EMPLOYMENT TRIBUNALS

Claimant: Dr A Adegbite

Respondents: 1. The Pennine Acute Hospitals NHS Trust
2. Dr R Prudham

HELD AT: Manchester **ON:** 12, 13, 14, 15 December 2016 and 16 December 2016,24 January 2017 and 1 Feb 2017(In Chambers)

BEFORE: Employment Judge Ross
Mr Ostrowski
Dr H Vahramian

REPRESENTATION:

Claimant: Mr A Elesinnia, Counsel
Respondents: Mr S Lewinski, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim that he was subjected to detriments by the respondent on the ground of making protected disclosures is not well founded and does not succeed.

2. The claimant's claim that he was victimised pursuant to s 27 Equality Act 2010 is not well founded and does not succeed.

3. The claimant's claim that the respondent directly discriminated against him because of race pursuant to s13 Equality Act 2010 is not well founded and does not succeed.

REASONS

1. The claimant's claims are for public interest detriment, victimisation pursuant to Section 27 of the Equality Act 2010 and direct discrimination Section 13 of the Equality Act 2010. The issues in these claims were identified at a case management hearing conducted by Employment Judge Ryan on 20th April 2016.P51-55)

2. We heard from the claimant. For the respondent we heard from Dr A Sinniah, Ms J Mien, Dr R Prudham and Mrs J Moore.

Findings of Facts

3. The claimant is employed by the respondent as a Consultant Obstetrician and Gynaecologist and has been employed since 2002 in that capacity. He describes himself as a black man of Nigerian national origin and British nationality. The claimant brought a claim to the Employment Tribunal for unlawful deduction from wages and race discrimination. His claim for unlawful deduction from wages was successful. His claim for race discrimination did not succeed. The case was heard before Employment Judge Rice-Birchall, Ms Jammeh and Mr Goodwin on 16th and 17th October 2013, in Chambers on 24th October 2013.The Judgment is dated 20.12.13 and was sent to the parties on the 24th December 2013. A copy of that judgment is at pages 300 to 319 of the Tribunal bundle.

4. We find doctors employed by NHS Trusts including the first respondent work to a job plan. The job planning process is the process to determine the balance and make up of the programmed activities "PAs" of each individual Consultant in the job plan. We find there are two types of activity which are recorded as PAs. These are direct clinical care (DCC) and administration time/continuing professional development (SPAs/CPD). We find SPA is an acronym for supporting programmed activities.

5. The Tribunal's judgment found at paragraph 119 (page 316) that there was no evidence that the claimant had been remunerated for the Gynaecology lead role from the 5th October 2010 to the date of the Tribunal hearing(October 2013) or for the Site lead role from June 2005 until September 2012. It found that Pennine Acute NHS Trust had identified the rate of pay for those roles namely two PAs and one PA for the Gynaecology lead and site lead roles respectively. On this basis it held the claimant's unlawful deduction from wages was well founded.

6. It was not disputed that the matter came to a Remedy Hearing on 23rd April 2014 and that the case was settled by a Consent Order at that hearing whereby the respondent agreed to pay the claimant £147,547.64.

7. There was a dispute between the parties in relation to tax on that sum and the claimant told us that he took the claim to Manchester County Court. That matter did not proceed and was struck out. We were informed that matters of this nature i.e. tax could be raised with HMRC.

8. We rely on the evidence of Dr Sinniah to find that the job planning process is subject to annual review. We find the Consultant Contract is based upon a full time work commitment of ten PAs per week. The Tribunal's attention was drawn to the Consultant job planning detailed guidance which is dated 1st February 2012 at pages 324 to 338 and in particular to paragraph 4 at p 327 which explains this.

9. We find each PA is usually 4 hours. See Dr Sinniah's evidence and the guidance "Each four hours of work has a value of one PA unless it has been mutually agreed between the Consultant and the Trust to undertake the work in premium time in which case it is three hours. Premium time is classified as any time that falls outside of the hours 7 to 19.00 hours Monday to Friday. Public holidays are also premium time. Programmed activities may be programmed as blocks of 4 hours or in smaller units where appropriate". P327

10. Our attention was also drawn to Appendix 1 of the guidance at p338 which states "if the Consultant disagrees with the contents of the job plan they have a formal right of appeal in accordance with the Trust mediation and appeals procedure". The mediation and appeals procedure for Consultant contracts is at page 263 to 268 and was also drawn to our attention in evidence.

11. The Tribunal finds that in accordance with the guidance at page 338 before the job planning starts with each individual consultant there is an initial job planning between senior managers who meet to agree job planning authority and objectives, and there is further planning meeting by the managers to agree departmental and strategic Trust objectives. After that the Clinical Director meets with the appropriate manager to agree how the objectives would be transferred into individual jobs.

12. When this has been done there is an individual job planning process between the Clinical Director and the Consultant.

13. The Tribunal relies on the evidence of Dr Sinniah to find that the process of job planning with each consultant is as follows. Each Consultant should have an annual job planning meeting and should meet with a Clinical Director for an individual job planning meeting -see also page 335, paragraph 17, Job Planning Process. At the end of that meeting a Job Plan is drawn up based on the discussions in the meeting and is circulated to the Consultant. This represents a formal offer of a job plan.

14. If the job plan is agreed that is the end of the process and the job plan is then implemented. If the Consultant disagrees there is then a process by which the Consultant can register disagreement through the Trust mediation and appeals procedure (see page 336).

15. The claimant agreed in cross examination that the Trust has an obligation to provide ten PAs .

16. We rely on the evidence of the first respondent that the last agreed job plan with the claimant was in 2010.

17. We rely on Dr Sinniah's evidence when he was asked what his understanding of the hours a Consultant should be paid for, that the hours the Consultant is paid for are the hours that the consultant should be contracted to do. He gave the example that if a Consultant takes longer to do a set task such as a ward round or an administrative task compared to the majority of Consultants or Clinicians that could be where disagreements arose. In those circumstances he said Consultants thought they should be paid more and the Trust assessed what it considered was reasonable and what it could pay. He gave an example of a Clinic where one Consultant might see six patients but another might see eight patients. The Trust had to determine what was the appropriate number of patients to be seen. If the Trust determined eight patients should be seen and the Clinic lasted four hours then that that was the period for which the consultant should be paid and would be paid.

18. He was then asked if a Consultant is paid more for a clinical or administrative task what opportunity is there in job planning to bring this into line. Dr Sinniah explained this is what the job planning process should be, he explained it was for correcting such anomalies. He said it was part of the reason the job planning process should be undertaken annually because the service changed on at least an annual basis for example new services are introduced.

19. We rely on the evidence of Dr Sinniah to find the purpose of the job planning process is to look forward and to take into account the objectives and needs of the service and to plan appropriately.

20. The detailed guidance on Consultant Job Planning states at Page 334 "Where the Trust requests a Consultant to perform additional programme activities it will give him or her three months or less by mutual agreement."

21. The Tribunal relies on the evidence of Dr Sinniah and the extract from the Guidance at p334 to find that once the process has been exhausted the Trust is able to impose the change in programmed activities on the Consultant.

22. We turn to consider the process if the consultant does not accept the job plan offer. We find that there is a two week period for a resolution of contentious issues between the Consultant and the Clinical Director. If the matter is not resolved within that period (mediation) the Consultant has a formal right of appeal in accordance with the Trust's mediation and appeals procedure. "If the Consultant disagrees with the contents of the job plan they have a formal right of appeal in accordance with the Trust's mediation and appeals procedure".

23. The Mediation and Appeals Procedure is at p264-268.

24. The procedure states at the outset at page 265 "where it is not possible to agree a job plan or a Consultant disputes a decision that he or she has not met the required criteria for a pay threshold in respect of the given year a mediation procedure and an appeal procedure are available". We find that the procedure

suggests there should first be mediation and then an appeal if agreement is not reached. The procedure states "the purpose of mediation is to reach agreement if at all possible and the Consultant should initially raise concerns with their Senior Divisional Medical Manager in writing within two weeks of the disagreement arising". Para 2.1 p265.

25. We find that the Senior Divisional Manager or his or her representative will then convene a meeting, normally within four weeks of receipt of the Consultant's letter to discuss the disagreements. (see paragraph 2.4 p265). We find the procedure then states if the consultant is not satisfied with the outcome he may raise an appeal within 2 weeks of notification of the outcome. Paragraph 2.7at p 265 and paragraph 3.7 page 267.

26. The last paragraph of Appendix 1 of the of the guidance states "refer to mediation and appeals procedure for timescales 3 weeks from date of receipt".p338 We find this is an ambiguous statement and this appears to be at odds with the Mediation and Appeals procedure which suggests specific time scales as stated above. We find that there is any relevant dispute about the time scales for registering a disagreement about the job plan and the ensuing process it is the timescales in the procedure itself rather than the guidance which are to be followed.

27. We find that in the guidance document (see page 338) the term "appeal" is used in its widest sense where it states "if the Consultant disagrees with the job plan they have a formal right of appeal in accordance with the Trust's mediation and appeals procedure. That procedure goes on to explain that appeal also includes mediation and we find that when Dr Sinniah wrote to the claimant on 20 November 2013 (see pages 70-2) he was referring to appeal in the widest sense. This is supported by page 337 which refers to at paragraph 19 appeals process and then within the text of the paragraph refers to both mediation and appeal.

28. We find Dr Sinniah's letter at page 70 to 72 is consistent with this because he states "if you are not happy with this then you have the right to appeal within 14 days from this correspondence which should be lodged with the Medical Director, Dr Rob Davies with corroborative work including outputs to match the remuneration you feel appropriate. I would be grateful if you could respond within those timescales".

29. We rely on the evidence of Dr Sinniah that he was appointed to the position of Deputy Medical Director in June 2013.

30. We rely on the evidence of Dr Sinniah that at the time he was appointed to the role of Deputy Medical Director the process of job planning by the first respondent was not good. He explained that a number of doctors had had no job plan for a number of years. He said that that was one aspect of it and the other was that in some cases the job plans were not reflective of the work being done, nor was the level of remuneration. He explained that he wanted to improve job planning and he wanted it to be as fair as possible. He wanted to raise awareness with Consultants and managers of the correct process. He said in the past there had been a view that job planning was about reducing pay and he wanted to focus on improving productivity to allow this process to take place and to do this he needed all parties to

have a better understanding of the job planning process. In order to do this we find there were a series of road shows involving the local negotiating committee which was described to us as being the local representative body of Consultants and also the BMA (British Medical Association).

31. We rely on Dr Sinniah's evidence that in the past the job planning process had not been implemented robustly and the local representative body of Consultants wanted the process to be applied in a consistent manner.

32. When asked if the application of tight time scales was draconian Dr Sinniah told us that if the procedure was not applied with the timescales in a consistent manner than others to whom it had been applied would raise grievances suggesting that it had been applied unfairly. We rely on Dr Sinniah's evidence to find that the job planning process was a process which looked forward. By contrast the Employment Tribunal judgment was a snapshot of an earlier moment in time.

33. We find that the claimant and Dr Sinniah met on 8th November 2013 to discuss the claimant's job plan.

34. We find that in the ordinary course of events this meeting would have taken place with the claimant's line manager, Clinical Director Mr Amu but the parties had been unable to agree a suitable date (The Tribunal was also informed that there was a relationship breakdown between the claimant and Mr Amu although Dr Sinniah told us that was not the reason why Mr Amu did not conduct the job planning meeting).

35. We find that it was Dr Sinniah's view that the appropriate number of PAs for the claimant should be 11.5 (page 57). We find that Dr Sinniah had discussed this with Jo Moore and Mr Amu in accordance with the job planning process who were supportive of the claimant having a 12.5 PA job plan. See page 57.

36. We find there was a detailed account in Dr Sinniah's letter of 20 November 2013 to the claimant at page 56 and 57 explaining the reasons why he felt the claimant should have the job plan suggested.

37. We find Dr Sinniah informed the claimant that Jo Moore/Mr Amu would proceed to issue him with a 12.5 PA job plan if he was in agreement. He gave him the right of appeal "if you are not happy with this then you have the right of appeal within 14 days from this correspondence which should be lodged with the Medical Director Dr Rob Davies …". We have explained earlier we are satisfied that he was operating within the broad framework of the respondent's appeals and mediation document by referring to appeal in the wider sense.

