EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No. 4103537/2023

Held in Aberdeen on 27,28,29 February 2024, 1 March 2024, 27 & 28 January 2025 and 23 April 2026

Employment Judge J M Hendry
Members E Hossack
A Atkinson

Mrs E Vinga	**Claimant** **represented by** **Ms N Bennett,** **Equality 4 Black Nurses**
Barchester Healthcare Limited	**Respondent** **Represented by** **Mr P Singh,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claims for race discrimination under Sections 13, 26 and 27 of the Equality Act 2010 not being well founded are dismissed.

REASONS

1. There is a long history to this case which we will not rehearse.

2. Evidence was first heard in 2024 and the case only listed for a final two day hearing in 2026. Because of the long delay in concluding the case a reading day was arranged for the 22 April 2026 to allow the Tribunal to review it's notes and productions. In the event rather disappointingly the respondent at the last minute intimated that they did not intend calling their final witness and both sides agreed to provide written submissions which they did.

3. The Tribunal convened on the 23 April to make its decision.

Issues

4. A list of Issues had been agreed. The three post-employment allegations that remained from the initial claim to be determined were: a) The refusal to provide a reference on the 6 January, b) The notification/referral to the Nursing and Midwifery Council (NMC) on 19 January 2023 and c) Referral to the Disclosures and Barring Service on 19 January 2023. [JB p181]

Facts

5. The claimant is an international nurse from Zimbabwe whose visa to work in the UK was sponsored by the respondent. She was a Nurse Manager in Zimbabwe.

6. The claimant is a black African.

7. The claimant passed her OSCE practical examination in nursing competence. She is a Registered Nurse.

8. The claimant was employed by the respondent as a Registered Nurse at Broadway Halls Care Home. She received a contract of employment on the 22 June 2021.

9. In September 2022 the Care Quality Commission conducted an unannounced inspection (in relation to Safety of Service, Effectiveness and Leadership) which identified serious and systemic failures in relation to a number of matters including medication management and staffing. These findings raised safeguarding concerns requiring urgent action. The effectiveness of the service for patients was classified, despite some serious matters being identified, as ‘Good’ but that the service ‘Required Improvement’.

10. The respondent company accepted the terms of the report and the highlighted failures. Ms Helen Hughes-Patrick (Clinical Development Nurse) organised training for staff and tried to address the other shortcomings highlighted in the report. As part of this the respondent undertook audits of

MAR charts, medication records and staff rotas. These audits applied to all staff.

11. Starting in October 2022 staff including the claimant participated in medication competency training.

12. Ms Helen Hughes-Patrick the respondent's Clinical Development Nurse was tasked to investigate. Evidence seemed to demonstrate repeated documentation discrepancies during shifts worked by the claimant and others.

13. On 5 October Ms Hughes-Patrick emailed other staff with details of various allegations that required to be investigated in relation to the claimant described as EV and another staff member AB. (JB90) The email stated:

"

- *Failure to administer or document administration of Clonazapam for a resident DH on 8 different occasions (21, 26, 27, 28 August, 10, 11 and 30 September and 1 October 2022;*
- *Failure to administer Antibiotics to a resident BJ at 22:00 on the 30/09/2022;*
- *Failure to administer Levothyroxine to a resident KR at 07:00 23/09/2022;*
- *Failure to administer Eye Drops Latanoprost to EH on 10 separate occasions, 16, 17 and 18 August 2022, 16, 17, 18, 23, 24, 25, 28 September;*
- *Failure to ensure that medication was transferred onto handwritten MAR at the commencement of new cycle resulting in 8 residents potentially not receiving 16 vital medications that was not on the printed MAR;*
- *Failure to document when medications refused by EH and RS resulting in gaps in medication records;*
- *Failure to attend planned compulsory training – Tissue Viability;*
- *Concerns about failing to support care staff with providing personal hygiene care to residents*."

