EMPLOYMENT TRIBUNALS

To: Andrew Otchie
12 Old Square Chambers
Lincoln's Inn
London
WC2A 3TX

2nd Floor, Import Building, 2 Clove Crescent,
London, E14 2BE

Office: 020 7538 6161
Fax: 0870 3240200

e-mail: eastlondon@justice.gov.uk

Your Ref:

To: Emily Stokes
Capsticks Solicitors LLP
1 St George's Road
Wimbledon
London
SW19 4DR

Your Ref: AMG/109268

Date 23 October 2019

Case Number: 3200872/2016

Claimant		**Respondent**
Ms M Odei	**v**	**Kings College Hospital NHS Foundation Trust**

EMPLOYMENT TRIBUNAL JUDGMENT

A copy of the Employment Tribunal's judgment is enclosed. There is important information contained in '**The Judgment**' booklet which you should read, including guidance about enforcement. The booklet "Employment tribunal hearings: judgment guide (T426)" can be found at:
www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, paper copies of all publications can be obtained by telephoning the tribunal office dealing with the claim.

The Judgment booklet explains that you may request the employment tribunal to reconsider a judgment or a decision. It also explains the appeal process to the Employment Appeal Tribunal. These processes are quite different, and you will need to decide whether to follow either or both. **Both are subject to strict time limits**. An application for a reconsideration must be made within 14 days of the date the decision was sent to you. An application to appeal must generally be made within 42 days of the date the decision was sent to you and no later than 4.00pm on the final day; but there are exceptions: see the booklet.

The booklet also explains about asking for written reasons for the judgment (if they are not included with the judgment). These will almost always be necessary if you wish to appeal. You must apply for reasons (if not included with the judgment) within 14 days of the date on which the judgment was sent. If you do so, the 42-day time limit for appeal runs from when these reasons were sent to you. Otherwise time runs from the date the judgment was sent to you or your representative.

For further information, it is important that you read the Judgment booklet. You may find further information about the EAT at **www.gov.uk/appeal-employment-appeal-tribunal**

An appeal form can be obtained from the Employment Appeal Tribunal at: Employment Appeal Tribunal, 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL, or in Scotland at George House,126 George Street, Edinburgh, EH2 4HH.

If you wish to lodge an appeal you should also refer to the T440 publication 'I want to appeal to the Employment Appeal Tribunal' at **www.gov.uk/government/publications/how-to-appeal-to-the-employment-appeal-tribunal-t440** which contains important information about lodging appeals.

Please note that all judgments are published on the online judgment register. The online judgment register can be accessed via: **www.gov.uk/employment-tribunal-decisions**

Yours faithfully,

MRS V ROBERTS
For the Tribunal Office

Case Number: 3200872/2016

RM

EMPLOYMENT TRIBUNALS

Claimant:	**Ms M Odei**
Respondent:	**Kings College Hospital NHS Foundation Trust**
Heard at:	**East London Hearing Centre**
On:	**3 – 5 and 9 – 11 & 22 July 2019 and (in chambers) 29 July and 6 August 2019**
Before:	**Employment Judge Goodrich**
Members:	**Mr T Burrows** **Mr D Ross**
Representation	
Claimant:	Mr A Otchie, Counsel
Respondent:	Ms M Murphy, Counsel

JUDGMENT

The judgment of the Tribunal is that:-

1 The Claimant was unfairly dismissed, as further set out below.

2 The Claimant's complaints of race and religion or belief discrimination fail and are dismissed, as further set out below.

REASONS

Background and the issues

1 The background to this Hearing is as follows.

2 The Claimant presented her Employment Tribunal claim on 18 September 2016.

Before doing so she had, as required, obtained an ACAS early conciliation certificate covering the period from 16 July to 26 August 2016,

3 In box 8 of the Claimant's claim form she ticked that she was bringing claims of unfair dismissal, religion or belief discrimination, race discrimination and "other", described as bullying and harassment. She drafted lengthy details of her claim, from which it was difficult to tell what was intended to be general background, or narrative, and what were the claims of unlawful actions about which she was seeking a judgment from the Employment Tribunal.

