



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Idenekpoma

**Respondent:** Camden & Islington NHS Trust

**Heard at:** London Central  
(by Cloud Video Platform)

**On: 14, 15, 16, 17 and 18 October  
2024**

**Before:** Employment Judge Joffe  
Ms L Jones  
Mr M Simon

## **Appearances**

For the claimant: Represented himself

For the respondent: Ms C Urquart, counsel

# RESERVED JUDGMENT

1. The claimant's complaint of being subjected to detriment for making a protected disclosure is not well-founded and is dismissed.
2. The claimant's complaints of direct age discrimination are not well-founded and are dismissed.
3. At the relevant times the claimant was not a disabled person as defined by section 6 Equality Act 2010 because of depression.
4. The claimant's complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.

5. The claimant's complaint of unauthorised deductions from wages is not well-founded and is dismissed.

# REASONS

## Claims and Issues

1. There was a list of issues agreed at a case management preliminary hearing in front of Employment Judge Connolly on 19 January 2024. This was as follows:

### 1 Time limits

1.1 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010?

The Tribunal will decide:

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

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

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

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

1.1.4.1 Why were the complaints not made to the Tribunal in time?

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

### 2 Protected disclosure

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

2.1.1 What did the claimant say or write? When? To whom? The claimant says he made disclosures on these occasions:

2.1.1.1 On or around 26 June 2022, in an email to his supervisor, Ms Jo Pollock, the claimant reported concerns in relation to the treatment of a patient by others. This included what he saw as threatening behaviour and gave an example of withholding certain things from the patient. E.g. saying if you don't do this, we won't give you your Pepsi.

2.1.2 Did he disclose information?

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

2.1.4 Was that belief reasonable?

2.1.5 Did he believe it tended to show that:

2.1.5.1 a person had failed, was failing or was likely to fail to comply with any legal obligation;

2.1.5.2 the health or safety of any individual had been, was being or was likely to be endangered;

2.1.6 Was that belief reasonable?

2.2 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

3 Detriment (Employment Rights Act 1996 section 48)

3.1 Did the respondent do the following things:

3.1.1 In the days following the complaint on 26 June 2022, decline all of the holiday requests that the claimant had made;

3.1.2 Disclose details of his complaint dated 26 June 2022 to his colleagues, in breach of confidentiality;

3.1.3 On or around 28 June 2022;

3.1.3.1 One of the male nurses in the team made comments about the claimant in relation to his private life, including comments about depression and medication and problems with his landlord;

3.1.3.2 The female permanent support worker on his ward made comments about the claimant in relation to his private life, including comments about personal problems and "baby mother" problems;

3.1.3.3 A black female support worker from another ward (Coral Ward) told the Claimant in a telephone call "we do not want you here" (i.e. in Coral Ward);

3.1.4 The claimant was stopped from working by Mirabel on 1 July 2022 which led the claimant to being removed from the training course mentioned in paragraph

3.1.5 In mid-July 2022, the respondent removed the claimant from the Trainee Nursing Associate course;

3.1.6 In November 2022, after the claimant had returned from a period of sick leave, his desk was secluded in a corner away from the others in the office;

3.1.7 Negative and insulting comments were made to the claimant in a return to work meeting by Andrea Peterson approximately 2 weeks after his return from work. This included:

3.1.7.1 if you want to be a nurse, you have to take certain treatment,

3.1.7.2 if you cannot take it, get a van or go and become an electrician;

3.1.7.3 if you cannot take it, you are a loser;

3.1.7.4 do not come back to the Trust, no one wants you here.

3.1.8 On 10 December 2022, the claimant was forced to resign in response to the respondent's conduct.

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

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

#### 4 Remedy for Protected Disclosure Detriment

4.1 What financial losses has the detrimental treatment caused the claimant?

4.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

4.3 If not, for what period of loss should the claimant be compensated?

4.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

4.5 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

4.6 Is it just and equitable to award the claimant other compensation?

4.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

4.8 Did the respondent or the claimant unreasonably fail to comply with it?

4.9 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

4.10 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the claimant's compensation? By what proportion?

4.11 Was the protected disclosure made in good faith?

4.12 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

5.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

5.1.1 Did he have a physical or mental impairment: depression?

5.1.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?

5.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

5.1.4 Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?

5.1.5 Were the effects of the impairment long-term? The Tribunal will decide:

5.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

5.1.5.2 if not, were they likely to recur?

6 Direct age discrimination (Equality Act 2010 section 13)

6.1 The claimant was in his early 30s and he compares himself with people in same age bracket as Andrew, the nurse in charge of the Laffan Ward (approximately early 50s).

6.2 Did the respondent do the following things (The claimant says he complained about these matters in the email to Jo Pollock on or around 26 June 2022).

6.2.1 On at least five occasions, between March 2022 and July 2022, Andrew allocated tasks to the claimant that were not related to his role, such as cleaning;

6.2.2 On at least five occasions, between March 2022 and July 2022, Andrew spoke inappropriately to the claimant when allocating

6.2.3 The respondent did not adequately address these matters when he complained about them; and

6.2.4 The respondent disclosed details of his complaint dated 26 June 2022 to his colleagues, in breach of confidentiality;

6.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated.

There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated.

The claimant has not named anyone in particular who he says was treated better than he was but states that Andrew would not have treated anyone close to Andrew's own age (approximately early 50s) in the same way.

6.4 If so, was it because of age?

6.5 Did the respondent's treatment amount to a detriment?

6.6 Was the treatment a proportionate means of achieving a legitimate aim?

The respondent says that its aims were:

6.7 The Tribunal will decide in particular:

6.7.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

6.7.2 could something less discriminatory have been done instead;

6.7.3 how should the needs of the claimant and the respondent be balanced?

7 Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

7.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

7.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

7.2.1 Not allocating tasks, providing support and teaching skills appropriate for the roles of those in the Laffan Ward;

7.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability?

7.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

7.5 What steps could have been taken to avoid the disadvantage? The claimant suggests: he could have been moved to another department, that he made this request and this was refused.

7.6 Was it reasonable for the respondent to have to take those steps?

7.7 Did the respondent fail to take those steps?

8 Remedy for discrimination

8.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

8.2 What financial losses has the discrimination caused the claimant?

8.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

8.4 If not, for what period of loss should the claimant be compensated?

8.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

8.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

8.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

8.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

8.9 Did the respondent or the claimant unreasonably fail to comply with it?

8.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

8.11 By what proportion, up to 25%?

8.12 Should interest be awarded? How much?

9 Unauthorised deductions

9.1 Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted? The claimant alleges that he was not paid for the 2 weeks he was at work following his return from sick leave in November 2022.

## Findings

### The hearing

2. We had a bundle of 551 pages in hard and electronic form.
3. We had a witness statement and heard evidence from the claimant on his own behalf.
4. We had witness statements and heard evidence from the following witnesses for the respondent:
  - Ms M Madzokere, at the relevant time interim ward manager of Laffan Ward;
  - Ms A Patterson, at the relevant time interim liaison team manager at Whittington Hospital;
  - Ms M Bih, charge nurse;
  - Mr A Nkurunzziza, charge nurse;
  - Mr T Gumpo, at the relevant time a Band 5 mental health nurse;
  - Ms J Pollock, preceptorship and professional standards lead.
5. The claimant applied to amend his claim form to add a claim for unlawful deductions from wages in respect of enhanced sick pay after he commenced sickness absence in July 2022. We rejected that application for reasons which we gave orally at the hearing.

6. Later in the hearing the claimant applied for new documents to be admitted. Some were uncontroversial and were added to the bundle. Others were not admitted for reasons we explained orally.

Facts in the claims

7. On 20 September 2021, the claimant commenced employment with the respondent as a clinical support worker at the Mental Health Crisis Assessment Service ('MHCAS').
8. From March 2022, the claimant commenced the Trainee Nurse Associate ('TNA') course. This was a kind of apprenticeship whereby a participating employee would continue to do support worker roles whilst undertaking learning to qualify as a nurse associate.

9. Ms Pollock gave this description of the structure of the training:

*TNAs rotate between their university placements doing non-assessed weeks, spoke placements and hub placements. TNAs are responsible for doing support worker type roles, such as laundry, making beds, cleaning, assisting with all aspects of patient care including personal care. University placements, (also known as "training weeks" or "training hours") are run Monday to Friday, 9am to 5pm. TNAs have a total of nine weeks a year at university in 1-to-3-week blocks. The Claimant was attending Middlesex University (the "university"). In accordance with the requirements of the Nursing and Midwifery Council ("NMC"), which is the independent regulator for nurses, midwives and nursing associates, TNAs must be present for at least 75% of their training hours. Failure to meet the minimum hours impacts on the TNA's ability to be registered with the NMC when they complete their apprenticeship.*

*6 Non-assessed time is spent at the apprentices Hub area where learning should be ongoing. It is during non-assessed time only that TNAs may take their annual leave, provided they have followed the Trust's annual leave policies and procedures. Spoke placements are external to the Trust and for two weeks each. The apprentice will be supernumerary during this time as they are working in an area, they are not familiar with, such as a GP practice or a surgical ward. Spoke placement hours, if missed, would need to be made up, as they are counted as part of the NMC requirement for the TNA apprenticeship. There are also two hub placements per year which are each six weeks long as part of the TNA apprenticeship. During hub placements, TNAs are assessed in practice. Any time missed needs to be made up or, if possible, the Hub placement may be extended to cover the missing hours.*

10. On 18 February 2022, Ms Pollock had written to allocate the claimant to Laffan Ward for the first year of his training. This was his 'hub'. It was an acute mental health ward.



