



EMPLOYMENT TRIBUNALS

Claimant: Mr Robert Ritchie

Respondent: Medway Maritime Foundation NHS Trust

Heard at: London South (by CVP)

On: 2 to 6 February 2026
and 17 March 2026 (in chambers)

Before: Employment Judge D Wright
Ms J Jerram
Mr C Rogers

Appearances

For the claimant: Ms Jemma Fairclough-Haynes, Employment Consultant

For the respondents: Ms Tara O'Halloran, Counsel

JUDGMENT

1. The Claimant's claims of detriment following the making of a protected disclosure are not well-founded and are dismissed.
2. The Claimant's claims of direct race discrimination are not well-founded and are dismissed.
3. The Claimant's claim of indirect race discrimination is not well-founded and is dismissed.
4. The Claimant's claims of victimisation are not well-founded and are dismissed.

REASONS

1. The Claimant is a consultant and at all material times was employed by the Respondent, an NHS Trust. ACAS Early Conciliation commenced on 5 June 2023 and the certificate was issued on 17 July 2023. The ET1 was lodged on 24 July 2023.

The Issues

2. The issues were set out by EJ T Martin at the case management hearing and are:

1 TIME LIMITS

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

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

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

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

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

(a) Why were the complaints not made to the Tribunal in time?

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

1.2 Was the detriment complaint made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of act complained of?

1.2.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

1.2.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.2.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within such further period as the Tribunal considers reasonable?

2 PROTECTED DISCLOSURES

2.1 Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide

2.1.1 The Claimant relies upon:

(a) an email dated 11 April 2023 sent to Jayne Black at 9:08 entitled "Sexual, Physical and Verbal Abuse from a patient". The Claimant relies upon all contents of this email and specifically the following wording: *"We had other incidents within the past few weeks where a female staff member was verbally/racially abused and threats made against her and another incident where hospital property was damaged in Area ½... The recently implemented and much lauded red card system is useless and ineffective and does not protect employees."*

(b) an email on 11 April 2023 sent at 12:19 to Dr V Anota, Emergency department consultant, entitled "Issue of e-mail censorship by ED Secretary" which said *"This has very serious implications for the safe and effective running of the Emergency Department secretarial support because this opens the worrying practice our e-mail communications were been screen prior to them being circulated."*

(c) an email on 18 April 2023 sent at 11.05 to Janice Kettle attaching a letter from a patient referring to racism, June 2022. Within this email the Claimant asks Janice Kettle to forward the CEO response and earlier email to the CEO and all ED staff.

(d) the entire contents of his email to Jayne Black on 11 April 2023 at 9.03am entitled "Lack of Leadership" where he highlighted several concerns including: "Surgical registrars not responding to bleeps, surgical orthopaedic teams not attending Trauma calls in a timely manner or not attending, reckless and dangerous practice by teams."

2.1.2 Did they disclose information?

2.1.3 Did they believe the disclosure of information was made in the public interest?

2.1.4 Was that belief reasonable?

2.1.5 Did they believe it tended to show that:

(a) a criminal offence of sexual and racial harassment of staff by patients as hate crime under the Crime and Disorder Act 1998 and section 66 of the Sentencing Act 2010 had been, was being or was likely to be committed;

(b) the health or safety of patients had been, was being or was likely to be endangered;

2.1.6 Was that belief reasonable?

3 DETRIMENT (EMPLOYMENT RIGHTS ACT 1996 SECTION 48)

3.1 Did the Respondent do the following things:

3.1.1 On or before 20 April 2023 the Emergency department secretary blocked the Claimant's email of 18 April 2023 on the instructions of Dr Alison Davis.

3.1.2 In an email from Dr Da Costa on 20 June 2023 the Claimant was admonished for sending emails about racism and increased violence and abuse against staff.

The Claimant also contends that:

The ED secretary informed them she had been instructed by the ED Manager, Josh, not to circulate any further emails from the claimant. The claimant recalls seeing part of an email from the secretary that included the following individuals: Hinton (HR Director), Dr. Davies (CMO), and the ED Manager.

The claimant also states they received both an email and verbal confirmation from the former ED Clinical Lead, Dr. A. Da'Costa, indicating that the CMO was responsible for issuing this instruction, which was then communicated through HR and the ED Manager.

3.1.3 From 13 April 2023, the Claimant had to send all his own emails without secretarial support because the Emergency Department secretary refused to send emails on his behalf.

3.1.4 From around 20 April 2023, staff, including K. Ward, A Okeke and Trust Directors C. Parokkaran and D Rennie-Hale were removed from the Claimant's mailing list. The Claimant is not able to identify who removed staff members from his mailing list.