4 On 24 November 2016 there was an application by the Claimant to amend her claim and another lengthy description of her claim.

5 On 5 December 2016 Employment Judge Prichard conducted a Preliminary Hearing.

6 The Claimant's case was listed for four days in May 2017. This was postponed, at the Claimant's application, for her to get another representative.

7 On 9 March 2017 Employment Judge Russell conducted the Preliminary Hearing listed by Employment Judge Prichard. This was listed to consider the Claimant's application to amend her claim; and an application by the Respondent to strike out the Claimant's claim, or for a deposit order to be made against her.

8 At this Preliminary Hearing the Claimant was represented by Mr D Stephenson, counsel. Mr Stephenson and Ms Johnson (the solicitor representing the Respondent) reached agreement as to how to proceed. They reached agreement that the Respondent would not pursue their application for strike out or a deposit order. The Claimant would rely on the rest of her further and better particulars by way of amending the claim. Judge Russell ordered the Claimant to present her amended particulars of claim in the form currently drafted as Further and Better Particulars, with her whistleblower claims withdrawn; and the Respondent to present a draft amended response. The documents provided for the Tribunal at this Hearing as the relevant documents were the Claimant's re-amended particulars of claim; and the Respondent's amended grounds of resistance.

9 The case was sent down for five days in August 2017.

10 The Claimant provided amended (or re-amended) particulars of claim, as ordered by Judge Russell; and the Respondent provided an amended response.

11 The hearing in August 2017 did not take place. An application was made on behalf of the Claimant, by Mr Otchie, Counsel for the Claimant acting under the Bar Council's direct access scheme, on the grounds of the Claimant's ill health. The grounds of the application were that she had been diagnosed with optic neuritis, as well as multiple sclerosis and severe depression.

12 The application was granted; and the case relisted for hearing in May 2018.

13 The May 2018 hearing did not take place.

14 The Claimant was subject to an "Unless Order" and the parties notified that her claim had been dismissed under Rule 38 of the Employment Tribunal Rules of Procedure 2013.

15 On 23 July 2018 a Preliminary Hearing was conducted by Employment Judge Brown.

16 Judge Brown set aside the Unless Order which had led to her claim being dismissed; and made another Unless Order.

17 The case was subsequently listed for six days, from 3 – 5 and 9 – 11 July 2019.

18 The details above show, therefore, that this case has taken a great deal longer to get to a full hearing than had initially been the date for which it had been listed.

19 At the outset of the hearing the Judge asked the parties' representatives whether the list of issues agreed between the parties remained the list for the Tribunal to determine; and they confirmed that it was. A copy of the list of issues is attached to this judgment.

20 As indicated above, the first day for which this case was listed was 2 July 2019.

21 Unfortunately, the Tribunal had only one lay member for the first day of the hearing. The representatives were asked whether they consented to the case being determined by a two-person Tribunal (and were notified that this comprised the Judge and the employee side Tribunal member). The Respondent was willing to consent, the Claimant was not.

22 The Tribunal discussed with the parties' representatives the options of seeking to find a second lay member for the remaining five days that had been listed for the hearing; or postponing and relisting the hearing for the first available six days we could obtain (which would have been in October 2019). The Claimant's representative preferred a new start in October; the Respondent to commence the hearing the following day. After inquiries were made, the Tribunal was able to find a third lay member for the remaining five days of the listed hearing; and Tribunal notified the parties that we could obtain a full Tribunal for the second and subsequent days of the listed hearing, the Claimant's preference remained for the case to be postponed until October. The Tribunal heard submissions from both representatives and considered its overriding objective. After doing so and after consideration, the Tribunal decided to proceed with the hearing for the remainder of the five days including because:

22.1 It was regrettable that a full Tribunal was not available for the first of the listed dates. The Claimant, as she is perfectly entitled to do, wanted a three person Tribunal.

22.2 The Tribunal could obtain a full Tribunal, with the necessary employer and employee side representatives for the remaining five days for which the case had been listed.