38. There had been disagreement in the job planning meeting between Dr Sinniah.Dr Sinniah considered that 12.5 was the appropriate number of PAs under the job plan. The claimant believed it should be more. See his letter on 3rd December 2013 at p69 to 70 where he stated "I am therefore currently doing a 14 PA job and that is what I expect to be paid". We find the claimant did not register his disagreement with the job planning process to the medical director Mr Davies within 14 days of Dr Sinniah`s email. Instead he wrote back to Dr Sinniah.(p69-70)

39. Dr Sinniah responded on 7 Dec 2013 (p69) reiterating the need to appeal to Dr Davies. The claimant wrote again to Dr Sinniah on 11 December and Dr Sinniah replied on 14th December 2013 where he stated "the decision whether or not to proceed is therefore not in my hands I am afraid as I clearly can not mediate between myself and you. It would have to be the Medical Director who does so hence the advice to contact him which I thought was reasonably explicit". He re-iterated that he had advised the claimant to appeal in writing within two weeks to Dr Davies.

40. There is no dispute that the claimant never specifically wrote to Dr Davies and stated he wished to appeal within the 14 day timescale of the date of Dr Sinniah's letter of 20 November 3013 (i.e. by 4 December 2013.) We find the claimant wrote to Dr Davies on 29 January 2014 to appeal (P339). Documents 339 to 341 were disclosed at a late stage during the hearing. Neither party took issue with these documents. The Tribunal finds they show that show by February 2014 the first respondent confirmed to the claimant he was out of time to request mediation. (p340-1)

41. On 24th December 2013 the Tribunal decision was sent to the parties.

42. We find that on 7th May 2014 there was a meeting attended by Nick Heyes, Deputy HR Director, Joanne Moore and others to discuss a mediation and job plan appeal monitoring spreadsheet for consultants. We find this was part of the process of the job planning for that year. We find that another unnamed individual had been sent a letter on 4th April informing him/her that s/he was out of time for an appeal. There was confusion at that meeting as to whether or not the claimant remained in the process which we find to mean the process for appeal/mediation.

43. Dr Sinniah was asked who had met with the claimant and when he was notified of any outcome. Dr Sinniah replied stating "I attach job plan and correspondence and think we have followed process". He says "I did not mediate but job planned because he had not met with Sola". We find Sola is Mr Amu and "he" is the claimant. He then states "I think this is where the confusion has arisen". He states that he advised the claimant to "contact Rob for mediation within the timescale and he did not do so and so is out of time".p85A

44. We find that on the 13th May 2014 at page 77 Joanne Moore checked with Mr Heyes of HR and Dr Sinniah how to proceed. She stated "I have looked into the payment of Dr A following our discussion as to whether or not he has lodged for appeal. He was paid in April 2014 all backdated claims relating to the ET settlement and at that point was switched onto 14 PA's. I believe therefore I am writing to advise he is now on a 12.5 PA job plan done by Anton and I am reclaiming back from 20th February (i.e. 3 months after the job plan offer date of 20th November.) Are you happy for me to progress on this basis?" Both Mr Heyes and Dr Sinniah responded "fine by me".

45. We rely on the evidence of Joanne Moore to find that although she was aware the claimant had a Tribunal claim involving his salary she was unaware of his racial discrimination complaint until August 2014.

46. We find that Mrs Moore had only met the claimant once in the Summer of 2013 when she had asked him to ensure that he participated in the job planning process. There is no dispute that she was copied into some of the correspondence in relation to the job planning process.

47. We rely on her evidence that she had become aware of other complaints about the claimant as follows. She informed us that she was aware of two separate complaints each raised by a third party, not the individuals concerned on two different occasions. We rely on her evidence that the Deputy Medical Director (Dr Sinniah) spoke to the individuals affected and asked them if they wanted to take it further and both said they did not and in those circumstances the matter was not taken any further and was not raised with the claimant.

48. We find that Mrs Moore sent a letter to the claimant dated 28th May 2014 at page 81 which set out the Trust's understanding of the position of the current year job plan and informing him that as he was out of time to request a job plan mediation or appeal, his new job plan of 12.5 PAs had come into force and therefore she was instructing payroll to reduce his PA's to 12.5 with effect from 24th April 2014, she also stated "should any of this information be incorrect please let me know as soon as possible".

49. The claimant responded to that letter by email of the 30th May 2014 at page 79. The claimant informed us that at this point he was incandescent with rage because he felt that the Trust was seeking to unilaterally vary his contract without agreement. As he saw it he was being required to do "the same amount of work for less money". The letter written by the claimant was expressed in very strong terms. We find that the letter was written in a very personalised manner. It is addressed "Dear Joanne" and throughout it refers to "you" which we find refers to Mrs Moore. The Tribunal finds the letter on an objective reading to be phrased in an abusive and unprofessional way. The letter states "I must say I find your behaviour intolerable and the arrogance insufferable".

50. The letter also states "it seems to me that you continue to treat colleagues who are black with contempt and I will not put up with it".

51. There was no dispute that the claimant had only met Miss Moore on one previous occasion in 2013 as described in our fact finding above and had no other direct dealings with her.

52. In the final paragraph of the letter he stated he would be seeking costs against her "personally and the Trust". He also said she would be made an individual respondent to a claim for racial discrimination, racial victimisation and unlawful deduction from wages without further notice.

53. When questioned in the Employment Tribunal about the letter the claimant said that some of the paragraphs were only directed at Mrs Moore personally in the sense that she was a senior manager at the Trust and therefore responsible for their

actions and that if she interpreted it personally then it was a misunderstanding of what he intended.

54. However, we are not satisfied that on reading the letter this is plain. Further the claimant's evidence was contradictory because he also stated in cross examination when asked about the tone of his letter that as a senior manager Mrs Moore was "not a baby". We find the answer suggests the letter was directed personally to Mrs Moore.

55. Mrs Moore told us that she forwarded the claimant's email to Dr Davies, the Medical Director, Dr Pickering the HR Director and Dr Sinniah. The Tribunal find that although the claimant's letter is not specifically identified as a grievance by him and although the claimant does not say in the letter that he wishes his concerns to be dealt with as a grievance he clearly raises serious concerns about the proposal to deduct sums from his wages as a result of the change in the job plan and the final paragraph states he intends to bring a claim for racial discrimination, racial victimisation and an unlawful deduction from wages without further notice. We find it would have been good practice for an enquiry to have been raised by the respondent with the claimant as to whether or not he wished his concern to be dealt with under the grievance procedure.

56. We find what happened next was that Mrs Moore raised a formal grievance herself of bullying and harassment to her line manager Mr Mullen, Executive Director of Operations about the content of the email (see page 82 to 84). She stated "in summary I have had my behaviour questioned, have been accused of acting illegally and most shockingly I have been called a racist, there has also been intimidation applied".

57. On 8th August 2014 the claimant was informed that following the formal complaint of bullying and harassment made against him, an independent investigation had been commissioned and Ms Mien had been appointed and would be making arrangements to contact him to interview him about Mrs Moore's complaint. Page 152. It is not disputed that Ms Mien is from Capsticks solicitors.

58. We find that by email dated 14th August 2014 at page 153 and 154 Ms Mien invited the claimant to an investigatory interview under the bullying and harassment policy in relation to Mrs Moore's complaint. He was informed "the discussion would be a fact finding exercise to enable me to gather as much relevant information from you as possible with regards to the contents of the complaint".

59. On 15th August Ms Mien interviewed Mrs Moore (see page 155 to 157) about the nature of her complaint. Ms Mien wrote to the claimant by email on 22nd August 2014 (page 158) again asking for his availability. She wrote again on 27 August to propose meeting on 2nd Sept or if the date was inconvenient for him to give availability in the next 10 days. On 1st September 2014 (page 159) the claimant contacted Ms Mien by email to inform her that the 2nd September was not convenient and that he "still had not received a grievance letter" and would not be in a position to respond until one was received.

60. We find Miss Mien replied on 2nd September 2014 at page 169 explaining to the claimant that a grievance letter is not required to be shared at this point of the investigation, i.e. the fact finding stage .She stated "however in the interests of a constructive meeting please find below the main points of Miss Moore's grievance to which I will be seeking further information from yourself in our fact finding meeting". We find that at page 169 to 170 Miss Mien had "cut and pasted" points 1 to 5 of Miss Moore's grievance letter see page 83 to 84 in their entirety. This was what Miss Moore had described as "specifically my grievance is in respect of the following comments". In bold are the comments to which she objected which were found in the claimant's email to her and underneath the commentary about why she found they were objectionable.

61. In her email of 2nd September Miss Mien informed the claimant that if he did not attend the meeting on the 11th September or provide an alternative suitable date which occurred prior to the 12th September regrettably she must produce the investigation report based on the information she had at that time and Hugh Mullen would make a decision about next steps accordingly.

62. We find the claimant did not attend the meeting on 11th September. We find Ms Mien produced a draft confidential investigation report on 26th September (page 172 to 177) and we find Miss Mien put that before Hugh Mullen to enable him as Case Manager to determine whether there was a case to answer in respect of bullying and harassment allegation by Joanne Moore against the claimant and whether further action was required.

63. We find on 3rd November 2014 at page 323 Mr Amu lodged a grievance against the claimant. On 21st February 2015 page 178 Miss Mien invited the claimant to an investigatory meeting in respect of the complaint made against him by Mr Amu and also to give him a further opportunity to respond to the complaint raised against him by Joanne Moore.

64. On 2nd March 2015 the claimant responded to Miss Mien stating "before I agree to attend any investigatory meeting I need to have either sight of the complaint or a summary of what it is that I am supposed to have done. Unless and until this information is provided I cannot attend any investigatory hearing". Miss Mien replied on 9th March confirming the investigation is being conducted under the bullying and harassment policy which she attached. She explains in relation to the Joanne Moore complaint (the only one relevant to this claim) that she has attached her last email dated 2nd September which provided a summary of Mrs Moore's complaint.

65. The claimant responded on the 18th March at page 185 to 186. In relation to Miss Moore's complaint he asks "can you confirm this matter in relation to Miss Moore has been concluded? If it hasn't been concluded what is its status at the moment? If an investigation report exists I would like a copy please at your earliest convenience." He states he is available to attend a meeting on Monday 30th March 2015 and that "if these matters are not concluded and dismissed immediately thereafter I will begin the ET/ACAS protocol with a view to bringing proceedings for racial discrimination and detriments for making protected disclosures".

66. Miss Mien replied on 19th March at page 191 to 192. She explained "the investigation into Miss Moore's complaint has not been concluded as I have been asked to provide you with another opportunity to participate in the process in order that I can listen to your side of the story and include it in the report". She explains: "I am afraid I am not at liberty to share the report with anyone except the considering manager. Bullying and harassment reports are not usually shared with either the claimant or the alleged perpetrator unless it is determined there is a case to answer and further actions required which has not been determined yet in either of these cases." The Tribunal finds the explanation given by Miss Mien in relation to the non disclosure of the draft report at this stage entirely reasonable.

67. We find here were further attempts by Ms Mien to arrange a meeting with the claimant. (see page 190 and the top of 191).

68. A meeting was arranged on 13th April 2015 with Miss Mien, a note taker Miss Lowe and the claimant see page 195 to 197 but the meeting did not proceed because the claimant wished to tape record the meeting and was informed that the Trust did not allow recordings to take place.

69. The claimant wrote to Miss Mien on 22nd April at page 198 and confirmed that the meeting did not proceed because she would not allow him to tape record the meeting. He referred her to the fact that she was unable to point to any Trust procedure that prevented him from doing so. He stated he found this "unilateral imposition unacceptable but not totally surprising bearing in mind I have made it clear to you during the meeting that this matter is likely to end in further litigation in any event".

70. The claimant also complained that "you are unable to explain why it was that I had not been furnished with copies of the complaints made against me despite several requests for the same". He went on to state "these unspecified and un-particularised allegations have been hanging over me for a considerable time without any resolution date in sight". He stated "I also note that you have not taken any steps to look into my complaints about the way in which these matters have been dealt with or my complaint which led to the original counter complaint. I have made it clear that my complaints about the proposed unilateral reduction of my salary was a protected act and the actions you are taking in ignoring my complaint and seeking to progress the perpetrator's complaint is an act of racial victimisation amongst other things. This is completely unacceptable. It is against this background that I refuse to continue with this meeting. I look forward to receiving a copy of your report and I will take the appropriate action once that is to hand".

71. We find that on 23rd April Miss Mien informed the claimant that she had checked with the considering manager who had authorised the requested documents to be shared with him with the consent of the complainants. In relation to Miss Moore she sent "the complaint letter submitted by Miss Moore (two appendices removed at Miss Moore's request)" page 199. She also tried again to arrange a meeting with the claimant.

