EMPLOYMENT TRIBUNALS

Claimant: Miss C Stephens

Respondent: Central London Community Healthcare NHS Trust

Heard at: London Central **On:** 2 – 6, 9 -11, 13 July 2018 and 16 & 17 July 2018 (in chambers)

Before: Employment Judge H Grewal
Mr D Eggmore and Mr D Kendall

Representation

Claimant: In person

Respondent: Ms H Patterson, Counsel

JUDGMENT

1 The following complaints were struck out on day 7 of the hearing on the grounds that they had no reasonable prospects of success:

(a) The complaints of direct sex, race and age discrimination;

(b) The complaints of harassment related to race, age and sex;

(c) The complaints of victimisation relating to matters that occurred before 29 September 2016;

(d) The complaints of having been subjected to detriments for having made protected disclosures;

(e) The complaint of unfair dismissal under section 103A of the Employment Rights Act 1996.

2 The complaints of victimisation in respect of acts that occurred on or after 29 December 2016 are not well-founded.

3 The complaint of unfair dismissal is not well-founded.

REASONS

1 In a claim form presented on 19 November 2017 the Claimant complained of race, age, sex and disability discrimination. She commenced Early Conciliation ("EC") on 22 October 2017 and the EC certificate was granted on 2 November 2017. The particulars of claim comprised 74 single-spaced type-written pages with no paragraph numbers. The narrative was not in chronological order, was repetitive and contained long rambling sentences which sometimes made no sense at all, such as,

> "*My communication to Emily Boynton, during a consistently applied multiplicity of discriminately raised and implemented processes underpinned by inconsistent with true fact of events (fabricated, and intentionally obscured) activities (actions of cohort) during current unresolved and unbroken in chain of causations, that had been and were occurring some since Feb 2014 and still occurring now November 2017."*

There was no indication in the Particulars of Claim which of the matters contained therein were alleged to be acts of discrimination and on what ground.

2 At a preliminary hearing on 5 February 2018 the Claimant withdrew the complaints of disability discrimination and indirect discrimination, and they were dismissed. It was clarified that the Claimant was pursuing claims of direct discrimination and harassment related to race, sex and age, victimisation and whistle-blowing detriments. The Claimant was given time to identify the alleged perpetrators of unlawful acts towards her and she identified 13 individuals. The Employment Judge made an order for the Claimant to set out in a document the unlawful acts done by each perpetrator, the date of each such act and to cross-refer to the page in her particulars of claim where the act in question was mentioned. The document was to be served on the Respondent by 21 February 2018. The Respondent was ordered to draft a list of issues based on the Claimant's particulars of unlawful acts.

3 The time for the Claimant to comply with that order was extended at her request to 7 March 2018. The Claimant produced a document which was not in the format ordered by the Employment Judge, and which did not make her case any clearer. Notwithstanding that, the Respondent drafted a list of issues having extrapolated from the Claimant's particulars of the claim what it believed to be the acts of which she was complaining. In essence, the Respondent did what the Claimant had been ordered to do and had failed, without good reason, to do. The fact that she was a litigant in person is not an excuse for not doing what she had been asked to do. One does not need to be a lawyer to set out the unlawful acts about which one wishes to complain.

4 At the preliminary hearing on 14 March 2018 the Employment Judge stated that, subject to the Claimant being given an opportunity to amend it, the draft list of issues would be adopted as an index to the Claimant's particulars of claim, so that her claim could be understood by the Tribunal that heard the case. The Judge made an order for the Claimant to make any amendments to the list of issues by 26 March 2018.

Although the Claimant had not made a written application to amend her claim to include a complaint of unfair dismissal, she was given leave to amend her claim to that effect.

5 On 26 March the Claimant returned the list of issues to the Respondent with a couple of minor suggested amendments. On 16 April the Tribunal wrote to the parties that EJ Wade considered the list of issues to be finalised.

6 At the preliminary hearing on 14 March 2018 the Employment Judge also made an order that witness statements were to be exchanged by 11 June 2018. She ordered that no witness statement was to be more that 30 A4 sides (12 point font) and that the facts were to be set out in numbered paragraphs on numbered pages in chronological order. If the witness intended to refer to a document, the page number in the bundle should be set out. At the Claimant's request, the date for exchanging witness statements was extended on three occasions – initially to 19 June, then to 21 June and finally to 25 June. The Respondent sent its statements to the Claimant on 25 June. The Claimant finally served a four page witness statement on 27 June.

7 At the outset of the hearing, the Claimant applied to have her particulars of claim treated as her witness statement. That application was opposed by the Respondent who had prepared for the case on the basis of the witness statement that the Claimant had served on 27 June. We refused the application. The particulars of claim did not comply with the order made at the preliminary hearing as to the format and structure of the witness statements. As we have said before, the particulars of claim were very long, repetitive, did not have numbered paragraphs, were not in chronological order and were generally unclear and confusing. The Claimant had had ample time to prepare a witness statement and there was no reason why she could not have included material from her particulars of claim in her witness statement. The application was made very late in the day and would cause prejudice to the Respondent. It would not be in accordance with the overriding objective for the particulars of claim to be used as the Claimant's witness statement.

The Issues

8 We treated the list of issues, to which the Claimant had had an opportunity to contribute and which the Employment Judge had approved, as being the issues which we had to determine. However, we made it clear that if the Claimant identified any complaint that was in the particulars of claim but not in the list of issues, we would consider it. The Claimant did not identify any such complaint.

9 The issues that we had to determine were as follows.

9.1 Whether the following acts occurred as alleged by the Claimant:

a. On 3 October 2014 Ms Le Bon Olive spoke to the Claimant about Jean Lynch's complaint about the Claimant being aggressive;

b. On or around 3 October 2014 others enlisted Ms Le Bon Olive to raise a formal complaint against the Claimant which resulted in undue disciplinary proceedings;

c. In October/November 2014 Ravi Deenoo was appointed to investigate Ms Le Bon Olive's complaint despite having knowledge of the incident through the handover he had with Judith Kato;

d. Between October 2014 and March 2015 there was a four month delay in conducting the investigation into Ms Le Bon Olive's complaint;

e. On 31 October 2014 Judith Kato referred the Claimant to Employee Health;

f. On or around 7-10 November 2014 the Respondent covertly referred the Claimant for a mental health assessment;

g. On 13 November 2014 Ms Turnbull contrived a clinical audit and as part of that provided the Claimant with no support and held her accountable for a lapsed task as part of the audit;

h. In November 2014 Ms Turnbull humiliated the Claimant in an email where she said, "*stop copying in people, you are not the manager*";

i. Mr Handley played several roles in the investigation into Ms le Bon Olive's complaint;

j. The Respondent ignored/excluded the Claimant's evidence during the investigation into Ms Le Bon Olive's complaint;

k. In May 2015 the Respondent appointed Ms Daly to investigate the Claimant's grievance;

l. In July 2015 the Respondent dismissed the Claimant's grievance of 1 May 2015 after she failed to attend the meetings arranged for 4 and 11 June 2015;

m. On 16 June 2015 the Respondent commenced investigation into the Claimant's covert recording of Ms Le Bon Olive in order to secure a sanction against the Claimant;

n. On 16 June 2015 Stephen Lord breached confidentiality by divulging the transcript of a meeting which the Claimant gave him to Ms Le Bon Olive;

o. In October 2015 the Respondent appointed Nora Gill for the purpose of covertly analysing the Claimant's psychological and neurological health;

p. In or around October 2015 the Respondent removed the Claimant's union representative Monica Campbell during the disciplinary investigation;

q. On 6 October 2015 the investigation meeting was carried out in a biased and bullying manner;

r. On 6 October 2015 Nora Gill falsely stated that she adjourned the hearing on that day because the Claimant refused to answer questions;

s. On 9 February and 17 March 2016 the participants in the Claimant's combined grievance and grievance appeal were disrespectful to her and demeaned her;

t. Between 8 April and August 2016 Messrs Deenoo and Handley harassed and bullied the Claimant while she was on sick leave. In particular, they asked her to provide a medical certificate from her GP and referred her to Employee Health after she had been absent for over 3 weeks;

u. On 27 September 2016 Emily Boynton relayed a message to the Claimant that Mr Lord had been trying to contact her and caused the Claimant to contact him on 28 September when it became apparent that he had left the Trust;

v. On or around 29 September 2016 the Respondent and/or Mr Lord fabricated disciplinary charges against the Claimant;

w. On or around 29 September 2016 Mr Lord appointed Gideon Lund to investigate the allegations against the claimant impacting on the transparency and fairness of the investigation;

x. On 4 October 2016 the Respondent suspended the Claimant pending an investigation into her contract;

y. Between October 2016 and July 2017 there was a flawed investigation which intentionally distorted and fragmented the true facts;

z. On 4 and 29 November 2016 Mr Lund repeatedly falsely claimed/lied that Stephen Lord did not commission the investigation into the claimant's conduct;

aa. On12 September 2017 there was character assassination by Mr Lund when he presented the case from a biased perspective and contrived objectionable questions;

bb. In February 2018 the Respondent dismissed the Claimant for gross misconduct.

9.2 If any of them did, whether they amounted to direct race, age or sex discrimination or harassment related to race, age or sex;

9.3 Whether any of the following was a protected act under the Equality Act 2010:

a. The grievance of 1 May 2015;
b. The grievance of 1 September 2015;
c. The grievance of 28 October 2015;
d. The grievance of 31 May 2016.

9.4 If any of them were and if the Claimant was subjected to any of the detriments alleged at 9.1 a – bb, whether she was subjected to the detriment because she had done a protected act.

9.4 Whether any of the matters at 9.3 were "qualifying disclosures" under section 43B(1) ERA 1996;

9.5 If they were and if the Claimant was subjected to any of the detriments alleged at 9.1 a – bb, whether she was subjected to the detriment because she had made protected disclosures;

9.6 Whether the Tribunal has jurisdiction to consider complaints about any acts/omissions that occurred before 23 July 2017.

9.7 What was the reason for the dismissal and, if there was a potentially fair reason for the dismissal, whether it was fair.

Striking out some of the claims

10 Rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013 provides,

> "*At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or any part of a claim or response on any of the following grounds –*
> *(a) That it is scandalous, vexatious or has no reasonable prospect of success."*

11 After having spent two days reading all the witness statements and looking at all the relevant documents and having heard the Claimant being cross-examined for over two and a half days, we were struggling to find any evidence that supported the Claimant's complaints of direct race, sex and age discrimination and victimisation detriments or that she had made any protected disclosures. We were minded at that stage to tell the parties that we were considering striking out the direct discrimination, victimisation detriment and whistleblowing-related complaints, but two of the Respondent's witnesses were only available to give evidence at that time, so we heard their evidence before we raised the issue with the parties. At that stage another thirteen witnesses were due to give evidence for the Respondent. We told the parties that we were considering striking out all the complaints except the complaints of unfair dismissal and victimisation in respect of the disciplinary process and the dismissal. We adjourned the case for the parties to prepare and make representations as to why the claims should not be struck out. We heard their submissions before we made our decision.