14. The email was also copied to the Manager of the home Julie Willmouth.

15. As Ms Hughes-Patrick was unavailable Ms Acuavera chaired a Zoom hearing arranged with the claimant on the 21 October to discuss the allegations. She was accompanied by Ms Murray, the Deputy Manager. The meeting started in the afternoon - The claimant attended without knowing the purpose of the meeting nor being aware of the specific allegations that were to be discussed.

She assumed it was an informal meeting about the recent CQC investigation and its consequences.

16. A copy of the notes prepared by Ms Hughes-Patrick for a planned meeting with the claimant on 12 October was used by Ms Acuavera as the basis for her questions at the meeting. This document was used by Ms Murray to add handwritten notes based on responses by the claimant.

17. The first part of the meeting related to training and the claimant's understanding of processes. The allegations were then put to her. The claimant gave various responses including that at some points the patients had been asleep and could not receive medication but that this was noted for later staff to administer and in relation to eye drops they were given but not documented. It was noted that she felt under pressure and indicated that there wasn't enough staff when she was also working on two floors. It was noted "*the quality of care I am able to provide is not good*". She explained that in the medication round she would still have to answer the "buzzer" (alarm) if it sounded. The claimant resigned on 21 October at 16.36 hours. Her last day of employment was 21 November 2022.

18. No proper minutes were taken but Ms Murray used a copy of the allegations to note responses from the claimant (JB92-95). This was not typed up nor was it disclosed to the claimant. The responses included the claimant indicating that there were staffing shortages which meant she had to cover two floors and that she was called away from medication rounds when the 'buzzer' sounded requiring her immediate intervention. She also stated that the medications were given although there might be some recording discrepances. She complained about lack of staff, that expectations were 'too high', the quality of care she could provide and communication difficulties with the pharmacy in relation to medication.

19. The claimant's responses were not ultimately investigated. The allegations involving AB were investigated, documented and some of the allegations were withdrawn.

20. It was apparent to the claimant that the allegations were potentially serious and that they might lead to disciplinary action. She was told that there would be a restructuring. She believed that they wanted her to resign. She was told that if she resigned she would get a reference and could work her notice. This is not recorded in the meeting notes.

21. At 4.36pm that day the claimant resigns by email. She worked a month's notice during which no further action was taken in relation to her investigation. Meantime the investigation into the alleged actions of AB progressed.

22. AB had a disciplinary hearing on the 17 November and was summarily dismissed. The letter indicated that the respondent believed that there had been breaches of the NMC Code of Conduct.

23. The claimant's last date of employment was the 21 November 2023.

Referral

24. Some doubt had arisen as to whether the claimant should be referred to her professional body. There was an internal discussion and agreement reached to refer because of the possible seriousness of the allegations. On the 20 December the respondent after contacting the NMC for advice agreed to submit a referral for the claimant. The NMC had seen a copy of the allegations. The claimant was unaware of this.

25. A formal referral was made on the 19 January 2023 to the NMC. The claimant was written to on the same date advising her that the referral had been made but the letter was sent to her former address and not received by her. The claimant had not previously been warned at the time of her resignation that a referral might be made despite the terms of the letter. The respondent's HR Department also sent a letter to the Disclosure and Barring Service on 19 January 2023 with a DBS referral in relation to the claimant. At paragraph N it copied the issues that were raised with the claimant at the investigatory meeting.

26. On the 6 February 2023 the claimant received notification from the NMC that she had been referred to them in relation to the full list of allegations made against her by her employer in October.

27. On the 10 February the NMC obtained an interim order restricting her working and placing conditions on it.

28. On 15 March the claimant was advised that she had been referred to the Disclosure and Barring Service (JB 219).

29. The claimant attended a hearing on the 20 July. The upshot was that the interim order was lifted allowing her to work. (JB p222]

30. On the 7 November 2023 the claimant was told that the Disclosure and Barring Service were taking no action.

31. The claimant was able to work with Florence Staffing Ltd during this period.

Submissions

Claimant's Submissions

32. The primary focus is on the respondent's handling of the post-termination reference and the referral to the Nursing and Midwifery Council (NMC), with the DBS referral and victimisation relied upon in the alternative where relevant.