22.3 The interests of justice and factors contained in the Tribunal's overriding objective set out in Rule 2 of its Rules of Procedure 2013 pointed strongly to starting the case the next day.

22.4 This is a 2016 case, originally listed to be heard in May 2017, so there have been over two years of delay since the original listing of the hearing.

22.5 In paragraph 23 of the reasons for Judge Brown's judgment she had stated that she agreed with the Respondent that there was a risk that further significant delay would render a fair trial impossible. She referred to such further delay affecting the cogency of evidence, in that memories of all witnesses would inevitably fade. It did not appear, therefore, in the Claimant's interests to further postpone the case, in that it might lead to an application to have the claim struck out.

22.6 Postponement would have numerous disadvantages, such as further delay, further expense to both parties and the stress for all the individuals concerned, both on the Claimant's and Respondent's side of having the case hanging over them. Important considerations in the overriding objective include such matters as avoiding delay and saving expense.

23 Although, the Tribunal was informed, the Claimant's multiple sclerosis has been helped by the treatment she has been receiving, we were asked by Mr Otchie if we would start each day at 10.30am, rather than 10.00am, and have regular breaks. The Tribunal agreed with this. We also decided to have a slightly shorter lunch adjournment of three quarters of an hour, rather than one hour, to recapture some of the time lost by making the later start, the regular breaks and the starting the case a day late.

24 The parties timetable, even if the case had had the original six day listing, allowed very little time for the Tribunal to deliberate and give judgment.

25 The combined effect of these matters was that evidence in the case was only completed on the fifth of the listed days; with the Tribunal needing to set aside further days for hearing submissions and the Tribunal to meet "in chambers" (in private) to deliberate on our judgment.

26 During the course of the hearing a dispute arose between the parties' representatives as to an application by the Respondent to admit an additional document.

27 The Employment Judge notified the parties that the Tribunal would be considering the application after taking into consideration the Tribunal's overriding objective; and the guidance given in the case of *Plymouth City Council v White EAT 0333/13*.

28 The Tribunal considered the parties' representations for and against the admission of the document and read the document in question.

29 The Tribunal decided not to admit the document including because:

29.1 In paragraph 39 of the Claimant's witness statement she stated that she

had continued working and seeing patients (after an incident that led to her being issued with a final warning).

29.2 There was no reference in the Claimant's amended particulars of claim to the Claimant continuing to be allowed to see patients in spite of having a serious allegation made against her that she had hit a patient. Nor was it a freestanding issue forming part of the list of issues for the Tribunal to determine.

29.3 In part of the course of the Claimant being cross-examined Ms Murphy put to her that the Respondent's case was that she was not permitted to do any client facing work after the incident in question. The Claimant had replied that it was only later, one month later. She had, therefore, drawn back somewhat from her witness statement, although there remained a dispute between the parties as to how long after the incident she had not been permitted to do client facing work.

29.4 The Tribunal read the document in question but it only seemed of limited assistance in resolving this dispute because it referred to the Claimant not seeing clients on a particular day but did not state as its reason that the Claimant was facing a serious allegation concerning a patient. Applying the guidance given in the *Plymouth City Council* case (above) the document was not necessary for a fair trial of the case.

29.5 Rather than admitting the document, the more appropriate course appeared to the Tribunal to allow Ms Murphy to ask Mr Cordon in examination-in-chief a supplementary question or questions as to when the Claimant was not permitted to do client facing work. Mr Otchie could then put the Claimant's case on this point to him.

The relevant law

Constructive unfair dismissal

30 Section 95 Employment Rights Act 1996 ("ERA") sets out the ways in which an employee is treated as being dismissed. The relevant statutory definition of a constructive dismissal are as follows:

(1) "…. An employee is dismissed by his employer if …

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

31 The burden of proof for establishing a constructive dismissal is on the employee. It has been held that the employee needs to prove:

31.1 That the employer has committed a breach of the employee's contract of employment, whether of an express or implied term.

31.2 The breach is sufficiently serious to amount to a fundamental breach of contract.

31.3 The employee must leave in response to the breach of contract, not for some unrelated reason. It was held in the case of *Nottinghamshire County Council v Meikle [2004] IRLR 703 CA* that it is enough that the employee resigned in response, at least in part, to the fundament breach by the employer.

