out of time.

129. The claimant has made in-time complaints in relation to not being paid correctly whilst off sick in February, March, and April 2024. The respondent accepts these matters are not subject to res judicata arguments or out of time arguments.

### **Holiday pay**

130. The claimant referred to a holiday pay claim for 3 years at 33 days of leave per year. He accepted this was not contained in his claim forms and required an amendment application. The claimant has not remained to make his oral amendment application; accordingly, this complaint cannot be pursued. I would dismiss it on the grounds that any complaint up to November 2023, should have been brought in the earlier proceedings, including by way of amendment. The complaint should be dismissed as Henderson abuse of process. I would dismiss any complaint relating to holiday pay post November 2023 as out of time.

### **Notice pay**

131. A similar situation arose in respect of notice pay, the claimant indicated he had not received this; it was not contained in his claim form and required an amendment application. The respondent provided documentary evidence in the form of an online payment and salary slip referring to a 'payment in lieu of notice' on the 13/9/24 of £9,760.61. If this complaint is before the tribunal, I find it has no reasonable prospects of success and dismiss it.

### **Issue 5.2.2 and 5.4 – Failure to make reasonable adjustments – failure to implement breaks – provide an auxiliary aid – dragon software**

132. The claimant said the failure to make these adjustments caused him a disadvantage, in that he struggled to see all the patients required, and it was stressful to maintain notes. He suggested adjustments of the provision of dragon software, and frequent breaks for diabetes and increasing his appointment times would alleviate this. He relied on his diabetes, and accepted this complaint was not within his claim forms. An amendment application has not been made in respect of this complaint.

133. In the list of issues. at paragraphs 5.2.3, the tribunal considered in the 2022 proceedings a PCP of 'a requirement to write notes during patient consultations and 5.2.4 a requirement to work shifts without regular breaks. 5.4 contains a complaint regarding a lack of auxiliary aid, those set out in the occupational health report dated 3/3/23 and computer software to assist with making notes. Adjustments suggested were increasing the time of patient consultations to 15/20 minutes, give the claimant computer software to assist, and allowing the claimant regular breaks on shift.

134. Paragraph 275 refers to a needs assessment report dated 19/12/22, and recommendations for dragon software, regular breaks, increased appointment times. Emails were referred to showing access to work equipment was ordered on the 10/1/23. The tribunal found the equipment was ordered within a reasonable time frame, and the claimant said he was too ill to undertake the training; he was left to arrange it when he was well enough. Notes of a telephone call with the claimant in paragraph 281 recorded he had received all the equipment and would organise coaching.

135. At paragraph 436 the tribunal found there was no failure to provide an auxiliary aid, recommendations were made re: longer appointment times, the tribunal did not find a PCP was in place requiring the claimant to work without breaks, overall, there was no failure to make reasonable adjustments.

136. I find that cause of action estoppel applies to this complaint. The list of issues makes it clear the claimant had raised the same issues of failing to provide an auxiliary aid, dragon software, and required him to work without breaks and to write notes. The tribunal made detailed findings as outlined above and determined there had not been a failure to make reasonable adjustments; the issues have already been determined.

137. If I am wrong about that, then I find the claimant's complaints are out of time, there being no just and equitable grounds put forward to justify the complaint being considered out of time. This matter dates from 2021 to 2023. I rely on my findings at paragraph 89.

**Issue 5.2.3 – Failure to make reasonable adjustments - A policy of failing to provide a representative in the disciplinary hearing, when recommended by occupational health;**

138. This complaint was not contained in either of the claimant's claim forms, and an amendment application was required. Paragraph 234 refers to the occupational health report stating the claimant should have the 'option of having representation if possible'. Paragraph 273 refers to the occupational health report dated 4/8/22 stating 'he will require representation due to dyslexia condition', the tribunal noting it did not specifically refer to legal representation.

139. At paragraph 5.2.2 in the list of issues in the 2022 proceedings, the claimant pursued reasonable adjustments claim on the basis the respondent had a policy of not allowing legal representation at disciplinary hearings. At paragraph 420, the tribunal found that no such PCP had been applied by the respondent. The tribunal found the claimant would be at a substantial disadvantage if he did not have a representative, but this did not need to be a legal representative. The respondent was not required to make a reasonable adjustment to pay for the claimant's representation.