The Law

12 The test of no reasonable prospect of success is a lower one than that of no prospect of success. In determining whether a claim has a reasonable prospect of success the issue is whether it has a realistic as opposed to a merely fanciful prospect of success – **Ezsias v North Glamorgan NHS Trust [2007] ICR1126, per Maurice Kay LJ at paragraphs 25, 26**.

13 We were very conscious that the superior courts have warned tribunals to be cautious about striking out discrimination cases, particularly where the central facts are in dispute, because they are fact sensitive - **Anyanwu v South Bank Student Union [2001] ICR 391.** That case, however, does not establish a rule against striking out in all discrimination cases. Lord Hope said, at paragraph 39,

> *"Nevertheless I would have held that claim should be struck out if I had been persuaded that it had no reasonable prospect of succeeding at trial. The time*

and resources of the employment tribunals ought not to be taken up by having to hear evidence in cases that are bound to fail"

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14 If the claimant's case is prima facie implausible or the undisputed facts of the case are incapable of giving rise to a prima facie case of unlawful discrimination, the case must be struck out. It is not legitimate to allow a case to proceed to trial in the hope that "something may turn up" during cross-examination – **ABN Amro Management Services Ltd & Another v Hogben EAT/0266/09**.

15 Most of central facts in this case were not in dispute and most of what happened was recorded in the contemporaneous documents. The Claimant's case was based upon her interpretation of innocuous events and management actions or her unwillingness to accept that what was stated in documents is in true. In respect of many of the issues the Claimant's interpretation was totally inconsistent with what the contemporaneous documents clearly demonstrated. When that was pointed out to the Claimant, her response invariably was that the documents were just "pretext" or lies and fabrication. When asked specifically why certain acts were alleged to be acts of discrimination, she resorted to the response that it was "all about context".

16 The Claimant relied upon the same detriments for her claims of direct discrimination, harassment, victimisation and whistleblowing detriments. In respect of many of them, it was clear from all the evidence that the Claimant was not subjected to the alleged detriment either because what she alleged did not occur or it did not amount in law to a detriment.

The complaints of direct discrimination and harassment

17 In order for the Claimant to establish a prima facie case of direct discrimination there has to be evidence from which we could infer (a) that she was subjected to a detriment and (b) that her race, gender or age played some part in her being subjected to that detriment. Another way of putting it is that there has to be some evidence from which we could infer that had the Claimant been white, a man or a younger person in the same circumstances the Respondent would have acted differently. The fact that the Claimant feels that that was the case is not sufficient. An employee is subjected to a detriment if, by reason of the act complained of, a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to a detriment.

18 In order to establish a prima facie case of harassment there has to be evidence from which we could infer that the unwanted conduct of which the Claimant complains (a) happened, (b) was related to race, gender or age and (c) had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her ("the proscribed effect"). In considering whether it had that effect we have to take into account not only the perception of the Claimant but also whether it was reasonable for the conduct to have had that effect.

19 We deal below briefly with the detriments alleged by the Claimant. We follow the lettering used in paragraph 9.1 (above).

a. and
b. It is not in dispute that Ms Le Bon Olive, who is of a higher grade than the Claimant and managed a clinic, attempted to speak to the Claimant informally about an exchange she had had with Jean Lynch. That is not capable of amounting to a detriment and, in any event, there was no evidence from which we could infer that it had anything to do with the Claimant's race, age or sex. It is not in dispute that Ms Le Bon Olive made a formal complaint about the Claimant. There was no evidence that anyone had enlisted her to do it. The Claimant said in cross-examination that she was not saying that her sex or age had anything to do with it. There was no evidence from which we could infer that her race had anything to do with it. There was no evidence from which could infer that the conduct had the proscribed effect or that it was reasonable for it have that effect.

c. It is not in dispute that Mr Deenoo was appointed to investigate it. He was the Claimant's line manager. His investigating the matter, on the Claimant's own evidence, did not disadvantage her in any way and could not reasonably have had the proscribed effect upon her. There was no evidence from which we could infer that his appointment had anything to do with the Claimant's race, sex or age.

d. It is not in dispute that there was a delay and that Ms Le Bon Olive was on compassionate leave at the time. That was the explanation given for the delay. There was no evidence from which we could infer that the Claimant's race, sex or age had played any part in the delay.

e. It is not in dispute that Ms Kato referred the Claimant to Employee Health on 31 October. It is also not in dispute that the Claimant was absent sick with stress and anxiety from 22 October to 4 November 2014 and that on 27 October she asked her managers to refer her to Employee Health. The referral could not amount to a detriment or reasonably have the proscribed effect and, in any event, there was no evidence from which we could infer that it had anything to do with the Claimant's race, sex or age.

f. The contemporaneous documentary evidence showed that on 22 October 2014 the Claimant referred herself to Employee Health because she wanted to prevent deterioration to her mental health and well-being. By 31 October the Respondent was contemplating mediation being facilitated by Neil Gething (Lead Clinical Psychologist in Employee Health) and the referral on 31 October to Employee Health included a referral to him to assess the suitability of mediation for the Claimant. There was no evidence from which we could infer that the Claimant's race, age or sex played any part in making that referral.

g. There was no evidence that Ms Turnbull had contrived an audit or that she had held the Claimant responsible for a lapsed task as part of that audit. The Claimant accepted in cross-examination that there was a backlog that needed to be addressed, and that the work had been divided between her and other colleagues. She said that she had not been asked to do this because of her race or gender. There was no evidence that the Claimant had been subjected to any detriment or harassment (as defined in section 26) or that her being asked to do anything in this process had anything to do with her sex, race or

gender.

h. Ms Turnbull had not said in that email what the Claimant alleged that she had said. What she did say could not amount to a detriment or harassment, and there was no evidence from which we could infer that it had anything to do with the Claimant's race, sex or age.

i. The Claimant said in cross-examination that that allegation was based on the fact that in the investigation interview with her Mr Handley, who was from HR, had asked more questions than Mr Deenoo, who was the manager investigating the complaint. If he had, it is difficult to see how that could amount to a detriment or harassment. In any event, there was no evidence to indicate that it had anything to do with the Claimant's race, age or sex.

j. There was no evidence to support that allegation.

k. It is not in dispute that Ms Daly was appointed. There was no evidence that that put the Claimant at a disadvantage or that it could reasonably have been seen as having the proscribed effect upon her. The Claimant objected to her because she said there was a conflict of interest and Ms Daly was not impartial because she had taken over from Mr Mulhern, who was trying to resolve issues relating to the backlog of data. However, the Claimant had not made any complaint about Mr Mulhern or his department in connection with that process. In any event, there was no evidence that the appointment of Ms Daly had anything to do with the Claimant's race, age or sex.

l. It is not in dispute that the grievance was dismissed because the Claimant failed to attend two scheduled meetings. She felt that Ms Daly should not hear the grievance because she believed that there was a conflict of interest. The Respondent looked into it but did not agree with her. There was no evidence from which we could infer that the Respondent would have acted any differently in those circumstances if the Claimant had been white, younger or a male.

m. It is not in dispute that the Respondent commenced an investigation to the Claimant having covertly recorded Ms Le Bon Olive. There was no evidence from which we could infer that it would not have done that if a younger, white or male employee had covertly recorded a colleague.

n. Even if Mr Lord had showed Ms le Bon Olive the transcript of the Claimant's covert recording of her, there was no evidence from which we could infer that race, age or sex played any part in his doing so.

o. It is not in dispute that Nora Gill was appointed to investigate the allegation that the Claimant had covertly recorded a colleague. The Claimant's allegation that she was appointed to covertly analyse her psychological and neurological health was based on the fact that she was the Clinical Business Unit Manager of the Inpatient Rehabilitation Services. There was no reasonable prospect of the Claimant establishing that allegation on that basis.

p. There was no evidence that the Respondent had removed the Claimant's trade union representative.

q. It was clear from the contemporaneous notes of the meeting that the meeting had not been carried out in a biased and bullying manner. The Claimant was unable to point to any evidence to prove that it had.

r. It was clear from the contemporaneous notes of the meeting that the Claimant was refusing to answer questions.

s. There was nothing in the contemporaneous notes of that meeting to indicate that anyone was disrespectful to the Claimant or demeaned her. The Claimant did not provide any evidence to support that bare assertion. She did not give details about what was said or done that was disrespectful or demeaning and who did it. There was no reasonable prospect of the Claimant being able to establish that allegation.

t. It was not in dispute that, in accordance with the Respondent's sickness absence policy the Claimant had been asked to provide a medical certificate from her GP and that she had been referred to Employee Health. It is difficult to see how those routine and innocuous management actions could amount to bullying and harassment and a detriment. There was no evidence from which we could infer that it had anything to do with the Claimant's race, age or gender.

u. It was not in dispute that Ms Boynton did relay that message to the Claimant. It is difficult to see how that could amount to a detriment or harassment, or how it could be said to have anything to do with the Claimant' race age or gender.

v. It is correct that allegations were made against the Claimant. They were based on what had been happening in the previous few months. There was no evidence from which we could infer that similar allegations would not have been made against another employee of different race, age or gender who had behaved in the same way as the Claimant had.

w. It was not in dispute that Mr Lund was appointed to investigate the allegations. It is difficult to see why that is alleged to be detrimental to or harassment of the Claimant. There was no evidence that the appointment of Mr Lund had anything to do with the Claimant race, gender or age.

x. There was no evidence from which we could infer that the Claimant's race, age or gender played any part in the decision to suspend her.

y. The Claimant did not specify in what way the investigation was flawed or distorted or how it "fragmented the true facts." In the absence of any evidence to support that assertion, there was no reasonable prospect of the Claimant establishing that allegation.

z. It was clear from Mr Lord's letter to the Claimant that he had commissioned the investigation into her conduct. There was, therefore, no reason for Mr Lund to claim that he had not. Even if, for some reason he had, there was no evidence from which we could infer that it had anything to do with the Claimant's race, age or gender. The Claimant's case that if she had been

white or a man he would have told her the truth makes no sense at all.

aa. The contemporaneous notes do not support the allegation made. The Claimant has not given specifics of the alleged "character assassination", "biased perspective" or "objectionable questions". In those circumstances, there was no reasonable prospect of the Claimant establishing that allegation.

bb. It was not in dispute that the Claimant was dismissed. There was no evidence from which we could infer that the outcome would have been any different if the Claimant had behaved in the same way but had been of a different age, race or gender.

