



EMPLOYMENT TRIBUNALS

Claimant: Ms Marcia Marie Chambers

Respondent: West London NHS Trust

Heard at: Watford

On: 2 to 6 March 2026

Before: Employment Judge MJ Smith
Tribunal Member S Boot
Tribunal Member C Surrey

REPRESENTATION:

Claimant: Mr Peter Ntui (litigation executive)

Respondent: Mr Gareth Deane (counsel)

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaint of harassment related race is not well-founded and is dismissed.
2. The complaint of victimisation is not well founded and is dismissed.
3. The sum of £15,000 in costs is payable by the claimant to the respondent within 28 days.

REASONS

Introduction

1. This is a claim of harassment on the grounds of race namely that the claimant identifies as a female of colour of the Caribbean ethnic group. In addition, the claimant claims victimisation on the basis that she committed a protected act namely raising the issue of harassment on the grounds of race with the respondent and then suffered detriment.
2. The respondent is an NHS trust which operates a medium secure unit providing psychological, occupational and rehabilitative services for male mentally disordered offenders. The claimant was employed as a staff nurse at the unit from 7 June 2004. She is still employed by the respondent. The claimant contacted early conciliation via ACAS on 8 November 2023 and an early conciliation certificate was issued on 10 November 2023. The claimant presented a claim for harassment on the grounds of race and victimisation on 5 January 2024.

The procedural background

3. At the start of the hearing, on 2 March 2026, the respondent made an application to allow one of their witnesses, Mr Adebayo Bankole, to give evidence via video pursuant to Rule 46 of the Employment Tribunal Procedure Rules 2024:

A hearing may be conducted, in whole or in part, by use of electronic communication (including by telephone) provided that the Tribunal considers that it would be just and equitable to do so and provided that those attending the hearing are able to hear what the Tribunal hears and, so far as practicable, see any witness as seen by the Tribunal.

4. There was no objection made by the claimant's representative. The tribunal allowed the application.
5. There was a further application on the second day of the hearing, 3 March 2026, by the respondent under section 46 for another of their witnesses, Mr James Tweneboa, to give his evidence via video pursuant to rule 46. There was no objection and the application was allowed.

Law

6. Section 123 of the Equality Act 2010 provides:

- (1) Subject to section 140B proceedings on a complaint within section 120 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.

- (2) Proceedings may not be brought in reliance on section 121(1) after the end of—
 - (a) the period of 6 months starting with the date of the act to which the proceedings relate, or
 - (b) such other period as the employment tribunal thinks just and equitable.

- (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.

- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

7. Section 26 of the Equality Act 2010 provides:

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

- ...
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
 - (a) the perception of B;
 - (b) the other circumstances of the case;

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

(5) The relevant protected characteristics are—

...

race;

...

8. Section 27 of the Equality Act 2010 provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

9. ***Thomas Sanderson Blinds Ltd v English*** EAT 0316/10 held that unwanted conduct means unwanted by the employee and ***Reed and anor v Stedman*** held that unwanted means unwelcome or uninvited.

The evidence before us

10. The tribunal was provided with a bundle for the final hearing provided by the respondent of 549 pages. There were witness statements from the claimant, Mr Francis Kouadio, Mr Kayode Kasali Idris, Mr Tanaka Mapfumo, Mr Adebayo Olabapo Bankole and Mr James Tweneboa. The tribunal heard evidence from the claimant, Mr Francis Kouadio Mr Kayode Kasali Idris, Mr Tanaka Mapfumo, Mr Adebayo Olabapo and Mr James Tweneboa.

11. The tribunal had a written note on the law from the respondent and written closing submissions on behalf of the claimant. Both representatives made oral closing submissions.
12. Having heard the evidence and read such documents as were referred to in the hearing bundle we made the following findings of fact.