72. Accordingly we find by 23rd April 2015 the claimant had the full text of Mrs Moore's letter of complaint at page 82-4.

73. We find the claimant wrote on 7th May 2015 to Ms Mien at page 204 to object. He says the documents are "unacceptable". He says Mrs Moore's complaints have been "substantially redacted" and goes on to state that "I have drawn to your attention repeatedly the fact that Mrs Moore's complaint amounts to racial victimisation". He states "as common sense is unlikely to prevail… I am going to contact ACAS as a prelude to commencing proceeding in the Employment Tribunal for racial discrimination and victimisation against you the considering manager and the Trust". He concludes by stating that "accordingly I will be grateful if you could refrain from contacting me in relation to this matter henceforth".

74. At this point we find Miss Mien escalated the matter to her manager Natalie Holroyd of Capsticks solicitors who responds to the claimant on 20th May 2015 (page 208 to 209). She stated "having carried out a review of the situation I note that you have been sent by Jenny Mien a copy of the complaint letter of Joanne Moore. You complain that the letter has been redacted. My investigation indicates that the only redaction was the removal of three copy emails and three attachments to one email, two of which you have previously received which I now attach for your information and reference. This completes the disclosure process in relation to the complaint by Joanne Moore. The reason that these emails were not included is that other persons were referred to in the email content. We have removed the comments about other individuals from the copies now sent to you. You had received a full copy of the complaint letter itself."

75. We find that the appendices attached to Mrs Moore's letter of complaint at 82-4 are listed at page 85. We find these attachments were (1) job plan offer email from Dr Sinniah 20th November 2013 at page 56,(2) the emails regarding mediation/appeal at pages 85A, page 59, page 73 and page 69, (3) The re-consultant AS document at page 78, re-consultant NH at page 77,(4) letter to Mr Adegbite 28th May 2014 page 81, (5) email from Dr Adegbite page 79.

76. In cross examination the claimant confirmed that by this stage, May 2015 he had received all the attachments although on re-examination he said he had not seen page 85A until the Tribunal Hearing.

77. We find that by 2nd September 2014 the claimant had sufficient information to answer the concerns raised in the grievance The Tribunal finds that by 2nd September 2014 the claimant had all the information he needed to respond to Mrs Moore's allegations because Jenny Mien sent him the "cut and paste" letter detailing Mrs Moore's concerns.

78. The final investigation report was produced by Miss Mien and dated 22nd June 2015 at page 210 to 223. We find the claimant never did contribute to the investigation. The final investigation report is at page 172 to 177. The Tribunal relies on the summary of the investigation report in relation to how the claimant engaged with the investigatory process. We find that the claimant never formally responded or fully participated in the process.

79. The claimant had complained to Miss Mien that amongst other things his original complaint had not been dealt with. In an earlier email at page 198 on 22nd April 2015 the claimant had complained "you have not taken any steps to look into my complaints about the way in which these matters have been dealt with or my complaint which led to the original counter complaint".

80. We find there is a lack of clarity by this stage about the claimant's complaints. In the email at p198 on 22 April 2015 he goes on to state "I have made it clear that my complaints about the proposal unilateral reduction of my salary was a protected act and the actions that you are taking in ignoring my complaint and seeking to progress the perpetrator's complaint is an act of racial discrimination amongst other things.

81. We find is unclear from this email precisely to what the claimant is referring. We find the only complaint picked up by Ms Holroyd on 20 May 2015 at page 209 in reference to this concern is the claimant's earlier unlawful deduction from wages claim because she states " As you should be aware your claim in the Manchester County Court has been concluded by Order of the Court that your claim be struck out….That claim has already been investigated and concluded."

82. On 6th June 2014 we find the respondent had written to the claimant inviting him to take part in a mediation process for the job plan process 2013 despite the fact he did not submit any request to Dr Davies within the timescale given to him by Dr Sinniah.(p85C)

83. There is no dispute that at the time of this Tribunal Hearing the respondent had not implemented any reduction in pay as stated in Mrs Moore's letter of 29 May 2014 in relation to the 2013 job plan.

84. On 20th July 2015 the claimant attended a meeting with Dr Prudham in relation to Mrs Moore's allegation of bullying and harassment. The claimant was informed that the complaint had been upheld. The claimant stated that he "could not comment on any issues as he was not aware of the allegations until he sees them". Page 224. We find this is factually incorrect. The claimant had a full copy of Mrs Moore's complaint by 23 April 2015 and all the information he needed to respond by 2nd September 2014.

85. The claimant was asked if he was willing to write an apology to Joanne Moore and in response he said "there is nothing more to say".

86. On 14th August 2015 Dr Prudham wrote to the claimant explaining that he believed the email communication that he sent was "outside of the standards expected of a professional medical doctor. The reason for my decision is that the behaviours you exhibited in writing the email are not ones that the Trust can or will support. The email caused Joanne Moore distress and I do feel your behaviour constituted bullying and harassment as pre-defined in the Trust's bullying and harassment (dignity at work) policy. As a professional medical doctor this type of behaviour is unacceptable and not the way the Trust expects the staff to behave towards one another. I confirmed that the immediate actions expected of you that you are to make a written apology to Joanne Moore in order to commence the

rebuilding of the relationship. I also asked you to attend the Trust's values training to remind you of your obligations when working with staff".

87. Dr Prudham wrote to the claimant to ask that a written apology was made (page 227). Mr Prudham wrote again to the claimant on 5th October 2015.(It was agreed that a typographical error in that letter 229A which refers to the 14th September when it should refer to the 14th August.) The claimant responded on the 21st October stating that he had no intention of apologising and mentioned again "I am constrained to commence litigation in order for common sense to prevail".

88. On 12th November, page 230 Dr Prudham wrote to the claimant explaining that he was disappointed he would not apologise and understood that he felt he was not at fault. However he had hoped that he would recognise "that the email caused Joanne enough concern to raise a complaint and that in the spirit of professionalism and Trust values you would have accepted that an apology was appropriate." He informs the claimant "on this occasion I will not be taking any further action I can confirm that this issue is now closed, a copy of this letter will be placed on your P file."

89. The claimant responded on 25th November page 232 and said that the letter was totally unacceptable. He re-iterated that his complaint had never been addressed and stated "I am unable to accept your decision because it indicates that I am somehow a second class citizen in this country. When a black man complains it is ignored, when a white woman complains it is dealt with at great expense. This is the essence of racial discrimination and I will not accept it. I am formally requesting that you should not place this letter on my file". He stated that he thought common sense would prevail but it is clear he is "carrying on a conversation with the deaf. Accordingly I will now take this issue to the Employment Tribunal who will no doubt be able to communicate in a language you can hear and understand".

90. Following this letter we find the claimant commenced proceedings in this case.

91. We turn back to make findings in relation to Dr Sinniah and the GMC. We find that following the Shipman enquiry a system of appraisal with supporting evidence such as audit was introduced for doctors known as revalidation. Dr Sinniah explained that there were two main bases for deferral of revalidation. One was a failure to supply documentary evidence, for example in relation to an appraisal. The other was that the practitioner was undergoing a process, such as an investigation and had not engaged with the appraisal process. He explained that deferral of re-validation did not in any way affect the doctor's ability to practice.

92. We rely on Dr Sinniah's evidence that at the time it was his practice if he had a concern in relation to re-validation to speak to the GMC first and then contact the Consultant afterwards by email which was what he did on this occasion, see page 86 to 87 and page 89. He acknowledged that GMC guidelines require him to speak to the practitioner before contacting the GMC although he had not appreciated at the time and now that he is aware of that he has changed his practice and now contacts the practitioner before contacting the GMC.

93. The claimant in his letter at page 88 informed Dr Sinniah that his actions were unacceptable and an act of racial discrimination and victimisation. He also stated "once a reasonable period has passed without satisfactory explanation I will commence legal action against you personally and the Trust for racial discrimination and victimisation". He went on to state "I have to make it clear to you that I am not prepared to accept arbitrary and oppressive use of managerial power on racial or any other grounds".

94. We find Dr Sinniah apologised to the claimant See page 92 and we find he also sent the claimant the GMC policy at page 95 and copies of his conversations with the GMC at pages 86 and page 90. His apology was primarily to rectify the fact that the claimant has not been informed of the grievance against him. He stated that allegations of racial discrimination were serious allegations and he was unclear how the claimant felt how there had been discrimination.

95. We find there were other occasions when the claimant alleged raised allegations of discrimination and threatened to bring legal proceedings.

96. The claimant at page 204 informed the investigating officer Jenny Mien "I am going to contact ACAS as a prelude to commencing proceedings in the Employment Tribunal for racial discrimination and victimisation against you, the considering manager (whoever that may be and the Trust)". He also threatened Dr Prudham at page 228 "I consider your request for me to apologise to Miss Moore and the implicit threat therein if I refuse as a further act of victimisation and racial discrimination and I will commence proceedings forthwith by adding this to the matters already complained of to ACAS". He went on to state "unfortunately I am constrained again to commence litigation in order for common sense to prevail".

The issues

97. The claimant's claims are for public interest detriment, victimisation pursuant to Section 27 of the Equality Act 2010 and direct discrimination Section 13 of the Equality Act 2010.

98. We turned first to deal with the public interest disclosure claim. These issues in these claims were identified at a case management hearing conducted by Employment Judge Ryan on 20th April 2016. It was agreed at the outset of this Hearing that the claims were identified as follows:-

99. Protected disclosures. The claimant alleged that he made protected disclosures as follows:-

99.1 By his letter to Mrs Joanne Moore in response to her letter of 28th May 2014 (page 79) as set out at paragraph 12 of the particulars of claim;

99.2 The claimant's letter to Dr Prudham dated 21st October 2015 (page 228) (paragraph 27 of the particulars of claim)

99.3 The claimant's letter of 25th November 2015 to Dr Prudham (page 232) (paragraph 27 of the particulars of the claim).

100. The issues for the Tribunal are as follows:-

1.What is the disclosure of information;

2.In the reasonable belief of the claimant was the disclosure made in the public interest and did it tend to show that a person has failed, is failing or is likely to fail to comply with a legal obligation to which he is subject;

3.Was the claimant subjected to a detriment? The claimant relied on paragraphs 20, 21, 22, 23, 24, 26, 28 and 29 of the particulars of claim;

(a)If so was the claimant subjected to a detriment by any act or any deliberate failure to act by his employer on the ground he had made a protected disclosure? The Tribunal must take into account the burden of proof provisions - Section 48(2) ERA 1996 "it is for the employer to show the ground on which any act or deliberate failure to act was done".

(b)If the claimant succeeded, the respondent at the remedies stage relied on a lack of good faith (see Section 49 and Section 123 ERA 1996).

101. Although at the case management stage the respondent agreed the first and second letters amounted to protected disclosures at the final hearing they disputed the first disclosure – the letter of 30th May 2014 at page 79- was protected.

The Law

102. The Tribunal had regard to s43B,s43C, s47B and s 48 ERA 1996.The Tribunal had regard to the relevant case law in particular Fecitt and others –v- NHS Manchester (Public concern at work intervening) 2012 ICR 372 CA and West Yorkshire Police –v- Khan 2001 ICR 1065, in relation to the burden of proof. The Tribunal reminded ourselves of the guidance of Chief Constable of West Yorkshire Police –v- Khan 2001 ICR 1065 HL in relation to detriment and Shamoon –v- Chief Constable of the Royal Ulster Constabulary 2003 ICR 337 HL which established that detriment existed if reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage. The House of Lords noted that an unjustified sense of grievance could not amount to a detriment. This was confirmed in Derbyshire and Others –v- St Helens Metropolitan Borough Council 2007 ICR 841. The test is not satisfied merely assertion by the claimant that he or she has suffered mental distress, it has to be objectively reasonable in all the circumstances (Lord Neuberger).

103. The Tribunal also had regard to the EHRC Employment Code "generally a detriment is anything in which the individual concerned might reasonably consider change their position for the worse or put them at a disadvantage". However an unjustified sense of grievance alone would not be enough to establish detriment, paras 9.8 and 9.9.

104. The Tribunal had regard to the cases relied upon by the parties namely Shinwari –v- Vue Entertainment Limited UKEAT/0394/14 and Panayiotou –v- Chief Constable of Hampshire Police case number 2014 IRLR 500.