20 Having looked at each of the complaints separately, we stood back and looked at the whole picture. The position remained that in respect of most of the matters the Claimant would not be able to establish that she was subjected to a detriment or harassment (as defined by section 26 of the Equality Act 2010) and in the few cases where she was (such as being subjected to disciplinary investigations, suspended and dismissed) there was absolutely no evidence to link that to her race, age or gender. We also took into account that complaints about all the allegations, other than the ones at paragraph 9.1 z, aa and bb, were not presented in time and the Claimant had not given any evidence as to why they were not presented earlier and why it would be just and equitable to consider them.

21 The Claimant said that the evidence of discrimination and harassment would emerge in the course of her cross-examination of the Respondent's witnesses. We had seen the Claimant give evidence and heard her explanations of why she believed she was subjected to race, sex and age discrimination. We had seen her cross examine two of the Respondent's witnesses. We had no confidence that the Claimant would through cross-examination of the witnesses be able to establish the discrimination that had so far not been evident anywhere in this case. The Claimant had had many opportunities to articulate her discrimination claims – in her lengthy Particulars of Claim, in the document that EJ Wade asked her to produce, in her witness statement, in her oral evidence during cross examination and in her cross examination of two of the Respondent's witnesses. She had consistently failed to do so, not because she was a litigant in person, but because there was no case there to articulate.

<u>Victimisation</u>

22 We had made it clear that we were not considering striking out any claims of victimisation in respect of the dismissal and the disciplinary process that led up to it. (i.e. the complaints at 9.1 v to bb.) The first alleged protected act took place on 1 May 2015. The detriments at paragraph 9.1 a to j predate that and, therefore, cannot be because of any protected act. We have concluded that there was no reasonable prospect of the Claimant establishing that she was subjected to the detriments as set out at 9.1 k, o, p q, r, s, t and u either because there was no evidence that what the Claimant alleged had occurred or what had occurred could not in law amount to a detriment. In respect of the matters at 9.1 l, m and n the onus was on the Claimant to establish that there was a causal link between those matters and any complaint of discrimination related to a protected characteristic in her grievance of 1 May 2015. It needs to be borne in mind that the Claimant's grievance ran into many pages and complained about a variety of things but there was barely any reference to

discrimination because of a protected characteristic. The Claimant would have to establish that if all the circumstances had been the same but there had been no reference to discrimination because of a protected characteristic the Respondent would not have done the acts at 9.1 l, m and n. There was no evidence from which we could infer that.

Whistleblowing complaints

23 The Claimant had not specified on which part of section 43B(1) ERA 1996 she was relying. There was no evidence from which we could conclude that she reasonably believed that the information she gave to the Respondent tended to show a breach of any of the matters set out in section 43B(1). There was no evidence from which we could conclude that she reasonably believed that the disclosure of the information in her grievances was in the public interest. It is not sufficient to show that she subjectively had that belief, there must be some basis for that belief to make it reasonable for her to have that belief. We concluded that there was no reasonable prospect of the Claimant establishing that any of her grievances amounted to a "qualifying disclosure." The detriments at 9.1 a to j predated the first alleged qualifying disclosure.

24 Having concluded that those claims had no reasonable prospect of success, in considering whether to strike them out we took into account the following matters. If they were allowed to proceed, although they had no reasonable prospect of success, an additional nine or ten witnesses would have to give evidence and be cross examined by the Claimant. That would lengthen the hearing by at least three or four days, lead to additional costs being incurred by the Respondent, use up Tribunal time and resources which are limited, delay justice for other users of the Tribunal, would lead to nine or ten people having to be away from work and would cause additional stress and anxiety for the Claimant who would have to prepare for cross examination of those witnesses. We concluded that it could not be in accordance with the overriding objective or in the interests of justice for that to happen when having already spent over five days on this case and having considered a large quantity of evidence the Tribunal had concluded that a large number of complaints had no reasonable prospect of success.

25 We, therefore, struck out all the complaints except those of unfair dismissal and victimisation in respect of the matters set out at 9.1 v to bb.

The Law

26 The onus is on the Respondent to prove the reason or the principal reason for the dismissal. A reason relating to the conduct of the employee is a potentially fair reason (section 98(1) and (2) of the Employment Rights Act 1996 ("ERA 1996").

27 Once the employer establishes a potentially fair reason, the Tribunal then has to consider whether dismissal is fair within the meaning of Section 98(4) ERA 1996, in other words, whether the employer acted reasonably or unreasonably in all the circumstances of the case in treating the reason established as a sufficient reason for dismissing the employee.

28 The well-established authority of **British Home Stores Ltd v Burchell [1978] IRLR 379** provides that in a conduct dismissal case the Tribunal has to ask itself the following three questions:

(i) Did the employer believe that the employee was guilty of misconduct?
(ii) Did he have in his mind reasonable grounds upon which to sustain that belief? and
(iii) at the stage which he formed that belief on those grounds had he carried out as much investigation into the matter as was reasonable in the circumstances of the case?

29 In determining the issue of fairness the Tribunal also has to see if there were any flaws in the procedure which were such as to render the dismissal unfair, and, finally, whether dismissal was within the band of reasonable responses open to a reasonable employer in all the circumstances of the case. The case of **Iceland Frozen Foods Ltd v Jones [1982] IRLR 439,** approved by the Court of Appeal in **Post Office v Foley [2000] IRLR 827** lays down the approach that the Tribunal should adopt when answering the question posed by Section 98(4). It emphasises that in judging the reasonableness of the employer's conduct the Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer. The function of the Tribunal is to determine whether in the particular circumstances of each case, the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted.

30 Section 27 of the Equality Act 2010provides that a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act. Bringing proceedings under the Equality Act and making an allegation that A or another person has contravened the Equality Act are protected acts. In **Martin v Devonshires Solicitors EAT/0086/10** Underhill J said, at paragraph 22,

> "*The question in any claim of victimisation is what was the "reason" that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and if not, not. In our view there will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable… it would be extraordinary if those provisions gave employees absolute immunity in respect of anything said or done in the context of a protected complaint."*

The Evidence

31 The Claimant, Monica Campbell and Pamela Okuna-Edokpayi (her trade union representatives) gave evidence on behalf of the Claimant. The following witnesses gave evidence on behalf of the Respondent – Emily Boynton (Divisional Director of HR and Organisational Development), Teresa Turnbull, Stephen Lord and Gideon Lund (Clinical Business Unit Managers) and Basirat Sadiq (Director of Operations). The documentary evidence comprised 1500 pages. Having considered all the oral and documentary evidence, the Tribunal made the following findings of fact.

Findings of Fact

32 The Claimant is a 50 year old woman and describes herself as black.

33 On 17 February 2014 she commenced employment with the Respondent as a District Nursing Team Administrator (Band 3) based at the World's End Health Centre. She had been undertaking that work as a Bank worker and was encouraged to apply for the permanent role by Teresa Turnbull (the Clinical Business Unit Manager) and Donna Le Bon Olive (Band 7 Nurse who managed the Leg Ulcer clinic). The Claimant reported to Ravi Deenoo (District Nurse Team Leader).

34 In June 2014 the Claimant covertly recorded a conversation between herself and Ms Le Bon Olive. In that conversation Ms Le Bon Olive told the Claimant that she had noticed that there was tension between them and that the Claimant's attitude towards her had changed. She told the Claimant that they valued the work that she did and understood that she was overworked but they all needed to work together as a team. That meant if a senior person in the team asked her for assistance, it was expected that she would assist instead of insisting that the instruction to do it had to come through her line manager.

35 At the end of September/ beginning of October 2014 Jean Lynch (a healthcare support worker) complained to Donna Le Bon Olive about the Claimant being aggressive during a telephone conversation. Ms Le Bon Olive attempted to speak to the Claimant about this issue. Although the evidence of both parties was that this conversation took place on 3 October, we think that it took place on 10 October. It matters not whether it was on 3 or 10 October. The Claimant questioned the capacity in which Ms Le Bon Olive was raising the matter with her and refused to engage with her on the basis that she was not a manager. She accused Ms Le Bon Olive of bullying her and put her mobile phone on the table and said that she had been recording her and that that was not first time that she had done so. Ms Le Bon Olive left and informed Amy Lovell, the Clinical Lead, of what had taken place.

36 On 10 October (Friday) Ms Lovell invited the Claimant and Jean Lynch to an informal meeting on the Monday (13 October) to enable them to resolve any issues between them. The Claimant did not attend the meeting.

37 On 14 October Ms Le Bon Olive sent Ms Lovell an email headed "complaint". She said that she understood the Claimant had not attended the meeting the previous days and asked whether it had been rescheduled for another date. She said that she felt that the Claimant was trying to intimidate her and that as a result of her meeting with her on Friday she would keep her distance until the matter had been formally investigated. Ms Lovell forwarded the complaint to Teresa Turnbull and to Mark Handley in HR.

38 Ms Lovell tried to reschedule the meeting for 17 October. The Claimant's response was that she would prefer to resolve the matter directly with Ms Lynch without anyone else being involved but if someone else was to be involved as a mediator it should be someone outside the District Nursing management team. She also felt that that there should be a similar mediation between herself and Ms Le Bon Olive.

39 On 15 October the Claimant asked to meet with Judith Kato (who was covering for Ravi Deenoo while he was absent) to discuss a meeting with Employee Health (the Respondent's occupational health service). Judith Kato met with the Claimant to discuss the matter. Ms Kato is black.

40 On 21 October Ms Lovell informed the Claimant that they were in the process of asking HR to arrange some mediation sessions.

41 On 22 October the Claimant referred herself to Employee Health's Mental Health Services. She gave her reasons for making the referral as follows –

> "*Feeling overly anxious, stressed, tired/exhausted, frightened, tearful, hot flushes, sweaty, drained troubled, slightly perplexed about what is happening, harassed, bullied, unconfident, oppressed and for months now experiencing feelings of being unable to cope. Would like to explore and unravel the cause of, these feelings by sharing some of the experiences I have had within my recent job role, with a hope to alleviate these feelings and prevent any deterioration in my Mental Health and Well-being.*
>
> *Please may you escalate, an urgent appointment for me, as I would like to review, these feelings before attending an impending mediation, which I believe is related to the current, symptoms I am feeling. The mediation meeting (which a date, has not been set as yet) may stir up these feelings and require me to give my perspective of my feelings, which I need the assistance of a counsellor to help me clarify in my head, without this support, this mediation may have a negative impact to my current Mental State and Well-being or general health?"*

42 From 22 October to 4 November 2014 the Claimant was absent sick with stress and anxiety.

43 On 23 October Employee Health informed the Claimant that an appointment made for her to see Neal Gething (Lead Clinical Psychologist and Head of their Psychology and Counselling Service) on 24 October. The Claimant queried why she was seeing him when she was seeking counselling. She was informed that it was because she had wanted an urgent appointment and he was available because of a cancellation in his diary. Unfortunately, Neal Gething had to cancel the meeting because of illness and he rescheduled it for 28 October. The Claimant asked for a meeting with "an ordinary counsellor" and an appointment was made for her to see a counsellor on 3 November.