11. She said:

*Your first shifts on the ward will be week commencing 28/3/22 where you will have induction and initially be supernumerary for 1 to 2 weeks.*
12. The claimant was provided with information about the structure of his course:

*Hub placement*

*These are six week placements in your employed area of work, there are 2 hub placements in each year. You will have a named practice supervisor / assessor to support your progress and competency during this placement. Evidence of your progress during these placements will be captured within a Practice Assessment Document (PAD). We will provide you with this when you attend university.*

*Please refer to the programme calendar diagram on the next page, the cells shaded in green identify the hub placement weeks.*

*Annual leave is not permitted during these periods.*

*Further information on hub placements will be provided during the NIP 1904 practice module session during your first week at university.*
13. It is relevant to note that trainees would have non-assessed weeks in their hub area where they were working in their own substantive area of work and were counted in the numbers for the ward.
14. Ms Pollock told the Tribunal that TNA apprenticeships are not easy in terms of balancing work with study.
15. We heard some evidence about 'protected learning hours'. Ms Pollock said that during a hub placement, the allocation of protected learning hours was five hours per week. That could involve something like attending a ward round or a medication round, sitting in on an assessment or a training event. During a spoke placement, the protected learning hours would be 37.5 hours per week. Time at university also constituted protected learning hours.
16. The claimant told the Tribunal that all hours on a work placement are protected learning hours and he should be supervised and paired with a nurse throughout any placement. He said he never heard about five hours as being the amount of protected learning time whilst on a hub placement. Ms Pollock said this would have been made clear by the university and that it was possible that the claimant had missed being informed of this due to absence.
17. In respect of supervision of the claimant's activities whilst at his hub, Ms Pollock said that the level would depend on whether the claimant was doing something he was already competent at and the level of risk associated with task. He would not necessarily be directly supervised whilst doing a task but would talk through the task with a supervisor afterwards and might engage in

reflective practice. The claimant had worked at MHCAS since September with direct patient engagement and would have had experience on observations and personal care and would be able to do tasks like providing patients with breakfast unsupervised. If he was concerned that a particular task was one he was not competent to perform, that was a concern he should raise at the time.

18. There was evidence given by both sides about whether cleaning formed a part of the claimant's role. The claimant said that any cleaning should be done by the domestic staff. The respondents' witnesses said that cleaning formed a part of the work of support workers and nurses; it was part of infection control. Ms Pollock said that jobs like mopping would be carried out by domestic staff although cleaning up bodily fluids would be done by nurses. Supporting service users might also involve supporting them to clean their environment.
19. On 22 March 2022, the claimant was absent from his university placement due to sickness.
20. On 28 March 2022, the claimant commenced his TNA role on Laffan Ward. The claimant told the Tribunal that he started on Laffan Ward with no induction and was told by a member of staff he should be prepared to please everyone. He said that he was told off on his first day on the ward for using his phone when he was checking for banks shifts. He said that other staff were always using their phones.
21. We heard some evidence from Mr Gumpo, a band 5 nurse on Laffan Ward, who worked with the claimant a few times. His role in relation to the claimant was a mentoring role but he said that he did not feel able to teach the claimant as he did not show an interest in learning; he was not proactive.
22. Mr Gumpo recalled an episode where the claimant failed to escalate a patient's concerning vital signs. When that became apparent, the priority was the patient. By the time situation was revealed, he did not have time to teach the claimant about what had gone wrong but he said that he had a plan to liaise with the claimant's mentor.
23. Between March 2022 and July 2022, the claimant alleged that Mr Nkurunziza on five occasions allocated tasks to the claimant that were unrelated to his job role and spoke inappropriately to him.
24. The claimant gave evidence about an incident on 26 June 2022 which we discuss further below. Otherwise we had almost no further evidence about the five occasions when tasks were inappropriately allocated and no evidence about the other times when Mr Nkurunziza was said to have spoken inappropriately. The claimant did point to an occasion on 12 June 2022 when

he was required to attend another hospital site with a patient and carry out a one to one duty without supervision and he said that he should not have been monitoring patient vital signs.

25. The claimant had various absences. Between 11 and 13 April 2022, he was on sick leave and on 29 April 2022, he was on bereavement leave. From 5 – 10 May 2022, he was again on sick leave.
26. It is convenient to summarise the claimant's other absences in May and June 2022:
- 19 May 2022: The claimant did not attend university;
- 23 May 2022: The claimant was on sick leave from university for several days;
- 27 May 2022: The claimant was on sick leave;
- 6 – 10 June 2022: The claimant was absent from university;
- 13 June 2022: the claimant was absent from work.
27. On 5 May 2022, Ms Madzokere wrote to Ms Pollock:
- Just to notify you of another absence from TNA Bassey today.*
- His absence is becoming a concern and he reports absence late as you can see from email below.*
- Considering that he emailed yesterday that he was ready to come back today after grieving losing his grandparent last week.*
- The team is now expressing concern about his attendance becoming unpredictable.*
- I will do a RTW interview to explore his gastro problems which have become frequent & update you.*
- The team is concerned about his learning wondering whether he will be able to meet his objectives due to his absence and also lacking the drive to initiate his learning.*
28. On 12 May 2022, Ms Pollock wrote to Ms Madzokere:
- am speaking with Bassey today to undertake a return to work as he will not be with Laffan again until his Hub starting 13/6/22 and I didn't want it to be left this long until we meet re his sickness.*
- I was on Health Roster looking at this and for some reason, he was not on Health Roster on Laffan from today – are you aware of this and do you know why? He is on the rota up until 11/5/22 however he was sick on the 10/5/22 which isn't recorded yet.*

*Even though he is not working with Laffan, his Uni time and Spoke time does still need to be represented on the rota.*

*We can discuss tomorrow but just wanted to know why he has come off if you know this?*

*Re his sickness – I will need to establish with him if he is already on monitoring and if so, what.*

*In the past 12 months he has had 23 days plus the 9 days he has had since starting the TNA programme.*

*At a minimum, when he is back, you will need to undertake the informal sickness meeting with him as his line manager. I can talk you through this if you would like. I have emailed his managers at MHCAS to check re stage of monitoring he is on.*

29. There was a return to work meeting after the 5 – 10 May 2022 absence held by Ms Pollock with the claimant by telephone on 12 May 2022. The claimant reported various stressors in his home life. The claimant agreed to an occupational health referral.

30. On 23 May 2022, the claimant was on sick leave from his spoke placement with food poisoning and was unable to attend later that week.

31. On 25 May 2022, the claimant emailed Ms Pollock and said that he was taking anti-depressants and may need reasonable adjustments to finish his course: *Apart from other private issues affecting my health I am also dealing with civil dispute with my landlord due to harassment and unauthorised access to my rented property, which have resulted to me not feeling safe to stay in the property I am paying for.*

*A lot had happened the past few weeks and I have been trying to try keep up with my study but haven't been easy.*

32. Ms Pollock replied:

*Thank you for sharing a little about what you have been having to deal with. Please let me know how I can support you and please look also at PAM assist through the Trust and through the Student union at University for further support options. Am attaching a presentation by PAM assist that tells you about what they offer and how to contact them.*

*Unfortunately, there are minimum requirements to be completed during the apprenticeship, 100% attendance at University, 100% attendance during all Spokes and during both hubs. Any time missed will have to be made up during this time. There are possibility's to get extensions with the academic side of things but this has to be done through the University and you have to apply before submission. You also have to work full time hours – it is not possible to work any less or have flexible working.*

*The apprenticeship requires full commitment to be able to complete as you not only have all the academic side of things, but you are a substantive staff member and have all of this side to meet as well.*

*I can see how much you are dealing with and I suggest you take some time to think if you are able to commit at this time to undertaking the TNA apprenticeship. I am happy to support you and am sure you are capable but there is no ability for flexible working and you have to submit all academic work, attend all University weeks – on line and in person and attend Spoke placements and complete your Hub placements with clinical competencies to achieve during this time.*

*Happy to talk this through with you and I do hope you are able to return to Spoke on Friday.*

33. From 6 – 10 June 2022, the claimant did not attend university and his tutors were in touch with Ms Pollock. Ms Pollock wrote to him:

*I have been sent an attendance list today by Middlesex University and I am shocked to see you are reported as non-engaging for the entire week.*

*I need to understand why this is, where you have been for the week and who and when you have discussed this with anyone at the University, anyone from the ward and why you haven't contacted me either.*

*Please let me know asap what is going on*

*In further correspondence she said: This has potential to impact if you can stay on the apprenticeship as attendance at Training weeks is an NMC requirement so the hours you have missed may impact if you can meet the NMC requirements.*

34. On 13 June 2022, the claimant was absent from his work on Laffan Ward. Mr Nkurunziza emailed him:

*I hope all is well.*

*I rang you yesterday asking you if you are coming in Monday and you replied positively "yes".*

*We rang you again requesting if you can help with covering SB at St. Thomas's Hospital you declined, stating that you are supposed to be learning on your placement and doing your essays.*

*This morning you were meant to be on the ward at 07:30am you did not turn up neither did you try to make any effort to contact the ward regarding your circumstances this morning??*

*Your absence today caused a huge disruption towards patient care due to inadequate staffing.*

*Please can you arrange a meeting with Jo.*

35. The claimant replied:

*I emailed marble [Madzokere] concerning my absent this morning due to ill health. I apologise as my phone battery was dead and couldn't ring the ward. I spoke to you yesterday saying I am on hub placement for the next 6 weeks and should be learning from the nurses. I never mentioned anything about coursework to you.*

*Besides, I don't appreciate the ward calling me and being stressed on my day off yesterday on works plans for the next day. I rather deal with work problems and plans when I am at work and not when I am with my family and dealing with my private life.*

*I will be in for me next shift on Wednesday.*

36. Ms Pollock then wrote to the claimant to say that this was not the correct absence reporting process and she had been trying to get in touch with him.
37. On 15 June 2022, there was a meeting between the claimant and Ms Pollock to discuss his levels of absence and concerns relating to his conduct / performance.
38. They discussed his high level of sickness and that this would trigger the informal stage of monitoring and the problems created by him not reporting his sickness absence correctly. Ms Pollock wrote in her note of the meeting:

*You have been described as lacking initiative, not showing an interest or been inquisitive, coming across as argumentative when asked to undertake tasks. You yourself reported feeling unmotivated and I think this is likely to be some of the reason you have been presenting this way.*

*Your time keeping is poor and there has been the use of mobile phone on the ward. You have reported this was raised and once you were aware of this, you have no longer been using your phone in ward areas. This will need some ongoing monitoring but I was pleased to hear you have addressed this issue. I also recommend you read the policy on the intranet about mobile phones – please let me know when you have done this.*

...