31.4 The employee must not delay too long following the breach of contract in order to resign or will be regarded as having elected to affirm the contract.

32 There has been extensive caselaw on what may amount to fundamental breaches of contract.

33 In the case of *WA Goold (Pearmak) Ltd v McConnel and another [1995] IRLR 516 EAT* it was held that there is a fundamental implied term in a contract of employment that an employer will reasonably and promptly afford a reasonably opportunity to its employees to obtain redress of any grievance they may have.

34 A failure to conduct a disciplinary process properly, or its outcome, may constitute or contribute to constituting a repudiatory breach of contract. Where, however, such a process has been properly followed it cannot do so.

35 In the case of *Woods v WM Car Services (Peterborough) Ltd [1981] IRLR 347 EAT* it was held that it is clearly established that there is implied in a contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation since it necessarily goes to the route of the contract. To constitute a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the contract. The Employment Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

36 There is an implied term of every contract of employment that the employers will provide and monitor for employees, so far as is reasonably practicable, a working environment which is reasonably suitable for the performance by them of their contractual duties.

37 Acts of unlawful discrimination towards an employee will in almost all instances amount a fundamental breach of contract.

38 Where the employee has established that he/she has been dismissed within the meaning of section 95(1)(c) ERA it is unusual, although not unknown, for the employer to establish that there has been a fair reason for dismissal. The burden of proof is on the employer to show that the reason or principal reason for the employee's dismissal was a reason falling within section 98(1) or (2) ERA. Where an employer has been able to do

this, a Tribunal will need to decide, with the burden of proof being neutral, whether the dismissal was fair within the meaning of section 98(4) ERA.

Race and religion or belief discrimination

39 In respect of direct race and direct religion or belief discrimination claims the Tribunal is concerned with section 13 Equality Act 2010 ("EqA") when read with section 39. It is recognised that it is unusual for there to be clear, overt evidence of discrimination and that the Tribunal should expect to have to consider matters in accordance with section 136 EqA and the guidance in respect thereof set out in the case of *Igen Ltd v Wong and other cases [2005] IRLR 258 (CA)* concerning when and how the burden of proof may shift to the Respondent and what the Respondent must prove if it does. The burden of proof provisions have also been considered in numerous subsequent cases. The burden of proof is usefully considered through a staged process.

40 At the first stage the Tribunal has to make findings of primary fact and determine whether these show, in respect of the Claimant and the real or hypothetical comparator, less favourable treatment and the difference in race or in religion or belief. In respect of a real, named comparator, the Tribunal looks for a difference in treatment which a reasonable person would consider to be less favourable and which this Claimant also felt was less favourable treatment. The test is: is the Tribunal satisfied, on the balance of probabilities and with the burden of proof resting on the Claimant, that this Respondent treated this Claimant less favourably than he treated a comparable employee of a different race or of a different religion or belief?

41 When considering whether there has been less favourable treatment, comparisons between two people must be such that the relevant circumstances are the same or not materially different. The Tribunal must be astute in determining what factors are so relevant to the treatment of the Claimant that they must also be present in the real or hypothetical comparator in order that the comparison which is made will be a fair and proper comparison. Often, but not always, these will be matters which will have been in the mind of the person doing the treatment when relevant decisions are made.

42 If the Tribunal is satisfied that there was less favourable treatment and the difference or race or religion or belief in comparable circumstances, we proceed to the next stage. We direct ourselves in accordance with section 136 EqA and ask, in respect of each item of less favourable treatment which has been proved, whether the Claimant has proved facts from which the Tribunal could reasonably conclude, in the absence of an adequate explanation, that the less favourable treatment was on racial grounds or on grounds of religion or belief. Findings of fact which affect whether we could so conclude will vary from case to case. Unreasonable treatment on the part of an employer is not necessarily a matter from which we will ultimately conclude that there was unlawful discrimination, merely because the person adversely affected by it is a particular race or of a particular religion or belief, but if it constitutes less favourable treatment than a comparator has received, that will be a matter from which an inference could be drawn at this stage, leaving the employer to prove that it had or would have treated a person of another race or another religion or belief unreasonably too. The Tribunal should take into account, where it considers it relevant, the provisions of the ECHR Code of Practice on Employment.