Applying the law to the facts

105. We turned to the first issue.

Did the claimant make a protected disclosure by his letter dated 30th May 2014 at page 79.

106. The Tribunal must first consider what is the disclosure of information relied upon. The Tribunal finds that in this letter the claimant refers to the letter of Joanne Moore dated 29th May 2014 in which he says "you state you planned to deduct my wages". He states it is his belief that "the ET established that I am entitled to receive 14 PAs (Programmed Hours) under my contract of employment until it is legally varied by agreement". He goes on to state that "your purported variation of my contract is unlawful and in breach of contract".

107. He states "it seems to me that you continue to treat colleagues who are black with contempt and I will not put up with it" and we find this is an allegation of race discrimination. He also complains "as matters currently stand you have refused to pay approximately half of the sum awarded by the ET by consent which is now the subject of an enforcement action".

108. In the last paragraph he indicates that if the respondent makes the deduction from his wages Mrs Moore will be made an individual respondent to a claim for race discrimination/racial victimisation and unlawful deduction from wages.

109. We remind ourselves a disclosure of information must convey facts. See Cavendish Munro v Geduld 2010 ICR 325.We find the disclosure of information to the respondent is that the claimant states "you proposed to deduct my wages". The claimant informs the respondent that is a purported variation of his contract and is unlawful. We find this amounts to a disclosure of information under the meaning of Section 43(B)(b) that a person is likely to fail to comply with any legal obligation to which he is subject.

110. We remind ourselves that the disclosure must be in the reasonable belief of the worker making the disclosure. We find that the claimant at this stage reasonably believed that the respondent was likely to fail to comply with a legal obligation because he believed that the Employment Tribunal judgment he had received in December 2013 meant that the respondent was not entitled to change his remuneration in accordance with a more recent job planning procedure. We remind ourselves that reasonable belief is widely construed and test is the reasonable belief of the worker making the disclosure and not the belief of a reasonable worker. It is not necessary for a worker to be correct and Babula –v- Waltham Forest College 2007 ICR 1026 is authority that the claimant will be able to avail himself of the

statutory protection even if he was in fact mistaken as to the extent of the legal obligation on which the disclosure was based.

111. We turn to the public interest requirement. Although it relates to the claimant's own contract, we are satisfied that the claimant's belief that a reduction in wages was unlawful was a matter of public interest. We find that a belief that the Trust, a public body, was in breach of what was ordered by the court is a matter of public interest Accordingly the Tribunal is satisfied that the claimant's letter at page 79 is a protected disclosure within the meaning of Section 43B (1)(b) ERA 1996.

112. The Tribunal turns to consider whether the disclosure is qualifying within the meaning of 43C and finds that it was because it was disclosed to the employer.

113. The Tribunal turned to the claimant's letter to Dr Prudham dated 21st October 2015, at page 228. The Tribunal finds that the disclosure of information conveying facts is "I consider your request for me to apologise to Miss Moore and the implicit threat therein if I refuse is a further act of victimisation and racial discrimination".

114. The respondent said at the submission stage it was "neutral" as to whether this was a protected disclosure.

115. We find the claimant believed that if he was required to apologise to Mrs Moore that amounted to an act of race discrimination. We find the reasonable belief test is a subjective test and we find the claimant who is black believed that being required to apologise to Mrs Moore who was white and threatened to reduce his wages without (in his belief) lawful authority amounted to an act of race discrimination. We find the breach of the legal obligation relied upon by the claimant is a potential breach of the Equality Act 2010.

116. Relying on the test that it is the belief of the worker making the disclosure that is relevant, not the belief of the reasonable worker the Tribunal finds that it was the claimant's belief that being asked to apologise was discrimination.

117. The Tribunal finds raising a potential act of race discrimination is a matter raised in the public interest. Accordingly the Tribunal is satisfied that the claimant's letter at page 79 is a protected disclosure within the meaning of Section 43B (1)(b) ERA 1996.

118. We turn to the second issue and find that this was a qualifying disclosure because it was made to the employer within the meaning of Section 43C.

119. The Tribunal turns to the third disclosure: the claimant's letter of 25th November 2015 to Dr Prudham (page 332).

120. This letter includes disclosures of information which have already been made. The claimant refers to an "unlawful racist attempt to unilaterally reduce my wages in the face of an employment decision to the contrary".

121. The Tribunal finds that this is a protected disclosure within the meaning of Section 43(B)(1)(c). We find the claimant has conveyed facts which the claimant

believed (not that it was factually correct) that it was likely the respondent's attempt to "unilaterally reduce my wages" was "racist".

122. It is not for the Tribunal to state whether or not this belief was true but whether it was, in the *reasonable belief* of the claimant that the attempt to "unilaterally deduct my wages" was "racist". We remind ourselves that this is a low threshold for the claimant because the test is whether the claimant (not a reasonable worker) held such a reasonable belief. We have found the claimant genuinely believed it was unlawful for the Respondent to make a deduction from his wages because of the earlier Tribunal judgement. He is a black man and considered a potential deduction from wages in these circumstances amounted to race discrimination. We are satisfied in the reasonable belief of the claimant there was a potential breach of the Equality Act 2010. The Tribunal reminds itself there is rarely overt evidence of discrimination and thus accepts that in the mind of the claimant he had a reasonable belief that he thought that the respondent was discriminating against him. We find that a matter of perceived race discrimination is a matter of public interest and accordingly this is a protected disclosure within the meaning of 43B(1)(b) ERA 1996.

123. This letter was sent to Dr Prudham and so was also made to the employer and is qualifying within the meaning of 43C ERA 1996

124. Having found that all three letters contain public interest disclosures the Tribunal went on to the next issue which was to consider the detriments.

125. The detriments are identified are paragraphs 20, 21, 22, 23, 24, 26, 28 and 29 of the particulars of claim. They are worded in a repetitious fashion. The Tribunal is required to deal with each.

126. We turn to the first detriment alleged at paragraph 20 that "**between 8th August 2014 and 20th July 2015 the first respondent and/or Ms Mien refused to provide the claimant with an un-redacted copy of Mrs Moore's complaint, despite several requests by the claimant.**

127. The Tribunal relies on its findings of fact. The Tribunal finds that it was not the policy of the first respondent to release a full copy of the grievance letter to individuals subject to a grievance. The Tribunal relies on its finding that by 2nd September 2014 the claimant had sufficient information to answer the concerns raised in the grievance (page 169).

128. We find the claimant was suspicious that he did not have all the information. We find by 23rd April 2015 (page 199) the claimant had all the relevant information he could possibly require to respond to the grievance.

129. We therefore turned to consider whether not having an un-redacted copy of the complaint until April 2015 could amount to a detriment. We find it does not. We remind ourselves that the detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage. We reminded ourselves that a justified sense of grievance alone can not amount to a detriment.

130. The claimant was in no way disadvantaged by not having an un-redacted copy of Mrs Moore's complaint and by the time he had received the un-redacted copy it must have been apparent to a reasonable man that he had not been disadvantaged. It is clear as stated in our finding of fact that Miss Mien cut and pasted all the crucial elements from Mrs Moore's complaint into the information sent to the claimant on 2nd September 2014 and the claimant could see that for himself by 23 April 2015. We find there was no detriment in relation to this allegation.

131. We turn to the second detriment namely **"the first respondent and/or Ms Mien refused to investigate the claimant's complaints about Mrs Moore (despite several requests by the claimant).** Para 21 ET1**.**

132. The Tribunal relies on its finding of fact that after the claimant made his complaint on the 30th May 2014 at page 79 the respondent did not investigate his complaint about the letter sent by Mrs Moore to him in which she stated the first respondent proposed to make a deduction from his wages.

133. We find that the wording of this allegation that the first respondent refused to investigate the claimant's complaint about Mrs Moore is inaccurate. We find it is factually correct that the respondent *failed* to investigate the complaint because the claimant never received a reply to his letter to Mrs Moore dated 30 May 2014 but we do not accept that they *"refused*" to investigate. We find that because of the offensive way the claimant worded his letter and because he addressed to Mrs Moore personally the respondent did not understand it as a complaint where the claimant was asking the first respondent to take action.

134. Although the claimant did make other complaints to the respondent we find his complaint followed a pattern whereby he made generalised complaints and then threatened legal proceedings and finds a lack of clarity in his letters. We find there was no clear complaint to Miss Mein and she did not refuse to investigate the claimant's complaint. We rely on our findings of fact that the only complaint to Ms Mien was entirely unclear (p198), she escalated that letter to her manager Ms Holroyd who dealt with the complaint she believed the claimant was referring to(p208). Further, the claimant decline to engage in the investigation process by meeting with Mrs Moore where he could have articulated his complaints.

135. Therefore the Tribunal finds that the only potential detriment here was that the first respondent failed to investigate the complaint raised about Mrs Moore in the letter of 30th May 2014.

136. The Tribunal turned to consider the third detriment at paragraph 22 ET1 "**on 20th July 2015 the claimant attended a meeting convened by the second respondent at the conclusion of the first respondent's investigation in to Mrs Moore's complaint and the complaint of another colleague which is not relevant for the purposes of this complaint. The second respondent informed the claimant at the meeting that he was going to uphold Mrs Moore's complaint against the claimant and, amongst other things, intimated that he expected the claimant to apologise to Mrs Moore in writing. When he asked the claimant to confirm that he would do so the claimant declined.**

137. We have considered this allegation with the alleged detriments paragraphs 23 and 24 from the claim form because those paragraphs include the relevant extract from the letter of 14th August 2015 where the second respondent informed the claimant that the complaint was being upheld and an apology was asked of the claimant and paragraph 24 of the claim form which includes the text from the second respondent's further letter of 14th October 2015 enquiring whether the apology has been issued.

138. We find that the claimant is relying on the fact that the complaint against him by Mrs Moore was upheld by the second respondent at a meeting on 20th July 2015 and that he asked the claimant to apologise to Mrs Moore in writing as detriments.

139. We find that neither the upholding of the complaint from Mrs Moore nor requesting the claimant to make an apology can amount to a detriment.

140. We rely on our findings of fact that the letter written by the claimant on 28th May 2015 (page 79) was written in intemperate language for a professional person. We rely on our finding of fact that the complaint by Mrs Moore was at least in part about the manner in which that letter was written. We rely on the evidence of Dr Prudham to find that he upheld the complaint about the way the letter was written. We rely on the evidence of Dr Prudham that he requested the claimant to make an apology about the way he had written the letter, he chased up the request but the claimant declined to make the apology and did not do so and then Dr Prudham took no further action.

141. We consider whether the fact that the complaint against him by Mrs Moore was upheld by the second respondent at a meeting on 20th July 2015 and that he asked the claimant to apologise to Mrs Moore in writing can amount to detriments.

142. We rely on Shamoon that the test is assessed from the viewpoint of a reasonable worker. We find that a hypothetical reasonable worker would on reflect consider that the manner in which the letter was written was not appropriate and would have considered reasonable to apologise and for that reason we are not satisfied that the complaint being upheld and the request to apologise amounts to a detriment.

143. We turn to the fourth detriment as stated at paragraph 26 of the claim form "**by way of an email dated 16th November 2015 including a letter dated 12th November 2015 the second respondent replied to the claimant's email in paragraph 25 above in the following terms**. The letter is then quoted. The letter of 12 November 2015 is to be found at page 230 in the bundle. We find this was the letter where Dr Prudham explained that he was disappointed that the claimant would not apologise to Joanne Moore but stated "on this occasion I will not be taking any further action. I can confirm that the issue is now closed. A copy of this letter will be placed on your Pfile".

144. We find that it was the placing of that letter on the claimant's "P file" which the claimant considered amounted to be a detriment. The P file is the personnel file.

145. We find that the respondent is obliged to keep a record of what occurred. We rely on the evidence of Dr Prudham that he took no action against the claimant. We accept his evidence that he did not issue any penalty against the claimant and it was just a documentary record to retain the letter of 12 November 2015 on the P file.

146. The claimant said he felt he was placed at a disadvantage by that letter being placed on his "P"file. We adopt once again the test of a reasonable worker as is established in Shamoon. A grievance had been taken out by another employee against the claimant. That grievance had been upheld. The outcome was that the claimant was asked to apologise. The claimant did not apologise. The matter was not taken any further when the claimant did not apologise but he was informed that the issue was closed and a copy of the letter closing the issue would be placed on his personnel file. We find that this is in line with simple HR practice and does not amount to a detriment to the claimant. It is simply a record of what has occurred.