140. The claimant is prevented by cause of action estoppel from pursuing this complaint. This exact issue was pursued in the 2022 proceedings, and a determination made that there was no failure to make reasonable adjustments; the claimant is not entitled to re litigate this.

141. If I have reached the wrong conclusion on this, I would accept the respondents' further arguments that this complaint dating from 2022 is out of time, and there are not just and equitable grounds on which time limits should be extended.

**Issue 6.1.4 – Victimisation - On the 9/11/23 the claimant complained to Dr Sellens, Dr Palmer, Dr Rowland, Ms Hickling and Dr Bullock that reasonable adjustments had not been made.**

142. The claimant's position was that on the 6/8/24 an MPHS investigation commenced, which was because of his complaint about reasonable adjustments not being made on the 9/11/23. When clarifying his claim verbally, he explained that he wishes to pursue this complaint. This was not referred to in either ET1 form, and would require an amendment application to be made, which the claimant has not made. It would also require amendment to apply to respondents 1 and 2.

143. The complaint that the claimant seeks to rely on, relates to a complaint reasonable adjustments were not made 4 days before the previous hearing started on the 13/11/23. It is not clear why, if the claimant relies on the detriment as the commencing of the MPHS investigation on the 6/8/24, he did not include this complaint in his first claim form submitted 2 days later the 8/8/24, or the second ET1 submitted on the 15/8/24. This complaint could not have been dealt with as part of the previous proceedings, due to the dates referred to.

144. I have not been provided with any explanation for the delay between August 2024 and now, in seeking to pursue this complaint. The claimant has not provided any grounds on which it is just and equitable to extend time limits. On the basis the burden of proof is on the claimant, and I have not been presented with any reasons why the complaint is being presented now, or any argument about a continuing act, I dismiss the complaint as presented out of time, the time limits cannot be extended.

**Issue 4.2.6 - On the 19/7/19, Dr Sellens and Dr Mohanna used false documents for the claimant's assessment and annual competencies assessment; (direct race and religious discrimination)**

145. The claimant verbally confirmed he wanted to pursue this complaint, when his claim was being clarified. He stated that both doctors had used false documents in his assessment around 19/7/19. This was not referred to in either claim form, and the claimant has not made an application to amend.

146. The tribunal in 2022 considered a complaint of direct race discrimination at 3.1.5 in the list of issues 'Mr Muogbo provided an unfair report for the claimants ARCP assessment in July 2019 without the claimants' input. The tribunal found the report contained some criticism but was not unfair; the assessment aligned to the evidence the tribunal had seen about the claimant's performance and conduct at work. This is contained in paragraphs 364, 365, and 366.

147. Issue 3.1.19 in relation to direct race discrimination was an allegation Dr Mohanna assessed the claimant as unsatisfactory in the educational supervisors report. The tribunal concluded at paragraph 393 that this was because the claimant's work was reasonably viewed by her as unsatisfactory.

148. An allegation of using false documents does not appear to have been referred to previously in connection with the complaint listed at 3.1.19. Dr Sellens is also now accused of using false documents; Dr Sellens is employed by respondent 2 and was not referred to in the complaint previously at 3.1.19. In respect of a complaint of religious discrimination, my comments in paragraph 86 apply. The claimant was advised in previous proceedings about the procedure to amend if he wanted to pursue complaints of religious discrimination.

147. I consider the claimant to be cause of issue estopped in relation to direct race discrimination regarding Dr Mohanna. This has been determined as issue 3.1.19 and not found proven. If the claimant wanted to allege Dr Mohanna had relied on false documents, he should have raised this as part of the complaint at the time, and also in relation to Dr Sellens, it would have been reasonable to do so.

148. If I am wrong about this, I rely on the complaints being out of time. They date back to 2019; The claimant has not provided any grounds on which it is just and equitable to extend time limits. On the basis the burden of proof is on the claimant,

and I have not been presented with any reasons why the complaint is being presented now, or any argument about a continuing act, I dismiss the complaint as presented out of time, the time limits cannot be extended.

**Issue 4.2.7 - Dr Sellen stopped Dr Reeds' investigation into the claimant's complaint of bullying and discrimination against the claimant in January 2020. (direct race and religious discrimination)**

149. This complaint was contained in the claimant's letter dated 19/9/25. The claimant accepted it was not contained in his claim forms, and there would need to be an amendment application in respect of it, which has not been made.