33. The claimant does not dispute that Broadway Halls Care Home had significant problems. The Care Quality Commission identified serious and service-wide failings in medicines management, staffing and governance. The claimant's case is that, against that wider background, the respondent singled her out as an individual professional risk and subjected her, a Black African nurse from Zimbabwe, to grave external escalation which was not shown to have been applied evenly to white staff.

34. The live issues for determination are whether the respondent effectively refused a meaningful professional reference in January 2023, whether it made an adverse referral to the NMC later that month, and whether those acts amounted to direct race discrimination and harassment. The claimant relies on Helen Bullock and Julie Willmouth as pleaded comparators, with primary emphasis on Ms Bullock.

35. The claimant relies on sections 13, 26 and 136 of the Equality Act 2010. She submits that she does not rely on race alone, but on a combination of facts which together raise an inference of discrimination sufficient to shift the burden of proof. Those facts include the existence of wider service failings, internal documents implicating more than one nurse, the respondent's acceptance that its internal process was not concluded, and evidence suggesting that white staff were not externally escalated in the same manner.

36. Internal respondent documents, including emails and a medication breakdown, placed multiple staff, not only the claimant, within the factual matrix of concern.

37. An internal investigation process was commenced against the claimant but was never concluded. The respondent admitted in its ET3 that, because the claimant resigned, the disciplinary investigation was not progressed to completion. The claimant accepts that referral prior to conclusion of an internal process is not unlawful per se, but contends that, on these facts, the conversion of an incomplete internal process into grave external regulatory escalation against this individual nurse is insufficiently explained.

38. On the reference issue, the claimant accepts that some response was provided. The complaint is that when asked for a full professional reference in support of future employment, the respondent confined itself to a bare factual statement of employment details. This occurred at the same time as the respondent was preparing external escalation. The claimant relies on the respondent's own reference guidance, which emphasises the importance of references, warns against detriment, and cautions against commenting on unresolved allegations. The reference issue is relied upon as part of a broader pattern of post-termination treatment rather than as a standalone act.

39. The NMC referral is characterised as the central act. The claimant submits that referral was discretionary, not automatic. The NMC's own materials confirm that not every concern requires referral and that local resolution or training may be appropriate. The respondent's reliance on advice from the NMC advice line is said not to answer the case, because that advice was expressly based solely on the information provided by the respondent. The Tribunal is invited to ask why, in a context of wider failings, an incomplete internal process and no concluded disciplinary findings, this claimant was selected for individual regulatory escalation.

40. In relation to comparators, Helen Bullock is said to be the key comparator. The respondent's own documents place her within the medication and documentation context. However, when asked by the NMC about Ms Bullock, the respondent stated that nothing had been reported regarding her conduct whilst on duty. By contrast, the claimant was externally characterised as a serious professional risk. That disparity is relied upon as supporting an inference of less favourable treatment. Julie Willmouth is accepted to be a weaker comparator due to her different role but is relied upon as part of the broader accountability picture.

41. The claimant submits that no express racial comment is required for an inference of discrimination. The inference arises from the pattern: a Black African nurse selected for grave external escalation from within a broader

failing service, an unfinished internal process, and differential treatment of white staff appearing in the same factual matrix. On that basis, the claimant contends that the burden of proof shifts and that the respondent has not discharged it. High-level reliance on “safeguarding” and “regulatory duty” is said not to answer the specific question of why this claimant was treated differently.

42. The harassment claim relies on the same conduct. The claimant submits that the acts were plainly unwanted and objectively serious, exposing her to professional and regulatory harm. If the conduct is found to be related to race, it was reasonable for her to experience it as degrading and damaging to her dignity.