Our findings of fact

13. The claimant was employed as a staff nurse by the respondent and commenced her employment on 7 June 2004. She is still employed by the respondent. She was a nurse on Berry Ward which is a medium secure unit housing male patients with mental health issues. There is a multidisciplinary team which works on the ward and includes nurses, doctors, health care assistants and other medical professionals.
14. Mr Kouadio is a health care facilitator who is also employed by the respondent and he worked on Berry Ward with the claimant. Mr Kouadio worked on Berry Ward from 2 September 2019 to 30 June 2024 when he transferred to Falcon Ward as a result of being offered the position. He has been employed by the respondent since 2006. The claimant was already a nurse on Berry Ward when Mr Kouadio moved there in 2019.
15. The tribunal considered the credibility of the claimant's evidence and that of the respondent's witnesses in its assessment of the fact of the case. The claimant's evidence was not always coherent and it was difficult to ascertain some of the details of the allegations she was making. There are no contemporaneous notes of the allegations referenced by the claimant. The complaints are a collection of incidents which occur over a period of months with significant gaps, including one of 10 months, before being brought to the attention of the respondent.
16. Mr Kouadio's evidence was coherent with the only incident he raised against the claimant being the one set out in his letter of 19 May 2021. Mr Kouadio stated that this incident involved the claimant engaging in an 'angry outburst' which appeared to be directed at him due to her mistaken apprehension that he had informed management of her lateness which had led to this issue being raised in the staff meeting on that day. In his evidence, Mr Idris stated that lateness was a permanent agenda item for team meetings. This issue would have been discussed on 19 May 2021 in that context. The description of the behaviour of the claimant was recorded contemporaneously by Mr Kouadio and the tribunal found this was likely to have occurred especially as he was then advised to stay away from the claimant by the nurse in charge of that shift.
17. This being the only complaint made by Mr Kouadio against the claimant there can not be said to be any animosity on his part due to race or otherwise. This, however,

appeared to be the start of the issues between the claimant and Mr Kouadio. Mr Kouadio was honest when unable to recollect incidents and gave a credible explanation for why he was able to recall an incident which took place in 2019. He explained that this was because he had been called as a witness in a case against a colleague who was alleged to have been sleeping on duty and he was alert to this as an issue as well as there being other allegations ongoing at the time of which he was aware and which had caused him to recollect this incident because he did not want to be placed in a similar situation.

18. The acts alleged against Mr Kouadio and Mr Tweneboa by the claimant were so minor that one would not expect the witnesses to be able to recall them years later. For Mr Kouadio this was at the fact finding meeting resulting in the fact finding outcome on 4 October 2023 and for Mr Tweneboa this was when he was asked to prepare his witness statement for these proceedings.
19. When Mr Idris gave his evidence he was clear and credible. He explained that he had told Mr Kouadio after his complaint on 19 May 2021 to avoid the claimant in order to reduce the chances of any further allegations being made. Mr Idris relayed this to the claimant in the expectation that she would apologise to Mr Kouadio because he had not mentioned anything with respect to lateness as far as the claimant was concerned. On 9 August 2021 the claimant made her first complaint to Mr Idris which made reference to 'cultural racism'. Mr Idris dealt with it informally as per the first stage of the Dignity at Work Policy which covers matters including bullying and harassment. He tried to arrange mediation between the claimant and Mr Kouadio but Mr Kouadio refused it as he did not think it would help. There were no further complaints by the claimant until 3 June 2022 and Mr Idris believed that the matter had been resolved. The tribunal found this to be the case as the claimant did not raise any further issues with Mr Idris for a period of ten months.
20. On 3 June 2022 the claimant made a further complaint to Mr Idris referencing her previous complaint of 9 August 2021 of which he was aware. Mr Idris stated that he spoke to the claimant regularly in his role as ward manager of Berry Ward and no issues had been raised regarding Mr Kouadio in this time. He stated that he had a good working relationship with the claimant which was evidenced by her email to him to thank him for his support when he left Berry Ward. After receiving the second complaint, Mr Idris forwarded it to his manager for escalation. In the interim he tried to keep both parties apart by placing them on separate shifts but this was difficult due to staff shortages on the ward and the claimant swapping shifts in order to accommodate her second job. None of this is in dispute and the tribunal found the facts as set out above.
21. Mr Bankole took over Mr Idris' role as ward manager in August 2022 and was informed in his handover of the issues between the claimant and Mr Kouadio. As the matter had already been escalated Mr Bankole was waiting for further instructions. The email from the claimant on 10 September 2022 to Mr Bankole prompted him to make further enquiries and he responded to the claimant saying he would make further enquiries. He replied to her on 29 September 2022 suggesting a mediation

which was superseded as Mr Mapfumo had by this point been appointed to mediate the situation between the claimant and Mr Kouadio. There was a delay in response from Mr Bankole as he had been on annual leave when the message was sent. He apologised to the claimant for the delay and informed her that Mr Mapfumo had been appointed as her mediator.