147. We turn to detriment 5 at paragraph 28 of the claim form which is the failure to reply to correspondence at para 27 or remove the letter from the p file.

148. We find this is duplicated in paragraph 29 and is dealt with below.

149. We turn to detriment which is contained in para 29 of the claim form. At the Case Management Conference it was confirmed that all the particulars at paragraph 29 are relied upon as detriments in the public interest disclosure claim. Para 29 is particularised in further paragraphs 29(i)-(viii) (a)-(d).There is some duplication of the earlier detriments which makes the case rather confusing.

150. We turned to consider the allegation found at paragraph 29(i) of the claim form "**the failure and/or refusal of the first and second respondents to investigate and/or deal with properly at all the claimant's complaint about Mrs Moore's proposed actions despite leading the GMC to believe that his complaint was being investigated."**

151. The Tribunal finds this is a duplication of the first alleged detriment namely the failure of the first respondent and Ms Mien to investigate the claimant's complaints.

152. The Tribunal relies on its findings that there was a failure of the first respondent to investigate the claimant's complaint about Mrs Moore's proposed actions. The Tribunal relies on its findings that the first respondent did not "refuse" to investigate the claimant's complaint.

153. So far as the second respondent Mr Prudham is concerned he was not engaged with the matter when the claimant made his complaint at page 79. Any failure on the part of Mr Prudham is dealt with by reference to allegation 29 viii (d) see below. The Tribunal is satisfied that failure to investigate the claimant's complaint about Mrs Moore amounts to a detriment.

154. The Tribunal finds that allegations at paragraph 29ii-iii of the claim are duplications of alleged detriments already considered

155. The Tribunal turned to allegation at paragraph 29 iv **"the conclusion that the claimant had a case to answer in relation to Mrs Moore's complaint**". The Tribunal reminds ourselves of the guidance of Lord Neuberger in Derbyshire and Others –v- St Helens Metropolitan Borough Council that mental distress is not sufficient to show detriment, it has to be objectively reasonable in all the circumstances. The Tribunal reminds ourselves of the guidance in Shamoon –v- Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, detriment is if a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage. The House of Lords found that an unjustified sense of grievance could not amount to a detriment.

156. The Tribunal relies on our findings of fact that because of the way the claimant worded his letter at 79 was reasonable for the employer to find that the claimant had a case to answer in relation to Mrs Moore's complaint and that it was reasonable to engage in an investigatory procedure and it was reasonable for Dr Prudham to ask the claimant to apologise to Mrs Moore for the way he had worded the letter. For this reason therefore the Tribunal is not satisfied that a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage. The Tribunal is not satisfied that it was objectively reasonable, the claimant was distressed by the conclusion that he had a case to answer in relation to Mrs Moore's complaint. Accordingly the Tribunal finds no detriment.

157. The Tribunal turns to the allegation at para 29 v of the claim form **"the instruction to the claimant by the second respondent on 20th July 2015 and/or 14th August 2015 and/or 14th October 2015 to apologise to Mrs Moore in writing despite the fact that the claimant had a legitimate reason and good cause to write to her in the way that he did".** The Tribunal relies on the guidance in Shamoon –v- Chief Constable for Royal Ulster Constabulary and the guidance of Lord Neuberger in Derbyshire and Others –v- St Helens Metropolitan Borough Council referred to above and to our findings of fact to find that it was objectively reasonable in all the circumstances for the second respondent Dr Prudham to ask the claimant to apologise to Mrs Moore in writing because of the way he had worded his letter of complaint at page 79. Accordingly we find no detriment.

158. Para 29 (vi) of the claim form. **The instruction to the claimant by the second respondent on 20th July 2015 and/or 14th August 2015 and/or 14th October 2015 to apologise to Mrs Moore despite the fact the first and second respondent refused to investigate the claimant's complaints**.

159. The Tribunal relies on its findings of fact that the way the claimant phrased his letter of complaint against Mrs Moore in such offensive and personalised terms it was an objectively reasonable outcome in all the circumstances to ask the claimant to apologise and therefore it was not objectively reasonable for the claimant to feel a sense of grievance about being asked to apologise and in those circumstances the Tribunal finds no detriment.

160. Para 29 (vii) of the claim form: **the decision by the second respondent to place a copy of his letter dated 12th November 2015 on the claimant's personnel file.**

161. This is a duplication of an earlier alleged detriment. The Tribunal relies on its finding above that it was the respondent's usual practice at the conclusion of a grievance procedure to record an outcome in relation to an affected employee on the individual's personnel file. The Tribunal accepts the evidence of Dr Prudham who we found to be a clear and conscientious witness who made concessions necessary that this was a standard practice of the respondent. The letter recorded that Dr Prudham was disappointed the claimant would not apologise but understood that the claimant felt he was not at fault. The letter concludes "on this occasion I will not be taking any further action I can confirm that this issue is now closed. A copy of this letter will be placed on your Pfile".

162. The Tribunal is not satisfied that a detriment exists because it is not satisfied that a reasonable worker might take the view that placing the letter at page 230 on the claimant's personnel file to his or her disadvantage.

163. Para 29 (viii)(a). **The claimant's complaint of racial discrimination about the way the first and second respondent's failed to deal with his complaint about Mrs Moore.**

164. The Tribunal has dealt with this allegation in relation to the allegation at paragraph 21 and relies on its earlier findings. In relation to the second respondent's failure to address the claimant's complaint of the 25th November 2015 at page 232 this is dealt with in allegation 29 viii (d)(see below).

165. Para 29 (vii)(b) of claim form. **The allegation of racial discrimination against the first and second respondents about the difference in treatment he had received on racial grounds.**

166. This allegation is widely worded. The tribunal finds that the claimant is referring to the failure of the respondent to investigate his complaint at page 79 and at page 232 and is therefore covered by the allegation made at paragraph 21 and the allegation made at 29viii (d).

167. Para 29 (viii)(c) of claim form: **the failure to confirm that the second respondent's letter dated 12th November 2015 had been removed from the claimant's personnel file.** This is a duplication of an earlier detriment. The Tribunal relies on its finding above that it was reasonable for the respondent to place a copy of the letter of 12th November 2015 page 230 on his personnel file and viewed objectively is not satisfied that that amount should be a sense of grievance and accordingly for the reasons stated there is no detriment.

168. Para 29 (vii)(d) of claim form **The failure to respond at all to the claimant's letter of 25th November 2015.** The Tribunal relies on its finding of fact that Dr Prudham did not reply to the letter of 25th November 2015. The Tribunal relies on its findings of fact that it makes a clear allegation of race discrimination. The Tribunal finds that this amounted to a detriment.

169. The Tribunal then turned to consider the causal connection in relation to the protected disclosures and the detriments.

170. The Tribunal reminded ourselves that Section 47B states "a worker has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure". The Tribunal reminded itself of the burden of proof that in any detriment claim it is for the employer to show the ground on which any act or deliberate failure to act was done, Section 48(2). We reminded ourselves this means that once the claimant has established there was a protected disclosure and that and the respondents subjected the claimant to a detriment, the burden will shift to the respondent to prove that the claimant was not subjected to the detriment on the ground that he or she had made the protected disclosure.

171. The Tribunal has found that there were three protected disclosures. The Tribunal has found that there were a number of detriments. The Tribunal turned therefore to consider each protected disclosure in relation to each detriment.

172. The Tribunal turned to the first public interest disclosure namely the claimant alleges that he made protected disclosures by his letter to Mrs Joanne Moore in response to her letter of 28th May 2014.

173. The Tribunal turned to deal with the first detriment it found which was stated at paragraphs 21, 29(i) 29 (ii), 29 (iii), 29 vii (a), vii (b). The Tribunal relies on its fact that all these allegations concern the alleged detriment of the failure of the first respondent to investigate the claimant's complaint about Mrs Moore made in his letter at page 79. The Tribunal relies on its finding of fact that there was not a specific refusal by the first respondent or by Ms Mein but there is a failure to respond by the first respondent to the claimant's letter at p79.

174. We turn to the first issue. Having decided that there was a protected disclosure and there was a detriment we must then turn to consider if the claimant was subjected to a detriment within the meaning of Section 47B. We are not satisfied he was because the wording of Section 47B states "a worker has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer …". We are not satisfied that there was a deliberate failure to act by the first respondent or by Ms Mein in relation to the failure to investigate the claimant's complaint.

175. The Tribunal relies on its finding of fact that the complaint in the letter at page 79 was directed to Mrs Moore "Dear Joanne" and the claimant directly accused her of race discrimination on the basis that she "proposed to unilaterally vary my contract without agreement". We find the reason why the Trust did not action that complaint was that firstly because of the very intemperate language and personalised nature of the letter, the person at whom the complaint was directed Mrs Moore took exception to it and lodged a grievance in relation to it and a procedure started in relation to that matter. Secondly in further correspondence any follow up complaints the claimant made were unclear. His email on 22nd April 2015 page 198 suggested his complaints about unilateral reduction in salary had been ignored but he did not ask for these to be investigated. When he raised a complaint against Miss Mien, Ms Holroyd had the matter referred to her and dealt with her understanding of what the

complaint was. Finally we accept the evidence of the respondent that at page 79 was not understood as a complaint.

176. Therefore in asking ourselves the question within the wording of 47(B) ERA 1996 was there a *deliberate failure* to act, we are not satisfied that there was. We find there was an omission to act and we are not satisfied there was any intention on the part of the respondent and accordingly the claim fails at that point.

177. However in case we are wrong about that and in not investigating the claimant's complaint about Mrs Moore at page 79 the respondent did subject the claimant to a detriment within the meaning os s 47 B(1) ERA 1996 we must consider the last issue which is causation.

178. Was the reason the respondent failed to investigate the claimant's complaint because he made a protected disclosure in the letter at page 79? We remind ourselves of the burden of proof.

179. We find the respondent has satisfied us the reason why it did not investigate the claimant's complaint that Mrs Moore had discriminated against him in sending him a letter explaining that following the outcome of the job plan process he was to have a reduction in his salary was because of the highly intemperate language the claimant used in complaining to Mrs Moore "I find your behaviour intolerable and arrogance insufferable" "you don't care about a judgment against the Trust from a court of competent jurisdiction" and "you are going to continue to act in an unlawful manner regardless".

180. Mrs Moore was an employee of the respondent who had no previous significant dealings with the claimant and was simply communicating the offer of a job plan process which had been carried out by an appropriate manager in the claimant's department namely Dr Sinniah. We reminded ourselves of the guidance in Woodhouse –v- West North West Homes Leeds Limited and Panayiotou –v- Chief Constable of Hampshire Police 2014 IRLR 500. We are satisfied that the reason the respondent failed to investigate the claimant's complaint that the proposal there be a reduction in his wages was racially discriminatory was because of the manner in the way he wrote his letter. The wording of the letter did not make it clear the claimant wanted an investigation or was presenting a grievance. The complaint is to Mrs Moore personally: "Dear Joanne." The claimant has a consultant is a senior employee who did not dispute that he was aware of the Trust's grievance procedure. The final paragraph of the letter asserts the action the claimant intends to take if any deduction is made from his wages which adds to the impression that this is a letter communicating what the claimant intends to do rather than a letter seeking action from the first respondent..(It is undisputed that the respondent did not make any reduction to the claimant's wages following Mrs Moore's letter.)

181. We therefore find the reason the first respondent did not investigate a complaint raised in this letter was because they did not understand it to be as a complaint which the claimant was asking to be investigated, not because of the letter itself.

182. Accordingly this claim must fail.

183. We turn to consider the same public interest disclosure namely the disclosure contained in the letter at page 79 in relation to the other detriment we found namely allegation 29 viii (d) the failure to respond at all to the claimant's letter dated 25th November 2015.

184. Once again turning to the first issue the Tribunal is not satisfied that the first or second respondent subjected the claimant to a "deliberate failure to act" . We accept the evidence of Dr Prudham whom we found to be a clear and conscientious witness who gave evidence in a calm considered manner and made concessions. One of the concessions Dr Prudham made was that with hindsight he could see how the claimant's letter at page 232 could amount to a complaint by the claimant. However, we accept his evidence that at the time he did not see it as a complaint. He had been the Grievance Officer in a grievance presented by Mrs Moore as complainant in a process where he had asked the claimant to apologise and the claimant had refused.

185. Dr Prudham had simply noted that the matter was then closed, that he did not insist on the apology he had requested from the claimant and the letter would be placed on the claimant's file. The claimant responded to that in very strong terms : "I am unable to accept your decision because it indicates that I was somehow a second class citizen in this country. When a black man complains it is ignored, when a white woman complains it is dealt with at great expense. This is the essence of racial discrimination and I will not accept it I am formally requesting that you should not place this letter on my file".