*You raised your concerns as well. You spoke about feeling as staff have not been supportive of you, that you have felt like you are been “pushed around” and that your time is not structured. We explored this and you mentioned you felt it was unfair, for example from today, that you had been asked to undertake what you perceived as more task than the other band 3 and that you felt all task should be given out evenly.*

*I explained that when delegating tasks, this is done on the skill required to undertake the task, the staff you have available and that there are occasions this is not done evenly. Using today as an example, you have not recently been on the ward, you are not familiar with the patients, you are not familiar*

*with the procedures. This then meant it was appropriate to allocate you to undertake more escorted leave and observations than the other staff on the ward.*

*We did however also discuss that staff should not have said to you, “you need to be nice to me or I will not complete your assessments”. Mable and Mirabel have agreed to ensure this is not repeated as it was inappropriate to say.*

*I also put it to you, the staff have not had an opportunity to get to know you due to your high levels of sickness absence and so they are not aware of your skill set yet. We discussed the need for you to put yourself forward, to be inquisitive, to ask questions, to ask to undertake tasks. I also asked that Mable and Mirabel also speak with the team and ask they include you in the things they are doing especially around the tasks generally given to registered Nurses, such as medication*

39. On 17 June 2022, there was a meeting between the claimant and Ms Madzokere to discuss the claimant’s return to work.
40. The claimant said in his witness statement that Ms Madzokere told him in the meeting that she would advise him, like her son. He said that she later agreed she had said this and suggested it was an African culture thing. The claimant’s case was that both Ms Madzokere and Mr Nkurunziza discriminated against him because of age. Ms Madzokere denied that she had said this. She said she did refer to the claimant being a young man at the outset of his career when trying to encourage him.
41. Ms Madzokere emailed Ms Pollock:

*I had a good chat with Bassey for the first time yesterday.*

*I did my best for him to have a cognitive reframing of his mind, having the right attitude towards work and his studies.*

*Having good work ethics, acting professionally as a good role model to other trainees and colleagues if he is to be registered on the Register. He initially displayed a negative attitude towards the team with one particular member of staff. I reassured him that particular member of staff is so willing to work with students and Assessor/Supervisor training of students and is zealous to take on students. All other staff members are willing to support him in whatever way they can for him to achieve his learning objectives on the ward. The other members of the MDT are very supportive and he can request to shadow an OT or psychologist, attend ward rounds and chaperone doctor doing physical exam or undertaking ECG, administering medications under supervision, developing care plans, making referrals and etc. The learning opportunities are huge. I reassured him too that I have evidence of the positive feedback we have received from former students on Laffan for him to read online and gave an example of NQN Ade who came back to work on this ward and also another one Sunny who was recently interviewed who wants to be allocated*

*to Laffan. I encouraged him to pull up his socks and work hard and achieve his certificate. I also advised him that if he doesn't change, he is likely to be dismissed from the course and not to be given that opportunity again by the Trust and if he is struggling, he can withdraw from the course now and resume later. At the end Bassey was appreciative of the chat and promised to work hard, be inquisitive and proactive in his own learning and seeking support when he needs it. He apologised of his behaviour and promised me to see change for the good.*

*I then did his RTW interview after meeting up with his Assessor Mirabel to discuss his learning objectives. Mirabel can update you of their conversation. I am going to refer him to Occupational Health before closing of the day today as I did not have a chance yesterday. He worked long day yesterday. He appeared amazing, a different young man altogether, Mirabel is my witness as they worked both together yesterday. He was proactive, no inappropriate behaviours I witnessed or reported. I received good feedback . He apologised to Andrew yesterday about his replies to him. He seemed to have enjoyed his day on Laffan yesterday than any other day before. We look forward to see a great improvement in the months ahead. Best wishes to him!*

42. On 22 June 2022, the claimant was referred to occupational health.

#### Events of 26 June 2022

43. Mr Nkurunzziza was the nurse in charge when the claimant was on shift. The claimant alleged that Mr Nkurunzziza shouted at him when the claimant said he should not be doing back to back one to one observations as he was a student on a placement and complained that Mr Nkurunzziza had allowed a female staff member to leave the ward on non work related leave for more than three hours.
44. The claimant said that Mr Nkurunzziza pointed his hand in the claimant's face and said, 'Get out of here, you small boy. If you don't want to continue working then go home'. He followed him out of the office and continued screaming at him in the presence of patients.
45. In the claim form, although not in his witness statement, the claimant said that Mr Nkurunzziza also said that the claimant was 'not up to my son's age'. Mr Nkurunzziza denied referring to the claimant as a small boy or making reference to his son; he did not have a son.
46. Mr Gumpo gave an account of the events of that day. He said that Mr Nkurunzziza was responsible for allocating tasks that day. The claimant was allocated the breakfast duty. Mr Gumpo said that this was a role anyone would do including nurses. Mr Gumpo said that one person would be assigned the task but they could ask others to assist as required. The assigned person would knock on patients' doors to encourage them to come



to breakfast and then serve the breakfast and clear up the cutlery and crockery. Cleaning was done by domestic staff. Another member of staff could be asked to call patients if the assigned member of staff was busy serving patients.

47. Mr Gumpo said that he was approached by an HCA that day to say that the claimant had left a mess in the dining room. He went to the dining room and saw the mess and reported it to Mr Nkurunzziza as the nurse in charge.
48. He said that Mr Nkurunzziza was then trying to explain to the claimant that the shift was meant to be a team effort and staff could not be selective about the tasks they were willing to do. He said that the claimant was resistant and very argumentative and Mr Nkurunzziza raised his voice, although he did not shout. Mr Gumpo did not consider Mr Nkurunzziza to have been unprofessional. The claimant was charged up and acting unprofessionally.
49. Mr Gumpo said that there had not been a staff member off shift for three hours, as the claimant suggested. He did not recall Mr Nkurunzziza saying 'small boy' or 'go home' and said that Mr Nkurunzziza was not that kind of character.
50. Mr Nkurunzziza said that he allocated the claimant breakfast duty that day. The duty involved opening the dining room, directing patients to breakfast and clearing away and closing the dining room after patients had eaten. Patients reported to staff that they had not eaten. A member of staff reported to Mr Nkurunzziza that the claimant told a patient it was their fault they had not eaten. A member of bank staff reopened the dining room for breakfast and reported that it had been left in a mess, Mr Nkurunzziza approached the claimant and expressed concern about the patients not having eaten and the dining room not having been cleared. The claimant replied that he was not a cleaner. Mr Nkurunzziza said that the claimant came to see him to complain about tasks on a number of occasions that day, becoming more argumentative and aggressive. Mr Nkurunzziza became frustrated eventually and raised his voice, saying something like 'you have come in five times to complain about allocations. If you're not up for working today, come back with a clear mind another day'. He subsequently told the claimant he could go home if he was not feeling well or was not up for working. The claimant decided to stay but continued to be difficult to work with, questioning tasks and failing to complete tasks.
51. The claimant gave some evidence about why it was inappropriate for him to have been assigned the breakfast duty and expected to clear the crockery and cutlery:
  - Cleaning was for domestic staff;
  - There were bank band twos who could have done the breakfast;

- It was not safe for a single person to be allocated to the breakfast duty and the claimant should in any event have been supervised at all times. If he had to go to call patients, leaving other patients unattended in the dining room exposed those patients to hazards.
52. He said that Mr Nkurunzziza did not listen to him when he said he was allocated duties not related to his role because he was young.
53. Also on 26 June 2022, Mr Gumpo spoke with Mr Nkurunzziza because he had been searching for the claimant as the claimant had been allocated the task of patient observations. He noticed that no one was observing the patients. He found the claimant on his phone in the staff room. Mr Gumpo told the Tribunal that there was a risk to patient safety if patients were not being observed and the claimant had not communicated to other staff that he needed a break.
54. Mr Gumpo related a number of other concerns he said that he had about the claimant to the Tribunal. On one occasion, the claimant took a patient off ward without signing the patient out; this was a patient who did not have leave to go outside. On another occasion he was monitoring a patient's vital signs but failed to report a concerning result which should have been escalated without delay to the nurse in charge.
55. The claimant then sent a written complaint to Ms Pollock about working with Mr Nkurunzziza:
- I will like to speak to you concerning one of the nurses Andrew as I really don't think I can continue working with him if he continues treating me the way he has been. I don't feel like I am part of the team anything I am working with him, and I really don't think I can continue working with him. It was in his presence, with him in charge of the shift I was first told in in the office by Alex in my first week I must be ready to please the staff in the ward if I wish to pass my course and training .*
- I chose this Job not because I wish to please anyone who is not a patient or be picked out for any little errors.*
56. Ms Pollock forwarded the email to Ms Madzokere and others, saying it raised a serious concern and asking how it would be investigated.
57. Also that day, Mr Nkurunzziza sent Ms Madzokere an email raising concerns about the claimant's behaviour:
- I just want to raise my concerns about Bassey (TNA). On the Sunday the 26/06/22, he was very difficult to work within the team.*
- I am someone who rarely gets frustrated by character, but at some point I asked him to go home if he is not willing to work as part of the team*

*I did not want his lack of flexibility to impact on our patient care. This started in the morning, he did not call the patient for breakfast and when one of the patient asked him if he could have breakfast he said, "No it's your fault you come for breakfast" And when he finished doing breakfast, he left the dining room in a mess. One of the HCA came and complained to Terrel subsequently informing when I approached he became very defensive and argumentative*

*I did the allocation and he started complaining that, he is doing too much and yet everyone was equally delegated in terms of tasks. He said "I will not do the last 1:1 and I informed him that your choice , but just put it on record because that, patient is high risk patient in terms of sexually assaulting other patients.*

*When he came of the 1:1 He just disappeared and Terrel kept looking for him and he was no where to be found*

*He spent most of the day during 1:1 on his phone even plugged close to bed room 3 according to Terrel who witnessed this happening.*

*When he is approached by a asking to go on leave, he doesn't consult or communicate to the NIC. He does things his way.*

58. On 27 June 2022, the claimant sent a second written complaint to Ms Pollock raising various concerns:

*I really don't think I can continue working with Andrew. Laffan ward is unsafe enough without cameras but having staff members working together behaving like a mini cult is something I can't deal with. As soon as I raise a concern, they start making allegations of me using my phone, and all sort of nonsense but sincerely everyone uses their phone on the ward.*

*It's like a mini cult with Andrew he does whatever he wants and then gets those bank staffs and other complaisant permanent staff to support him as a witness. I have really tried my best the past few weeks doing my job caring for the patients but nothing is ever enough and will never be with Andrew.*

*I believe the two bank staffs who used to work for MHCAS as security guards and briefly as support workers already gone to him saying I was part of the reason they were not being booked to work there, I have actually overheard one of the bank staff saying to Andrew the king of MHCAS is working here as one of us now(referring to me). I don't know if Andrew feels threatened knowing I will never be part of his mini cult. This bank staff have been complaining to me that Nigerians have taken over MHCAS, I really don't know what that means, but I am beginning understand what they meant now as I myself I am Nigerian, but to be honest I don't care about background when I am doing my job.*