44 On 27 October the Claimant asked both Employee Health and her manager whether she could refer herself to see the Employee Health doctor. They both advised her that any referral to the doctor had to be done by her line management. Later that afternoon the Claimant sent an email to Teresa Turnbull (which was copied to Amy Lovell and Judith Kato) and asked for the referral be made by her line manager and for Ms Kato to send her any paperwork that was sent in as a result. Ms Turnbull responded that Amy Lovell had passed a referral for mediation to HR (who was responsible for organising it) and that Ms Lovell would complete the Employee Health referral. The Claimant queried why Ms Lovell was completing the referral and why the referral was being made. Ms Turnbull responded the referral was being made because she was absent sick with stress and because she had requested a referral, and that Ms Lovell was supporting Judith Kato in making it.

45 On 31 October Ms Lovell sent a referral to Employee Health by email. The email was copied to Judith Kato and the Claimant. There were two parts to the referral. There was a Manager's Referral form signed by Judith Kato. The reason given for

the referral was that the Claimant had been absent from work with stress since 22 October and management wanted advice as to how best to support and promote the Claimant's health and well-being. A number of boxes were ticked to indicate the demands of the Claimant's job and the specific areas on which guidance and advice was sought. It was also stated on the form that work was being undertaken to facilitate mediation through Neal Gething with the Claimant and two other members of staff. There was also a referral to the Employee Health Mental Health Services. The reason for the referral was said to be stated in the attached referral (i.e. the Manager's Referral form) and it was stated that Mr Gething would be dealing with it. The purpose of that referral was for Mr Gething to assess whether mediation was a suitable option for the Claimant. Unfortunately, that was not made clear to the Claimant prior to her meeting with Mr Gething.

46 The Claimant's evidence was that she did not receive the second part of that referral. It is possible that it was not attached to the email. Any failure to disclose it was an inadvertent omission rather than an attempt by the Respondent deliberately to conceal it. Even if the Claimant had received it, it would not have enlightened her as to the purpose of the referral to Neal Gething.

47 The Claimant did not attend the appointment with the counsellor on 3 November.

48 On 3 November the Claimant complained to Ms Kato that much of the information given in the Employee Health referral was inaccurate. She wanted the form to be retracted and said that questions about trust, integrity and accountability were being raised in her mind. She also asked Ms Lovell whether Mr Gething had been sourced as the mediator to carry out mediation between herself and Ms Lynch and Ms Le Bon Olive, and asked for the choice of mediator to be reviewed as she was not comfortable with him being the mediator. Ms Lovell responded that HR was responsible for dealing with mediation and that she had no knowledge of Mr Gething having been selected. The Claimant responded that she had no problem with the referral having been made and welcomed the care and support that it could afford her. Her only reason for being "*slightly concerned"* was that the Trust was *"mandating"* her to see "*a key psychologist".*

49 The Claimant was informed that two appointments had been made for her with Employee Health on 7 November. There was an appointment at 2 pm to see Neal Gething and one at 3 pm to see Dympna Donnelly. Employee Health informed the Claimant of the former and asked her to contact them to let them know whether she would be able to attend. No one told the Claimant that she had to attend either of the appointments of that failure to do so would have any consequences.

50 The Claimant saw Neal Gething on 7 and 10 November. At the outset of the first meeting he told the Claimant that the purpose of the meeting was for him to assess whether mediation would be suitable for her. It is clear that he told the Claimant that because she referred to it in an email that she sent to Ms Donnelly on 11 November. He then did various tests to determine the level of her stress, anxiety and depression.

51 In a report dated 10 November Ms Donnelly advised that the Claimant was fit to be at work. She said that the Claimant perceived the stress (which led to her sickness absence) to be work-related but it had been difficult to understand what the issues were as the Claimant had not given her sufficient information. She recommended that a stress risk assessment be carried out with the Claimant.

52 On 11 November Ms Turnbull asked the Claimant to attend a meeting on 13 November with Francis Mulhern. Mr Mulhern was a Business and Change Manager from outside the Clinical Business Unit. The purpose of the meeting was to look into why the data on the system (RIO) did not reflect the work that the unit had actually done. RIO data adherence for World's End was significantly lower than for any other team. The data on the system was important because that was what the Clinical Commissioning Group would use as the basis for awarding funding in the forthcoming financial year.

53 Following discussion at the meeting, it was noted that a number of issues had led to the RIO data not being complete. Certain Bank/agency sheets were held within the Administration team and had not been added to RIO (the oldest of these dated back to 2013), some information was not updated because queries were raised with the Team Leader but no clear answer was provided, when the Administrator was not at work no one covered her work and there were some process issues. The purpose of the meeting was not to allocate blame but to identify the issues and to work out how to load all the relevant data. Three other employees were brought in to input the backlog sheets and the Claimant was given responsibility to input the data for November 2014, the query sheets and the missing sheets. Each of them was allocated a number of records to input and had to provide a weekly update to Mr Mulhern.

54 On 18 November Teresa Turnbull sought help from a project manager in respect of a new system of archiving that had been set up. She copied in the email exchange to the Claimant and asked that she and Adam, the other administrator, be copied in into any reply. The Claimant forwarded the exchange to a number of other people and to Estates. Ms Turnbull sent an email to the Claimant (not copied to anyone else) in which she told her not to escalate to other services without asking her first and that it was not her responsibility.

55 Francis Mulhern left on 12 December 2014. He was replaced by Shalene Daly and thereafter the weekly updates had to be provided to her.

56 On 16 December 2014 Mark Handley from HR invited the Claimant to a fact-finding meeting on 18 December with Mr Deenoo and him in respect of the exchange between her and Ms le Bon Olive on 3 October. He attached to his letter a statement from Ms Le Bon Olive, which was not signed or dated, and a copy of the Respondent's Bullying and Harassment Policy. The Claimant was told that she could provide a written statement and was advised of her right to be accompanied. Mr Handley said that at the conclusion of the meeting a recommendation would be made to Ms Turnbull. This would be one of the following – to take no further action, to take an appropriate management course of action or to pursue the matter under the Respondent's disciplinary policy.

57 The Claimant objected to the short notice that she had been given, the timing of the meeting, Ravi Deenoo conducting the meeting and asked for the hearing to be put off until February when she would be in a position to submit a grievance. She said,

> "*I am tired, stressed, buffeted, accused, lied upon, called names, under represented, unsupported, my person has been violated and I know, I really owe it to myself, to confront, the perpetrators of this.*"

Mr Handley responded that they could not wait until February and said that Mr Deenoo had been assigned as he was independent because he had been absent from work when the incident occurred.

58 The meeting took place on 18 December. The Claimant was accompanied by Monica Campbell, her trade union representative. She said that she did not have anything in writing at that time but would submit a statement in January. The Claimant said that Donna Le Bon Olive had said to her that she and Jean Lynch found her to be very aggressive. The Claimant had asked her in what capacity she was speaking to her. Ms Le Bon Olive had replied as a Band 7 manager. The Claimant admitted that she had recorded the meeting and that she had recorded others too. She had done so because Ms Le Bon Olive was emotionally blackmailing her.

59 On 19 December Mr Handley informed the Claimant that they had been unable to meet with Ms Le Bon Olive that day because she was absent from work. She remained absent until March 2015. The Claimant responded that she would prepare her written statement in response for January.

60 When Ms Le Bon Olive returned to work in March 2015, Mark Handley interviewed her about the incident with the Claimant. She said that Jean Lynch had raised a concern with her. She had asked to speak to the Claimant and told her at the outset that it was an informal chat. The Claimant started yelling at her. She had slammed her phone on the table and said that she had been recording her and had evidence against her. She had asked her in what capacity she was speaking to her. Ms Le Bon Olive told her that her conduct was inappropriate. She said that it was uncomfortable in the office and she felt that she had no administrative support at all. She did not want to be at work feeling intimidated by somebody and at the end of the day needed someone to help as an administrator.

61On 25 March 2015 Mr Handley informed the Claimant that he had met with Donna Le Bon Olive and that he and Ravi Deenoo would prepare a report as soon as Mr Deenoo returned from annual leave.

62 The Claimant's response was that she had been waiting for Ms Le Bon Olive to return to work before she submitted her written response which contained questions she wanted to ask her. She also said,

> "*The prolonger assault from Donna Le Bon needs to stop, she is still trying to trouble me.*"

63 The investigation report was drafted in March 2015. It concluded that the Claimant raising her voice, informing Ms le Bon Olive that she had been recording her and presenting her with the phone had been seen by Ms Le Bon Olive as intimidating behavior and it had upset her. Recording a colleague was not behavior that the Respondent expected from its employees. However, it accepted that the Claimant had done so as a means to protect herself because she believed that she needed to do so because of previous conversations that she had had with Ms le Bon Olive and

because her perception was that the meeting was not supportive. It concluded that no formal action should be taken against the Claimant and recommended other management actions. It stated that the relationship between them needed to improve and that further "supported conversations" should take place to achieve that. It recommended that they both have access to a mentor.

64 It was not clear why that report was not disclosed to the Claimant and Ms le Bon Olive in March 2015. A further version was produced in April 2015. The only difference appears to be that that recommended that a meeting take place between the new CBU manager, HR, the Claimant and her trade union representative to discuss the recommendations and the way forward. That too was not disclosed to the parties involved at that time.

65 On 21 April 2015, following requests made by the Claimant, she was given copies of her Employee Health records and her HR file.

66 On 27 April 15 the Claimant emailed certain questions to Neal Gething. She concluded the email by saying,

> "*I have a view about the questions, I have asked you, which I'd like to share with you, once you have answered in an open and honest way. I truly felt, that you were trying to help me in this situation, but how you were brought into carrying out this session was not relayed to you properly or with integrity from the referrers."*

He suggested that they met to discuss her questions but the Claimant was adamant that she wanted the replies in writing.

67 On 5 May 2015 the Claimant submitted a formal grievance dated 1 May under the Respondent's Bullying and Harassment Policy. The grievance was against five "participants" and two "facilitators." The participants were said to be Teresa Turnbull, Amy Lovell, Donna Le Bon Olive, Judith Kato and Dympna Donnelly, and the facilitators were Ravi Deenoo and Neal Gething. She said in the body of the document that for over a year she felt that she had been subjected to a "*barrage of Harassment and Bullying at the hands of those named above*." The body of the grievance ran into five pages and was full of generalised assertions but lacking in specifics. There was no reference to discrimination because of protected characteristic in the body of the complaint. Attached to the grievance were a further 15 or 18 documents. Many of them ran into about 10 pages and one was 30 pages long.