22. There were issues with dates being arranged around the availability of both the claimant and Mr Mapfumo. Mr Mapfumo met with the claimant on 10 May 2023. The reason he gave for the delay was partly scheduling conflicts and working patterns but mostly because he was suddenly placed on long term sick leave and was unable to meet the claimant. Once he returned from sick leave the investigation progressed. In the interim efforts were being made to keep the claimant and Mr Kouadio apart but there were difficulties due to staff shortage and the claimant swapping shifts to accommodate her second job.
23. The tribunal found the respondent's witnesses credible in light of the documentary evidence including the Dignity at Work policy which set out that the informal procedure was to be followed first before any complaint was formalised. In addition, there are emails documenting the attempts by Mr Idris and Mr Bankole to escalate matters and Mr Mapfumo trying to arrange meetings with the claimant.

Harassment section 26 Equality Act 2010

Unwanted Conduct

24. The tribunal considered the substance of the harassment claim as set out in the List of Issues from the preliminary hearing (pages 67-71 final bundle).
25. The tribunal considered whether the following conduct occurred:
- (a) Sometime in 2021 FK made comments in claimant's presence, that people do not need to travel to work. He said that there are NHS jobs everywhere. Claimant left the nurses office, when FK made the comment. On her return FK repeated the same comment in her presence because he knew that the claimant does not live locally.
26. Mr Kouadio was unable to recall this incident and stated that if he had made this comment it was nothing to do with race. Mr Kouadio accepted in his evidence that he knew the claimant lived far away and that she was on time for her shifts. If the comment was made there is no reason to assume it was based on the race of the claimant as the reference was made indirectly to another member of staff and was

based on where someone lives. There was no mention of race at the time of the comment. The tribunal found that this was unlikely to have occurred.

(b) On 21 March 2021, FK and claimant were both on a night shift. At about 05.00-06.00am of the following day, 22/03/2021, FK walked past where claimant was sitting near the window in the nurses' station and pulled back the blinds, abruptly. He gave no reason for his action. FK was unconcerned despite the fact the claimant was cold and uncomfortable. Claimant made no comments in interests of peace.

27. The tribunal found that this act probably happened but that this was a usual part of Mr Kouadio's duties as a security facilitator which involve opening blinds, curtains etc at daybreak for the next shift. There was no way for him to know that this was an issue for the claimant as she never raised it with him.

(c) FK pretends to carry out security checks for longer than necessary. 11/03/2022 and claimant noted that after his security checks, FK did not attend handover, but prepared his breakfast then entered the office to eat. No other staff does that.

28. It was not challenged that checks may take longer due to a number of reasons. If Mr Kouadio was late, this might be due to those reasons rather than the claimant's race. There was no mention of race and by this point there had been a gap of about a year between incidents. No issue was taken regarding the eating of breakfast elsewhere by the claimant's representative. The tribunal found that he was likely to have been late as Mr Kouadio said in evidence this was a possibility.

(d) On 17 April 2022 while on the night shift, claimant was talking to FO, another colleague in the nurse's station when she suddenly felt a chair dragged on her side. FK got up and quickly left the office, no apology.

29. There was an inconsistency between the claimant's evidence in her witness statement and the evidence she gave orally. In her witness statement the allegation is that the chair was dragged 'near me', but in her oral evidence she stated that the chair was dragged 'on me'. Mr Kouadio cannot recall this incident but stated that if it did happen it was probably an accident. The tribunal found that it likely did happen but that Mr Kouadio did not realise it had occurred as it was an issue that was never raised with him.

(e) On 27 April 2022 claimant was sitting in the nurse's station writing a CPA Report. She suddenly looked up and saw FK standing by the staff drawers looking at her in a very stern manner, it appeared he was trying to intimidate her.

30. The evidence on this point was limited and there is only one such allegation made by the claimant against Mr Kouadio of this type. The claimant, in her witness statement, alleged this was done 'aggressively' but this was never repeated in her oral evidence when questioned. She stated it was done 'sternly'. Given the inconsistent evidence and the fact that this is the only such allegation on this point we do not find that this incident happened.

(f) On 17 April 2022, while claimant was doing handover in the office, FK was moving the chair he sat on back and forth several times. This was a disrespectful behaviour towards the Claimant. Witnesses: JP, & FO.

31. The evidence is that the claimant was the nurse in charge of the night shift and was completing the handover in the morning to the day shift. Mr Kouadio was also on the night shift so would have been completing his remaining duties as there would be no need for him to be at the handover which is necessary for incoming staff to be made aware of any issues from the previous shift. We did not hear from any other witnesses on this point. The tribunal found that this did not happen.