*Yesterday me and Andrew had an argument and you can't believe this man was shouting and screaming at me in presence of PATIENTS and when I told him it was unprofessional, he replied saying the patients are normal people*

*like us. Maybe he has been in the ward too long and forgot its still a work environment. He wants me to be complaisant, and call him sir sir sir like his preferred bank staffs and other staffs in his mini cult. I DON'T ACCEPT SOME PART OF MY AFRICAN CULTURE, FOR EXAMPLE BOWING DOWN TO ELDERS WHEN I AM AT WORK, AND THE EARLIER THIS PEOPLE SEE I WILL NEVER DO THAT THE BETTER FOR THEM. THEY ARE NOT MY PARENTS THEY ARE JUST WORK COLLEAGUES.*

*I AM EVEN SCARED TO RAISE ALL THIS WITH MARBLE BECAUSE I AM SCARED HOW THE MINI CULT WILL RESPOND. I UNDERSTAND MARBLE MAY NOT MEAN ANY HARM BUT THE LAST TIME WE HAD A MEETING SHE ALSO STARTED ADVISING ME SAYING SHE IS ADVICING ME LIKE MY MUM. I REALLY DON'T LIKE TALKS OF SUCH OR BEING ADIVISED LIKE THAT, BUT I HAVE GOT USED TO IT BEING AN AFRICAN.*

*This bank staffs have less than 4 months experience working in health care compare to me whom have a broad knowledge of what I am doing, but still when I am working with Andrew, he puts them of more importance and try push me to the side do the less important jobs. I can't even mention how I am overworked without any time to breath when Andrew is in charge, yet after breaking my back doing everything, he still finds something to say I didn't do, and sometimes even says I didn't do the job I did because the work is not really structured, for example the one-to-one they can decide on what to document on the system on how it was done, so I could be on one to one for the whole day but the system it can documented as I didn't do any one to one. He doesn't treat the permanent staff in his ward the way he treats me and its concerning. I don't learn nothing from him when working. I have concluded no matter what I do it won't be enough for Andrew. That place is like a cult and even with S regardless if she is racist or abusive towards staff still don't permit them to treat her in certain ways, I have personally seen them treat her during Andrew's shift.*

59. Ms Pollock responded to the claimant that day. She said that she spoke to him on the phone after that, thanking him for raising his concerns, providing reassurance and advising him of next steps - that his concerns would be investigated.
60. Also on 27 June 2022, the claimant received a notification that a holiday request he had made had been denied.
61. That same day, the claimant complained to Ms Pollock and Ms Madzokere about the denial of the holiday request:

*I made annual leave request many weeks ago but had no reply then cancelled it few days ago thinking it was not done properly. I made the request again few days ago and surprisingly just saw it has been denied today. The HR said I should speak to my manager who I believe will be you. It's really unwise for whoever denied it to have done so in times I am just making complaints.*

62. Ms Madzokere wrote back to say she had not received notification from Health Roster (the IT system on which leave was recorded) about the claimant's leave. She asked him to confirm the period of leave.
63. As we understood the system, Health Roster was supposed to send notification of a leave request to an employee's manager for approval.
64. Ms Madzokere said that she investigated with Health Roster staff, who said there had been a glitch resulting in her not being sent the requests. The Tribunal saw a thread of emails between her and Ms Pollock where they appeared to be trying to understand what had gone wrong with the claimant's leave request.
65. Again that same day, Ms Madzokere approved the leave request and asked the claimant to check it was correct.
66. Ms Pollock's evidence was that this was a known glitch in the system and had been rectified. Other staff had also been affected. It had nothing to do with the claimant's complaints.
67. On 27 June 2022, Ms Madzokere began investigating the concerns the claimant had raised in his email.
68. The claimant said that Ms Madzokere should not have been assigned this investigation as he had said in his complaint that he was scared to raise the matter with her. Ms Pollock's evidence as to why the matter was sent to Ms Madzokere for investigation was that it was that it contained a safeguarding issue about patient care had to be prioritised. As part of the safeguarding process, the issue had to be reported to the ward manager. Ms Pollock also forwarded the email to the matron and senior service manager.
69. In investigating the complaints, Ms Madzokere spoke to a number of staff members who were potential witnesses to the complaints. She also had to speak with a number of individuals in HR and her own line managers as well as Ms Pollock. There was a list in the bundle of these individuals.
70. On approximately 28 June 2022, the claimant said that a male nurse commented about the claimant's private life, depression, medication and landlord problems and that a female support worker commented about his private life and 'baby mother' problems.
71. The claimant said that a female support worker told him in a telephone call that 'we do not want you here'.
72. These were the allegations from the list of issues. The claimant did not add a great deal of detail in evidence. He did not name the male worker in his

witness statement but in oral evidence said that it was Poris Mathew. In his statement, he said something different about what Mr Mathew had said. He said Mr Mathew said that what he learned at university and what happened on the ward were very different, He said that the ward was a jungle. He said that two workers were joking about his depression and mocking him. Ms C Hakizmana told Mr Mathew that the claimant was on medication, having landlord problems and baby mama problems. He considered that his depression must have been revealed by Ms Madzokere as he had only revealed it to her (at his RTW meeting). The claimant said in oral evidence:

*They were trying to make me frustrated and miserable even before the investigation started. I could see in their faces [ie the other workers] that they were aware of the whole situation.*

73. As to the member of staff from another ward, the claimant said in his witness statement that he received a telephone call from a female staff member from Coral Ward after it had been suggested the claimant work on Ruby Ward to separate him from Mr Nkurunzziza. The woman from Coral Ward asked him if he wanted to come work on Coral Ward. The claimant asked if that was the new plan and the woman replied that he should not come to Coral Ward as they also did not want him there.
74. Between 29 and 30 June 2022, Ms Madzokere and the claimant liaised regarding the claimant's shift on 1 July 2022. Ms Madzokere was struggling to separate the claimant and Mr Nkurunzziza and both were rostered that day. Mr Nkurunzziza was needed as charge nurse that day and the claimant did not want to move his shift. Ms Madzokere therefore arranged to redeploy the claimant to Ruby Ward that day.
75. On 30 June 2022, there was an investigation meeting between the claimant and Ms Madzokere about the claimant's complaints.
76. On 1 July 2022, the claimant claimed that Ms Bih stopped him from working on Laffan Ward. He wrote to Ms Madzokere to complain.
77. Ms Bih gave an account of events to the Tribunal. She said that she worked the night shift that night and Mr Nkurunzziza was due to be nurse in charge on the day shift.
78. She was told by Mr Nkurunzziza that the claimant was working on Ruby Ward as the two had issues working together.
79. She conducted handover from 7:30 am. The claimant arrived late at 7:45. She paused handover and told the claimant that he would be working on Ruby Ward. She said the claimant became confrontational and said he was working on Laffan Ward. She continued handover and spoke to the claimant privately afterwards in the staff room. The claimant showed her an email with Ms

Madzokere which showed the plan had been changed. She said that the claimant should wait for Ms Madzokere to arrive. She wanted someone senior to confirm the change in plan.

80. When Ms Madzokere arrived, she explained that there had indeed been a change in plan and that the claimant could work on Laffan Ward.
81. The claimant's account of this incident was that he was 'harshly and angrily' stopped by Ms Bih and told that he would not be working on the ward that day. He could see in her face 'hate and rage'. After stopping the handover, she said that she would see him in private afterwards. He felt humiliated in front of other staff and started 'having nervous breakdown and my hands were shaking'.
82. In the office he told Ms Bih to calm down and look at the text message from Ms Madzokere. She appeared agitated. When he showed her the message she said, 'OK that's fine you can work'. Then he went into the staff room. He was bowing his head with tears in his eyes. Ms Bih came back and told him he should not start work until the manager arrived. She could see his bowed head. He decided to go and buy cigarettes and was having one outside the hospital. He saw Ms Bih leaving and decided he could not continue in that ward. He went home and did not return.
83. Between 1 July 2022 and November 2022, the claimant was on sick leave.
84. On 5 July 2022, the claimant wrote to Ms Pollock, asking to change ward:  
*Please I would like to know if there is a chance, I could change my ward to maybe one in Highgate or any other department around the trust. I really don't think laffan ward is helping in my development, they don't even know what a TNA is. Looking forward to hearing from you.*
85. Ms Pollock replied:  
*I can imagine things much be very stressful for you for you to take sick leave during your Hub as all this time has to be made up.*  
*There is not an easy option to swap you as I have TNA in most areas.*  
*I will look into this but please keep me updated re how much sick leave you will be taking and let me know when you are back at work*  
*You are also welcome to give me a call for support if this is helpful but I don't want to bother you while you are not well and off sick at the current time.*  
*Will come back to you re change of location once I have established options*

86. There was correspondence that day between Ms Madzokere and Ms Pollock in which Ms Madzokere said that the claimant wanted to be redeployed and Ms Pollock said that it would not be straightforward to get a new placement but she would look into it.
87. She told the Tribunal that she did begin to investigate at that point although she could not allocate the claimant to a placement until he was ready to return. It was clear to her that he could not return to Laffan Ward.
88. On 11 July 2022, there were emails between Ms Pollock and senior lecturers at Middlesex University discussing the possibility of the claimant taking a 'Break in Learning'. Ms Pollock said that she raised concerns with the University because of the amount of sickness absence the claimant had had, both from his placements and from his university course.
89. Ms Pollock emailed the tutors saying she wanted to start a conversation and she then set out the claimant's absences. She continued;

*I am aware usually any absence of 4 weeks or more will ensure a break in practice is enacted however he has so far had equivalent of over 4 weeks absence during essential aspects of the TNA apprenticeship, 1 week in Spoke 8 days in training weeks and so far 24 days at least in his first Hub assessed time.*

*The Trust will deal with his attendance under their processes however I am very concerned about him staying on the apprenticeship at this time.*

*We have referred him to Occupational Health and he does have underlying depression and anxiety which is strongly influencing his absences.*

*There are also issues with his Hub placement – he is requesting to move. I can facilitate this if needed.*

*I would like to know your thoughts? My thoughts are he should have a break in practice, address his current issues and return when in a better state to be able to fully attend all aspects of his apprenticeship.*

90. Ms Feeney, senior lecturer adult nursing, wrote back:

*I also share your concerns related to the amount of time that he has had off and propose that we wait for him to return from his current certified sick time as you have indicated that this may be extended, which will possibly trigger a Break in Learning. If he does return prior to the 4 week absence I suggest that we need to meet with him to address how we can further support Bassey in university and in practice.*

91. Ms Whitehead, another senior lecturer adult nursing, agreed that a Break in Learning would be suitable.



92. On 19 July 2022, the claimant wrote to Ms Madzokere saying that he could not return to Laffan Ward because of the health and safety risk it posed to him, at least until the investigation was concluded.