68 There was hardly any reference to discrimination because of a protected characteristic in the attachments. In one the Claimant said,

> "*All of Teresa Turnbull's communication carried prejudiced, discriminative and racially discriminative undertones (underlying qualities or elements)."*

69 In an attachment headed "Complaint about Mis-Management of My Health" the Claimant was very critical of Dympna Donnelly and concluded the section about her by saying,

> "*I feel violated, psychologically interrogated in a field where, I have little personal expertise to offer me the opportunity to check the quality of input."*

However, she took quite a different view of Mr Gething. She said,

> "*I personally feel about Neal Gething's input, is that genuinely, he felt that he had been seeing me for Mediation and there was nothing else to that and unwittingly he participated ironically in the Psychological games played by Teresa Turnbull and her cohorts."*

70 One of the attachments was a document headed "Audit". It ran to a little over five pages. It is very difficult from that to ascertain what the Claimant's complaint is about the fact that in November steps were taken to resolve a problem that existed with certain data not being inputted on the system. She said in that document,

> "*It seems to me like another Harassment and Bullying escapade emanating from Teresa Turnbull yet again and no courtesy granted for my feelings or omissions at the very least?*
> *That is what I call negative managing?*
> *What would have happened had I been found culpable of causing a backlog, or had not judged correctly beforehand that Teresa was capable of such events obscuring me from any processes to validate her claims?"*

What is clear from that document (and the Claimant confirmed this in cross-examination) was that she was not levelling any complaint against Mr Mulhern

71 On 20 May Mr Gething responded in writing to the Claimant's questions. He said that the purpose of her seeing her in November 2014 had been to determine whether or not mediation would be a helpful process for her and that attendance at that session was completely voluntary. He said that on 7 November the Claimant had said that at that stage she was "paranoid" and not trusting. He did not believe that she had used the word diagnostically but as a way of saying how she felt about matters at work. They had not discussed any diagnosis in the two meetings that she had with him.

72 Shalene Daly was appointed to investigate the Claimant's grievance. On 22 May 2015 she invited the Claimant to a meeting on 4 June to discuss her grievance.

73 On 25 May the Claimant wrote to Emily Boynton (Divisional Director of HR and Organisational Development) that Ms Daly could not carry out the investigation. She said that the "Audit incident" was part of her grievance and that Ms Daly "*might be required to input into this matter and give feedback from their department"* and that it was clearly evident that "*were Shalene to carryout fact-finding to this matter* ***this would constitute a 'Conflict of Issue'".***

74 The Claimant sent that email again on 26 and 28 May. On 28 May she headed it in bold capital letters with the words "FOR URGENT ATTENTION". She said that she had seen from email tracking that it had been read. Ms Boynton responded that as she was new in post there were many matters requiring her urgent attention and that she would revert to the Claimant the following day. She responded the following day that as that was the first stage in the grievance it was not appropriate for her to be involved. She said that she would pass on the Claimant's letter to Adetutu Oredola-

Showunmi, and that the Claimant should address all her queries to either her or Mark Handley.

75 On 29 May Ms Oredola-Showunmi wrote to the Claimant that they had reviewed her complain about the audit and their view was that there was no conflict of interest with Shalene Daly undertaking the investigation.

76 The Claimant sent a long email in reply which dealt with a number of unconnected matters. In respect of Ms Daly she said that she did not think that she was independent and that there was a conflict of interest. She continued,

> "*I do not want Shalene to be the one carrying out this investigation, and while, we are not in agreement on this point I hope that I would not have to negate on this any further."*

77 The Claimant also raised the matter with Mark Handley and he responded that Ms Daly was an appropriate person to investigate the grievance because, in accordance with the policy, she was an independent manager from outside the immediate line of management and had had no previous involvement with the subject of the grievance.

78 The Claimant responded on 2 June that she would not attend a meeting with Ms Daly and that that was her "*final word on the matter."*

79 On 3 June 2015 copies of the investigation report into Ms Le Bon Olive's complaint were sent to her and the Claimant. They were told the outcome of the investigation and were invited to separate meetings with Stephen Lord, CBU Manager, on 16 June to discuss the report.

80 On 4 June 15 the C sent an email to Ms Boynton to expand upon her grievance in respect of the mismanagement of her health. She says that she believed "perceptive discrimination" had occurred because her employer incorrectly thought that she had a disability. She had originally requested a referral to discuss her menopause. She made an allegation of failure to make reasonable adjustments in respect of her hot flushes.

81 The Claimant did not attend the grievance investigation meeting with Shalene Day on 4 June. She was invited to a rearranged meeting on 11 June,

82 On 10 June 15 at 12.52 the Claimant sent another very long email to Emily Boynton, although Ms Boynton had clearly told her not to communicate with her about her grievance. She asked for her grievance to be considered issue by issue. She also complained about the way in which Ms Le Bon Olive's complaint had been investigated. At 2.10 she sent another email to Ms Boynton and complained that she had not had a response to her previous email. Ms Boynton reminded the Claimant that she had told her not to communicate with her in respect of her grievance. She also asked the Claimant to consider the tone and content of her emails before sending them and pointed out to her that insisting on a response within a certain timeframe could be seen as harassment. She encouraged the Claimant to meet with Ms Daly and pointed out that it would be very difficult to address her various concerns if she did not engage with the Trust's jointly agreed processes. The Claimant did not attend the meeting with Shalene Daly on 11 June 2015.

83 On 16 June, prior to the meeting with Mr Lord, the Claimant sent Mr Handley some documents which included a transcript of the recording of her conversation with Donna Le Bon Olive on 6 June 2014.

84 At the meeting on 16 June Mr Lord told the Claimant that he agreed with the recommendations and wanted to discuss them with her. The Claimant refused to engage in that conversation because she maintained that the correct process had not been followed in the investigation, although it was not clear what her complaint about the process was. The Claimant confirmed that the transcript was of a meeting that she had recorded and that Ms Le Bon Olive had not been aware that she was recording it. All the parties were sent notes of that meeting on the same day and given the opportunity to make any amendments. The Claimant was also asked to make any comments on the investigation report by 30 June. By 7 July the Claimant had not made any amendments to the notes of the meeting or any comments on the report and sought more time to do so. She did not in fact do so.

85 On 24 August 2015 Mr Lord wrote to the Claimant. He set out his conclusions on the concerns that the Claimant had raised about the process. He concluded that the report and its conclusions stood. He advised the Claimant that she had a right to appeal under the Respondent's Grievance Policy against the processing of the complaint. He also informed her that he would appoint an appropriate manager to investigate her covertly recording a colleague.

86 On 25 August Mr Lord wrote to the Claimant about her grievance of 1 May 2015. He said that he considered Ms Daly to have been an appropriate investigator as there had been no significant conflict of interest given the nature of the Claimant's grievance and Ms Daly's role. He concluded that she met the criteria of an independent and appropriate manager from outside the immediate line of management. She had had no previous involvement with the subject of the grievance or the parties involved in the subject. He made the decision to conclude the grievance process as the Claimant had chosen not to engage in the investigation process. In the circumstances, he was unable to move forward with her grievance and had closed it. She was advised of her right to appeal that decision.

87 On 1 September 2015 the Claimant sent an email to Emily Boynton to appeal against both decisions. Her grounds of appeal, like many of her communications, lacked clarity and coherence. She concluded by asking for an informal meeting with Ms Boynton and for Mark Handley and for Stephen Lord to re-conduct the whole investigation as it was flawed with discrimination and in order to reinstate her trust in HR and Management processes and policy.

88 Ms Boynton asked the Claimant to summarise succinctly the outcome that she was seeking from the appeal process. She advised her that re-conducting the investigation was unlikely to be accepted as a reasonable outcome as she did not believe that it would satisfy all her concerns or be a good use of the Trust's resources. The Claimant responded with a rambling and incoherent email of three and a half pages.

89 On 22 September Nora Gill, CBU Manger of the Inpatient Rehabilitation Services in Barnet, wrote to the Claimant informing her that she had been appointed to investigate the allegation that the Claimant had made a covert recording of a

conversation with a member of staff. She invited the Claimant to an investigation meeting on 6 October.

90 On 30 September at 10.10 the Claimant sent the Chief Executive another grievance (the second grievance). In that grievance she complained about (insofar as one can ascertain her complaints) her previous grievance being closed down, the investigation of Ms Le Bon Olive's complaint against her, the instigation of an investigation into her covertly recording Ms Le Bon Olive and Mr Handley and Ms Oredula-Shwunmi rudely putting down the telephone on her. The first two matters were already the subject of her appeal. That email contained, as did so many of the Claimant's communications, sentences that did not make any sense. For example, she said at one point,

> "*In advertently, trying to deal with aspects outlined in Formal Grievance 1 in the outcome of Donna Le Bon Olives Complaint which aspects of bullying towards me at the hands of Donna Le Bon Olive (subject of my Formal Grievance 1) were brought up as they related in the events during the talks but were evidently left out of the investigation deliberations by HR, a quite significant omission, along with omissions and blatant disregard for my expressed concerns about participants involved in recommendations with consequential impact on outcomes and recommendations."*

91 The Claimant received an automated "out of office" reply which said that anything important should be directed to Deputy Chief Executive. At 10.16 the Claimant forwarded her email to the Chief Executive to the Deputy Chief Executive. Two days later she sent it again to the Deputy Chief Executive and said that it was very important and urgent because it felt like persons were trying to make her "*disturbed".* On the following day, she complained to her trade union representative that she had not had a response from the Chief Executive or his Deputy and asked her whether she could send them an email to prompt them.

92 On 6 October Nora Gill conducted an investigation interview with the Claimant. The Claimant was accompanied by her trade union representative. The Claimant refused to answer questions. She said that she did not understand the allegation. Ms Gill said that the allegation was very simple and repeated it. The Claimant kept demanding to know who had brought the allegation. She was told that it was based on the transcript that she had provided and what she had said about covertly recording her colleague. The Claimant's response to that was, "*Am I making an allegation about myself?"* She refused to answer any questions about the transcript because she said that anything she said about it would compromise her outstanding grievance and it had come "*out of another arena".* The meeting was concluded because the Claimant failed to answer questions.

93 On 7 October the Claimant sent an email (comprising two and a half pages) to the Chief Executive complaining about the meeting with Ms Gill had the previous day. In her email she said things like,

> "*In a sort of by the way manner of speaking, I was also told that as I had indicated, that the document was extrapolated and was part of an active grievance and extenuating processes, it was also thrown in that the date for this recall would take into consideration the end date of those events before*

the recall date was set (no mention of dependence on outcome of those grievances).”

and

“*Intentionally vocalised in that forum for the records, minuted by a Secretary, I felt it important to put in sort of disclaimer kind of request, based on my enlightened revelations and observations of this latest attempt of what persons had tried to do to me.”*

94 The Chief Executive responded that he had passed the Claimant’s email to Mark Handley who was dealing with the investigation. The Claimant nevertheless continued in the next few days to send further emails to the Chief Executive.