150. In the 2022 proceedings, the claimant pursued 29 complaints of direct race discrimination spanning 1/8/18 - June 2022. This new complaint about direct race discrimination sits in the middle of this period. This complaint about Dr Sellens was not pursued as direct race discrimination in those proceedings. However, the tribunal made a finding in paragraph 204, about the circumstances of Dr Reed withdrawing from the investigation part way through, due to a conflict of interests. The tribunal noted this was unfortunate, but the right course of action to take.

151. I consider that issue estoppel applies to this complaint. The tribunal had made findings as to why Dr Reed ceased involvement in the investigation. This is highly relevant to any actions taken/ not taken by Dr Sellens in those circumstances. The finding made by the tribunal is binding on the parties, and in my view would prevent the claimant from pursuing this complaint.

152. If I am wrong and issue estoppel does not apply, then I would rely on Henderson abuse of process. This complaint dates from 2020, and the 2022 proceedings covered a range of dates of complaints from 2018–2023. I consider that the claimant could have raised the complaint by way of amendment in 2022 /2023 and should have done so, bearing in mind the span of dates for the complaints being made. There is no indication of any mistake made by the claimant in pursuing this complaint.

153. If the res judicata conclusions I have drawn are incorrect, I would dismiss the complaint out of time. The complaint dates back to 2020. The claimant has not provided any grounds on which it is just and equitable to extend time limits. On the basis the burden of proof is on the claimant, and I have not been presented with any reasons why the complaint is being presented now, or any argument about a continuing act, I dismiss the complaint as presented out of time, the time limits cannot be extended.

**Issue 2 – Unfair dismissal in respect of respondent 2**

154. In respect of the unfair dismissal complaint against respondent 2, I find the complaint was submitted in time. However, as respondent 2 was not the claimant's employer, I strike out the complaint on the grounds it has no reasonable prospect of success.

**Issue 2 – Unfair dismissal in respect of respondent 1**

155. The claimant submitted an in-time complaint of unfair dismissal in respect of respondent 1, in his ET1 form dated 8/8/24. I appreciate that I have not heard

representations from the claimant, on the respondent's application to strike out the unfair dismissal complaint on the grounds there is no reasonable prospect of success. However, I have taken the view that the claimant voluntarily absented himself from the remainder of these proceedings without good reason. I have summarised in paragraph 80 the respondents' submissions on his application.

156. I have considered the factor outlined in **Cox v Adecco Group UK Limited 2001 ICR 1307** in relation to strike out applications against litigants in person.

157. In relation to the facts of the case, I recorded at paragraph 26 the claimant's case in respect of unfair dismissal. He stated that he had been bullied, discriminated against and blackmailed, threatened and intimidated, and then dismissed. The respondents did not follow BMA policies and procedures. No case manager was assigned, there was no formal investigation process, no formal evidence provided or findings of an investigation outlined, no formal disciplinary meeting held, or representative provided in any disciplinary hearing, Sam Ross was not an independent reviewer as required by policy, no alternative outcomes were explored or offered, and no appeal was held.

158. The respondent accepts that it did not conduct a further investigation tribunal after the 2022 hearing. It carefully reviewed the findings and judgment of the tribunal. The respondent's position was that the claimant was found to have lied on oath. He had made baseless claims about the respondent, lied about evidence, alleged the respondent had fraudulently manufactured documents, and alleged the respondent had blackmailed him. All his allegations of bullying, blackmail, intimidation, and discrimination were dismissed. The judgment demonstrated that the claimant did not demonstrate the highest standards of behaviour required by a doctor. In those circumstances, the relationship of trust and confidence had irretrievably broken down, for both parties. This dismissal was for some other substantial reason, the breakdown in the relationship between the parties. The respondent's position is there was no other possible outcome apart from dismissal, and the removal of his training number was a mandatory part of that process. The respondent maintains that any other procedure would have been utterly futile. His claim for unfair dismissal would be bound to fail and should be struck out.

159. I have taken care to read the claim form and additional documents associated with the claim, and which have been referred to in this judgment. The parties agree that the respondent undertook no procedure after receiving the judgment, apart from reviewing the judgment, and dismissing the claimant. In this sense, there are few disputed facts; I note the claimant takes issue with Sam Ross who reviewed the judgment, as he maintains he was not independent. The claimant's case at its highest is the respondent followed no procedure at all on receipt of the judgment, and therefore the conclusion to dismiss him was inherently unfair.