93. In the lead up to and on 20 July 2022, Ms Madzokere's notes of her investigation record the following:

*MM had meeting with Matron LA and Preceptorship Lead JP and reported her findings to the meeting. It appeared that most of TNA BI's complaints were subjective and did not carry much weight due to lack of evidence and witnesses. BI too had requested to be moved from Laffan ward as he felt unsafe to work there hence it was concluded that Preceptorship Lead JP will look for BI's redeployment to one of the wards preferably at Highgate Mental Health Centre. Another option was for BI to withdraw from the course since there were reports that he was not doing well at his studies. MM will ask another Charge Nurse to meet up with TNA BI regarding the issues raised about his performance and develop a support plan for him on how he can improve his performance.*

*20/07/22 received a MS Teams call from PLN JP [Ms Pollock] that she had found an alternative placement for TNA BI on one of the wards at Highgate Centre*

94. Ms Madzokere wrote to the claimant that day:

*I hope you are getting better each day. For your reassurance, Jo is currently busy trying to get you redeployed to another ward possibly at Highgate Centre. We heard your request & considered it. You will hear from her soon.*

*Please look after yourself and keep in touch. Wish you speediest recovery and best wishes in your studies.*

95. Ms Pollock emailed the claimant to say that his sick note expired the following week and ask if he felt well enough to return. She offered to schedule a call with him to discuss the options.

96. The claimant replied that he was not certain about returning and that it would depend on the available options.

97. On 21 July 2022, Ms Pollock said that she spoke to the claimant about his continued absence. He indicated he would be off work for several further weeks. She told him that would likely trigger an automatic Break in Learning as he would have had 28 days in a row. The claimant agreed that a Break in Learning would be triggered and agreed to take the break from 1 July 2022. He agreed he would return to his substantive role in MHCAS.

98. In oral evidence about this conversation, Ms Pollock said that the claimant said that he was still struggling. He was unhappy and stressed about things on Laffan Ward. She discussed the problems with his university work and they

agreed the Break in Learning. He agreed he needed to concentrate on his emotional state so he could re engage with the course. Once he was ready to return to the apprenticeship, it would be to a different area.

99. Ms Pollock wrote to Ms Madzokere to explain the arrangements on 16 December 2022:

*I had a full conversation with him around his options, openly discussed how much sick leave he had had since commencing the course 14/3/22, also confirmed we would move his Hub area due to the concerns he was having on Laffan plus the concerns expressed about him while on Laffan was an option discussed with him. He confirmed during this call he was extending his sick leave as was not fit yet to return. He agreed and I also recommended he take a break in learning (BIL) and when he was feeling better we could look for him to re-join at a later cohort.*

100. The claimant's account of what had occurred what that Ms Pollock rang him and said 'We have decided to take you off the course and return you to MHCAS your previous department and when you are ready to start this course again we can have a discussion.'

101. On 22 July 2022, Ms Pollock advised Middlesex University of the claimant's Break in Learning.

102. She also sent the Break in Learning form to the claimant:

*Please see attached the Break in learning form required for any learner who has taken a break from their apprenticeship programme.*

*Please can you provide your signature and send the form back via email.*

*If you have any queries, please do not hesitate to contact me.*

103. Ms Pollock's evidence was that the Break in Learning had nothing to do with the protected disclosure the claimant made about the patient. She was grateful to him for raising concerns about patient safety. He was on the point of triggering an automatic Break in Learning due to the length of his absence.

104. On 26 July 2022, the claimant provided a statement of fitness for work citing depression, mixed anxiety and depressive disorder.

105. On 24 August 2022, the claimant wrote to Ms Pollock:

*I appreciate the opportunity that was offered to me to study as a TNA but my experience in the course had given me a second taught [sic] and my conclusion is I don't think this is something I would like to continue.*

106. On 30 August 2022, the claimant submitted a formal grievance dated 24 August 2022. This referred to his previous complaint, which he felt had not been resolved.

107. On 21 September 2022, the claimant did not attend a meeting with Ms Madzokere called to discuss her findings in relation to the complaints he had made.
108. On 5 October 2022, Ms Madzokere sent the claimant an 'informal grievance outcome letter'.
109. In early November 2022, Ms Patterson made arrangements for the claimant to see Occupational Health.
110. On 13 November 2022, the claimant returned from sick leave to his previous role at MHCAS. He alleged that his desk was secluded in a corner away from his colleagues. He told the Tribunal that during this period, he was at various desks. Some had computers not connected to the IT system he had to use. On one or more occasions had to use a desk behind some cabinets which blocked his view.
111. On 21 November 2022, Ms Patterson held a return to work and supervision meeting with the claimant. At this meeting, the claimant alleged that Ms Paterson made insulting comments to him.
112. The background was that Ms Patterson was not the claimant's line manager but had agreed to cover for the claimant's line manager in order to meet CQC deadlines. She knew very little about the claimant.
113. The claimant said that during the meeting, Ms Patterson abused him. She asked him how he was able to feed his daughter on such a low wage. She told him he was a failure. She said that Laffan Ward was a 'shitty department' and 'that anything happens there stays there'. She told the claimant to get a van or learn to be an electrician. She said that all eyes were on the claimant and that nobody wanted him in the Trust. She told him that he was a black man and nobody cared about him. In order to progress as a nurse, he should be ready to take certain treatment. When he reached the top he could do whatever he wanted.
114. Ms Patterson denied that she made these offensive remarks to the claimant. She followed the indicated topics in the forms for a supervision meeting and a return to work meeting to structure the discussion. They discussed the claimant's absence from work and the claimant told her he suffered from stress and anxiety. The claimant told her that there had been issues on Laffan Ward but he did not wish to discuss these further. Ms Patterson told the claimant that a referral had been made to Occupational Health and that they would discuss any potential adjustments the claimant might require if there were any recommendations from Occupational Health.

115. The claimant said that he did not want to work in the NHS any more and was considering other career options. Ms Patterson said that, in order to be supportive, she mentioned a colleague who worked on a self employed basis as an electrician and that he had become an electrician by taking a three month course.
116. On 25 November 2022, there was an Occupational Health report from Ms L Jacobs, trainee OHA. Ms Jacobs described the claimant as suffering from an acute stress reaction due to events at work. She wrote:
- As you are aware, while Godstime had resumed work on the 13/11/2022, he informs me that he has taken further sickness absence from the 21/11/2022. Godstime describes symptoms of impaired mental health and wellbeing associated with perceived workplace stressors. He reports that his sleep has been impacted and that he has been feeling anxious and worried. Godstime advises me that, while he had felt that he was making good progress prior to resuming work, he perceives that being back in work has subsequently triggered his symptoms again.*
117. On 26 November 2022, the claimant resigned with two weeks notice, His employment with the respondent terminated on 10 December 2022. Thereafter the respondent continued to investigate the claimant's grievance although he declined to be further involved. On 27 July 2023, Ms D May, operational director, sent the claimant an outcome letter. She did not uphold his complaints except for two which were partially upheld. She found that both the claimant and Mr Nkurunziza raise their voices on 26 June 2022 and that there was a miscommunication about where the claimant was working on 1 July 2022.

#### Evidence about depression

118. In a disability impact statement provided by the claimant in a response to a standard Tribunal order setting out in some detail what information the claimant was required to provide in this statement, the claimant wrote:
- My depression started after I was moved to the new department which I faced hell.*
- From the doctor report you can see it was from May 2022 my depression was becoming more serious and affecting my daily activities.*
- It affected me because I was not motivated to continue working with the team because I believed I was being victimised and secluded. I was having anxiety that I will not be able to finish my course and requested to be moved to a new department.*
119. The claimant did not provide medical records predating 2022. In the claimant's GP notes, there were these relevant entries

*10 May 2022: problem : Mild depression (first). Generalised anxiety disorder – mild.*

*11 May 2022: Spoke to pat. over the phone, says needing Med3 for stress, had problems with previous Job and case going to high court, gets stressed with any updates on the case and flash backs, was on SSRis before but managed to come off it as started to go to the Gym and managed to start New Job in NHS Sept. 21, still stressful but not as previous job. issued Sertraline and Promethazine again yesterday, aware will take some time to work*

*23 June 2022: certificate for depression issued*

*12 July 2022 Econsult noted - MED3*

*What is your occupation? The patient said "Trainee Nursing associate"*

*Previous consultations noted*

*Improved on Sertraline 100mg*

*Going to the gym*

*...*

*No suicidal thoughts*

120. The claimant was issued a further certificate on 9 December 2022 covering the period until 6 January 2023 with a diagnosis anxiety and depression.
121. There was no further relevant entry until 24 May 2023:

*Promethazine hydrochloride 25mg tablets 1-2 tablets ON pen for insomnia 28 tablet*

*Problem Mild depression (New)*

*Document eMED3 (2010) new statement issued, not fit for work lh Fit Note Document*

*(Diagnosis: Mild depression; Duration 24-May-2023 - 07-Jun-2023)*

*History Spoke to pat. over the phone, says some stress last few days as been looking for job with no success, been on SSRis in the past for depression, stopped it < 6 months ago and been going to Gym which was helping, housing issues, staying with friends or family. says not sleeping.*

*no SH or suicidal ideation, denies hearing any voices.*

*...*

*Comment Asking for Med3, agreed Med3 for 2 weeks, for Promethazine to help with Insomnia, encouraged to go back to Gym, counselling, f2F review in 2 weeks, aware of SH or suicidal ideation or disturbed to attend ED. not for SSRis yet, only few days history,*

*r/V in 2 weeks first.*

122. There was a further consultation on 25 July 2023 described as a depression interim review. Promethazine and sertraline were prescribed.
123. We were provided with a print out of medications the claimant had been prescribed. Promethazine was prescribed again on 26 July 2024 and sertraline on 27 August 2024.
124. In oral evidence, the claimant told the Tribunal he had had a history of depression, but was doing well when he moved to Laffan Ward. In terms of how his activities were affected, he said that he was not motivated to leave the house or work, he had anxiety and was unable to finish his course.
125. The claimant said that at times when he was not taking medication that did not mean he had recovered. He had other ways of dealing with depression including going to the gym. He returned to work in November 2022 and felt he was getting fitter at that time.
126. When asked in cross examination why his OH report did not mention depression in November 2022, he said he was disoriented from meeting with Ms Patterson at the time.