43. Later developments are relied upon not to suggest that all initial concerns were fabricated, but to demonstrate the seriousness of the detriment caused and to show that the grave risk picture advanced by the respondent was not ultimately sustained. The revocation of interim NMC conditions and positive subsequent references are said to reinforce that point. Similar reliance is placed, in the alternative, on the DBS decision to take no action.

44. In conclusion, the claimant submits that, in a home with acknowledged service-wide failings and an incomplete internal process, the respondent selected this Black African nurse for grave external escalation in circumstances not shown to have been applied evenly to white staff. The respondent’s explanations are said not to address that central question. The Tribunal is invited to uphold the surviving claims applying the two-stage burden of proof under section 136.

Respondent’s Submissions

45. The remaining claims are of direct race discrimination under section 13 of the Equality Act 2010 and harassment related to race under section 26. The allegations concern three post-termination acts: an alleged refusal to provide a reference in January 2023, a referral to the Nursing and Midwifery Council (NMC) later that month, and a referral to the Disclosure and Barring Service (DBS) in March 2023. The respondent submits that the claimant has failed to establish a *prima facie* case under section 136 and that the claims fail at the first stage of the burden of proof.

46. The Tribunal is invited to determine whether the respondent treated the claimant less favourably than comparators, namely Helen Bullock and Julie Willmouth, because of race, and whether the acts complained of amounted

to harassment related to race. The respondent contends that neither limb is satisfied.

47. The respondent relies on sections 13, 26 and 136 of the Equality Act 2010, and on authority including ***Madarassy v Nomura International plc*** [2007] ICR 867, ***Igen Ltd v Wong*** [2005] ICR 931, and ***Laing v Manchester City Council*** [2006] ICR 1519 in relation to the burden of proof. It is emphasised that the initial evidential burden is substantive and that a mere difference in treatment combined with a protected characteristic is insufficient. In relation to harassment, reliance is placed on ***Richmond Pharmacology v Dhaliwal*** [2009] IRLR 336, with the submission that not all conduct causing upset amounts to harassment and that objective reasonableness must be assessed.

48. The factual background is said to be critical. The claimant was employed as a Registered Nurse. In September 2022 a Care Quality Commission inspection identified serious and systemic failures in medication management at the care home, raising safeguarding concerns. In response, the respondent undertook evidence-based audits of medication administration records, MAR charts and staff rotas. Those audits identified repeated documentation discrepancies during shifts worked by the claimant over a sustained period.

49. An investigation meeting took place on 21 October 2022. The respondent's case is that this was a fact-finding meeting only, with no decision made and no outcome reached. The claimant resigned later that day, with the result that the disciplinary process was not concluded. The respondent submits that the safeguarding concerns did not fall away on resignation and continued to require regulatory consideration.

50. Credibility and reliability are said to be central to the case. The respondent submits that the claimant's evidence was internally inconsistent and materially divergent between pleadings, examination-in-chief and cross-examination. Inconsistencies are identified in relation to the tone and content of the investigation meeting, whether resignation was encouraged, what assurances were allegedly given, and whether and when allegations of discrimination were raised. These inconsistencies are described as going to the heart of the case and are unsupported by any contemporaneous documentation. There was no documentary corroboration of alleged pressure to resign or of discriminatory motivation.

51. By contrast, the respondent's witnesses are said to have given calm, measured and consistent evidence, supported by contemporaneous records and the logic of events following a serious regulatory inspection. The Tribunal is invited to prefer the respondent's account where evidence conflicts and to

draw adverse inferences from the claimant's inability to engage coherently with key documentary material during cross-examination. The respondent submits that the claimant's account was reconstructed with hindsight and lacked reliability.

52. In relation to the investigation itself, the respondent submits that it was prompted by audit evidence linking medication discrepancies to the claimant's shifts and formed part of a wider safeguarding response to the CQC findings. The investigation is characterised as non-disciplinary at that stage. The suggestion that the investigation was itself discriminatory is described as unsustainable, with no evidence that others in comparable circumstances were treated differently or that race played any role. The investigation was said to be driven by safeguarding obligations and initiated by a senior individual responsible for quality control.