160. I am aware that the claimant appealed the judgement from 2022 to the EAT, on the grounds there was an error of law, including a 31-page document setting out the basis of his appeal. On page 262 in the bundle, HHJ Auerbach on the 4/10/24 concluded the notice of appeal disclosed no reasonable grounds for bringing the appeal. It described the tribunal's decision as lengthy, thorough, and clearly and carefully reasoned. It is recorded that 'the claimant has not identified any arguable error of law in the tribunals account of the law in its decision, which appears to me to have been entirely correct, nor in the way that in the remainder

of the decision, it applied the law to the fact'. The claimant has requested an oral hearing in respect of this decision.

161. In general terms the tribunal at any final hearing would be required to consider **Polkey v AE Dayton Services Limited 1988 ICR 142 HL**, and the requirement for the employer to follow a proper procedure, and includes procedural fairness as a factor for the tribunal to consider when determining the reasonableness test under section 98 (4) Employment Rights Act (1996).

162. I am aware of the authority **Gallacher v Abellio Scotrail Limited EAT 0027/19**, which refers to a rare case where there is a complete breakdown in working relations between the parties, such that a dismissal can take place without following a proper procedure, on the basis it would be futile. The EAT confirmed that in that case, neither party had trust and confidence in the other, and the tribunals conclusion that a dismissal procedure could be dispensed with, because it was reasonably considered by the employer to be futile in the circumstances, was a conclusion the tribunal was entitled to reach.

163. I have considered the findings of the 2022 judgment carefully. At paragraph 17, the judgment referred to a general finding that the claimant had lied about his position on working nightshifts, and about a document at page 345 in the bundle being fake. The tribunal also concluded the claimant had a tendency to automatically argue he had been discriminated against, when anything happened, he disagreed with, and this was regardless of whether there was any real basis for that assertion or not. Paragraph 18 refers to the tribunal rejecting the claimant's assertion that the respondent had produced fake documents, showing he did not work night shifts and a document at page 345. Paragraph 19 contains a finding that the tribunal found the claimants conduct unprofessional for a regulated professional. Paragraph 20 rejected the claimant's assertions that several of the claimant's witnesses had lied. Paragraph 170 contains a specific finding that the claimant had lied about working nightshifts, in June 2019. When presented with a document the tribunal accepted as the real Rota, he maintained his position that he recalled working on some of those nightshifts. The claimant did not review his position when presented with the Rota, but accused the respondent of fabricating them, which the tribunal did not accept.

164. I note the background of significant and detailed factual findings, and specific findings that the claimant had lied to the tribunal and made false claims of evidence being fabricated by the respondent. The tribunal at final hearing of any unfair dismissal complaint would consider those factual findings. All his complaints of race and disability discrimination were dismissed. His role as a trainee doctor required him to adhere to high professional standards, including honesty, integrity, and probity. The nature of the findings made by the tribunal go to the core of those professional standards.

165. In the circumstances, I consider that the claimant had no reasonable prospect of succeeding in relation to his unfair dismissal complaint. I have formed this view because of the nature and scope of the findings referred to in paragraphs 163 and 164 above in the 2022 proceedings. I consider that the respondent would be able to establish the reason for dismissal, SOSR, the breakdown in the relationship of trust and confidence between both parties. The claimant, in making allegations that the respondent had fabricated evidence, was demonstrating his position that the relationship of trust and confidence had broken down. Whilst I accept the respondent did not undertake any formal procedure on receipt of the judgment,

which may be unusual, I consider the respondent would be able to establish the reasonableness of its decision to dispense with a dismissal procedure and to dismiss. Accordingly, I exercise my discretion to strike out the unfair dismissal complaint.

**Issue 4.2.5 - On the 27/5/24, Dr Sellars removing the claimant's training number unfairly and discriminately (direct race, religious and disability discrimination)**

166. This was a complaint made in time, that the claimant sought to pursue a direct race, religious and disability discrimination complaint. Whilst I appreciate the complaint was made in time, the claimant did not identify any additional factors which he claimed made this a discriminatory act, for example a comment made by someone, e mail or correspondence sent, indicating a discriminatory motive. I have considered the removal of the training number as an action must follow procedurally the dismissal of a trainee doctor from his post. I am aware I should be slow to strike out discrimination complaints, especially if facts are in dispute. There is no dispute that the training number was removed, and the reason for this was the dismissal. This does not appear to be a complaint where key facts are in issue. I consider the nature and scope of the findings identified above at paragraphs 163 and 164 in the 2022 proceedings. I find that the complaint has no reasonable prospect of success, and I exercise my discretion to strike out the complaint.