## **Law**

### Disability discrimination

#### *Definition of disability*

127. Section 6(2) of the Equality Act 2010 provides that a person has a disability if that person:
  - Has a physical or mental impairment
  - The impairment has a substantial adverse effect on that person's ability to carry out normal day-to-day activities;
  - That effect is 'long-term'.
128. 'Substantial' is defined in S.212(1) EqA as meaning 'more than minor or trivial'. In considering whether there is a substantial adverse effect on normal day-to-day activities, the focus should be on what the person cannot do and not what he or she can do: Goodwin v Patent Office [1999] ICR 302, EAT.
129. Schedule 1, paragraph 2 provides that the effect of an impairment is long-term if it has lasted for at least 12 months, is likely to last for at least 12 months, is likely to last for the rest of the person's life or is likely to recur. When looking at whether an effect is 'likely' to last for at least 12 months, a tribunal should consider whether 'it could well happen': Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening) [2009] ICR 1056, HL.

130. A tribunal may, in a case where there is a dispute about the existence of an impairment, ‘start by making findings about whether the Claimant’s ability to carry out normal day-to-day activities is adversely affected (on a long-term basis), and consider the question of impairment in the light of those findings’: J v DLA Piper UK LLP [2010] ICR 1052. It is good practice for a tribunal to state conclusions separately on the question of impairment and adverse effect, but the tribunal should not proceed to those conclusions in rigid consecutive stages.
131. An impairment must be treated as having a substantial adverse effect if measures are being taken to treat or correct it and but for those measures, it would be likely to have that effect: para 5(1), Schedule 1 Equality Act 2010.
132. In a case where there was a history of incidents of depression but no medical or other evidence of the effects on the claimant of these incidents, the claimant failed to establish that the impairment was long term by reason of being recurrent: Williams v Leukaemia and Lymphoma Research EAT 0493/13.

#### Failure to comply with a duty to make reasonable adjustments

133. Under s 20 Equality Act 2010, read with schedule 8, an employer who applies a provision, criterion or practice (‘PCP’) to a disabled person which puts that disabled person at a substantial disadvantage in comparison with persons who are not disabled, is under a duty to take such steps as are reasonable to avoid that disadvantage. Section 21 provides that a failure to comply with a duty to make reasonable adjustments in respect of a disabled person is discrimination against that disabled person.
134. In considering a reasonable adjustments claim, a tribunal must consider:
- The PCP applied by or on behalf of the employer or the relevant physical feature of the premises occupied by the employer;
  - The identity of non-disabled comparators (where appropriate) and
  - The nature and extent of the substantial disadvantage suffered by the claimant.
- Environment Agency v Rowan [2008] ICR 218, EAT.
135. The concept of a PCP does not apply to every act of unfair treatment of a particular employee. A one-off decision can be a practice, but it is not necessarily one; all three words connote a state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again: Ishola v Transport for London [2020] EWCA Civ 112.

136. A claimant bears the burden of establishing a prima facie case that the duty to make reasonable adjustments has arisen and that there are facts from which it could reasonably be inferred, in the absence of an explanation, that the duty has been breached. There must be evidence of some apparently reasonable adjustment which could be made, at least in broad terms. In some cases the proposed adjustment may not be identified until after the alleged failure to implement it and this may exceptionally be as late as the tribunal hearing itself: Project Management Institute v Latif [2007] IRLR 579, EAT. There is no specific burden of proof on the claimant to do more than raise the reasonable adjustments that he or she suggests should have been made: Jennings v Barts and the London NHS Trust EAT 0056/12. The burden then passes to the respondent to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one.
137. By section 212(1) Equality Act 2010, 'substantial' means 'more than minor or trivial'.
138. When considering what adjustments are reasonable, the focus is on the practical result of the measures that can be taken. The test of what is reasonable is an objective one: Smith v Churchills Stairlifts plc [2006] ICR 524, CA. The Tribunal is not concerned with the processes by which the employer reached its decision to make or not make particular adjustments nor with the employer's reasoning: Royal Bank of Scotland v Ashton [2011] ICR 632, EAT.
139. Carrying out an assessment or consulting an employee as to what adjustments might be required is not of itself a reasonable adjustment: Rider v Leeds City Council EAT 0243/11, Tarbuck v Sainsbury's Supermarkets Ltd 2006 IRLR 664, EAT.
140. Although the Equality Act 2010 does not set out a list of factors to be taken into account when determining whether it is reasonable for an employer to take a particular step, the factors previously set out in the Disability Discrimination Act 1995 are matters to which the Tribunal should have regard:
- The extent to which taking the step would prevent the effect in relation to which the duty was imposed
  - The extent to which it was practicable for the employer to take the step
  - The financial and other costs that would be incurred by the employer in taking the step and the extent to which it would disrupt any of its activities
  - The extent of the employer's financial and other resources
  - The availability to the employer of financial or other assistance in respect of taking the step



- The nature of the employer's activities and the size of its undertaking
- Where the step would be taken in relation to a private household, the extent to which taking it would (i) disrupt that household or (ii) disturb any person residing there

This is not an exhaustive list.

### Knowledge

141. An employer is not subject to a duty to make reasonable adjustments if it did not know or could not reasonably be expected to know:
- That the employee has a disability; and
  - That the employee is likely to be placed at a disadvantage by a PCP: Schedule 8, para 20(1)(b) Equality Act 2010.
142. An employer must do all it can reasonably be expected to do to find out whether an employee has a disability: EHRC Employment Code, para 5.15.

### Direct discrimination

143. Direct discrimination under section 13 Equality Act 2010 occurs when a person treats another:
- Less favourably than that person treats a person who does not share that protected characteristic;
  - Because of that protected characteristic.
144. For an individual to be an actual comparator for the purposes of a direct discrimination claim, there must be no material difference in their circumstances: s 23 Equality Act 2010. Whether the situations of a claimant and his or her comparator are materially different is a question of fact and degree: Hewage v Grampian Health Board [2012] ICR 1054, SC.
145. In a direct discrimination case, where the treatment of which the claimant complains is not overtly because of the protected characteristic, the key question is the "reason why" the decision or action of the respondent was taken. This involves consideration of mental processes of the individual responsible; see for example the decision of the Employment Appeal Tribunal in Amnesty International v Ahmed [2009] IRLR 884 at paragraphs 31 to 37 and the authorities there discussed. The protected characteristic need not be the main reason for the treatment, so long as it is an 'effective cause': O'Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor [1996] IRLR 372.
146. This exercise must be approached in accordance with the burden of proof provisions applying to Equality Act claims. This is found in section 136: "(2) if there are facts from which the Court could decide, in the absence of any other explanation, that person (A) contravened the provision concerned, the Court must hold that the contravention occurred. (3) but subsection (2) does not apply if A shows that A did not contravene the provision."

147. Guidelines were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258 regarding the burden of proof (in the context of cases under the then Sex Discrimination Act 1975). They are as follows:

*(1) Pursuant to s.63A of the SDA, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s.41 or s.42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as 'such facts'.*

*(2) If the claimant does not prove such facts he or she will fail.*

*(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.*

*(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.*

*(5) It is important to note the word 'could' in s.63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.*

*(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.*

*(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.*

*(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s.56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.*

*(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.*

*(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.*

*(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.*

*(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.*

*(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.*

148. The tribunal cannot take into account the respondent's explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA).
149. We bear in mind the guidance of Lord Justice Mummery in Madarassy, where he stated: 'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.' The 'something more' need not be a great deal; in some instances it may be furnished by the context in which the discriminatory act has allegedly occurred: Deman v Commission for Equality and Human Rights and ors 2010 EWCA Civ 1279, CA.
150. The fact that inconsistent explanations are given for conduct may be taken into account in considering whether the burden has shifted; the substance and quality of those explanations are taken into account at the second stage: Veolia Environmental Services UK v Gumbs EAT 0487/12.
151. Although unreasonable treatment without more will not cause the burden of proof to shift (Glasgow City Council v Zafar [1998] ICR 120, HL), unexplained unreasonable treatment may: Bahl v Law Society [2003] IRLR 640, EAT.

152. We remind ourselves that it is important not to approach the burden of proof in a mechanistic way and that our focus must be on whether we can properly and fairly infer discrimination: Laing v Manchester City Council and anor [2006] ICR 1519, EAT. If we can make clear positive findings as to an employer's motivation, we need not revert to the burden of proof at all: Martin v Devonshires Solicitors [2011] ICR 352, EAT

### Protected disclosures

153. Section 43B(1) ERA 1996 defines a qualifying disclosure as a disclosure of information which in the reasonable belief of the worker making the disclosure is in the public interest and tends to show one of a number of types of wrongdoing. These include '(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject' and '(d) that the health and safety of any individual has been, is being or is likely to be endangered.'
154. To be a protected disclosure, a qualifying disclosure must be in circumstances prescribed by other sections of the ERA, including, under section 43C, to the worker's employer.
155. Guidelines as to the approach that employment tribunals should take in whistleblowing detriment cases were set out by the EAT in Blackbay Ventures (trading as Chemistree) v Gahir (UKEAT/0449/12/JOJ):
- 155.1 each disclosure should be identified by reference to date and content
- 155.2 the basis upon which the disclosure is said to be protected and qualifying should be addressed
- 155.3 if a breach of a legal obligation is asserted:
- each alleged failure or likely failure to comply with that obligation should be separately identified; and
- the source of each obligation should be identified and capable of verification by reference for example to statute or regulation
- 155.4 the detriment and the date of the act or deliberate failure to act resulting in that detriment relied upon by the claimant should be identified
- 155.5 it should then be determined whether or not the claimant reasonably believed that the disclosure tended to show the alleged wrongdoing and, if the disclosure was made on or after 25 June 2013, the claimant reasonably believed that it was made in the public interest.
156. There is a number of authorities on what a disclosure of 'information' is. It must be something more than an allegation; some facts must be conveyed:

Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325. There is no rigid dichotomy between allegations and facts. A statement must have sufficient factual content and specificity such as is capable of showing one of the matters listed at s 43B(1): Kilraine v Wandsworth LBC [2018] ICR 1850.