43 If the Tribunal could reasonably conclude, absent a non-discriminatory explanation, that there was unlawful discrimination, we move to the next stage. In the absence of an adequate explanation, the Tribunal will uphold the complaint that there has been discrimination on grounds of race or religion or belief in respect of the proven act/s of less favourable treatment. So, we now look to the employer to see whether it provides and proves a credible, non-discriminatory explanation or reason for the difference in treatment. In the absence of such an explanation, or in the absence of such an explanation which we accept as proven on the balance of probabilities, we will infer or presume that the less favourable treatment occurred because of the Claimant's race or religion or belief.

44 When the Tribunal is considering a hypothetical comparator, the stages tend to merge or become indistinguishable. If the Tribunal concludes that an employee of one race or one religion or belief has been treated less favourably than a hypothetical employee of a different race or religion or belief in comparable circumstances would have been treated, this will almost certainly contain an inference, express or implicit, to the effect that but for the race or religion or belief the first employee would not have been so treated.

45 Here there are also allegations of unlawful discrimination by way of victimisation, contrary to section 27 EqA when read with section 39. Here the burden rests upon the Claimant to prove the performance of one or more of the "protected acts" defined at section 27(2) EqA and the receipt thereafter of detrimental treatment involving the receipt of some less favourable treatment than the person (real or hypothetical) who had not performed the protected act(s). Everything set out above as regards to the burden of proof provisions in section 136 EqA and guidance as to the drawing of inferences applies equally to victimisation (and harassment) claims.

46 Harassment is defined in Section 26(1) EqA when read with section 40.

47 In the case of *Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336 EAT* guidance was given that the necessary elements of liability for harassment are threefold:

(1) Did the Respondent engage in unwanted conduct?

(2) Did the conduct in question either (a) have the purpose or (b) the effect of either (i) violating the Claimant's dignity or (ii) creating an adverse environment for her – the prescribed consequences.

(3) Was the conduct on a prohibited ground?

48 The Tribunal must also have regard to the time limits provisions of section 123 EqA. The primary time limit, within which the claim must be presented in order for the Tribunal to have jurisdiction to consider it, is three months from the date of the act(s) about which a complaint is made, but this is subject to various qualifications. Section 123(3)(a) provides that any act extending over a period shall be treated as done at the end of that period. Caselaw has explained this further. Such as act may be something done in pursuance of a policy or practice, however informal, or a series of linked or connected acts. It cannot be a few isolated instances spread over time or a single act with

continuing consequences. Additionally, section 123(3)(b) provides that failure to do something is to be treated as occurring when the person in question decided on it. Beyond this, section 123(1)(b) provides that a Tribunal may consider a complaint which is out of time if it is, in all the circumstances, just and equitable to do so. This is a wide discretion. We must bear in mind that limitation periods ought not without good reason to be disobeyed. The issue of prejudice is very important: how "old" is the claim, have memories faded or become less reliable, are witnesses unavailable, have documents disappeared? Is it unfair to either party to proceed? What explanation is given for delay? Have internal proceedings kept matters alive in the interim? Has the Respondent in any way misled the Claimant or been responsible for the delay? No list can be exhaustive, for we must bear in mind all relevant factors.

49 Additionally, time limits considerations may be affected by the extension of time provisions contained in the early conciliation legislation.

The evidence

50 On behalf of the Claimant the Tribunal heard evidence from:

50.1 The Claimant herself;

50.2 Ms Annette Efejuku (whom the Tribunal understands to have been a former work colleague of the Claimant);

50.3 Ms Emmeline Brew-Graves, Senior Specialty Doctor and Sexual Offences Examiner and joint lead doctor for the Respondent;

50.4 Ms Elisabeth Robson, former colleague of the Claimant;

50.5 Mr Andrew Nitiri, former husband of the Claimant.

51 In addition, the Tribunal was referred to a witness statement provided by Ms Debbie Vowles, former clinical supervisor of the Claimant, although Ms Vowles did not attend the Tribunal to give her evidence.