(g) On 4 May 2021, while on night duty, FK "kisses his teeth" at claimant loudly when asked to help prepare patients' property list. He did it only after questioning why day staff did not do it.

32. The tribunal found that it was likely that this incident did happen but that it was a reaction to being asked to do a job that was not for Mr Kouadio to do and was an expression of mild annoyance at the request rather than to do with race. In any event, there is no reference to this incident in the claimant's witness statement.

(h) He would sometimes comment on the Claimant's shift planner for the night (on 03 June 2021, 04 August 2021 and 05 August 2021), act strangely by making unwanted sounds (on 05 August 2021) and even print over his name on the Claimant's shift planner (on 11 May 2021). Again, FK's comment on the issue of travelling far to work when he said 'there are NHS jobs all over the place' was indirectly alluding to the Claimant whom (FK) knew was coming from far to work.

33. The evidence in the claimant's witness statement referred to 3 separate instances of interference with the shift planner but only one shift planner showing a change was

produced as part of the bundle. Mr Kouadio stated that he did write on this planner but only to make his name clearer to read. The tribunal found that this did happen. In relation to any other comments and/or sounds made by Mr Kouadio towards the claimant, the tribunal found that sounds are likely to have happened but were not do with race. The comments were not specified and race was not mentioned with respect to those comments either in the List of Issues, in the claimant's witness statement or in oral evidence. The tribunal did not find that these comments happened as they were not documented.

(i) On 10 January 2023 the Claimant had just finished her night shift and handed over to (PC) who was on an early shift with (FK) and (JT), the Claimant was using one of six computers after handing over. (FK) seeing the Claimant on the Computer leave the nurse's office with (JT), then (JT) returned to the nurses' office alone, walked slowly behind the claimant then stopped at the vacant computer next to the Claimant topped on the logged-off computer keyboard while standing up, pretend to be using the computer then slowly walk behind the Claimant twice more times, back and forth, then left the nurses office. Then (FK) returned alone and sarcastically said to (PC) nurse that she might lose her PIN as the 'chief executive' would send an email to NMC and you lose your job. (JT) was perceived by the Claimant to have walked behind the Claimant to see what she was writing on the computer and then discussed it with (FK).

34. The claimant's allegation about Mr Tweneboa walking away and then coming back to pretend to use the computer is incoherent. Mr Tweneboa has no recollection of this incident but he and Mr Kouadio agreed that all members of staff would regularly use the office for computer work at various points in their shift. Mr Kouadio also has no recollection of this incident and one would not expect members of staff to recall every time they used a computer. Mr Tweneboa stated that the computers are never used during handover as all staff coming onto shift should attend. If Mr Tweneboa was informing Mr Kouadio of what the claimant was doing on the computer there would be no reason, on Mr Kouadio's return to the office, for him to approach a different member of staff and make reference to that member of staff losing her Nursing and Midwifery Council PIN.

35. In relation to the alleged conversation about the PIN, Mr Kouadio is a healthcare facilitator who is not required to have a PIN. While he was aware it existed and that it shows that a nurse is registered, he was unaware of the circumstances in which one could lose a PIN as he stated he does not know any nurse who has lost theirs. The tribunal found that this incident did not happen.

(j) On 10 February 2023, there was a repetition of shift as in paragraph 24 above except that (FK) was not amongst the early staff, and (JT) never walked past to see what the Claimant was writing on the computer. This explains further how influential (FK) has been in a negative sense on the ward.

36. In light of the fact that we found the incident in (i) above did not happen, this incident is no longer relevant. In any event, this is an example of an allegation not of unwanted conduct.

(k) On 20 July 2023, while the Claimant handed over to (FK), he had his back facing her. He was writing with his back against the Claimant and was not facing her while she handed over.

37. It is likely that this incident happened. It is recalled by the claimant but not by Mr Kouadio. There are, however, any number of reasons why someone would need to write on the board during a handover.

(l) On 18 August 2023, (FK) was late for the early shift and because he knew it was the Claimant who was in charge of the night shift, he did not call to say he would be late.