53. Turning to the reference of January 2023, the respondent's position is that a reference was in fact provided, in line with established practice, and that this is supported by contemporaneous evidence. The claimant is said to have accepted under cross-examination that references in the same format were provided for other former employees. It is submitted that there is no evidential basis for suggesting differential treatment linked to race and that the claimant identified no valid actual or hypothetical comparator in materially identical circumstances.

54. As regards the NMC referral, the respondent submits that it sought guidance from the NMC's Regulation Advice Line and was advised that a referral was appropriate. The referral is said to have accurately reflected audit findings, without embellishment or expression of opinion, and to have remained consistent over time. The respondent contends that it acted in accordance with professional and regulatory obligations. Allegations of retaliatory or discriminatory motivation are said to be inconsistent with the contemporaneous audit trail, timing and the involvement of an independent regulator.

55. The DBS referral is said to arise from the same safeguarding concerns, in a heavily regulated sector involving vulnerable service users. The respondent submits that it acted cautiously and responsibly, and that the claimant has provided no evidential basis from which racial motivation could be inferred.

56. On comparators, the respondent submits that neither Helen Bullock nor Julie Willmouth is an appropriate comparator under section 23. Ms Bullock was not implicated in audit findings of equivalent seriousness, and Ms Willmouth occupied a materially different role, not comparable to that of a registered nurse responsible for medication administration.

57. The harassment claim relies on the same post-termination acts. The respondent submits that the conduct was not related to race, consisted of legitimate safeguarding and regulatory actions, and that any distress experienced by the claimant was not objectively reasonable. Applying ***Dhaliwal***, the statutory threshold for harassment is said not to be met.

58. In conclusion, the respondent submits that the claimant has not established facts from which discrimination could be inferred and that, applying ***Madarassy***, ***Igen*** and ***Laing***, the burden of proof does not shift. In any event, the respondent is said to have provided clear, consistent and credible non-discriminatory explanations for each act. The Tribunal is invited to dismiss the claims in their entirety, on the basis that the respondent acted responsibly, lawfully and without discrimination.

Discussion and Decision

59. The claims proceeded under Sections 13 and 26 of the Equality Act 2010.

> "***13 Direct discrimination***
>
> ***(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.***
>
> ***26 Harassment***
>
> ***(2) (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.***
>
> ***(2) A also harasses B if—***
>
> ***(a) A engages in unwanted conduct of a sexual nature, and***
>
> ***(b) the conduct has the purpose or effect referred to in subsection (1)(b).***"

60. Discrimination is often covert or hidden in some way and this presents particular problems for an employee proving discrimination on the grounds of a protected characteristic. The Equality Act 2010 deals with the burden of proof in s.136. This encompasses a two-stage test. At stage 1 a claimant must prove facts from which a Tribunal could infer that discrimination has

taken place. Only if such facts have been established does stage 2 apply where the burden 'shifts' to the employer to prove that the treatment in question was not in any way related to the protected characteristic.

61. The burden of proof remains on a claimant to prove, on the balance of probabilities, facts from which (absent any other explanation) a tribunal could infer that an unlawful act of discrimination had taken place. The change in wording to the balance of proof provisions in the Equality Act 2010 did not introduce a substantive change to the law and thus earlier authorities are still relevant.

General Observations

62. The genesis of the difficulties that arose in the care home at which the claimant worked was a critical report from the regulator. The report dealt with systemic problems in the home. There were difficulties over staffing, training and leadership and the documentation relating to prescribed medications. It is not our role to comment on these matters themselves but they formed the background to the claimant leaving her employment. The staff were aware of the critical report and were told that there would be a reorganisation. Steps were taken to improve and stabilise the service.