157. There is little authority on the issue of what 'likely' means in the various limbs under s 43B(1). In Kraus v Penna plc [2004] IRLR 260, the EAT interpreted 'likely' as meaning 'probable or more probable than not' and said that there must be more than a possibility or risk that an employer might fail to comply with the relevant legal obligation. We note that more recent authorities on the meaning of the word 'likely' in other employment law contexts such as in the context of the definition of disability under the Equality Act 2010 have adopted a lower test for likelihood; in respect of the definition of disability, 'likely' means 'could well happen' but accept that for these purposes we must apply the guidance in Kraus v Penna.
158. The burden of proof is on the worker to show that he or she held the requisite reasonable belief. The tribunal must look at whether the claimant subjectively held the belief in question and objectively at whether that belief could reasonably be held. The allegation need not be true: Babula v Waltham Forest College [2007] IRLR.
159. The reasonableness of the worker's belief is determined on the basis of information known to the worker at the time the decision to disclose is made: Darnton v University of Surrey [2003] IRLR 133.
160. Factors relevant to the issue of whether a worker reasonably believed that a disclosure was in the public interest include:
- 160.1 the number in the group whose interests the disclosure served (the larger the number, the more likely the disclosure is to be in the public interest)
- 160.2 the nature of the interests affected (the more important they are, the more likely the disclosure is to be in the public interest)
- 160.3 the extent to which those interests are affected by the wrongdoing disclosed (the more serious the effect, the more likely the disclosure is to be in the public interest)
- 160.4 the nature of the wrongdoing disclosed (the disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing)
- 160.5 the identity of the alleged wrongdoer (the larger and more prominent the alleged wrongdoer, the more likely the disclosure is to be in the public interest)

(1) Chesterton Global (2) Verman v Nurmohamed [2017] IRLR 837.

161. A worker has a right not to be subjected to a detriment by any act or deliberate failure to act on the part of his or her employer done on the ground that the worker has made a protected disclosure under s 47B ERA 1996.

Causation of detriment / burden of proof

162. Where the employee complains of detriment under various provisions of the ERA 1996, including and s 47B, the tribunal will consider the complaint under s 48. S 48(2) provides that it is for the employer to show the ground on which any act or deliberate failure to act was done.

163. The worker must show:

163.1 that he or she made a protected disclosure and

163.2 that he or she suffered less favourable treatment amounting to a detriment caused by an act, or deliberate failure to act, of the employer

163.3 a prima facie case that the disclosure act was the cause of the act or deliberate failure to act which led to the detriment.

(International Petroleum Ltd v Osipov & others 2017 WL 03049094, EAT and Serco Ltd v Dahou 2017 1RLR 81, CA)

164. Once the worker has done that, the employer must show:

164.1 the ground on which the act, or deliberate failure to act, which caused the detriment was done

164.2 that the protected disclosure played no more than a trivial part in the application of the detriment (Fecitt v NHS Manchester [2012] ICR 372, CA).

**Submissions**

165. We were grateful to the parties for their written and oral submissions.

**Conclusions**

*Issue: 2 Protected disclosure*

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

*2.1.1 What did the claimant say or write? When? To whom? The claimant says he made disclosures on these occasions:*

*2.1.1.1 On or around 26 June 2022, in an email to his supervisor, Ms Jo Pollock, the claimant reported concerns in relation to the treatment of a patient by others. This included what he saw as threatening behaviour and gave an example of withholding certain things from the patient. E.g. saying if you don't do this, we won't give you your Pepsi.*

*2.1.2 Did he disclose information?*

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

*2.1.4 Was that belief reasonable?*

*2.1.5 Did he believe it tended to show that:*

*2.1.5.1 a person had failed, was failing or was likely to fail to comply with any legal obligation;*

*2.1.5.2 the health or safety of any individual had been, was being or was likely to be endangered;*

*2.1.6 Was that belief reasonable?*

*2.2 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.*

166. The respondent accepted that the claimant had made a protected disclosure although the content of that disclosure was not exactly as set out in the List of Issues but was in the terms of the email of 27 June 2022 set out at paragraph 58 above.

*Issue 3: Detriment (Employment Rights Act 1996 section 48)*

*3.1 Did the respondent do the following things:*

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

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

*3.1.1 In the days following the complaint on 26 June 2022, decline all of the holiday requests that the claimant had made;*

167. It is clear from our findings of fact that the claimant did have a leave request refused on 27 June 2022 and then allowed later that day.

168. We accepted that the system for approving leave involved the manager being sent an email by the IT system and that, due to a glitch, Ms Madzokere did not receive the email.

169. In considering whether there was evidence to support the claimant's case that this refusal was caused by his protected disclosure rather than by an IT problem, the only supporting factor we could find was timing. Factors which seemed to us to support the respondent's account that this was an innocent error caused by an IT glitch were the following:

- The speed with which the issue was rectified once it was raised;
- The email trail which appeared to show Ms Pollock and Ms Madzokere trying to work out what had gone wrong. Either this showed that the refusal was not caused by any action of either woman or both were involved in a plot to cover up their wrongdoing and invented the trail to cover their tracks. The latter seemed highly improbable to us;
- It made no sense to the Tribunal that Ms Madzokere would punish the claimant for his protected disclosure by taking action which would be quickly discovered and rectified.

170. There was no evidence from which we could reasonably conclude that the protected disclosure played a role in the initial refusal of the claimant's leave. In the alternative, if the burden of proof passed to the respondent, we were satisfied by the respondent's explanation and that the protected disclosure played no part.

*Issue: 3.1.2 Disclose details of his complaint dated 26 June 2022 to his colleagues, in breach of confidentiality;*

171. This was an allegation against Ms Madzokere. The detriment alleged as we understood it was telling staff who did not need to know about the claimant's complaints, as he put it 'broadcasting it far and wide'.

172. We did not consider that the evidence established that Ms Madzokere had shared the complaints with anyone who did not need to know about them, either in order to investigate them or for example, to provide HR support. There was, therefore, no detriment and this complaint fails on the facts.

*Issue: 3.1.3 On or around 28 June 2022;*

*3.1.3.1 One of the male nurses in the team made comments about the claimant in relation to his private life, including comments about depression and medication and problems with his landlord;*

173. We did not conclude on the balance of probabilities that this occurred. There was no contemporaneous complaint and the claimant did not provide the name of the individual at any point prior to his oral evidence. His account of what was said was not a consistent one.

174. Even if we had accepted the claimant's account we had no evidence at all that Ms Mathew was aware of the claimant's protected disclosure much less that he was motivated by it.

175. We did not uphold this claim.

*Issue:3.1.3.2 The female permanent support worker on his ward made comments about the claimant in relation to his private life, including comments about personal problems and "baby mother" problems;*

176. Again we had no evidence to connect whatever may have been said with the claimant's protected disclosure. The claimant did not complain about this matter at the time and he did not name the individual until he produced his witness statement.

177. We did not uphold this claim.

*Issue: 3.1.3.3 A black female support worker from another ward (Coral Ward) told the Claimant in a telephone call "we do not want you here" (i.e. in Coral Ward);*

178. Again, we had very sparse evidence about this complaint; we had no name of the individual. We had no sense from the claimant's evidence as to whether this remark was made in a joking or in a serious way. We had no evidence



that members of staff on Coral Ward were aware of the claimant's protected disclosure. We were unable to conclude that this occurred and was a detriment. If it did occur, we had no evidence of a connection with the protected disclosure.

*Issue: 3.1.4 The Claimant was stopped from working by Mirabel on 1 July 2022 which led the Claimant to being removed from the training course.*

179. It is correct to say that Ms Bih did initially stop the claimant working until she checked that the plan had changed. It was not an absolute refusal to let him work; it was a delay whilst she investigated the situation.

180. We could see no reason to reject her evidence that she acted as she did because she had not been provided with the information and was concerned to make sure she checked and did the right thing.

181. We could see no facts from which we could reasonably conclude that the situation came about because of the claimant's protected disclosure rather than because of some miscommunication.

182. We did not uphold this claim.

*Issue: 3.1.5 In mid-July 2022, the respondent removed the claimant from the Trainee Nursing Associate course;*

183. We had to resolve a difference in evidence between the claimant and Ms Pollock about what was said in the telephone conversation. Ultimately we preferred Ms Pollock's account. This was consistent with the documents, which showed that she was concerned about the claimant's position, given the level of absence he had had, and had sought to raise that for discussion with his tutors at university. She was certainly concerned that a Break in Learning should be explored. She was, however, also looking for an alternative hub placement for the claimant. That was consistent with her not having made a unilateral decision which she was seeking to impose on the claimant.

184. The claimant meanwhile was facing a situation of ongoing ill health where an automatic Break in Learning would be triggered in the near future in any event. He had missed a great deal of time in all three types of placement. It was undoubtedly stressful for him and the amount he had to make up was daunting.

185. We therefore concluded that this detriment was not made out. We considered for completeness whether there was any evidence which led us to believe that Ms Pollock was suggesting and indeed encouraging the Break in Learning because of the protected disclosure. In that respect we noted that she had been expressing concern about the effects of the claimant's absence on his participation in the TNA course well before the protected disclosure. That concern was ultimately shared by the university tutors who were not involved with the protected disclosure. We would not have considered there was

material from which we could draw the appropriate inferences about causation.

186. We did not uphold this claim.

*Issue: 3.1.6 In November 2022, after the claimant had returned from a period of sick leave, his desk was secluded in a corner away from the others in the office;*

187. Like a number of the claimant's claims, this one suffer from a lack of factual specificity. From what we could derive from the evidence, it appeared that there was a hot desk situation in MHCAS; the claimant accepted other people were also moving around. There appear to have been several occasions when the claimant ended up with an unattractive desk position behind some cabinets. On other days the location was acceptable. He said the nurse in charge had told him to use the undesirable desk.

188. Whatever was happening, and it appears there may have been a degree of disorganisation on the claimant's return to MHCAS, there was simply no evidence which would connect the claimant's desk allocation with his protected disclosure. These were events in a different department some months later. We had no evidence that any of the personnel in MHCAS were aware of the claimant's protected disclosure.

189. We did not uphold this claim.

*Issue: 3.1.7 Negative and insulting comments were made to the claimant in a return to work meeting by Andrea Peterson [Should be Patterson] approximately 2 weeks after his return from work. This included:*

*3.1.7.1 if you want to be a nurse, you have to take certain treatment,*

*3.1.7.2 if you cannot take it, get a van or go an become an electrician;*

*3.1.7.3 if you cannot take it, you are a loser;*

*3.1.7.4 do not come back to the Trust, no one wants you here.*

190. We bore in mind that this was essentially the only contact Ms Patterson had with the claimant. She had been asked to step on for another manager to carry out a necessary function. She had no investment in the outcome of the process as she was not the claimant's line manager. It appeared to us that she was very mildly frustrated at having to take on this role.