## **Directions**

167. In respect of the remaining complaint regarding the claimant not being paid the correct sick pay between February – April 2024:

The claimant is directed within 28 days, by the 18/12/25 to provide to the respondent a schedule setting out what monies he says he is owed for this period;

The respondent is directed to reply within 28 days, by the 22/1/26, setting out if any / all those sums / none of those sums claimed are accepted;

The parties shall notify the tribunal within 84 days, by the 19/2/26, whether the complaint is to be withdrawn; the parties have come to an agreement, or the complaint needs to be listed for a hearing before the tribunal. The parties should provide the tribunal with suggested directions.

## **List of issues**

### **The Complaints**

1. The claimant is making the following complaints:
  - 1.1 Unfair dismissal;
  - 1.2 Direct religious, race and disability discrimination;

- 1.3 Victimization;
- 1.4 Failure to make reasonable adjustments;
- 1.5 Unauthorised deductions from pay;
- 1.6 (Notice pay / holiday pay)

## Provisional list of Issues

2. The issues the Tribunal will decide are set out below.

### 1. Time limits

- 1.1 Given the date the claim form was presented and the dates of early conciliation, discrimination/ victimisation complaints may not have been brought in time.
- 1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
  - 1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
  - 1.2.2 If not, was there conduct extending over a period?
  - 1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
  - 1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
    - 1.2.4.1 Why were the complaints not made to the Tribunal in time?
    - 1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?
- 1.3 Was the unauthorised deductions complaint made within the time limit in section 23 etc of the Employment Rights Act 1996? The Tribunal will decide:
  - 1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made etc?
  - 1.3.2 If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
  - 1.3.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
  - 1.3.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

## 2. Unfair dismissal

- 2.1 What was the reason or principal reason for dismissal? The respondent says the reason was a substantial reason capable of justifying dismissal, namely a break down in the relationship of trust and confidence between the respondent and claimant following the release of the judgment on the 7/5/24.
- 2.2 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

## 3. Remedy for unfair dismissal

- 3.1 Does the claimant wish to be reinstated to their previous employment?
- 3.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?
- 3.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 3.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 3.5 What should the terms of the re-engagement order be?
- 3.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
  - 3.6.1 What financial losses has the dismissal caused the claimant?
  - 3.6.2 Has the respondent proven that the claimant failed to take reasonable steps to replace their lost earnings, such as by failing to take reasonable steps to find another job?
  - 3.6.3 For what period of loss should the claimant be compensated?
  - 3.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
  - 3.6.5 If so, should the claimant's compensation be reduced? By how much?
  - 3.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

- 3.6.7 Did the respondent or the claimant unreasonably fail to comply with it?
  - 3.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
  - 3.6.9 If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
  - 3.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
  - 3.6.11 Does the statutory cap of fifty-two weeks' pay or [£105,707] apply?
- 3.7 What basic award is payable to the claimant, if any?
- 3.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

#### **4. Direct race, religious and disability discrimination (Equality Act 2010 section 13)**

- 4.1 The claimant describes his religion as Muslim, and his race as Afghan Pashto / Pashtoon.
- 4.2 Did the respondent do the following things:
  - 4.2.1 On the 19/7/19, Professor Rowland recorded leave that the claimant had taken as unauthorised, and then as being for a religious festival which disclosed the claimant's religion to others; (direct religious discrimination);
  - 4.2.2 In December 2018, Dr Sellens verbally accused the claimant of shouting by using capitals in e mails, and Dr Farmer then told HR; (direct disability discrimination); (diabetes, dyslexia and mental health relied on);
  - 4.2.3 In 2019, Dr Sellens sought to influence the claimants' clinical supervisors, Dr Mukherjee, Dr Mohana, and Dr Muogbo against him, by writing an e mail after the 19/7/19 to tell his supervisors to provide a negative report and sought to influence his competency review; (direct race, religious and disability discrimination);
  - 4.2.4 In July 2019, Dr Mohana and Dr Sellens bullied the claimant by writing the wrong information, and other information about his family in his E – portfolio; (direct race discrimination);
  - 4.2.5 On the 27/5/24, Dr Sellars removed the claimant's training number unfairly and discriminately; (direct race, disability and religious discrimination); (diabetes, dyslexia and mental health relied on);