63. The claimant who had received no criticism of her work or working practices attended a meeting on 21 October. She was not forewarned that the meeting was to discuss specific allegations of her apparent failures principally on occasions to record or give medications properly. The claimant was caught somewhat off guard but explained as best she could what her recollection was of events. She blamed understaffing and she alleged that on occasions she had to supervise two floors of the home while giving out medication and being called on urgently to attend issues when an alarm was sounded.

64. The investigation did not get off to a good start. The person in charge of the investigation was on holiday when the first investigation meeting took place. There was considerable detail in the allegations which the claimant had no prior notice of. To be fair to the respondents it is our suspicion that this was just to start a process of investigation and that this was to get an initial response from the claimant and that there would have been other meetings at which the respondent's detailed records/evidence would be disclosed. This is indeed what happened with another nurse (AB) who was investigated for similar matters. In passing given the importance of these matters we are

surprised that the Zoom meeting was not recorded or as we note, no proper minutes were taken.

65. The Manager had just left and the task of conducting the interview devolved to Ms Acuavera, Regional Support Manager. She was accompanied by a Ms Murray the Deputy Home Manager who was there to take notes. This she did by writing the claimant's responses on a sheet containing the allegations. These notes were never typed up for approval probably because following the meeting the claimant resigned.

66. The principal dispute in the evidence relates to what occurred at the close of the meeting. It seems clear that the claimant was upset at what she saw as the respondents targeting her as a scapegoat for systemic difficulties identified in the report. She complained that she could not provide a good level of care given the understaffing and that issues over record keeping although important should be addressed internally though changes in processes and training. She was somewhat fatalistic believing that this was how many employers operated in her experience and that it was convenient for them to lay the blame on nurses particularly black nurses who they could hire and fire. The other nurse AB was from a south Asian background. She therefore thought that she would in her own words 'cut her losses' and move on. She alleged that she was told that if she resigned there would be no further investigation, she could work her notice, and she would receive an employment reference.

67. Ms Acuavera who was a confident and clear witness, denied that there was any such discussion. We found this ultimately difficult to reconcile with evidence we heard. We found it impossible to accept that the claimant was lying about these matters even taking account of possible misunderstanding or miscommunication. The claimant was in a very weak position. Her visa was sponsored by the respondent. Minutes after the meeting the claimant resigned by email. She gave no reasons but stated her last day of work. She then worked a month's notice and the investigation halted. From future events it was clear she expected to receive a reference. The provision of a reference was provided for in the respondent's policies. Significantly she resigned, not by sending an email to the head office or HR but to Ms Murray, the Deputy Manager and Ms Acuavera [someone she had not met before that meeting] within minutes of the conclusion of her meeting with them.

68. In this case the claimant looked at what she saw as the unfair scapegoating of herself and AB (who was ultimately dismissed) the promise of a reference which was then withheld and the referrals to the NMC and Disclosure and

Debarring Service which she had not been warned about as being racially motivated. She had been allowed to continue working and as far as she thought the investigation was at an end. She was not aware, as we became aware, of the confusion and muddle that was going on behind the scenes.

69. The difficulty the respondent's managers had created was that by short-circuiting the claimant's investigation due to her resignation, the broad allegations put to her at the initial stage were not investigated further in the light of her explanations such as she was not on shift on some of the occasions alleged. We can see that in relation to AB many of the similar allegations were not upheld after a full investigation. This meant that when they came to consider referring the claimant to the regulators they sent the initial allegations to them which, and we agree, was unfair to the claimant. In hindsight they should have completed the investigation before deciding on such a serious matter as a referral to the regulators and the draconian consequences that this has for the person referred. In the claimant's case she faced the loss of her income and professional standing and it was only after the intervention of Equality 4 Black Nurses that restrictions were lifted by the NMC.