95 On 16 October Ms Gill informed the Claimant that as she had refused to answer any questions in relation to the allegation made against her on the grounds that it could compromise the outcome of her grievances, she had decided to put her investigation temporarily on hold until there was clarity regarding her grievances.

96 On 21 October the Claimant asked Mr Handley a number of questions about Nora Gill’s qualifications, what her role entailed and why she had been appointed to investigate the allegations against her. Mr Handley responded that she had been appointed to investigate the allegation because she had had no involvement in the matter and was, therefore, impartial, and that her role had nothing to do with her being appointed. Despite having been told that the Claimant continued asking for more information about her role.

97 On 26 October 2015 the Claimant sent the Chief Executive a third grievance. In that grievance she complained about the “*unclear versions of facts and events*” relating to the appointment of Nora Gill to conduct the disciplinary investigation. She claimed that it was the fourth attempt of a “*covert and unconsented psychological, psychiatrical and neurological assessment”* of her. She also complained of a number of other matters. The word “*discrimination”* was used at the outset of the grievance, but there was no reference to any protected characteristic or any allegation that could amount to unlawful discrimination under the Equality Act 2010.

98 On 21January 2016 Jennifer Allan, Divisional Director of Operations, Networked Community Nursing and Rehab Service, invited the Claimant to a meeting on 9 February to discuss her appeals against Mr Lord’s decisions of 24 and 25 August 2015 in respect of the outcome of the investigation into Ms Le Bon Olive’s complaint against her and his decision to close her grievance of 1 May 2015 and the two further grievances that she had raised since then.

99 On 4 February 2016 Stephen Lord informed the Claimant that he had decided to cease the investigation into her having made a covert recording of Donna le Bon Olive and that no further formal action would take place in respect of that. He made it clear, however, that her action had been unacceptable and did not conform to the Respondent’s values and behaviours. He warned her that if he found that she had made covert recordings of conversations with a member of staff, the public or a patient, he would need to follow it up through the Respondent’s Disciplinary Policy.

100The combined grievance and appeal hearing took place on 9 February 2016. The Claimant was accompanied by her trade union representative. Stephen Lord and Mark Handley were present to explain their actions. The meeting did not conclude on that day and was reconvened on 17 March 2016.

101 On 23 March Ms Allan sent the Claimant the outcome of the combined grievance and appeal hearing. In respect of the Claimant's complaints about the investigation and outcome of Ms Le Bon Olive's complaint against the Claimant, she accepted that the enforced delay in concluding that investigation must have been uncomfortable and probably stressful for the Claimant. However, the complaint had been processed in accordance with the relevant policies and there was no evidence of any bias or detrimental treatment towards her. Mr Lord had acted reasonably and without bias in accepting and taking steps to implement the conclusions and recommendations of the investigation report which should have provided a platform for her and her colleagues to move on from the incident.

102 In respect of the closing of her grievance of 1 May 2015 she said that she had considered the emails that the Claimant had provided as evidence of her work-related conduct with Shalene Daly and had concluded that the content and nature of that contact did not make Ms Daly an inappropriate person to investigate her concerns. She concluded that Mr Lord had acted reasonably in deciding to close the complaint.

103 The Claimant's grievances had related to the above two matters and other additional matters. As far as the investigation into the covert recording was concerned, Ms Allan concluded that Mr Lord had acted appropriately in the way in which he had dealt with that matter. In respect of the Claimant's complaints about her referral to Employee Health, she concluded that it was possible that confusion or misunderstanding might be at the root of the concerns that she had highlighted. She advised the Claimant that if she wished to pursue that matter, she should submit it in a single document to her by 22 April 2016.

104 She said that she was satisfied that there was no evidence of discrimination on the grounds of any protected characteristic against the Claimant but accepted that the Claimant had found the disciplinary investigations and the grievance process stressful and that the outcome had not resolved issues in the way that she had expected. Ms Allan said that her intention had been that the hearing would provide an opportunity for any differences to be aired and a productive way forward to be facilitated. However, she had regrettably come to the conclusion that they had reached a point where there was an irretrievable breakdown in many of the Claimant's key working relationships in her role. That could have a destabilising effect on the functioning of her team and on her wellbeing. She believed that it would be in the Claimant's best interests to make a fresh start by transferring to an equivalent role in a different team and asked the Claimant to reflect on her proposal and to confer with her trade union representative and to let her know her response by 8 April 2016.

105 The Claimant was absent sick from 8 April to 19 August 2016. The reason given for her absence was "stress at work."

106 On 18 May 2016 Ravi Deenoo sent the Claimant a copy of a referral that he had made to Employee Health. He also wrote to her on the same day to inform her that,

contrary to what was required under the Respondent's Sickness and Absence Procedure, she had not sent him a doctor's certificate to cover her period of sickness absence. He had checked with HR and they had not received it either. He warned her that failure to comply with the Respondent's policy could lead to her absence being deemed to be unauthorised which could result in her not being paid sick pay and/or having disciplinary action taken against her. He asked her to send him a doctor's certificate by 24 May 2016.

107 On 31 May 2016 the Claimant raised with Emily Boynton a grievance about those two letters from Mr Deenoo which she said amounted to sustained and continuous harassment and bullying even while on sick leave. Ms Boynton asked the Claimant what action she expected to be taken to resolve her grievance. The Claimant responded,

> "*The only support I need for my satisfaction in resolving this grievance is for lack of integral conduct, psychological games seen from Mark and Ravi (who seem to pair up expressly to manipulate and confuse processes that ordinarily should be straight forward) which I have been experiencing and harassment in using policy in an unhealthy and imbalanced way (…) that seems still to be going on, illustrative in example such as this."*

108 The Claimant attended an appointment with Dr Preston at Employee Health on 2 June 2016. Following the appointment the administrator sent the Claimant a draft of Doctor Preston's report for her to advise them of any factual inaccuracies and any concerns that she might have over confidential disclosures. The Claimant sent substantial amendments to the content of the report directly to Dr Preston at his email address at the Respondent and also at his email address at another organisation. She said that she had sent it to him directly because she did not trust the Employee Health department. Dr Preston informed her that that address should not be used in relation to Employee Health work that he did for the Respondent. In response the Claimant sent him another email to that address and asked him lots of questions about that organisation and his "*qualifying occupations".*

109 On 9 June 2016 Dr Preston wrote to the Claimant that she had to engage with the Employee Health department in the normal way through the support staff and that, if she was not able to agree to that, she could not engage with Employee Health. He also said that as a result of her communications, he was concerned about her stress and anxiety levels and felt that his assessment was not sufficiently detailed and comprehensive to provide a reliable report to management. He felt that he needed additional insight into her medical history. He wanted to get a medical report from her GP and sought her consent to do so. He said that following receipt of that report he would like to have another consultation with her where he would expect her to be able to discuss her medical issues with him. If she was not prepared to engage with the Department through the normal channels, to consent to him getting a medical report from her GP and to discuss her medical issues with him, he would not be able to provide a report.

110 The Claimant did not provide the agreement and consent sought by Dr Preston, and on 5 July he wrote to Mr Deenoo that as she had not given the consent necessary for the continued involvement of Employee Health, they were not able to provide a medical report on her. On 16 August Dr Preston informed Mr Deenoo that they could not provide occupational health advice in respect of the Claimant.

111 On 19 August 2016 the Claimant sent Emily Boynton an email and asked her what the Respondent's position was regarding her return to work. She said that following a consultation with her GP she was ready to start working on 20 August and would attend for work on 22 August at 9am unless she was told otherwise. Ms Boynton replied that the Claimant needed to contact her line manager (Mr Deenoo) to discuss the arrangements for her return to work. She pointed out that it was normal for employees to be seen by Employee Health before they could return to work after a long sickness absence. She made it clear that any communication in respect of these matter should be with her line manager and not with her.

112 On 20 August the Claimant sent Ms Boynton a long rambling and offensive email in response. She accused her of being part of the HR staff who had "*dumped"* her grievance of 2015, had delayed the grievance appeal and had "*purposefully and strategically overwhelmed*" her from being able to manage the process and had brought the "*HR members who were lying about the processes they conducted to have a ringside seat to hear what they had to defend".* She said that Ms Boynton's participation in that decision was "*detrimental."* She said that in referring to her Employee Health in 2014 HR had *"manipulated systems"* against *"defenceless low banding employees… of ethnic origin"* and had mixed their "*un-natural level of work politics and very poor communication, consistently flailing standards and the ego and bad managerial attitudes of more than a natural number of Senior White Managers"* with her genuine health matters. She accused managers of "*aggressively man handling"* her and HR of "*displaying cunning and ruthless behavior".* She asked Ms Boynton "*As a White woman, how much of this would you have put up with?"* She concluded by saying that HR had told her that her full sick pay was due to expire on 26 August and that she was fit to return to work on 22 August and would do so.

113 On 23 August the Claimant resent the email to Ms Boynton because she had not received an acknowledgement.

114 Ms Boynton responded that she found the tone of her email inflammatory and not conducive to establishing respectful and working relationships with colleagues. She said that she had asked one of her staff to provide HR support to the Claimant's line manager. The Claimant responded that her email was "*fact"* and that she thought that it was fitting for Ms Boynton to communicate with her on the issues that she had raised.

115 The Claimant attended for work on 22 August but was asked by her line manager to go home as the Respondent needed occupational health advice about her return to work. On 30 August Mr Deenoo informed the Claimant that she would be treated as being on medical suspension on full pay for two weeks from 22 August.

116 On 5 September the Claimant sent Ms Boynton another long email in which she asked a large number of questions, some of which were rambling and unintelligible. She accused the Respondent of "*looking to violate my person, once again.".*

117 On 8 September 2016 Mr Deenoo wrote to the Claimant that the Respondent had commissioned two other occupational health providers for advice on her return to work. She was given the identity of the two providers, and asked to express her preference as soon as possible.

Instead of responding to Mr Deenoo, the Claimant sent another long rambling email to Emily Boynton in which she repeated yet again her questions and concerns about historical matters. She also resent her the email of 5 September. Ms Boynton responded that, as she had previously explained, the Claimant needed to direct her concerns to her line manager.