- 4.2.6 On the 19/7/19, Dr Sellens and Dr Mohana used false documents for the claimant's assessment and annual competencies assessment; (direct race and religious discrimination);
- 4.2.7 Dr Sellen stopped Dr Reeds' investigation into the claimant's complaint of bullying and discrimination against the claimant in January 2020. (direct race and religious discrimination)

4.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant has not named anyone in particular who they say was treated better than they were.

4.4 If so, was it because of race, religion and/or disability?

**5. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**

5.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

5.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

5.2.1 A policy of not paying night shift entitlement when the full nightshift could not be worked;

5.2.2 A policy of failing to implement breaks between patient appointment times;

5.2.3 A policy of failing to provide a representative in the disciplinary hearing, when recommended by occupational health;

5.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

5.3.1 The effects of the claimant's disability diabetes prevented him from working a full night shift; (5.2.1)

- 5.3.2 That the claimant struggled to see all the patients required, and it was stressful for him to try to maintain the notes required; (5.2.2)
- 5.3.3 The claimant was disadvantaged in the disciplinary hearing; (5.2.3)
- 5.4 Did the lack of an auxiliary aid, namely dragon software, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the claimant struggled to see all the patients required and it was stressful for him to try and maintain the notes required ?
- 5.5 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- 5.6 What steps could have been taken to avoid the disadvantage?  
The claimant suggests:
- 5.6.1 allowing him to work part of the night shift, to receive a full night shift premium;
- 5.6.2 provision of dragon software, training on dragon software;
- 5.6.3 frequent breaks for diabetes and increasing appointment times;
- 5.6.4 provision of a representative in the disciplinary hearing.
- 5.7 Was it reasonable for the respondent to have to take those steps and when?
- 5.8 Did the respondent fail to take those steps?

## **6. Victimisation (Equality Act 2010 section 27)**

- 6.1 Did the claimant do a protected act as follows:
- 6.1.1 After 21/1/21 diagnosis of learning difficulties, in a meeting with Miss Ekling of the wellbeing team on the 9/11/23, the claimant requested training for dyslexic people / new computer software;
- 6.1.2 In August 2019, the claimant e-mailed Dr Rowland complaining about bullying, after an incident on the pediatric ward where a registrar was shouting at him;

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- 6.1.3 On 28/1/20, the claimant complained to Dr Smith and Dr Sellens about the wrong information being recorded in his E – portfolio;
  - 6.1.4 On the 9/11/23 the claimant complained to Dr Sellens, Dr Palmer, Dr Rowland, Ms Hickling and Dr Bullock that reasonable adjustments had not been made.
- 6.2 Did the respondent do the following things:
- 6.2.1 In summer 2024 after termination, he received a letter starting a disciplinary investigation; (6.1.1);
  - 6.2.2 This was followed by disciplinary action (6.1.2);
  - 6.2.3 The claimant then received a letter from Dr Rowlands later in 2020 indicating he was the subject of an investigation and disciplinary process; (6.1.3)
  - 6.2.1 On the 6/8/24 an MPHS investigation commenced. (6.1.4)
- 6.3 By doing so, did it subject the claimant to detriment?
- 6.4 If so, was it because the claimant did a protected act?
- 6.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

**7. Remedy for discrimination or victimisation**

- 7.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
- 7.2 What financial losses has the discrimination caused the claimant?
- 7.3 Has the respondent proven that the claimant failed to take reasonable steps to replace any lost earnings, such as by failing to take reasonable steps to find another job?
- 7.4 For what period of loss should the claimant be compensated?
- 7.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 7.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 7.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

- 7.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 7.9 Did the respondent or the claimant unreasonably fail to comply with it?
- 7.10 If so is it just and equitable to increase or decrease any award payable to the claimant?
- 7.11 By what proportion, up to 25%?
- 7.12 Should interest be awarded? How much?

**8. Unauthorised deductions**

- 8.1 Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?
- 8.2 Did the claimant have deductions made from his salary in May 2020, March, April, May, June, July 2022, January 2023 and February, March and April 2024?

**Employment Judge Beck**

**Date: 20/11/25**