38. Mr Kouadio accepted in oral evidence that there is a possibility that he had been late but stated that if he were, he would telephone the office which has a single telephone line which anyone can pick up if they are in there. There was no evidence that the claimant was in the office at the relevant time to answer any telephone call from Mr Kouadio. There would be no way for Mr Kouadio to know who is in the office to answer the telephone while he was on his way in to work. The tribunal found that the fact that Mr Kouadio was late was likely to have happened but that he would have been likely to telephone the main line and the claimant had simply not been in the office at the time of the call. This is due to the fact that it was not the claimant's office but an office used by the multi-disciplinary team.

(m) On 04 September 2023, (FK) and the Claimant were in the nursing station and suddenly (FK) made an audible 'sigh sound' and then went to look for a mask. He returned wearing a mask over his nose. No other staff were wearing a mask and did not see the need for one.

39. There is evidence in the bundle that Covid was still around in the ward in 2023 and there had been an outbreak of it earlier in the year. Mr Kouadio accepted that he

may have worn a mask but that if he did, it was to protect himself from getting ill. The tribunal found this to likely have happened.

(n) On 27 September 2023 the Claimant was sitting in the nurses' station and (FK) stretched his hands over the Claimant to use the cupboard and did not ask to be excused.

40. The evidence from Mr Kouadio is that the claimant had her usual seat in the office and that there is no cupboard near her such that he would need to reach across. This might be similar to the allegation regarding the pulling of blinds but the large gap between the two incidents makes it likely that at most this was a minor act of incivility. The tribunal found that it was likely to have occurred as Mr Kouadio accepted that the claimant does not always sit in the same place in the office every time.

41. The conduct which we have found to have occurred was conduct which was unwanted by the claimant. She has described it as 'unpleasantness' and indicated that at times she felt uncomfortable.

Was the unwanted conduct related to the claimant's race?

42. The evidence showed that there was only one obvious mention of race which was in the claimant's letter of complaint dated 9 August 2021. In evidence the claimant accepted that the reason she believes that Mr Kouadio's conduct was done on the basis of her race was because she could not think of any other reason for his conduct. The Tribunal noted that while there was a contemporaneous note of Mr Kouadio's complaint about the claimant in May 2021, there were no contemporaneous notes of the claimant's allegations.

43. While it may be possible that she did not realise the extent of the conduct in 2021 and, therefore, felt no need to make contemporaneous notes at the time, after August 2021 the claimant described this as a serious situation which was worsening. In her complaint of August 2021 however, her allegation of racism is qualified as she stated 'I also believe there are some elements of cultural racism involved his attitude towards me. If not, why has FK singled me out among other nurses for unprovoked hostility? Could it be FK, perceives me as a weak and easy target to hurl insults at?' The claimant put forward an alternative explanation for the conduct alleged. The claimant stated in oral evidence that she did not discuss her race or ethnicity with other members of staff as she viewed it as a private matter. Mr Kouadio, Mr Idris and

Mr Tweneboa all agreed with this. The tribunal found that the acts of Mr Kouadio were not done as a result of the claimant's race. With regard to the acts that the tribunal found did not occur, even if they had occurred, they would not have been due to the claimant's race for reasons set above.

Did the unwanted conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? If not, did it nevertheless have that effect?

44. As a result of our findings above, the tribunal found that the purpose of the conduct was not to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

45. The conduct could not have had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. There was no incident that was so major that it could have had that effect on the claimant. The cumulative effect has to be considered in light of the large gaps between incidents and between the reporting of those incidents. The claimant has stated that she considered the conduct to be 'psychological torture'. If the effect on her was as great as she reported, there would not have been such a large gap between the reporting of the incidents in 2021 and 2022 and there would not be such large gaps between incidents. There was no effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Did the Respondent take all reasonable steps to prevent the unwanted conduct as alleged?

46. In May 2021 Mr Idris addressed them informally and Mr Kouadio only wanted an apology. Once Mr Idris informed the claimant of Mr Kouadio's perspective and that she was not the target of the 19 May meeting, he was expecting her to act accordingly and apologise to Mr Kouadio. This had brought that matter to an end as far as Mr Idris was concerned especially as he had told Mr Kouadio to avoid the claimant in order to minimise the chances of any further issues between them. When Mr Idris received the claimant's complaint on 9 August 2021, there were minor acts which formed the subject of the claimant's complaints and Mr Idris addressed them informally in accordance with the Dignity at Work Policy. He advised both parties to avoid each other and there were no further complaints by the claimant until June