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

3.3 If so, was it done on the ground that he made a protected disclosure?

4 DIRECT RACE DISCRIMINATION (EQUALITY ACT 2010 SECTION 13)

4.1 Did the Respondent do the following things:

4.1.1 Delayed investigation of the Claimant's grievances raised in relation to discrimination on 8th, 12th, 16th and 26th May 2023. These grievances were sent to Jayne Black and Leon Hinton;

4.1.2 From around 11 April 2023 blocked the Claimant's emails, namely sending emails so that the recipients did not receive them. The relevant emails are all of the department wide emails sent by the Claimant.

4.2 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 does not have a specific comparator but asserts that a comparator would be a white male member of staff.

4.3 If so, was it because of race?

4.4 Did the Respondent's treatment amount to a detriment?

5 INDIRECT DISCRIMINATION (EQUALITY ACT 2010 SECTION 19)

5.1 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCP:

5.1.1 To downgrade DATIX incident reports of race discrimination where the reporting clinician was black.

5.2 Did the Respondent apply the PCP to the Claimant?

5.3 Did the Respondent apply the PCP to white reporting clinicians or would it have done so?

5.4 Did the PCP put black reporting clinicians at a particular disadvantage when compared with white reporting clinicians in that complaints of race discrimination were not taken seriously?

5.5 Was the PCP a proportionate means of achieving a legitimate aim?

5.6 The Tribunal will decide in particular:

5.6.1 was the PCP an appropriate and reasonably necessary way to achieve those aims;

5.6.2 could something less discriminatory have been done instead;

5.6.3 how should the needs of the Claimant and the Respondent be balanced?

6 VICTIMISATION (EQUALITY ACT 2010 SECTION 27)

6.1 Did the Claimant do a protected act as follows:

6.1.1 The Claimant relies upon:

(a) an email dated 18 April 2023 addressed to Emergency department consultants regarding the actions or omissions of the Emergency department secretary, which states *"My Concern is the trust managerial team is using our ED secretary to censor / screen my e-mail communications and in doing so is engaging in discriminatory, vindictive and undermining activities."*

(b) an email to Jayne Black on 11 April 2023 at 9.03am entitled "Lack of Leadership" which lists the following wrongdoings and omissions:

- Surgical registrars not responding to bleeps
- Surgical teams not attending trauma call in a timely manner or not attending
- Patients not added to on call list
- Surgical teams not handing cases over to colleagues at handovers resulting in undue delay in care/treatment
- On call teams declining referrals from GPs
- On call teams refusing to see patients until the 'other team' sees the patient

6.2 The Claimant relies on section 27(2)(c) and section 27(2)(d) of the Equality Act 2010. The alleged breach relied on by the Claimant under section 27(2)(d) is that he was victimised for raising concerns about censorship of emails which had discriminatory, legal and health and safety consequences.

6.3 Did the Respondent do the following things:

6.3.1 On or before 20 April 2023 the Emergency department secretary blocked the Claimant's email of 18 April 2023 on the instructions of Dr Alison Davis

6.3.2 On or about 20 June 2023 the Claimant was admonished for sending "inflammatory" emails. The Claimant contends that:

The ED secretary informed them she had been instructed by the ED Manager, Josh, not to circulate any further emails from the claimant. The claimant recalls seeing part of an email from the secretary that included

the following individuals: Hinton (HR Director), Dr. Davies (CMO), and the ED Manager.

The Claimant also states they received both an email and verbal confirmation from the former ED Clinical Lead, Dr. A. Da'Costa, indicating that the CMO was responsible for issuing this instruction, which was then communicated through HR and the ED Manager.

6.3.3 From 13 April 2023, the Claimant had to send all his own emails without secretarial support.

6.3.4 From around 20 April 2023, staff, including K. Ward, A Okeke and Trust Directors C. Parokkaran and D Rennie-Hale were removed from the Claimant's mailing list. The Claimant is not able to identify who removed staff members from his mailing list.

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

6.5 If so, was it because the Claimant did a protected act?

6.6 Was it because the Respondent believed the Claimant had done, or might do, a protected act?

The Law

3. The law is set out in the advocates' skeleton arguments and is agreed to the extent that it matters for our decisions. This is a case which turns largely on the facts and therefore we do not propose to set out the law here.
4. We heard from Claimant who gave evidence on his own behalf. On behalf of the Respondent, we heard from Dr Alison Davis (Chief Medical Officer), Mr Leon Hinton (Chief People Officer), Mr Josh Dalton (IT Project Manager/Operation Manager), Mr Wayne Blowers (Director of Quality and Safety), and Dr Adebayo Da Costa (Clinical Director for Acute and Emergency Care).