191. The fact that the claimant considerably expanded on these allegations in his witness statement but then did not put the new matters to Ms Patterson did not assist in persuading us that that these things had been said.

192. Ultimately we did not accept that Ms Patterson had made this series of hostile and highly unprofessional remarks to the claimant. We could see no reason why she would have done so. It would not have been in her professional interests to antagonise the claimant in circumstances where she was simply performing a role on another manager's behalf. We accepted that she

suggested the electrician role as a possibility because the claimant had expressed a desire to leave the NHS and she was trying to be kind.

193. Had we had any material on the basis of which to conclude that Ms Patterson knew about the protected disclosure and had reason to have negative feelings towards the claimant because of it, that could have influenced our view of what was said at the meeting. However we had no evidence that Ms Patterson did know about the protected disclosure. She was not the claimant's current line manager; it was not suggested that she had particular ties to Laffan Ward at the time. She was no part of the investigation. We note that in any event, Ms Madzokere believed she had reassured the claimant about the treatment of the patient during her discussion with him so the issue was not even a particularly charged one at this point.

194. For all of these reasons, we did not uphold this claim.

*Issue: 3.1.8 On 10 December 2022, the Claimant was forced to resign in response to the Respondent's conduct.*

195. We have concluded that there was no detrimental treatment of the claimant caused by the protected disclosure so it follows that the protected disclosure was not the reason for the claimant's resignation.

196. We did not uphold this claim.

## 5 DISABILITY

*5.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:*

*Issue: 5.1.1 Did he have a physical or mental impairment: depression?*

197. We were satisfied from the medical evidence and the claimant's own evidence that he suffered from the impairment of depression.

*5.1.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?*

198. The claimant gave very limited evidence about the effects of his depression on his day to day activities. He told us that his sleep was affected and his motivation to go to work. He was unable to finish his course. Taking into account the considerable time he had off work and what he said in his correspondence with the respondent at the time, we considered there was just sufficient to satisfy us that there was a substantial adverse effect

*Issue: 5.1.5 Were the effects of the impairment long-term? The Tribunal will decide:*

*5.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?*

199. The relevant time was when the claimant was on Laffan Ward between March and July 2022. The claimant told us he was well at the beginning of the period so the impairment had not lasted twelve months. We had no medical or other

evidence which cast any light on the prognosis for the condition at that point in time. We were not able to conclude that the impairment was likely to last for twelve months; we bear in mind that we cannot look at what in fact happened thereafter in determining that question.

*Issue 5.1.5.2 if not, were they likely to recur?*

200. We simply did not have sufficient evidence to reach a conclusion that the effects of the claimant's impairment were likely to recur. We were told by him that he had a history of depression but given no detail about the effects on him of previous episodes, nor did we have a medical opinion or other evidence to establish a link between the episode in 2022 and earlier episodes so as to indicate that there was a recurrent condition as opposed to some isolated episodes.

201. For these reasons we did not find that the claimant had a disability within the meaning of the Equality Act 2010 at the relevant time.

*6. Direct age discrimination (Equality Act 2010 section 13)*

*6.1 The claimant was in his early 30s and he compares himself with people in same age bracket as Andrew, the nurse in charge of the Laffan Ward (approximately early 50s).*

*6.2 Did the respondent do the following things (The claimant says he complained about these matters in the email to Jo Pollock on or around 26 June 2022).*

*Issue: 6.2.1 On at least five occasions, between March 2022 and July 2022, Andrew allocated tasks to the Claimant that were not related to his role, such as cleaning;*

202. As we have observed above, we did not hear evidence about five occasions. We heard a complaint about clearing up breakfast. The claimant also said that he should not have been asked to do one to one observations and he should not have had to take a patient to another hospital site.

203. As we have recorded above, a number of witnesses confirmed that clearing up the breakfast was simply part of the role, even for a registered nurse. We had no evidence that the claimant was allocated a disproportionate or inappropriate amount of work of this sort.

204. So far as one to one observations and taking a patient to another site were concerned, the claimant's concerns seemed to relate to a belief that he should have been supervised continuously whilst undertaking these activities. We accepted the respondent's evidence, which accorded with common sense, that the TNA role did not require that level of supervision and that, in particular, these activities were not ones which required the claimant to be accompanied by a more senior member of staff. These were tasks he could be expected to do as part of his underlying role. He was not entitled to protected learning time throughout his time at his hub placement.

205. We did not find this claim made out on the facts and we therefore did not uphold it.

*Issue 6.2.2 On at least five occasions, between March 2022 and July 2022, Andrew spoke inappropriately to the Claimant when allocating*

206. We only had one example given by the claimant in evidence which was the incident on 26 June 2022. It was accepted that Mr Nkurunziza raised his voice on that occasion. We accepted the evidence of Mr Gumpo that the claimant was being confrontational and his behaviour in relation to carrying out reasonable requests was frustrating to Mr Nkurunziza. We found, as did the grievance investigator, that both the claimant and Mr Nkurunziza raised their voices on that occasion.

*Issue: 6.2.3 The respondent did not adequately address these matters when he complained about them; and*

207. We had Ms Madzokere's evidence about the investigation which she conducted into these matters, which seemed to us to be a reasonably thorough one. The claimant did not make any specific criticisms of the investigation and we did not find that this complaint was made out on the facts so we were unable to uphold it.

*Issue: 6.2.4 The respondent disclosed details of his complaint dated 26 June 2022 to his colleagues, in breach of confidentiality;*

208. As indicated above, we had no reliable evidence that Ms Madzokere's investigation went beyond what was necessary and proportionate to deal with the complaints the claimant had made. We therefore did not uphold this complaint.

*Issue: 6.3 Was that less favourable treatment?*

*The Tribunal will decide whether the claimant was treated worse than someone else was treated.*

*There must be no material difference between their circumstances and the claimant's.*

*If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated.*

*The claimant has not named anyone in particular who he says was treated better than he was but states that Andrew would not have treated anyone close to Andrew's own age (approximately early 50s) in the same way.*

*6.4 If so, was it because of age?*

*6.5 Did the respondent's treatment amount to a detriment?*

209. The only aspect of the treatment complained about we have found made out was Mr Nkurunziza raising his voice to the claimant on one occasion.

210. Are there facts from which we could reasonably conclude in the absence of an explanation that this was less favourable treatment than Mr Nkurunziza

would have meted out to an older person and that it was materially caused by the claimant's age?

211. Obviously if Mr Nkuruzziza had called the claimant a 'small boy', that would be powerful evidence that the claimant's age played a role in Mr Nkurunzziza's attitude towards him and his treatment. However we were not satisfied that Mr Nkurunzziza did call the claimant a small boy. Mr Gumpo, whom we found a credible witness, did not recall anything of that sort being said. The account was also undermined by the fact that the claimant alleged in his claim form but not his witness statement that Mr Nkurunzziza had also made a remark about the claimant not being 'up to his son's age'. We considered that this was an effort to bolster the age claim; if the remark had been made, we considered it would have been referred to in evidence and put to Mr Nkurunzziza. It rendered the remark more improbable that Mr Nkurunzziza did not have a son.
212. We concluded that the allegation about age was more about how the claimant felt in being told what to do than about what was actually said. He was as a matter of fact junior to Mr Nkurunzziza and it was part of Mr Nkurunzziza's role to assign tasks to him. The claimant resented the tasks because they did not accord with his idea of what the TNA role involved and he was offended. We concluded that he himself perceived that what he was being asked to do was because he was young rather than, as was the case, because he was junior.
213. As to whether there was some sort of culture of age discrimination, which the claimant suggested might relate to Mr Nkurunzziza and Ms Madzokere's African ethnic background, we did not find evidence of such a culture. We did not consider Ms Madzokere's reference in a meeting to the claimant being young and at the start of his career to have been something which the claimant could reasonably regard as a detriment. It was in a context of Ms Madzokere providing encouragement to the claimant and the reference appeared to be factual and not belittling or condescending.
214. We did not find facts from which we could reasonably conclude that Mr Nkurunzziza raised his voice because of the claimant's age. If we are wrong about that and the burden shifted, we were satisfied that Mr Nkurunzziza would have raised his voice with an older employee who had behaved similarly to the claimant and with whom he was similarly frustrated.
215. For all of the above reasons, we did not uphold the claimant's claims of direct age discrimination.

*Issue: 6.6 Was the treatment a proportionate means of achieving a legitimate aim?  
The respondent says that its aims were:*

*6.7 The Tribunal will decide in particular:*

*6.7.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;*

*6.7.2 could something less discriminatory have been done instead;*

*6.7.3 how should the needs of the claimant and the respondent be balanced?*

216. We did not have to go on to consider the justification argument as we did not find that the claimant had been directly discriminated against because of his age.

*7 Reasonable Adjustments (Equality Act 2010 sections 20 & 21)*

217. Although we did not find that the claimant had established he was disabled on the basis of the evidence which we had, we went on, for completeness, to consider some of the other issues in the reasonable adjustments claim, insofar as we were able to do so.

*Issue: 7.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?*

218. We heard very little evidence and no real argument on this issue. The respondent had less evidence than the Tribunal did on the issue of whether the impairment was long term and none was forthcoming when the respondent referred the claimant to occupational health. It is unlikely that we would have found that the respondent had the requisite knowledge in these circumstances.

*Issue:7.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:*

*7.2.1 Not allocating tasks, providing support and teaching skills appropriate for the roles of those in the Laffan Ward;*

219. On the basis of the facts about these matters we have found above, we did not conclude that it was established that the tasks, support and teaching provided to the claimant in the relative short time he spent on Laffan Ward were inappropriate.

*Issues: 7.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability?*

*7.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?*

220. We could not make any sensible findings on these issues given that we did not find the PCP was established. The same is true of the remaining issues.

221. For all of these reasons, we did not hold the claimant's claim for breach of a duty to make reasonable adjustments.

9 Unauthorised deductions

*Issue: 9.1 Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted? The claimant alleges that he was not paid*

*for the 2 weeks he was at work following his return from sick leave in November 2022.*

222. After discussion during the hearing, the claimant indicated he was satisfied that he had been paid these sums and, for this reason, we did not uphold this claim.

Employment Judge Joffe

6 December 2024

Sent to the parties on:

12 December 2024

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For the Tribunal Office:

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