52 On behalf of the Respondent, the Tribunal heard evidence from:

52.1 Ms Mahamathy ("Mathy") Rajanikanth, who at the relevant times was site manager at the Whitechapel premises where the Claimant (principally) worked.

52.2 Ms Satveera ("Saf") Singh, who, at the relevant times, was the Asian Women's Advocate at their Whitechapel premises.

52.3 Ms Michelle Mountfort, Service Delivery Manager, Advocacy Services, the Respondent's Whitechapel and Camberwell Services and, at the relevant times, the Claimant's line manager.

52.4 Mr Simon Cordon, Service Manager for the three London Haven sites, including where the Claimant worked, and Ms Mountfort's line manager.

52.5 Ms Kelly Hudson, who was engaged by the Respondent to investigate a grievance submitted by the Claimant.

53 In addition, the Tribunal considered the documents to which it was referred in four lever arch bundles of documents (three supplied by the Respondent and one by the Claimant).

Findings of fact

Background

54 The Tribunal sets out below the findings of fact we consider relevant and necessary to determine the issues we are required to decide. We do not seek to set out each detail provided to us, nor to make findings on every detail that may have been in dispute between the parties. We have, however, considered all the evidence provided to us and we have borne it all in mind.

55 The Claimant, Ms Mercy Odei, commenced her employment with the Barts and London NHS Trust on 15 March 2010. In April 2013 her employment transferred, by virtue of "TUPE," to the Kings College Hospital NHS Foundation Trust, the Respondent in these proceedings.

56 On 20 June 2016 the Claimant sent a resignation letter, with the effective date of termination of her employment being 16 August 2016.

57 The Claimant describes her colour and ethnic or national origins as black British. She describes her religion or belief as Methodist Christian.

58 The Respondent provides an acute and early intervention response service to victims of sexual assault described as "The Haven's Sexual Assault Referral Centre". The Respondent has responsibility for Havens' services at sites based at Camberwell, Paddington and Whitechapel.

59 The Claimant gave details of her position with the Respondent. Ms Mountfort also gave details of the Claimant's position, and the service as a whole. There was no disagreement between them as to their descriptions, so far as the Tribunal was made aware.

60 The Havens provides forensic medical examination for survivors of sexual violence who engage with the Respondent's service via the police or as a self-referred client. They are provided with a forensic medical examination and a follow-up service in relation to advocacy, sexual health and counselling and psychology services.

61 The Claimant's role was part of the Respondent's Haven follow-up advocacy services. The Claimant was a young person's advocate and was part of a multi-

disciplinary team set up to provide an early intervention service.

62 The Claimant was provided with a job description. Her job summary described her role as including:-

62.1 Provide advocacy, support and crisis intervention services to young people aged 13 to 16 years of age who have been raped/sexually assaulted and who access the Haven service.

62.2 To develop, deliver and evaluate community-based programmes of education and empowerment around the issues of rape and sexual assault for local young people in community-based groups to raise their understanding of and improve their practice in relation to rape/sexual assault.

62.3 To act as the designated health advisor within the Haven for young people, providing information, health education and advice on sexual health matters.

63 Within a few months of the Claimant starting employment as a young person's advocate, in June 2010 Ms Satveera ("Saf") Singh commenced her employment as a colleague of the Claimant. Ms Singh was the Asian Women's Advocate for the Whitechapel Haven with the role of supporting Asian women and girls, aged 13 and upwards, who had been victims of rape, serious sexual assault and domestic violence.

64 The Claimant's immediate line manager, initially, was Ms Raquel Correia, who was the Claimant's line manager until May 2014.

65 From 7 May 2014, throughout the remainder of the Claimant's employment with the Respondent, the Claimant's line manager was Michelle Mountfort. She was Service Delivery Manager for the Respondent's Advocacy Services for the Havens and the Claimant's line manager until the end of her employment with the Respondent. Mr Simon Cordon was Ms Mountfort's line manager and was the service manager for all the Respondent's Haven sites.