Discussion and Findings

5. Whilst the format of this determination will inevitably separate out different heads of claim in order to make appropriate findings, we have taken a holistic view of all the evidence, whether explicitly referenced or not, when coming to our decision.

Protected Disclosure

6. The first qualifying disclosure relied upon by the claimant is at 2.1.1 (a) of the list of issues. This, along with 2.1.1(d) were accepted by the respondent as being qualifying disclosures. We agree.
7. In relation to 2.1.1.(b) we find that this was not a qualifying disclosure. Whilst the claimant says "[...] has very serious implications for the safe and effective

running of the Emergency Department secretarial support [...]”, we find that the claim is high level and unparticularised. It does not contain sufficient information to amount to being a protected disclosure. He fails in any meaningful way to show how safety is compromised by the secretary not sending round robin emails on his behalf.

8. With respect to 2.1.1.(c) we again find that this was not a qualifying disclosure. It is essentially a complaint that his complaint was not being investigated quickly enough. We find that the email does not contain enough information to show that there was a public interest issue. Whilst it references racial abuse, the particular complaint from a patient that he relies upon was not, we find, racist in nature. We also find that any belief it showed that a criminal offence was being or was likely to be committed, or that the health and safety of patients was likely to be endangered was not a reasonable belief.

Detriment (Employment Rights Act 1996 section 48)

9. The claimant alleges that the first detriment was that the Emergency Department secretary blocked his email of 18 April 2023 on the instructions of Dr Alison Davis. This ties in very closely with the third detriment which was that the claimant had to send all his own emails without secretarial support and we propose to deal with both of these together.
10. We heard from Dr Davis who confirmed that she did make a decision that the secretary should not be sending emails of this nature on behalf of the clinical staff. We heard evidence, which was largely accepted by the claimant, that the ED was already short staffed on the secretarial front. The senior leadership in the hospital determined that sending round robin emails on behalf of staff which were not of a clinical nature was not the correct use of resources. We accept this explanation. We found it to be a credible and reasonable explanation for the use of resources.
11. With respect to the third detriment, we find that Dr Davis intended for the ban to only be on the secretary forwarding non-clinical emails on behalf of the claimant. However, by the time it had worked its way down to the secretary and claimant it had become distorted, like in a game of telephone, and the restriction was somewhat confused whereby the claimant genuinely believed the ban was on all secretarial support.
12. We also find that the situation was brought to a point whereby the decision was needed because of the claimant's emails. We find that he was sending a number of emails, through the secretary, to the whole department which were raising concerns about racism and abuse of staff by patients. However, the tone of his emails was abrasive and were forthright in their criticism of the senior leadership of the hospital. The respondent's witnesses said on a number of occasions that tone of the emails were not in line with the "values" of the hospital. We find that this was a reasonable view for them to take.

13. We find that the decision to restrict his use of the secretary for sending these emails was down to the tone of his emails and not due to the underlying concerns.
14. We find that it is to the claimant's credit that he takes his position as an experienced consultant in the department seriously. He obviously recognises that with his privileged position, comes a responsibility to junior members of staff who may not feel able to speak out. But we also note that it is important to remain professional when sending emails to colleagues.
15. We heard from Dr Davis who made it clear that she welcomes feedback and concerns being raised with her. She described having an "open door policy". She did not have any ill will to the claimant for him raising the issues. In fact, it appears that the respondent accepts a history of poor performance on staff protection, especially racism. Dr Davis said that since taking over the trust she has made progress on this, but accepts that the hospital still had areas to improve upon at the relevant time.
16. We have seen that the claimant was, on a number of occasions, invited to take part in working groups and engage with the "pivoting teams" to help improve the situation for staff. He did not accept these invitations, although we do have some sympathy for his view that this would just be more "talk and no action" when he wanted immediate action to happen before looking at the longer-term plan.
17. When we weigh up all the evidence, we find that the first and third detriments were not down to the making of the protected disclosure, but rather the tone and manner of his making of the disclosure and his other emails to the department which were critical of the senior leadership. We therefore dismiss the claim on the first and third detriments.
18. The second detriment relied upon was Dr Da Costa, the claimant's line manager, admonishing the claimant for sending emails about racism and increased violence and abuse against staff. This email was sent on 20 May 2023 and was copied to the entire department. Dr Da Costa seemingly replying to the same distribution list that the claimant had used in the first place. Dr Da Costa, and the respondent, denies that his email was admonishing. He says that he was trying to educate the claimant and asking him to engage in a more productive manner rather than sending "inflammatory emails".
19. We find that the email does come across as giving the claimant a "dressing down". We can feel Dr Da Costa's frustration coming through the page. In many ways an admonishment at this point would be valid as the claimant was still sending inflammatory emails despite the withdrawal of secretarial support for them the month before. It was not particularly appropriate to respond to the