186. We accept the evidence of Dr Prudham to find that in the grievance he had been asked to hear, he had reached the end of the process and he did not think he could respond or add anything further as he had made a decision, the matter was concluded and the issue should be recorded on the Pfile in the usual way.

187. We accepted his evidence that the reason he did not understand the claimant to be requesting any further action was because of the last paragraph of the letter where the claimant stated "as indicated in my previous correspondence I thought common sense would prevail but it is clear that I am carrying on a conversation with the deaf. Accordingly I will now take this issue to the Employment Tribunal who will no doubt be able to communicate in language you can hear and understand". We find it was for this reason that Dr Prudham did not respond to the letter. He understood that the claimant was unhappy with the outcome namely that his personnel file would contain the outcome letter but that the claimant would be taking the matter to the Employment Tribunal because he considered by communicating with Dr Prudham "he was carrying on a conversation with the deaf".

188. However if we are wrong about that and the failure to respond to the complaint by Dr Prudham can be "an act or deliberate failure to act" rather than an omission we have gone on to consider the causal connection.

189. We must ask ourselves whether the respondent has satisfied us that the reason Dr Prudham didn't respond to the concern raised by the claimant at page 232

was because the claimant had originally raised a protected disclosure in a letter to Joanne Moore at page 79. We accept the evidence of Dr Prudham that his failure to take any action in relation to the claimant's letter at page 232 was in no sense whatsoever related to the claimant's letter at page 79.

190. For the sake of completeness the Tribunal also deals with the causal connection in relation to placing the letter of 12th November 2015 on the claimant's pfile. If this is capable of amounting to a detriment then it is a detriment to which the claimant was subjected by Dr Prudham and the Trust because it was placed on his pfile. We must turn to consider the issue of causal connection. We entirely accept Dr Prudham's explanation that the reason he placed this letter on the claimant's pfile was in accordance with the standard procedure of the Trust where a process had concluded and an outcome had been noted that it would be recorded on an employee's pfile. We find it was in no sense whatsoever related to the claimant's protected disclosure made at page 79.

191. We turn to consider the protected interest disclosure claim in relation to disclosure (2), namely the claimant's letter to Dr Prudham dated 21st October 2015 p228 and we turned to consider detriment one. The first detriment is in relation to the failure of the respondent to investigate the claimant's complaint at page 79. That detriment occurred before the letter on 21st October 2015 was sent to Dr Prudham. Accordingly we find from a time line point of view there is no causal connection but even if we are wrong on that we rely on our reasoning above that the reason the claimant's concern is at page 79 were not dealt with was because for the reasons already stated.

192. We turn to consider the second detriment which was the failure to respond at all to the claimant's letter dated 25th November 2015.

193. For the reasons relied upon above we find the reasons Dr Prudham did not reply to that letter were stated above. We find they were in no sense whatsoever related to the email sent at page 228.

194. Insofar as it is relevant if we were wrong that there was no detriment in relation to the placing the letter on the pfile we are satisfied there was no causal connection between the public interest disclosure at page 228 and the decision to place the letter on the pfile because we rely on Dr Prudham's evidence that the reason for placing the letter on the pfile was because it was a Trust's standard procedure to record the outcome of the matter.

195. We turned to consider public interest disclosure three, the claimant's letter of 25th November 2015 to Dr Prudham. We turned to consider the first detriment which was the failure to investigate the matters raised in the claimant's letter at page 79. This letter containing the disclosure at page 232 was long after the claimant raised his original concern and therefore from a causal connection point of view it is difficult to see how detriment which is alleged to have occurred from 30th May 2015 could be caused by a letter which was sent on 25th November 2015 some months later. For that reason we find this allegation cannot succeed. However, if we are wrong about that we rely on our findings above as to why the respondent did not investigate the claimant's complaint at page 79.

196. We turn to the second detriment namely the failure of Dr Prudham to reply to page 232. We rely on our findings above. Dr Prudham told us in cross examination that he took advice on the letter at page 232 from HR. He spoke to the Deputy Director. He advised him to take no further action as the matter was now closed. We rely on his evidence that looking at the totality of the communication with hindsight he could see the claimant was raising a complaint but that was not how he appreciated the letter at the time, particularly in the way that it was written with the final paragraph and accordingly we find that is the reason why he did not respond to the letter, not because it made a protected disclosure.

197. Accordingly for these reasons the claimant's claims for public interest disclosure detriment fail.

198. Finally, if the Tribunal is incorrect about its finding in relation to detriment and the claimant was subjected to a detriment by the allegation in para 20 of the claim form ie the respondent and/or Miss Mien not providing the claimant with an un-redacted copy of Mrs Moore's complaint namely 8th August 2014 and 20th July 2015 the Tribunal finds that in terms of the causal connection the respondent has satisfied us that the reason why it acted in that way was because the respondent was following its own policy on the matter, see page 238 and 278. It was unrelated to the protected disclosures.

199. In case the Tribunal is incorrect about its finding in relation to detriment above and the claimant was subjected to a detriment by the allegation found at paragraph 22 of the claim form (also repeated at paragraph 23 and 24 and at paragraph 29 (iv), 29 (v), 29 (vi) of the claim form) namely that the claimant had a case to answer in relation to Mrs Moore's complaint, that the second respondent informed the claimant that he was going to uphold Mrs Moore's complaint and that he expected the claimant to apologise, we turn to consider the casual connection.

200. The Tribunal finds that the reason why the claimant was told he had a case to answer, was informed Mrs Moore's complaint was upheld, was asked to apologise and when he did not do so the request was followed up in writing was in no sense whatsoever related to the claimant's 3 protected disclosures.

201. The Tribunal relies on the evidence of Dr Prudham that he followed the respondent's grievance procedure in relation to Mrs Moore's complaint, that the claimant was given a number of opportunities to engage in the process by the investigating officer Ms Mien but choose not to do so, that he was given sufficient information to respond to the complaint and that the claimant had an opportunity at the meeting with Dr Prudham to give his side of the story. We accept Dr Prudham's evidence that the reason the claimant was asked to apologise to Mrs Moore was entirely because the claimant worded his letter to Mrs Moore in a highly inappropriate and unprofessional manner and not because of the original letter itself of 20 May 2015. The Tribunal relies on the principles espoused in Shinwari v Vue Entertainment and Panayiotou v Chief Constable of Hampshire Police that the letter itself of 20 May 2015 (a protected disclosure) and the way it is written are matters capable of distinction. In this case we are satisfied that Dr Prudham acted in the way

he did because of the manner of the claimant's actions not the fact of the disclosure itself.

202. The second protected disclosure is dated 21/10/15 and the third disclosure is dated 25.11.15 so they are not casually connected to the detriments that the claimant had a case to answer in relation to Mrs Moore's complaint, that the second respondent informed the claimant that he was going to uphold Mrs Moore's complaint and that he expected the claimant to apologise, because they post date them.

Victimisation

203. At the Case Management Hearing the claimant relied upon the same protected acts as in the protected disclosure claim namely, firstly the letter to Mrs Joanne Moore at page 79 of the bundle dated 30th May 2014, secondly the claimant's letter to Dr Prudham dated 21st October 2015 at page 228, thirdly the claimant's letter of 25th November 2015 at page 232. In addition the claimant relied upon his previous claim of race discrimination to the Employment Tribunal.

204. The claimant relied upon the same detriments as in the public interest disclosure claim.

205. The issues for the Tribunal were:-

1.Were the three letters namely (1) his letter to Mrs Joanne Moore in response to her letter of 28th May 2014 (page 79) as set out at paragraph 12 of the particulars of claim, (2)The claimant's letter to Dr Prudham dated 21st October 2015 (page 228) (paragraph 27 of the particulars of claim)and (3)The claimant's letter of 25th November 2015 to Dr Prudham (page 232) (paragraph 27 of the particulars of the claim) protected acts within the meaning of Section 27(2) of the Equality Act 2010?

2.Did the claimant's claim to the Employment Tribunal on a previous occasion case no 2402108.13 complaining of race discrimination amount to a protected act?

3.Did the claimant suffer detriments as relied upon at paragraphs 20, 21, 22, 23, 24, 26, 28 and 29 of the particulars of claim?

4. Having regard to the burden of proof, is there a casual connection? Did the respondent subject the claimant to a detriment because he did a protected act(s)?

206. The respondent disputed that the letter of the 25th November 2015 was a protected act because it alleged it was made in bad faith.

207. The Tribunal turned to the first issue and to consider whether these three letters and the earlier claim to an Employment Tribunal could amount to a protected act. The Tribunal found that all three letters and the previous claim to Employment Tribunal amounted to protected acts within the meaning of s27(2) Equality Act.

208. In respect of the disputed letter namely 25th November 2015 the Tribunal had regard to HM Prison Service and Others –v- Ibimidun 2008 IRLR 940 and Martin –v- Devonshire Solicitors 2011 ICR 352.

209. The Tribunal relies on its findings of fact that the claimant genuinely believed that the respondent had acted in an "unlawful racist attempt to unilaterally reduce my wages in the face of the Employment Tribunal decision to the contrary".

210. We find that the claimant erroneously believed the respondent was unable to change the job plan under which the claimant worked, despite the job planning procedure. Because of this erroneous belief, the claimant believed he was entitled to be paid remuneration in accordance with the programmed hours(PAs) found to be relevant at that time by the Employment Tribunal chaired by Judge Rice- Birchell, When the respondent said that following the job planning procedure the claimant was entitled to be paid in accordance with a lower number of programmed hours and accordingly would reduce his wages, an action would leave the claimant worse off financially, the claimant, who is black, considered this was an act of race discrimination.

211. It is unclear in the letter of 25th November 2011 when the claimant states "my complaint has never been addressed" precisely what he is referring to because he refers to various matters including "the racist attempt to unilaterally reduce my wages," the issue in relation to Dr Sinniah and the GMC being informed about a complaint , an allegation "my revalidation was unjustly delayed" and the outcome of Mrs Moore's grievance against him where he was asked to apologise and the outcome being placed on his personnel file.

212. However the Tribunal is not satisfied that it can find that the claimant was acting in bad faith when it has found the claimant believed the respondent was acting in a discriminatory fashion. Accordingly the Tribunal finds that the letter at page 232 was a protected act.

213. The Tribunal turns to each of the allegations of detriment.

214. The Tribunal turns to the first detriment at paragraph 20 "between 8th August 2014 and 20th July 2015 the first respondent and/or Miss Mien refused to provide the claimant with an un-redacted copy of Mrs Moore's complaint, despite several requests by the claimant. The Tribunal relies on its earlier finding of fact that this is not a detriment: the claimant had all the information he needed to answer the complaint by 2nd September 2014.

215. However if the Tribunal is wrong about that and the claimant has suffered a detriment in relation to this allegation the Tribunal turns to causation.

216. The Tribunal reminds ourselves that the burden of proof provisions and the guidance in Igen Ltd v Wong 2005 ICR 931. We remind ourselves it is for the claimant to adduce facts from which the Tribunal could conclude in the absence of an adequate explanation, that the respondent has committed an act of discrimination. If the claimant does not prove such facts the claim will fail. In deciding whether the claimant has proved such facts the Tribunal must bear in mind that it is unusual to find direct of discrimination. Where the claimant adduces such facts the burden shifts to the respondent to show that there is a non discriminatory explanation for the treatment.

217. We turn to consider the first protected act and the first detriment. In relation to the letter to Mrs Moore of the 30th May 2014 (page 79) .The Tribunal is not satisfied that the claimant has adduced any facts to suggest that the burden of proof has shifted. The Tribunal reminds itself that a mere assertion of discriminatory treatment is insufficient-there must be "something more".

218. However the Tribunal has gone on to consider the allegation as if the burden of proof has shifted. We find that refusing to provide the un-redacted copy of Mrs Moore's complaint to the claimant (until in or around April 2015) was entirely unrelated to the first protected act ie the letter 30 May 2014. The reason the claimant was provided with a redacted copy and the respondent refused to provide a unredacted copy was because that was in line with the respondent's disciplinary procedures, see page 238 and 278. Accordingly this allegation fails.

219. We turn to the second and third protected acts namely the claimant's letters of 21st October 2015 and 25th November 2015. We find these post-dated the detriment relied upon so there cannot be a causal connection.