70. We will now turn to the three allegations.

Reference

71. The claimant asked for a reference through Pulse Jobs.com (JB 190). She expected to receive one. There was a delay in responding. The request was passed to Cheryl Innes (HR) and Claire Mudge the Regional Director. Consideration was given to the respondent's Policy but the claimant was regarded or assumed to have been dismissed. A reference was given containing bare details of the employment periods. This was unsatisfactory for the Agency who asked for more detail. That request was declined by Ms R Long on the 25 January (JB 196).

72. The policy says:

> "***Although there is no obligation to provide a reference, within the care sector it would be rare to refuse, because it is good practice to provide a reference and because of the adverse consequences a refusal would have on the employee concerned.***"

73. It also says (JB 88):

> "***Legally, other than the circumstances detailed in the section 'Legal Considerations', you are not required to provide a reference about an employee/bank worker or ex-employee/bank worker. However it is Barchester Healthcare's policy to always provide references. Failure to do so for specific employees could lead to tribunal claims due to detrimental treatment.***
> ***HOW SHOULD I RESPOND TO A REFERENCE REQUEST?***
> ***When a request is received for a reference, you should respond to this in a timely manner (ideally within 48 hours). The Response to Reference Request Form should be completed and returned to the prospective employer either by post or by attaching to a secure email. A copy of the Response to Reference Request Form should be retained and placed within the employee's personal file or within a file specific for references issued where an employee's file has already been archived.***"

74. The policy was not followed in relation to timing or completion of the correct form. The response by the company was not well thought out. The respondent's managers were concerned that having made a referral that giving a ''full'' reference would be inappropriate. We did not accept that a brief factual reference was in accordance with either the policy or good practice and highlighted the lack of clarity around the claimant leaving her employment and the unresolved allegations.

Referrals to the NMC and Disclosure and Barring Service

75. The claimant's submissions referred to the referrals as victimisation under the Act rather than harassment. We regret to say that we did not accept that the claimant made a protected act, thus engaging Section 27 by alleging race discrimination at the meeting on the 21 October and we preferred Ms Acuavera's evidence on that matter. We accepted her evidence that she would have been alert to any such suggestion given her own background.

76. The claimant's evidence on this matter was somewhat hesitant and we suspect that these matters although perhaps in her mind were not articulated by her at the meeting. There is no reference to race discrimination in the resignation nor was any grievance raised by her. However, even if we had held that a protected disclosure had been made the evidence does not suggest that the allegations against the claimant were made for discriminatory reasons or to victimise the claimant for raising the issue of race discrimination but because the allegations found were serious. It was significant that advice was taken before the referrals were made and although

we are critical of these ‘unvarnished’ or un-investigated allegations being used as a basis for the referrals the regulatory body the claimant’s race did not play a part in that decision making process.

77. The claimant relied on two comparators who were both accepted to be white British. We accept the respondent’s submissions that neither Helen Bullock nor Julie Willmouth were appropriate comparators. Ms Bullock was not implicated in audit findings of equivalent seriousness, and Ms Willmouth occupied a materially different role (she was the Manager), not comparable to that of a registered nurse responsible for actual medication administration. That said there is a clear disparity of power between nurses such as the claimant, dependant on visa sponsorship, and employers when issues arise that are essentially related to poor management, systems and understaffing. They can dismiss such nurses, blame difficulties on them and move on with an apparently clean slate. For this reason, we examined the circumstances here very carefully and concluded that at least at a senior level of management, this did not appear to be the motivation.

78. The fact of the matter, however, is that the claimant had professional duties to her patients and after discussion with the regulator referrals were made. We criticise the way matters were handled. There was confusion, within HR, as to whether the claimant had been dismissed rather than resigned. Our view was that it was unfortunate that one senior member of staff was not in charge of the whole process providing continuity rather than a number of staff being involved at various points in the process. We can sympathise with how this might have appeared to the claimant who was not aware of what was occurring behind the scenes but we do not see any racial discrimination or discriminatory motive behind the ultimate reporting of what at the end of the day were serious concerns.

Date sent to Parties **19 May 2026**