entire department and this did cause the claimant more of a detriment than simply sending the email to him alone would have done. However, we find that the reason for the admonishment was down to the tone of the claimant's email and Dr Da Costa's feeling that the claimant's approach would "create the opposite of the desired outcome". As such we dismiss the claim on the third detriment.

20. We note that whilst there were actions taken in response to the tone of the Claimant's emails, no formal or informal disciplinary action was taken.

21. As to the fourth detriment, the claimant alleges that certain members of staff were removed from his outlook address book so that he was unable to send messages to them. We heard from Josh Dalton who confirmed that this would not be possible on the IT systems. Someone is either visible on the address book to everyone in the organisation or they are not visible to anyone. We find that at some point, at least one of those staff members was not accessible to the claimant to send emails to, but this was probably down to him being on long term sick leave and then resigning from the respondent's employ. We accept the evidence of Mr Dalton that this block would not have applied solely to the claimant, but that no one in the organisation would have been able to send an email to this address. Therefore, we find that there was no detriment to the claimant.

22. As such the claim of detriment under section 48 is dismissed in full.

Direct Race Discrimination (Equality Act 2010 Section 13)

23. The claimant relies on two acts of direct discrimination. The first is that that respondent delayed investigation of his grievances.

24. It is important to note here that that claimant had previously gone through the grievance process under the former leadership of the respondent. He was not happy at all with the outcome, and this coloured his trust in the current leadership when raising a grievance.

25. It is also important to note that between these two grievances, the respondent had withdrawn the grievance policy and replaced it with a new resolution policy. The claimant was not aware of this change and was trying to proceed on the basis of the format he was used to from prior experience.

26. We accept the respondent's evidence whereby we were told that the old policy had been removed from the intranet and replaced with the resolution policy. We were told that if you searched for "grievance" on the intranet you would be redirected to the new policy. We also find that if you read the version control section of the policy it tells you that it replaces the old grievance policy, but there is nothing in the body of the actual policy to tell you this. It was not entirely clear that the new policy replaced the old one.

27. We find that the claimant is not a fan of using technology and accept that he did not make as much use of the intranet and other electronic forms of communication as his employer may like. Therefore, he was unaware of the new policy. We find that this led to a great degree of confusion when the respondent and claimant were communicating and giving terms different meanings.
28. We find that following the raising of the grievance, the claimant was invited to meetings so that the respondent could understand the complaints in more detail. The claimant initially gave the impression he would take part in this and said he would come back with a date he and his union rep could make. In the event, he did not come back with a date.
29. The respondent asked the claimant therefore to fill in the Resolution Form to give more details. This is where the confusion really began as the claimant was wanting to do formal grievance and not an informal resolution. There was a back and forth on this point with everyone talking at cross purposes. We find that it should have been obvious to the respondent that the claimant was not aware of the change in policy, and more should have been done to set his mind at ease that the grievance was progressing and was being taken seriously. This breakdown in communication led to a delay in the investigation.
30. Eventually the claimant provided the requested information and the respondent then appointed an external investigator. He contacted the claimant to arrange meeting over MS Teams. The claimant refused to engage with the investigator because he wanted to have an in-person meeting. The respondent was not prepared to pay the additional costs this would incur for the investigator to travel from Bristol and stay in a hotel.
31. Before us, the claimant explained that he did not want to have a meeting on Teams because he does not like using video technology for communication, something which is not unusual. He also told us that he preferred meeting face to face because his upbringing in Jamaica meant that his communication style could be misinterpreted in a British setting and he came across better in person. It is worth pointing out at this point that the Claimant is British and was born in Wales, but spent his formative years in Jamaica. He returned to the United Kingdom some 30 years before the relevant period.
32. Unfortunately, he did not mention his cultural upbringing as a reason for needing an in person meeting to the investigator or the respondent. As he only every phrased it as a preference, the respondent reasonable was not prepared to change investigator or incur additional costs.
33. After a number of chasers and warnings, the respondent deemed the complaint to be withdrawn.