2022. In 2021 Mr Idris was under the impression that the matters had been dealt with.

47. On 3 June 2022 the claimant presented her second complaint to Mr Idris. Once he became aware that the issues were ongoing, he tried to separate the claimant's and Mr Kouadio's shifts so that they did not work together. This was not always possible due to the ward being short staffed and the claimant swapping shifts to accommodate her second job.
48. The delays from 2022 to 2023 have been dealt with already but there were a number of unforeseen circumstances and some errors which took place. The individuals involved apologised to the claimant and she agreed in evidence that she had no issues with anyone other than Mr Kouadio. The claimant was offered the opportunity to move wards as a result of a recommendation from Occupational Health on or about 5 September 2023. The claimant accepted in evidence and submissions that she did not move wards because her position at Berry Ward fitted with her circumstances and her second job and she believed that as she had started working on the ward first, Mr Kouadio should be moved. The respondent did all it could to prevent any further unwanted conduct.

Victimisation section 27 Equality Act 2010

Did the claimant do a protected act?

49. The claimant alleged that there were three protected acts namely her complaint on 9 August 2021 which made reference to 'cultural racism', her complaint on 3 June 2022 and her email chasing up her complaint on 10 September 2022. The respondent's case is that it accepts that the complaint made on 9 August 2021 was a protected act but that the other two acts do not amount to a protected act as there was no reference to race. The claimant's second letter of 3 June 2022 while not expressly referring to race did refer to the letter of 9 August 2021. The June letter was addressed to Mr Idris who is the same person who had received the initial complaint. Because the 3 June letter referenced the August 2021 letter where 'cultural racism' had been alleged the tribunal found that the letter of 3 June 2022 was also a protected act.
50. The email sent by the claimant on 10 September 2022 was not a protected act as it made no reference to the claimant's race and was simply asking when matters would be dealt with.

Did the Respondent subject the claimant to the following alleged detriments and are they capable of amounting to detriments?

(a) Failure to resolve the Claimant grievance prolonged and worsened the Claimant's misery working side by side her harasser.

51. The complaint was resolved by the fact-finding outcome which was sent to the claimant and Mr Kouadio on 14 November 2023. The claimant did not appeal this outcome.

(b) Working in an unsafe environment with a hostile colleague, the Respondent breached her obligation under the Employers Liability Act and the Health and Safety Regulations concerning workplace safety.

52. There was no evidence heard by the tribunal relating to allegations of physical violence or threat towards the claimant by Mr Kouadio. The respondent tried to separate the claimant and Mr Kouadio on shifts to avoid proximity between them. No legal points were made by the claimant's representative regarding the Employer's Liability Act or any Health and Safety regulations as there were no references made to either in written or oral submissions by the claimant's representative. The tribunal did not find that this was an unsafe environment for the claimant. Any conduct was minor and did not result in 'psychological torture'.

(c) The Claimant was always over the edge with anxiety each time she comes to work has been diagnosed of atypical chest pain as a consequence of the harassment and victimisation.

53. The claimant has been diagnosed with a cardiac condition namely Wenckebach phenomenon which is a type of heart block. This is a physiological condition and no medical expert diagnosed it as being a result of work-related stress and/or anxiety. In the letter dated 23 July 2024, based on a meeting between the claimant and occupational health, the claimant is noted as saying that she 'cannot identify a reliable trigger between work-related stressors and the cardiac symptoms'. This is a contemporaneous account of what was discussed at that meeting. While this account post-dated the alleged conduct it provided evidence of the claimant's view of her cardiac symptoms. The tribunal found that while the claimant may have felt uncomfortable at work her physical symptoms could not be attributed to any work-related stress particularly as her diagnosis is a physiological condition.

54. The tribunal found that there was no detriment suffered by the claimant. In any event the claimant's physical condition would be relevant to damages and not detriment.

Time Limits section 123 Equality Act 2010

55. Because the tribunal have found the substantive allegations not to be well-founded there is no need to consider the issue of time limits.

Conclusions

Harassment

56. The conduct which we have found to have occurred amounted to unwanted conduct. The effect of the conduct could not reasonably amount to a violation of the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment. The respondent took all reasonable steps to prevent the unwanted conduct. The claim for harassment was not well-founded and was dismissed.

Victimisation

57. There were two protected acts on 9 August 2021 and 3 June 2022. There was no detriment suffered by the claimant. The claim for victimisation was not well-founded and was dismissed.

Time Limits

58. The substantive claims were dismissed and there was no need to consider this issue.

Costs Application

59. There was an application by the respondent at the conclusion of the hearing for a costs order to be awarded against the claimant under rules 73 and 74 of the Employment Tribunal Procedure Rules 2024.