220. Finally in relation to this allegation the Tribunal turns to the fourth protected act. The Tribunal is not satisfied that the claimant has adduced any facts to suggest that the burden of proof has shifted. There was no evidence that Miss Mien had any knowledge of the previous claim of discrimination at the Employment tribunal.

221. If the burden of proof has shifted the Tribunal accepts the non discriminatory explanation from Ms Mien that the reason the claimant was provided with a redacted copy and the respondent refused to provide a unredacted copy of the complaint (until April 2015)was because that was in line with the respondent's disciplinary procedures, see page 238 and 278.

222. The Tribunal turns to the next detriment namely the failure of the first respondent and Miss Mien to investigate the claimant's complaints against Mrs Moore. This allegation is also stated at paragraph 29 i, ii, iii, viii (a) and (b).

223. The Tribunal turns to the first protected act and this detriment. The Tribunal is not satisfied that the claimant has adduced any facts to suggest that the burden of proof has shifted.

224. However the Tribunal considers that if the burden of proof has shifted, the respondent has satisfied the Tribunal there is a non discriminatory explanation. So far as the claimant relies on his letter at page 79 as the reason why the first respondent and Miss Mien did not investigate the complaints of the claimant about Mrs Moore the Tribunal relies on its earlier findings that the failure to investigate the claimant's complaint was because that they were not clearly understood and because of the way he worded his letter in a direct highly unprofessional manner personalised against Mrs Moore and not because he made a protected act.

225. The Tribunal turns to the second and third protected disclosures and this detriment. The Tribunal is not satisfied that the claimant has adduced any facts to suggest that the burden of proof has shifted.

226. The Tribunal relies on its findings in relation to the public interest disclosure claim that the failure of the first respondent to investigate the claimant's complaint at page 79 was unrelated to the claimant's letter to Dr Prudham dated 21st October 2015 and letter of 25th November 2015 because these letters post-dated the complaint (complaints against Dr Prudham are dealt with later).

227. In relation to the last protected act that the respondent failed to investigate the complaint in a letter at page 79 because the claimant had made a previous claim for race discrimination the Tribunal is not satisfied that the claimant has adduced any facts to suggest that the burden of proof has shifted.

228. However if the Tribunal is wrong and the burden has shifted the Tribunal relies on its finding of fact that Joanne Moore to whom the letter was directed was unaware of the claimant's claim of race discrimination until some months later in August 2014 so any failure on her part was not connected to the claim for race discrimination case which had in any event been brought some considerable time earlier and was heard in the Employment Tribunal in October 2013 with the outcome sent to the parties on 24th December 2013 (see page 300 to 319). The Tribunal relies on its previous findings for the real reason why the fist respondent failed to investigate the claimant's complaint about Mrs Moore.

229. The Tribunal turns to the next group of allegations concerning detriment which are informing the claimant that Mrs Moore's complaint against the claimant was being upheld, that the claimant was expected to apologise in writing and this request being re-iterated in letters to him of 14th September 2015 and 14th October 2015 -see paragraph 22 of the claim form, 23, 24, 29 iv, v, vi, viii (a), (b).

230. The Tribunal relies firstly on its finding of fact that there was no detriment in relation to these matters for the reasons already stated.

231. However in case the Tribunal is wrong about that the Tribunal turns to consider the issue of causation. The Tribunal finds that Mrs Moore's complaint was found to be answerable and upheld and the claimant asked to issue an apology because of the way the claimant wrote the letter at page 79 in inappropriate and unprofessional language for a person of the claimant's professional status.

232. The first protected act is the claimant's letter of 30 May 2015. Given that is the letter which causes Mrs Moore to bring her grievance which in turn leads to the complaint being upheld, the request he apologise and that request being re-iterated, the Tribunal finds the claimant has adduced facts which could suggest that the reason for the detriments was the protected act. Accordingly the burden of proof has shifted.

233. The Tribunal turns to consider the respondent's explanation. The Tribunal reminds ourselves of the guidance in Martin v Devonshires Solicitors 2011 ICR352 and the guidance of Mr Justice Underhill that some feature of the protected act may properly be treated as severable.

234. The Tribunal accepts the explanation of Dr Prudham as described in our findings in relation to the public interest disclosure claim that the reason Mrs Moore's complaint was found to be answerable and upheld and the claimant asked to issue an apology was because of the way the claimant wrote the letter at page 79 in inappropriate and unprofessional language for a person of the claimant's professional status. In other words it was the way in which the claimant wrote that letter, not the letter itself which led to the detriments in this allegation. We find this is a matter properly from the protected act severable within the principal espoused in Martin v Devonshires Solicitors 2011 ICR352.

235. The Tribunal turns to the second and third protected acts and finds as a matter of causal connection the second and third protected acts ie the claimant's letters of 21st October 2015 (page 228) and 25th November 2015(page 232) post-date the detriments relied upon and so cannot be causally connected.

236. In relation to the fourth protected act, the previous Employment Tribunal claim for race discrimination we rely on the passage of time which has elapsed between the protected act and the alleged detriment and the evidence of Dr Prudham identified in our findings above that that the reason Mrs Moore's complaint was found to be answerable and upheld and the claimant asked to issue an apology was because of the way the claimant wrote the letter at page 79 in inappropriate and unprofessional language for a person of the claimant's professional status. We find there was no casual connection because we rely on Dr Prudham's non discriminatory explanation.

237. The Tribunal turns to the third area of alleged detriments namely paragraph 26 of the claim form, paragraph 28, paragraph 29 vii and viii (c).The Tribunal finds that all these allegations relate to the placing of the 12th November 2015 on the claimant's personnel file. The Tribunal relies on its earlier findings that this does not amount to a detriment.

238. However, in case the Tribunal is wrong about that we turn to the issue of causal connection. We turn to the first protected act. The Tribunal is not satisfied that the claimant has adduced any facts to suggest that the burden of proof has shifted.

239. However in case it is wrong about that the Tribunal has gone on to consider the explanation on the assumption the burden has shifted to the respondent. The Tribunal finds that the only reason the letter was placed on the claimant's pfile was the reason given by Dr Prudham, namely that that it was standard practice by the respondent in a case where there had been a grievance and an outcome that a letter would be placed on the personnel file of an affected employee.

240. The Tribunal turns to the second protected disclosure: the letter of 21st October 2015. The Tribunal finds that given the letter of 12 November 2015 which is the letter placed on the claimant's p file is a rely to the letter of 12 October 2015, the Tribunal finds the claimant has adduced facts which could suggest there was a casual connection between this letter, the second protected disclosure and the alleged detriment of placing the letter of 12 November on the claimant's p file. Accordingly the burden of proof has shifted.

241. The Tribunal turns to consider the respondent's explanation. The Tribunal relies on Dr Prudham's evidence that placing the letter on the P file was a standard Trust procedure where there had been a grievance and an outcome such as an apology had been requested. The Tribunal finds this is a non discriminatory explanation and the true reason for placing the letter on the p file.

242. The Tribunal turns to the third protected disclosure-the letter of 25th November 2015. The Tribunal finds this cannot be causally connected because it post-dates the letter informing the claimant this would go on his Pfile on 12th November 2015..

243. In relation to the fourth protected act ie previous Employment Tribunal claim for race discrimination we rely on the passage of time which has elapsed between the protected act and the alleged detriments and the evidence of Dr Prudham as stated above to find that there is no casual connection.

244. Finally the Tribunal turns to the last detriment namely the failure of Dr Prudham to respond to the claimant's letter of 25th November 2015 -see allegation 27, 28, 29 viiiI(d).

245. The Tribunal relies on its earlier findings that there was a detriment in relation to this action.

246. The Tribunal turns to the first protected act. We are not satisfied the claimant has adduced facts to suggest this protected act was linked to the failure of Dr Prudham to reply to this letter.

247. However in case we are wrong about that we have considered the allegation as if the burden had shifted.

248. We rely on our findings above that the reason Dr Prudham failed to respond to this letter was twofold. Firstly, because of the way it was worded, particularly with regard to the final paragraph where it asserts in robust language the action the claimant intends to take, he did not perceive it as a letter requiring a response.

249. Secondly we rely on Dr Prudham's evidence that in the context of the situation at the time, he did not perceive the letter to require a response. When the

claimant wrote the letter at p232 he was objecting to a letter recording an internal process being placed on his p file. Dr Prudham was the person who had heard Mrs Moore's grievance. In other words a grievance process had been completed, the parson who was the subject of the grievance (the claimant) had objected to the proposed outcome-an apology- and refused to comply. No action was taken against the claimant-he was told Dr Prudham was disappointed but would not take any further action and the issue was closed. A copy of the letter confirming this was to be placed on the file.p230. In these circumstances where the grievance had been concluded and the claimant informed the issue had been closed we accept Dr Prudham's evidence that he did not understand the claimant's letter as requiring a reply.

250. We turn to the second protected disclosure his letter of 21/10/15 and this detriment. We are not satisfied the claimant has adduced facts to suggest this protected act was linked to the failure of Dr Prudham to reply to his letter of 25.1115 letter. However in case we are wrong about that we have considered the allegation as if the burden had shifted. We rely on our findings above for the real reason Dr Prudham did not reply to the letter of 25.11.15.

251. We turn to the third protected act the claimant's letter of 25.11.15. We find the claimant has adduced facts to suggest this protected act caused this detriment because of the nexus namely that is was this letter to which Dr Prudham relied.

252. Accordingly the burden of proof has shifted. We accept the explanation of Dr Prudham as described above for the real reason why he failed to rely to this letter.

253. Finally in relation to the fourth protected act ie previous Employment Tribunal claim for race discrimination we rely on the passage of time which has elapsed between the protected act and the alleged detriments and the evidence of Dr Prudham as stated above to find that there is no casual connection.

254. Accordingly the claim for victimisation does not succeed

Direct Discrimination

255. The Tribunal turned to the claimant's claims of direct discrimination. As set out at the case management hearing the claimant relied on the allegations in paragraphs 20, 21, 22, 23, 24, 26, 28 and 29 of the particulars of claim as allegations of direct discrimination because of race. The issues for the Tribunal were:-

(1) Has the respondent treated the claimant as alleged less favourably than it treated or would have treated an appropriate comparator;

(2) If so, has the claimant adduced primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic;

(3) If so what is the respondent's explanation? Can the respondent show a non discriminatory reason for any proven treatment?

256. The Tribunal reminded itself of the guidance in Shamoon –v- Chief Constable of the Royal Ulster Constabulary 2003 ICR 337 and Pearce –v- Governing Body of Mayfield Secondary School 2003 ICR 937 where Lord Hope held "that with the exception of the prohibited factor i.e. the protected characteristic) all characteristics of the complainant which are relevant to the way his case was dealt with must be found also in the comparator". The Tribunal reminded ourselves of s23 Equality Act 2010 which deals with comparators.

257. The Tribunal turned to the first allegation "between 8th August 2014 and 20th July 2015 the first respondent and/or Miss Mien refused to provide the claimant with an un-redacted copy of Mrs Moore's complaint despite several requests by the claimant". Para 20 of the claim form.

258. The Tribunal relies on its finding of fact that the respondents management guidelines for the investigation of grievance bullying and harassment cases state at paragraph 9.3 "the employee should be made aware of the complaint/concern about them and be provided with the facts i.e. date/time/brief details of incident. It is not necessary during the investigation stage to provide copies of any written complaints/statements to the employee whom the complaint is against or their representative, but this may be agreed if requested".

259. Turning to deal with the issue the Tribunal finds there was no unfavourable treatment of the claimant because firstly being provided with a redacted copy of the statement did not disadvantage him in any way because all the salient points were contained within the first letter to him from Miss Mien dated 2nd September 2014 (see page 169). Once the claimant had this information he knew the case against him and was in a position to respond.

260. However, if we are wrong about that and the claimant has been subjected to unfavourable treatment we must consider the case at stage one, did the respondent treat the claimant less favourably than it treated a real or hypothetical comparator. The Tribunal turn to consider the issue of a real or hypothetical comparator.

261. The only comparator relied upon by the claimant was Mrs Moore. The Tribunal finds that Mrs Moore is not a suitable comparator for this allegation because she was the person who had raised a complaint about the claimant to the respondent; the claimant was the person about whom Mrs Moore had made a complaint. Therefore there is a material difference in circumstances between the claimant and Mrs Moore so s 23(1) Equality Act 2010 is not satisfied.