118 On 12 September the Claimant sent Ms Boynton another long email. She began by saying,

> "***What would be useful or beneficial for me to know from you about the impending processes for my return gateway to work*** *are crucial (important) questions to a satisfactory and adequate process befitting the current work related situation.*
>
> *Otherwise we will clearly encounter another cycle, of the Trust not having my permission to shunt me around, like cattle or a piece of meat.*
>
> *I refuse for the Trust to be given another opportunity to access and violate my person, as has been the case on 7 November 2014, when I was tricked into an audience with a Psychologist. Who tried to pronounce Paranoia on me…"*

She said that her wish was to arrange her own independent Employee Health appointment via her GP as that was the only way she could be sure that the process was neutral and unbiased. She said that she would take the matter up with more senior managers in the NHS and her MP. She was going to make it a national topic for discussion. Her story would change legislation. In the meantime, she asked Ms Boynton for a grievance form so that she could raise the Employee Health matter as a grievance "*with the other matter underpinning my new grievance."*

119 The Claimant sent Ms Boynton another email in similar vein on 13 September. That was followed by another email on 19 September which began with the following paragraphs,

> "*First and foremost, I want to raise a series of grievances and complaints, about your continued ignoring of my request to remove Stephen Lord from my affairs, it would seem that I am not human enough for you to heed or look into my request or reasoning (which you are aware of as* ***you*** *endorsed and encouraged this lack of integrity during the novel, weird and orchestrated process [appeal] to do so.*
>
> ***I think that Mis-conduct [gross misconduct] needs to be highlighted and documented in Stephen Lord's file, it warrants that he should never be allowed to manage anyone or anything again as a member of Staff and Mark Handley an HR Business Advisor's conduct should also be looked into and this marked on his record."***

120 This was followed by two further emails to Emily Boynton on 20 and 26 September in which the Claimant complained about Ms Boynton not responding to her emails and a shortfall of £100 in her last payslip.

121 Emily Boynton responded on 26 September and said that she had previously advised the Claimant that she needed to raise these issues with her line manager.

She said that Stephen Lord had been trying to contact her by telephone but had not been able to get through. She gave her advice as to how she could pursue any shortfall in her salary with the payroll department.

122 On 27 September the Claimant sent two long emails to Ms Boynton repeatedly raising the concerns that she had raised earlier. They were similar to the emails that she had sent earlier in style and tone.

123 On 28 September the Claimant sent a long email to Stephen Lord and received an automated out of office reply which stated that Mr Lord was no longer working for the Respondent. Although Mr Lord's employment with the Respondent did not terminate until 16 October 2016, his last working day was 27 September.

124 On 29 September Mark Handley sent the Claimant a letter from Stephen Lord (of the same date) in which he stated that he had asked Gideon Lund (CBU Manager) to commence a disciplinary investigation into her conduct and behaviour to consider the following three allegations:

- Despite the Claimant's concerns having been considered at formal grievance hearings on 9 February and 17 March, she continued to raise vexatious and unfounded allegations against different members of the Respondent's staff, which could be considered as evidence of serious harassment and threatening behaviour;
- Since October 2014 the Claimant's behaviour had been consistently inappropriate and not in keeping with the Respondent's values of valuing relationships with others. That was apparent from her correspondence with a range with a range of employees including Mark Handley, Adetutu Oredola-Showunmi and Dumpna Donnelly;
- The tone and content of her recent emails to the Director of HR and Organisational Development (Emily Boynton) raised concerns about her inability to interact positively with colleagues, patients and members of the public on behalf of the Respondent.

As a result of a misunderstanding of one of the Claimant's emails the Respondent believed at that time that the Claimant had been signed off sick by her GP again. However, it was made clear to her that if she were to be fit to return to work, they would consider suspending her. Mr Lord advised her that he was leaving and that if she had any queries she should consult Gideon Lund.

125 This led to the Claimant sending two further long emails to Emily Boynton complaining, among other things, about the start of the disciplinary process. Ms Boynton responded that she would have the opportunity in the course of the disciplinary investigation process to respond to any issues raised. She was asked to confirm whether she had been signed off sick again by her GP.

126 The Claimant challenged the assertion that she had been signed off sick by her GP. On 4 October 2016 the Claimant was informed that she was suspended on full pay with effect from that date.

127 In October 2016 Mr Lund invited the Claimant to attend a disciplinary investigation meeting on 18 November. He advised her that at the meeting she would have the opportunity to provide a full response to the allegations and that she should

bring with her to the meeting any information which might assist the investigation. He also advised her that she was entitled, if she so wished, to submit a written statement before or at the meeting. She was advised of her right to be accompanied and of the potential outcomes of the investigation.

128 On 4 November 2016 Mr Lund interviewed Adetutu Ordedola-Showunmi as part of his investigation. She told him of the contact that she had had with the Claimant and said that emails from the Claimant had upset her and ultimately she had felt compelled not to engage with her any more. She said that communication with the Claimant impacted negatively on the team and staff within the Trust.

129 On 11 November Mr Lund interviewed Emily Boynton. She said that the Claimant's email could be quite challenging and that she had been cautioned about the tone of her emails. In September 2016 her emails had become more intense and there had been concern about the things that she was saying. She had said that she was fit to return to work but they were concerned because she was not engaging with Employee Health and because of her pattern of behaviour. Her behaviour caused people to feel harassed. She received emails on a daily basis and they had an impact on her.

130 Mark Handley was interviewed on 1 November. He said that the Claimant's behaviour had been consistently inappropriate; as part of his role he expected to encounter challenging behaviour from staff, but he had found her behaviour to be very upsetting. On 16 November Mark Handley produced a witness statement (comprising eight typed pages) in which he set out the contact that he had had with the Claimant between December 2014 and May 2016, and the unacceptable tone and content of her emails to him. He attached to that statement the email communications. Prior to interviewing the Claimant Mr Lund read though his statement and the supporting evidence.

131 On 18 November Mr Lund met with the Claimant. She was accompanied by her trade union representative. At the outset of the meeting when Mr Lund tried to tell the Claimant how the meeting would proceed, the Claimant interrupted him and said, "*I don't want to be weighed down with your emotional feelings."* The meeting was not very productive because the Claimant was incapable of giving direct answers to questions that she was asked and deviated to other unconnected issues and the relevance and meaning of what she was saying was often unclear. The Tribunal's experience of the Claimant giving evidence was very similar. Mr Lund stopped the meeting after two hours because he felt that they were not making any progress.

132 On 21 November Mr Lund informed the Claimant that there would be a follow up investigatory meeting and that in advance of that he would send her a list of questions to ensure that her responses were coherent and relevant to the questions. The Claimant then attempted to engage in a protracted email exchange with Mr Lund. A lot of it did not make any sense. I give just one example –

> "*I am comfortable with how you choose to carry out the investigation but would just like a record of the previous anomaly to 2 hour only planned investigation of the 18/11/2016, hosting your repetitive and lengthy questions of the wide scope for the 2 and a half year context referenced to and your contribution of personal testimonies throughout (thank you was endearing to hear) which we were unable to slot in the allotted time."*

133 On 27 November Mr Lund sent the Claimant a number of questions. He told her that he was fully aware of the context, continuum and history but that he had clear terms of reference for the investigation. On 28 November he sent her the rest of the questions.

134 The reconvened investigation meeting took place on 29 November 2016. The Claimant was again accompanied by her trade union representative. At the meeting Mr Lund went through the questions sent to the Claimant in advance. The Claimant initially provided some responses, although they did not answer the question that she had been asked. After a while she responded "no comment" to all the questions and accused Mr Lund of being biased. The meeting ended after two hours and the Claimant was asked to provide the responses to the remaining questions in writing, which she did on 1 December.

135 On 2 December Mr Lund sent the Claimant notes of the meeting and incorporated into that the answers that she had given in writing. The Claimant was asked to provide her comments on the notes.

136 The Claimant, instead of providing comments on the notes, embarked on an exercise of providing written replies to all the questions. On 6 February 2017 she sent an email to HR in which she said that she was still processing her answers to the complex questions posed by Mr Lund and that she hoped to have completed her written answers by 10 February. HR replied that the investigation report would be concluded after she had provided her written comments. By 25 February, the Claimant had still not provided a response and said that she needed more time to do so.

137 On 13 March 2017 the Claimant sent her written response to the notes. The document comprised 45 type-written pages. It was repetitive, did not address the relevant issues and parts of it were unintelligible and did not make sense.

138 Mr Lund produced his investigation report in July 2017. The report itself comprised 32 pages and the appendices attached to it ran into 500 pages. He concluded in respect of each of the three allegations that there was evidence to support the allegation, and set out in detail the evidence that led him to that conclusion. He recommended that all three allegations be considered at a disciplinary hearing. The report did not contain any communication with Employee Health because the Claimant had refused to give her consent to that being released.

139 On 20 July Karen Spooner invited the Claimant to attend a disciplinary hearing on 15 August to answer the three allegations. She told the Claimant that she would conduct the disciplinary hearing and that Mr Lund would present the management case. He was not proposing to call any witnesses. If the Claimant wished to have witnesses attend the hearing she should notify HR. She was advised of her right to be accompanied and to submit any statement or documents upon which she wished to rely to HR three days before the hearing. She was warned that dismissal was a potential outcome. The hearing was rescheduled at the Claimant's request to 12 September. Basirat Sadiq, who was taking over Ms Spooner's role, was asked to conduct the disciplinary hearing.

140 The disciplinary hearing took place on 12 September 2017. Mr Handley and Ms Boynton were available to attend if the Claimant wished them to attend. The Claimant was represented by her trade union representative. Mr Lund presented the management case. Ms Sadiq asked him who had commissioned the investigation and he responded that Stephen Lord had done so before his departure. The Claimant and her representative were given the opportunity to ask Mr Lund questions, and they did so. Mr Handley was called as a witness at the Claimant's request. The Claimant and her representative asked him some question. The Claimant was then given the opportunity to present her case. The Claimant's position was that the tone and content of her emails was attributable to the effect that the referral to a psychologist in 2014 had had upon her. Towards the end of the meeting Ms Sadiq asked the Claimant whether, in light of the fact that she had said that many of these issues stemmed from her referral to Employee Health, she would consent to Ms Sadiq seeing the report prepared by Employee Health following that referral. The Claimant indicated that she would do that. Ms Sadiq asked the Claimant to provide her with the consent letter by 15 September, and she said that she would then get the outcome letter to her by 26 September.

141 In an email dated 15 September to Ms Sadiq and HR, which was far from clear, the Claimant appeared to give consent for them to have access to her referrals to Employee Health, tests, and drawings/psychological pictures of her brain. On 28 September the Claimant sent Ms Sadiq a letter headed "Re: Consent for Medical Access September 2014-Present". In that letter she said,

> "*During a contrived contingency from a process commissioned on 29/9/2016 [agreed between all participants who convened the follow on process of 12/9/2017] I hereby grant you access to my sensitive and privileged medical information significant to the period of September 2014 – Present (including last date of entry) only.*
>
> *For application purposes of use (including it's 'justification') factored into the process by you the chair of the hearing a channel for her better understanding to obtain through a conducive to significant policy and Acts the medical information proportionate and relational to the whole true context underpinning this commissioned confidential process of 29/9/2016"*

142 The Claimant's letter was sent to Employee Health and they were asked to provide all management referrals made for the Claimant and the reports in response to those referrals. Dympna Donnelly, Deputy Head of Employee Health, replied that that the letter from the Claimant was too vague and that they needed a consent form for the release of medical information signed by her. She also pointed out that the Claimant had recently been given her Employee Health records and notes held on the psychology and counselling database and that she could provide a copy of those to Ms Sadiq. HR passed on this information to the Claimant on 6 October.