Law:

60. Rule 73 of the Employment Tribunal Procedure Rules 2024 provides that:

73.— Costs orders and preparation time orders

- (1) A costs order is an order that the paying party make a payment to—
 - (a) the receiving party in respect of the costs that the receiving party has incurred while represented by a legal representative or a lay representative

61. Rule 74 of the Employment Tribunal Procedure Rules 2024 provides that:

74.— When a costs order or a preparation time order may or must be made

(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.

(2) The Tribunal must consider making a costs order or a preparation time order where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted,

(b) any claim, response or reply had no reasonable prospect of success, or

(b) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.

62. Rule 40 of the Employment Tribunal Procedure rules provides:

40.— Deposit orders

...

(7) If the Tribunal following the making of a deposit order decides the specific allegation or argument against the depositor for substantially the reasons given in the deposit order—

(a) the depositor must be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 74 (when a costs order or a preparation time order may or must be made), unless the contrary is shown, and

(b) the deposit must be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit must be refunded.

(8) If a deposit has been paid to a party under paragraph (7)(b) and a costs order or preparation time order has been made against the depositor in favour of the party who received the deposit, the amount of the deposit must count towards the settlement of that order.

Our findings of fact in relation to costs

63. The claimant had sought legal advice since at least 1 November 2023 as a letter was sent on her behalf by her representative to the Guy's and St Thomas' Hospital with a request for her medical records to be disclosed.
64. There was Preliminary Hearing on 10 July 2024 where EJ Gumbiti-Zimuto stated that any acts which occurred prior to 4 October 2023 were likely to be out of time. There was a further Preliminary Hearing on 3 September 2024 where EJ Delaney issued a Deposit Order of £150 in respect of each claim making a total of £300. At that hearing EJ Delaney also ordered the claimant to prepare a finalised list of issues as per the discussion at the hearing. This list of issues was filed on 17 September 2024. The Deposit Order was sent to both parties on 9 December 2024.
65. Employment Judge Daley set out in the Deposit Order that there was difficulty with the allegations as pleaded and in particular that it was not clear that the acts were sufficiently pleaded or referenced to the claimant's protected characteristic. The claimant was aware at the earliest from 3 September 2024 and the latest 9 December 2024 that there were issues with the way that the claims had been pleaded. In respect of the harassment claim there was no link set out in the List of Issues or the written or oral evidence of the claimant that linked any conduct by Mr Kouadio to her race. The claimant could have amended the list of issues to make this clearer once the Deposit Order was received on 9 December 2024 but no application was made.
66. On 24 February 2026 a costs warning was sent to the claimant's representative by the respondent which stated that if the claimant's claim were to fail because the panel found the claim was not to do with race then the respondent would be making a costs warning. This was reiterated to the claimant's representative on the morning of the first day of the hearing on 2 March 2026. A further warning was sent by email to the claimant's representative from the respondent on 5 March 2026 prior to judgment being given by the tribunal.

67. The claimant was on notice from 9 December 2024 of the issues with the claims and from 24 February 2026 of the possibility of a costs order being applied for by the respondent. During the hearing the tribunal enquired into the claimant's means. The tribunal found that the claimant had the sum of £1900 each month as disposable income once her expenses had been met.

68. The tribunal applied the test for costs orders and noted its power to award a costs order against a party under rule 73. The tribunal then applied rule 74(2)(a) and (b) to determine if the threshold had been met.

Rule 74(2)(a) Employment Tribunal Procedure Rules 2024

69. The Deposit Order made reference to the fact that the harassment claim did not establish a link between the conduct alleged by Mr Kouadio and the claimant's race. The tribunal found, at the final hearing, that any conduct which occurred was not linked to the claimant's race. Where a claim fails on the issues identified in the deposit order there is a presumption that such conduct is 'unreasonable' (rule 40(7)). The tribunal found that the action of the claimant in pursuing the harassment claim was unreasonable on that basis.

70. The tribunal considered whether the claimant's action in pursuing the harassment claim was unreasonable in light of the circumstances of the case. The actions set out above were unreasonable in that the claimant had been aware of concerns about her claims since 3 September 2024 and at the latest 9 December 2024, she had obtained legal advice and could have rectified any matters in the List of Issues sent on 17 September 2024. When the Deposit Order was sent on 9 December 2024 the claimant had another opportunity to rectify the List of Issues but did not do so. The action in pursuing the harassment claim was unreasonable in all the circumstances.