34. We find that the reason for the delays in investigation were initially down to a breakdown in communication over which policy was being relied upon. The delays were then made worse by the claimant's refusal to engage with the investigator and his failure to give what he now says were his true reasons for not wanting to have the discussion remotely. We find that the claimant has not met the threshold required to shift the burden here to the respondent.
35. The second complaint of direct discrimination relates to the decision to block the secretary from sending department wide emails on behalf of the respondent.
36. The claimant points out that a nurse, who was white, was having her emails sent to the whole department by the secretary after the decision was made to stop him sending them. These emails discussed the same subject matter, patient abuse (including racism) and staff safety, as the claimant's emails. This, we find, is sufficient to shift the burden to the respondent.
37. The respondent points out that this nurse had a departmental lead role for this area and therefore was in a different position to the claimant, who had appointed himself to highlighting the problems. The respondent also took us through some of the nurse's emails and we find that they are very different in tone to the claimant's. They are constructive, calm and polite. The claimant's emails were, in many instances, not.
38. Overall, we accept the respondent's explanation for the difference in treatment and find that race had nothing to do with the decision.

Indirect Discrimination (Equality Act 2010 Section 19)

39. The claimant, in the pleadings and list of issues, relies on one PCP. That is to say that the respondent had a PCP to "downgrade DATIX incident reports of race discrimination where the reporting clinician was black".
40. It became clear that the claimant was not actually running this argument in the hearing. We heard evidence from the respondent that people assessing the DATIX reports would not necessarily know the ethnicity of the person reporting it. We find that there was not evidence of incident reports being downgraded **where the reporting clinician was black** (our emphasis). As such this claim is dismissed.
41. No formal application to amend the claim was made. However, in the claimant's skeleton submissions, the PCP was described as "psychological abuse of staff was treated as less serious than physical abuse and that this disproportionately affected non-white staff who experienced racial abuse." Furthermore, the policy was described as low harm and no harm reports, which would include racism, were deleted.

42. We were told that no reports were deleted, but after review of the evidence it became clear that at least some may have been. However, we find that there was not evidence of systematic deletion of low harm or no harm reports. They may well have been closed down with less investigation, but there was no PCP of deleting them. In fact, the emails we have seen show that they should not be being deleted.
43. As to the system of grading reports, we find that there was a PCP in place to rank incidents based on a number of factors, one of which was harm. An incident of physical abuse was more likely to be ranked above psychological abuse. We find that this means that racist verbal abuse was more likely to be ranked lower than non-racist physical abuse. However, if we were to do a true comparison, we should look at racist verbal abuse vs non-racist verbal abuse, and racist physical abuse vs non-racist physical abuse. We saw no evidence that a racist verbal incident would be treated less seriously than a non-racist verbal incident.
44. Even if we consider that more verbal abuse is going to be racist in nature than not, and therefore the treatment of verbal abuse as a lower harm incident, means that non-white staff are at a disadvantage, we have to consider the legitimate aim.
45. The respondent has finite resources and needs to prioritise which incidents to take action on. We find that this is a legitimate aim. We were told that their ranking system was based on NHS England guidelines and that they chose to focus initially on physical harm, but that they did not discount verbal abuse. In fact, the evidence in the bundle shows that they were seeking ways to reduce the racist abuse being aimed at their staff. We find that this would be a proportionate means of achieving the legitimate aim.
46. As such we dismiss the indirect discrimination claim.

Victimisation (Equality Act 2010 section 27)

47. The claim relies on two protected acts. The first of these was the email of 19 April 2023 where he says “My concern is the trust managerial team is using our ED secretary to censor/screen my e-mail communications and in doing so is engaging in discriminatory vindictive and undermining activities”.
48. We find that the claimant is clearly raising discrimination concerns here which would amount to a complaint that the Equality Act was being breached. As such, we find that this is a protected act.
49. The second one is the email of 11 April 2023. Within this email, the claimant raises a number of complaints but all of these appear to relate to safety issues rather than Equality Act issues. Therefore, we find that this was not a protected

act. We remind ourselves that despite the similar wording, the test for protect act is different from protected disclosure.

50. As to the detriments suffered, we have previously found that the first, second and third of these did happen, but that the fourth one did not.

51. However, as before, we have found that the reason for the respondent doing these things was due to the tone and manner of the claimant's emails and not because of the protected acts.

52. We therefore dismiss the victimisation claims in full.

Time Limits

53. Having dismissed the claim, we do not need to deal with any time limit points.

D J Wright

17 March 2026

Sent to the parties on:

19 March 2026

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For the Tribunal Office:

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