143 On 20 October Ms Donnelly sent the Claimant a draft consent form for her to sign. The form stated that the Claimant gave her permission for Ms Donnelly to release to Ms Sadiq her Employee Health records and the notes held on the psychology and counselling database for the period from September 2014 to that date. The Claimant added to that form a lot of text, most of it totally incomprehensible. For example, she inserted in the middle of the sentence that she

gave Ms Donnelly permission to release to Ms Sadiq certain documents the following text,

> "*and make request for a neutral and totally uninvolved of vertical designation/OHP qualified/far removed from having participated in my Health Matters in consideration to the point I made in the covering e-mail, where this is a proportionate and justifiable possibility."*

144 The Claimant sent the form to Employee Health but it was not received by them. On 20 November her trade union representative sent them another copy. Ms Donnelly responded that the form that had been sent to the Claimant was in a format that reflected their requirements to have clear and unequivocal consent to release confidential information. The form returned by the Claimant had been altered and was not acceptable for their needs. She sent another copy of the original form and asked the Claimant to sign it without altering it.

145 The Claimant commenced Early Conciliation on 22 October 2017 and her claim form was presented to the Tribunal on 19 November 2017. It was not sent to the Respondent by the Tribunal until 4 December.

146 On 1 December Ms Sadiq and her HR advisor, Louise Malusky, met to make a decision on the matter. Ms Sadiq found that the allegations against the Claimant had been established and amounted to gross misconduct. In considering sanction she took into account that the Claimant had not shown any insight into the impact of her behaviour on others and had not acknowledged the negative impact that it was having upon her colleagues. Furthermore, when she was asked what it would take to enable her to return to working positively with her colleagues, she had said that the Respondent needed to accept that it had wronged her and to apologise to her. In those circumstances, Ms Sadiq concluded that if the Claimant returned to work she would continue to behave as she had in the previous two years. She decided to dismiss the Claimant with notice. Ms Sadiq and Ms Malusky then worked jointly in drafting the outcome letter.

147 There was a delay in sending out the outcome letter to the Claimant which was attributable partly to Ms Malusky having a period of sickness absence in December, the Christmas holiday and the Claimant's raising the matter with the Chief Nurse.

148 The outcome letter was sent to the Claimant on 8 February 2018. In the letter Ms Sadiq set out the management case and the Claimant's response to that case. The Claimant's response was that the tone and contents of her emails had changed after the referral to the psychologist which had caused her to have anxiety, only she as the author of the emails would know what the tone was and there had been no tone, she had only submitted one grievance and that had been shut down, she had persisted because she was frustrated as her grievance had not been heard, her accusations were not vexatious or unfounded but facts and the allegations made against her were serious harassment and threatening behaviour and she was being bullied and harassed by the Respondent. Ms Sadiq found that there was clear evidence that the Claimant had continued to raise vexatious claims against different members of the Respondent's staff, that colleagues who had come into contact with her had found her behaviour inappropriate and not in keeping with the Respondent's value of valuing relationships with others, and that colleagues who had received her emails had found them to be inappropriate and to some a cause of anxiety as a result of

which of them had stopped engaging with her. The Claimant had demonstrated unreasonable behaviour which affected her relationships with her colleagues. Her decision was to dismiss the Claimant with four weeks' notice. She explained her reasons for reaching that decision. The Claimant was advised that any appeal against the decision should be sent to the Chief Executive within ten working days.

149 On 16 February the Claimant wrote the Chief Executive to convey to him her intention to appeal against the decision to dismiss her. She said that she would submit particulars of her appeal later and asked that time for that be extended to 27 February 2018. No further particulars were provided.

150 The Claimant's employment terminated on 5 March 2018.

151 An appeal hearing was scheduled for 30 April but was put off until June at the Claimant's request. The appeal was heard on 13 and 18 June 2018 by an appeal panel.

152 The outcome letter was sent to the Claimant on 11 July 2018, in the middle of the hearing before us. The appeal panel did not uphold the decision in respect of the first allegation but did do so in respect of the other two. It concluded that on the basis of the evidence presented to Ms Sadiq, her decision in relation to that allegation had been appropriate. However, the panel had had much more evidence before it at the appeal stage and the appeal panel had shown the Claimant considerable more latitude than was reasonable in helping her to present her case in a clear fashion. It concluded that the bringing of a number of grievances by the Claimant was not serious harassment or threatening behaviour and did not amount to gross misconduct.

153 It concluded, however, that the Claimant's behaviour in respect of the second and third allegations justified termination on the grounds of gross misconduct. That conclusion was based on the following factors - the Claimant's behavior was unacceptable and it was having a significant and unpleasant adverse effect on her colleagues, her colleagues were not expected to have to deal with that level of wearing down and unpleasantness, her attitude about her behaviour showed a lack of concern or care towards those who worked with her and who were polite and reasonable in carrying out their responsibilities, there was no evidence of their being racially motivated or dishonest in their dealings with her, her attitude made it very unlikely that the relationship between her and her colleagues could be made good, unless others agreed with the Claimant's perception of how she had been treated her behaviour would continue unchanged.

154 The panel considered, having heard the Claimant's position at the appeal, that it would be appropriate to substitute the reason for the dismissal to an irretrievable breakdown of workplace relationships.

Conclusions

Victimisation

155 We first considered whether the acts set out at paragraph 9.1 v – bb (above) occurred as alleged by the Claimant and, if they did, whether they amounted to a "detriment" under the Equality Act 2010. We have not found that Mr Lord or anyone

else “fabricated” the disciplinary charges against the Claimant (9.1 v). Mr Lord appointed Gideon Lund to investigate the allegations. Mr Lund was from a different unit and had no involvement in any of the matters that were the subject of the investigation. The Clamant has not adduced, or pointed to any evidence, to support her assertion that his appointment had any impact on the transparency or fairness of the investigation. There was no evidence before us that appointing Mr Lund to investigate the allegations subjected the Claimant to a detriment (9.1 w). We have not found that the investigation was “flawed” or that true facts were “intentionally distorted” or “fragmented” (9.1 y). We have not found that Mr Lund falsely claimed or lied that Stephen Lord had not commissioned the investigation (9.1 z). Nor have we found that there was anything improper or unfair in the way that Mr Lund presented the management case at the disciplinary hearing on 12 September ((.1 aa). For the reasons given above, we concluded that the Claimant was not subjected to the detriments set out at paragraph 9.1 v, w, y, z and aa (above).

156 The Claimant was subjected to the detriments set out at paragraph 9.1 x and bb. She was suspended on 4 October 2016 and dismissed in February 2018.

157 We then considered whether the Claimant had done the protected acts set out paragraph 9.3 above. The Claimant’s grievance of 1 May 2015 was a very long document and it was primarily a complaint of bullying and harassment which was not said to be related to any particular protected characteristic. There was one reference to race discrimination in one of the attachments (see paragraphs 67-68 above). We concluded that that very small part of that very long grievance was a protected act. In her appeal/grievance of 1 September 2015 the Claimant complained that the investigation had been flawed with discrimination. The word “discrimination” was used in the grievance of 26 October 2015. In neither of those cases was there any reference to a protected characteristic or anything or indicate that the Claimant was complaining of unlawful discrimination under the Equality Act 2010. We had grave reservations as to whether those could amount to a protected act but proceeded on the basis that they did. In the grievance of 31 May 2016 the Claimant complained of bullying and harassment in general, but did not make any reference to discrimination or allege that she was being treated less favourably than others or that it had anything to do with any protected characteristic. We concluded that there was no protected act in that grievance.

158 We then considered whether the Respondent had suspended the Claimant on 4 October 2016 and dismissed her in February 2018 because she had done the protected acts in May, September and October 2015. We concluded that the Claimant was not suspended or dismissed because of two or three very brief and unparticularized complaints of discrimination between May and October 2015 but because of the volume of inappropriate communications that the Claimant had with her colleagues between March 2015 and September 2016 (in particular, between March 2016 and September 2016) which were incoherent, offensive and made serious and unpleasant allegations without any foundation against her colleagues, and the impact that they had upon the recipients. We had no doubt that if the Claimant had only made the three brief allegations of discrimination between May and October 2015, the Respondent would not have suspended or dismissed her. The Claimant was suspended a year after the last allegation, which supports our conclusion that there was no causal link between the protected acts and the suspension and the dismissal.

Unfair Dismissal

159 We found that the reason for the dismissal is as set out in paragraph 158 (above). That is a reason related to conduct.

160 We were satisfied that Ms Sadiq, who conducted the disciplinary hearing, genuinely believed that the Claimant was guilty of the misconduct alleged against her. Most of the evidence against the Claimant was contained in the emails that the Claimant had sent, and she accepted that she had sent them. The Claimant put forward an explanation of why she had sent them and did not accept that the emails were inappropriate or offensive.

161 At the time that Ms Sadiq came to that conclusion, the Respondent had conducted as much investigation as was reasonable in all the circumstances. Mr Lund conducted a full and thorough investigation. He interviewed the Claimant and a number of the recipients of her emails. He produced a comprehensive report that contained all the relevant evidence. The Claimant was given every opportunity to respond to the evidence in his report at the disciplinary hearing. As the Claimant attributed the tone and content of her emails to her referral to a psychologist in Employee Health 2014, Ms Sadiq sought to look further into the matter before she made her decision. In order for Employee Health to release the relevant information, it required the Claimant's unequivocal consent. Despite the Claimant being given several opportunities to provide such consent, she failed to do so. In those circumstances, Ms Sadiq had no alternative but to make her decision without that information.

162 We then considered whether the decision to dismiss was within the band of reasonable responses which a reasonable employer might have adopted. Ms Sadiq considered alternatives to dismissal but because of the reasons set out at paragraph 196 (above) concluded that dismissal was the only option. Having regard to the misconduct which was found established and for the reasons given by Ms Sadiiq, we were satisfied that dismissal was within the band of reasonable responses.

163 We were satisfied that the procedure that was followed was fair and reasonable. There were considerable delays in the process and that was unfortunate. Some of the delays were attributable to the Claimant. Others were not. We were mindful, however, that the managers involved in the process were involved in the disciplinary process in addition to their normal demanding jobs.

164 Having considered all of the above, we concluded that the dismissal was fair.

_____

Employment Judge Grewal

Date 17 October 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

18 October 2018

FOR THE TRIBUNAL OFFICE