262. Accordingly the Tribunal considered a hypothetical comparator in the same set of circumstances as the claimant but from a different ethnic group namely a hypothetical white comparator

263. The Tribunal is not satisfied that there is any evidence to shift the burden of proof to the respondent, and is not satisfied there is any evidence to suggest the claimant was treated less favourably than a hypothetical comparator in the same set of circumstances as himself.

264. However in case we are wrong about that we turn to consider the respondent's explanation for the treatment. The Tribunal is satisfied the respondent has shown there is a non-discriminatory explanation. The Tribunal accepts the respondent's evidence that the claimant was treated in the same way as any hypothetical comparator because the procedure was conducted in accordance with the guidelines at pages 278, accordingly this allegation does not succeed.

265. The Tribunal turned to the next allegation which concerned the failure of the first respondent and/or Miss Mien to investigate the claimant's complaints about Mrs Moore despite several requests by the claimant. This allegation is found at paragraph 21 and also at 29 i, ii, iii and viii (a) and (b).

266. The Tribunal relies on its findings of fact that in his letter at page 79 the claimant raised a complaint of racial discrimination. His complaint was highly personalised and addressed to and directed at Mrs Moore. The Tribunal relies on its finding of fact that the first (and second) respondent did not *refuse* to deal with the claimant's complaint about Mrs Moore's proposed actions. The Tribunal relies on its findings that the respondent failed to investigate the complaint in the claimant's letter of 30 May 2015.

267. The Tribunal relies on its finding of fact that there was a lack of clarity in the claimant's further letters. He made no complaint about Mrs Moore in his letter of 18th March 2015 (page 185) nor did this contain a request to investigate an earlier complaint. In his email of 22nd April 2015, page 198, the claimant did suggest that his complaint about the unilateral reduction in his salary had been ignored but he did not ask for these to be investigated, rather he explained that this was the background for him refusing to take part in an investigation meeting and that he would take appropriate action once an investigation report was in his possession. He did not complain about Mrs Moore in that letter.

268. Similarly, the claimant's email of 7th May 2015 at page 204 although it refers to "Miss Moore's complaint amounts to an act of racial victimisation" rather than pressing for an investigation of any such a complaint, the claimant makes a specific request to Ms Mien to "refrain from contacting me in relation to this matter henceforth".

269. In the claimant's final email of 25 November 2011, page 232, it is unclear from that letter alone what exactly it is that the claimant is complaining about. He refers to both "an unlawful racist attempt to unilaterally reduce my wages in the face of an employment tribunal decision to the contrary" and to the GMC being informed of a complaint without his knowledge and his revalidation being delayed.

270. It asserts "my complaint has not been addressed" but does not specifically state which particular complaint of his was not investigated. He goes on to complain he was asked to apologise "to the perpetrator" and that Dr Prudham wrote a "dismissive letter" and said it would go on his pfile. He stated in no uncertain terms stated he would be taking matters to the Employment Tribunal.

271. Accordingly the Tribunal finds there is a complaint in the letter of 30 May 2015 to which the respondent does not rely(the second respondent is not involved at

that stage) and there is a complaint in the letter of 25 November 2015 and the second respondent does not reply to that letter.(The complaint in relation to Dr Prudham and the letter of 25 November is dealt with in relation to 29 viii(d) below)

272. The Tribunal turns to consider the issues. The Tribunal in accordance with Shamoon must construct a hypothetical comparator because it finds that Mrs Moore is not appropriate as a comparator because she is not in the same set of circumstances as the claimant. She is a person who has raised a complaint against the claimant. She is not a person against whom a complaint has been made.

273. The Tribunal is satisfied that failure to investigate a complaint of race discrimination can amount to unfavourable treatment. The Tribunal reminded ourselves that a difference in treatment and a difference in race is not sufficient, there must be a "something more to shift the burden of proof". Although she is not a direct comparator, the Tribunal has taken account of the evidence asserted by the claimant with regard to Mrs Moore, namely that when she lodged a grievance it was investigated and dealt with whereas on the face of it the claimant's complaint at page 79 was not investigated.

274. The Tribunal has reminded ourselves that discrimination can be unconscious as well as conscious. The Tribunal has reminded itself that there was an omission to act. The Tribunal finds that apart from the fact that the respondent investigated Mrs Moore's clearly articulated complaint and did not address the complaint in the claimant's letter of 30 May 2014 it finds no other evidence to shift the burden of proof.

275. The Tribunal turns to consider the respondent's explanation. The Tribunal finds there was a non-discriminatory explanation for the treatment. The Tribunal is satisfied that the whole context of the circumstances must be considered. The Tribunal finds that the respondent embarked on a job planning process as stated in our finding of fact with its employees. The Tribunal finds that Dr Sinniah whom the Tribunal found to be a careful, thorough and conscientious witness had sound reasons for assessing the claimant in the way that he did under the job plan and reducing the number of programmed hours. In cross examination Dr Sinniah told us his own ethnic origin was from Sri Lanka. The Tribunal took into account that during the course of the job planning process the respondent also consulted with the claimant's direct manager Mr Amu, a person of the same ethic background as the claimant. The Tribunal has taken into account that Mrs Moore had no previous direct dealings with the claimant and was simply the person from the respondent's organisation who communicated the outcome of the job planning process which we find was a reasonable and lawful process adopted by the respondent.

276. The Tribunal has taken into account that the claimant informed Mrs Moore in his letter of 30 May 2014 that if she makes any deduction from his wages he will make her an individual respondent to a claim for race discrimination, racial victimisation and unlawful deduction from wages without further notice and will be seeking costs against her personally and the Trust. There is no dispute that the Trust never implemented the deduction from the claimant's wages in accordance with the job plan it had carefully carried out.

277. Taking all of this into account the Tribunal is satisfied that there is a non-discriminatory explanation for the failure to investigate the claimant's complaint in the letter of 30 May 2014. The Tribunal accepts the respondent did not appreciate the claimant was making a complaint of race discrimination which required investigation because of the way he directed the complaint at Mrs Moore in a highly personalised manner where he makes various accusations and threatens to take legal action if she takes the proposed action of reducing his wages, an action which was not taken. Furthermore the claimant, a consultant gynaecologist and highly qualified, intelligent individual did not make it clear in that letter or his later letters that he wished to have a complaint that the plan to make a deduction from his wages was an act of race discrimination investigated, nor did he lodge a formal grievance. This is consistent with his later actions where the claimant did not engage with the grievance investigation process conducted by Ms Mien into Mrs Moore's complaint, despite many opportunities to do so, where he could have put his side of the story and clearly articulated his complaint.

278. The Tribunal is satisfied that there was a non-discriminatory explanation for the respondents' failure to investigate the complaint in the letter of 30 May 2014 namely that the respondent in the context of the circumstances we have found did not appreciate that the claimant required the matter to be investigated.

279. The Tribunal turns to the next allegation at paragraph 22 "on 20th July 2015 the claimant attended a meeting convened by a second respondent at the conclusion of the first respondent's investigation into Mrs Moore's complaint and the complaint of another colleague which is not relevant for the purposes of this complaint the second respondent informed the claimant at the meeting that he was going to uphold Mrs Moore's complaint against the claimant and, amongst other things intimated that he expected the claimant to apologise to Mrs Moore in writing. When he asked the claimant to confirm that he would do so the claimant declined". The Tribunal has also dealt with paragraphs 23, 24, 26, 29 iv, v, vi.

280. The allegations concern the requirement for the claimant to attend a meeting where the claimant was informed that Mrs Moore's complaint was upheld and he was asked to apologise and the letters of 14th August 2015 and 14th October 2015 chasing up the apology.

281. We rely on our finding of fact. We find that it was entirely reasonable for the respondent to investigate the complaint lodged by Mrs Moore, we find it was entirely reasonable for the respondent to ask the claimant to apologise for the way in which he wrote the letter at page 79. We find that Mrs Moore had acted professionally in the course of her employment having consulted with her colleagues and following the outcome of a job planning process conducted appropriately by Dr Sinniah, the outcome that had been agreed with colleagues. In return she received a letter where the claimant said her behaviour was "intolerable and her arrogance insufferable". He went on to say "it seems to me that you continue to treat colleagues who are black with contempt and I will not put up with it". He went on to express the matter in such a way suggests that there had been a previous occasion when she had treated him in a racist manner. We find that Mrs Moore had acted entirely properly and in a non-discriminatory fashion in informing the claimant that the outcome of the job planning procedure would be a reduction in his wages.

282. We turned to consider whether the claimant has been treated less favourably than a real or hypothetical comparator.

283. There was no real comparator in this case as Mrs Moore is not in the same set of circumstances as the claimant. We therefore turned to a hypothetical comparator. We are not satisfied the claimant has adduced facts which suggest the burden of proof has shifted but if it has we are satisfied that there is an entirely non-discriminatory explanation for the reason for the fact the complaint was upheld and the claimant was asked to apologise and that is the highly inappropriate and offensive way he wrote a highly personalised and abusive letter to Mrs Moore. We find that a hypothetical comparator for different ethnic group in the same set of circumstances as the claimant would have been treated in exactly the same way.

284. We turned to the next allegation which is found at paragraph 26 and 29 vii and viii (c).

285. This is the allegation concerning the placing of the letter at page 230 on the claimant's personnel file. We rely on our finding of fact that Dr Prudham did this in accordance with Trust policy to reflect the outcome of a matter which had closed. We have taken into account that Dr Prudham did not insist the claimant apologise. We have taken into account the conciliatory nature of the letter and the careful way in which it is worded "I am disappointed you will not apologise and I understand that you feel you are not at fault. However I had hoped you would recognise that the email caused Joanne enough concern to raise a complaint and that in the spirit of professionalism and trust values you would have accepted that an apology was appropriate".

286. The Tribunal turns to consider whether the claimant has been treated less favourably than a real or hypothetical comparator. There is no real comparator drawn to our attention and we therefore go on to consider a hypothetical comparator in the same set of circumstances. We reminded ourselves the burden of proof does not shift unless the claimant can show us "something more" other than a difference in treatment and a difference in race. We are not satisfied there is any evidence to shift the burden of proof but in case we are wrong about that we have gone on to consider the matter at the second stage namely whether the respondent can show there is an non-discriminatory reason for the treatment . We find that there is a non-discriminatory reason for the treatment. We entirely accept Dr Prudham's evidence that the standard procedure in the Trust is to record the outcome of a grievance in relation to any one affected on their personnel file and that he was simply following standard policy in doing so. We are entirely satisfied therefore that a hypothetical comparator of a different ethnic group would have been treated in the same way.

287. We turn to the allegation in relation to paragraph 28 and paragraph 29 viii (d). We find these allegations concern the failure of the second respondent to reply to the claimant's letter dated 25th November 2015.

288. There is no dispute that Dr Prudham did not reply to the claimant's letter dated 25th November 2015. We turn to the issues has the claimant been treated

less favourably than a real or hypothetical comparator and is the difference in treatment because of race?

289. Once again there is no real comparator to whom we were directed in these circumstances. We turned to consider a hypothetical comparator. We find the claimant has not adduced facts which cause the burden of proof to shift. However in case we are wrong about that we have turned to consider the allegation as if the burden has shifted to the respondent.

290. We rely on the evidence of Dr Prudham as set out earlier in this judgment that at the time, considering that letter in isolation, he did not appreciate it to be a complaint. We accept the evidence of Dr Prudham to find that in the grievance he had been asked to hear, he had reached the end of the process, he had not insisted the claimant apologise and he did not think he could respond or add anything further as he had made a decision, the matter was concluded and the issue was recorded on the personnel file in the usual way.

291. We accepted his evidence that he did not understand the claimant to be requesting any further action was because of the last paragraph of the letter of the 25 November 2015 from the claimant states "as indicated in my previous correspondence I thought common sense would prevail but it is clear that I am carrying on a conversation with the deaf. Accordingly I will now take this issue to the Employment Tribunal who will no doubt be able to communicate in language you can hear and understand". We find Dr Prudham understood that the claimant was unhappy with the outcome namely that his personnel file would contain the outcome letter but that the claimant would be taking the matter to the Employment Tribunal because he considered by communicating with Dr Prudham "he was carrying on a conversation with the deaf".

292. We therefore find that there is a non discriminatory explanation for the reason that Dr Prudham did not reply, namely that he did not understand from the letter that it was a complaint requiring a reply and thus this complaint fails.

Employment Judge Ross
15 March 2017

JUDGMENT SENT TO THE PARTIES ON
16 March 2017

FOR THE TRIBUNAL OFFICE