66 Ms Mahamathy ("Mathy") Rajanikanth was the site manager for the Havens Whitechapel from September 2013, although she was not the line manager for the Claimant, Ms Mountfort or Mr Cordon.

67 Some weight was placed by the Claimant and her representative as to problems experienced by the Whitechapel Haven in 2012 and we deal briefly with this.

68 In 2012 the Whitechapel Haven was temporarily closed by NHS Commissioners following serious failures in sending samples to forensic laboratories for DNA tests.

69 An Independent investigation was commissioned by the Barts Health NHS Trust to examine the services provided at the Haven Whitechapel from 2004 onwards (the report was dated April 2013).

70 Amongst the many findings in a lengthy report, the Tribunal's attention was drawn to a section on the report being which it was recorded that there were interpersonal relationship difficulties amongst some of the staff which had not led to action being initially taken. A number of recommendations were made in the report.

71 Part of the Claimant's case was that failures identified in the report continue to exist; and that repeated efforts were made to "manage her out" of the service.

72 The Tribunal considers the report to be of little use in determining the issues we are required to decide. It was a report provided over three years before the Claimant's resignation and was directed to the wider issues of the Haven's service at Whitechapel as a whole, rather than being specifically directed at the Claimant's part of the service. Furthermore, in April 2016, the overall rating for which the Respondent's Haven services were rated was "good". This suggests that, whatever the problems experienced by the service in the earlier part of the Claimant's employment, improvements were made in the years following the 2013 report for the service to be classified as good. Nor was there anything in the 2013 report to which the Tribunal was referred to suggest that any of the problems experienced at that time were caused by discrimination on grounds of race or religion or belief.

73 In addition to the Claimant having a line manager, she was expected to attend fortnightly clinical supervision to provide support and supervision for her work. The aim of the clinical supervision was for the Claimant's work to be scrutinised by a more senior individual to herself, with a high level of skill; to provide learning for her; and to provide the Claimant with emotional support. The Claimant's work could be harrowing at times, in listening to and dealing with issues relating to victims of sexual assault.

74 The Claimant's managers' views of the Claimant's work (shared by Ms Correia, Ms Mountfort and Mr Cordon) was that, although she had definite strengths, she could be disorganised in relation to her workload.

75 In answer to a question from the Judge, following up from an answer given earlier in cross-examination, Ms Mountfort described the Claimant's strengths as including passion in her role, enjoying working with young people, being fun to work with with a good sense of humour, being dedicated to the Havens, her knowledge in relation to safeguarding specifically to young people, her knowledge around sexual health issues, and the notes she made generally being very good.

76 All the above findings are made by way of background and, so far as the Tribunal was made aware, were not the subject of any significant dispute between the parties.

Allegations referred to as "general background evidence" in the Claimant's re-amended particulars of claim, namely:-

Ms Singh would frequently refer to white colleagues as 'Gora' or 'Gori', and black males as 'chocolate boys'

Ms Singh said: "sexy French chocolate boy", and "my father would kill me because, we are not allowed to go out with a chocolate boy" or words to that effect.

She made comments about "Bengali men being disgusting, short and stumpy perverts" or words to that effect.

"Why are African bums shaped like that", and why is your bum shaped like a beach ball" or words to that effect.

Issue 4.1 allegation (harassment race/religion) Claimant alleges that (in January 2011) Ms Singh commented that she felt uncomfortable holding the Claimant's daughter's hand, because the women in Ms Singh's community would consider she had been a 'dirty girl', by having a sexual relationship with a black man.

77 The Claimant and Ms Singh were colleagues in performing advocacy services, as described above, at the Respondent's Whitechapel Haven. For the first years of their employment with the Respondent they shared an office.

78 In addition to sharing an office, the Claimant and Ms Singh quickly became friends.

79 Ms Singh describes herself as third generation British Indian. She describes her religion or faith as, whilst being born into Sikhism, being more spiritual than religious.