71. The tribunal considered whether the action of the claimant in pursuing the victimisation claim was unreasonable. While the claimant had made protected acts, the detriments alleged did not amount to detriment. The first detriment alleged was factually incorrect as the claimant's grievance was resolved on 4 October 2023. The second detriment alleged was not legally pursued in relation to the Employers Liability Act or to the Health and Safety Regulations. The second detriment had no factual basis for arguing that the work environment was hostile or unsafe in either the claimant's written or oral evidence as the conduct alleged was minor in nature and there was no evidence of violence or threats made by Mr Kouadio towards the claimant. The third detriment alleged had no factual basis to suggest that any

physical conditions suffered by the claimant were a result of the conduct of the respondent and, in any event, any physical impact would be relevant to damages not detriment.

72. The tribunal found that the claimant's action in pursuing the victimisation claim in light of the above was unreasonable.

Rule 74(2)(b) Employment Tribunal Procedure Rules 2024

73. The tribunal considered whether the harassment claim had 'no reasonable prospect of success'. The tribunal took into the consideration the facts set out above. The lack of any link between the claimant's race and the conduct alleged was clear from 3 September 2024 at the earliest and 9 December 2024 at the latest. The List of Issues did not address this and, as such, there was no reasonable prospect of success in relation to the harassment claim.

74. The tribunal considered whether the victimisation claim had 'no reasonable prospect of success'. The tribunal took into consideration the facts set out above. The claimant's argument in relation to the first detriment was factually incorrect. The second detriment regarding an unsafe working environment was not pursued in any meaningful way during the proceedings and no legal point was taken in relation to the Employers Liability Act or any Health and Safety Regulations. There was no clear evidence from the claimant either written or oral to suggest that the working environment was unsafe. The tribunal found that there was no reasonable prospect of success in relation to the victimisation claim.

Should the tribunal exercise its discretion to make a costs award?

75. In deciding whether or not to make a costs award the tribunal reminded itself that a costs award is not to punish the party who pays but to recompense the receiving party for 'reasonable' costs at a summary assessment. The tribunal also exercised its discretion to take into account the claimant's means. The tribunal took into account the fact that the claimant was legally represented and had been since about 1 November 2023.

76. The tribunal had regard to the fact that a costs award is not punitive but to compensate the receiving party for its reasonable costs. The tribunal took into consideration the opportunities available to the claimant amend the list of issues, the wording of the deposit order and the costs warnings. The tribunal also took into

account that the respondent is a public body and had made attempts to resolve the claim without the need for a final hearing.

77. The tribunal decided to exercise its discretion to make a costs award against the claimant because she had been legally represented throughout and it was clear that there were issues with both claims during the proceedings. The tribunal accepted that this would have been obvious by 9 December 2024 and that costs should run from that date.

What amount of costs should be awarded?

78. Both the claimant's claims had significant difficulties from the beginning. The potential for the claims to be out of time was raised at the Preliminary Hearing on 10 July 2024. The Deposit Order issued on 9 December 2024 clarified the issues which were not rectified from that date to the date of the hearing. The fact that the claimant had legal advice prior to issuing any claims and certainly during the period from 9 December 2024 means that she should have been aware of the risks of pursuing both claims.

79. The risks were reiterated to the claimant's representative on 24 February 2026, 2 March 2026 and 5 March 2026.

80. The tribunal considered that the maximum possible amount it could award on a summary assessment of costs is £20,000. The amount claimed by the respondent dated from 9 December 2024 and included the final hearing. It did not include the costs of any work carried out prior to 9 December 2024. The tribunal took into account that the respondent is a public body which has to account for how it spends its money. The tribunal also exercised its discretion under rule 82 to consider the claimant's ability to pay as set out above.

81. The tribunal ordered that the sum of £15,000 in costs be payable by the claimant to the respondent within 28 days.

Conclusion on Costs Application

82. The application succeeds on both rule 74(2)(a) and (b) in respect of the harassment and victimisation claims.

83. The tribunal exercised its discretion to make a costs order against the claimant.

84. The tribunal made a costs order against the claimant for £15,000 payable to the respondent within 28 days.

**Approved by
Employment Judge MJ Smith
20 March 2026**

Judgment sent to the parties on:
1 May 2026

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For the Tribunal:

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Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

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

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