80 Prior to her employment in the Respondent's advocacy service at the Whitechapel Haven, Ms Singh had been living in Doncaster. The Claimant helped her find somewhere to live when moving to London for a job. They saw each other socially outside work. They went clubbing together. The Claimant introduced Ms Singh to friends of hers. She invited her to dinner at the Claimant's home.

81 Both the Claimant and Ms Singh agreed that they had a friendship outside work, although there disagreed, in their evidence they gave, as to how often they saw each other socially outside work. Both also agree that, later on, their friendship soured, although they give different reasons for why it soured. We turn to this later below.

82 One social event attended by the Claimant and Ms Singh was an Asian Bride show that took place at the Wembley Stadium on 22 and 23 January 2011.

83 Issue 4.1 concerns events that occurred between the Claimant and Ms Singh at the Asian Bride show in January 2011. It is doubtful, and probably unfair, for the Tribunal to seek to resolve disputes of fact as to this allegation. We have no jurisdiction to consider it, as referred to later in the Tribunal's conclusions. It was a social event held at a weekend attended by the Claimant and Ms Singh as having at the time a friendship outside work. It was not an event occurring in the course of the Claimant's employment. Moreover, it was an incident that occurred over four years before she made a complaint about Ms Singh's conduct at the event; and five and a half years before the Claimant commenced ACAS early conciliation as a prelude to issuing proceedings. As explored later below it is out of time and it would not be just and equitable to extend time limits for this allegation.

84 Briefly, therefore, we make the following findings of fact about the allegation. There is some measure of agreement between the Claimant and Ms Singh as to what

happened.

85 The Claimant attended the event with her young daughter who, like the Claimant, is black. Ms Singh, at some point or points of the event, was holding the Claimant's daughter's hand. Ms Singh noticed that she was getting hostile looks from Sikh individuals who were present at the event. She explained to the Claimant why she was getting hostile looks. Exactly what Ms Singh said by way of explanation is in dispute and with the passage of time that occurred before the Claimant first complained about the matter to her employers (over four years later and after their relationship had deteriorated) is something the Tribunal does not consider itself confident to record. It is sufficient to find that the reason for the hostility was, Ms Singh believed, that those giving her hostile looks were assuming that the Claimant's daughter was Ms Singh's daughter and that the girl was the product of Ms Singh having a relationship with a black man. She may have said, as the Claimant alleged in her amended particulars of claim, that they considered that she had been a "dirty girl" by having a sexual relationship with a black man, with Ms Singh, no longer remembering exactly what she said.

86 The Tribunal is more confident in recording and finding that, contrary to her evidence, at the time the Claimant was not offended by the explanation Ms Singh gave for attracting hostile looks when holding the Claimant's daughter's hand. We also find Ms Singh's evidence that the Claimant giggled when Ms Singh gave her the explanation more convincing than the Claimant's evidence of being offended at the time.

87 The Claimant accepted when cross examined that she and Ms Singh remained friends until 2014 and continued to socialise outside work after the incident. The Tribunal does not believe that the Claimant would subsequently done such things as inviting Ms Singh for dinner at her home had she truly been offended by the remark. The Claimant's explanation, when cross examined, that she continued to socialise with Ms Singh because she felt sorry for her was unconvincing and sounded patronising.

88 The Tribunal also has doubts about making detailed findings of fact on the matters above listed as background evidentiary matters. It appears strange, if they occurred and if the Claimant was upset by them, that they were crossed out in the amended particulars of claim and considered only relevant as background issues. Other than as to issue 15.1 (the allegation that the Claimant assaulted a patient, to which we refer later) they do not appear to be relevant to the issues the Tribunal is required to decide.

89 Insofar as it may be necessary for the Tribunal to make findings on whether, or the extent to which, Ms Singh made inappropriate comments of a racially discriminatory kind, the Tribunal finds as follows.

90 The Claimant's evidence that she was upset by frequent comments by Ms Singh of a racist nature was unconvincing. The origin of the Claimant making any complaints of this to the Respondent was in the immediate aftermath of Ms Singh telling Ms Mountfort, on 19 June 2015, that the Claimant had assaulted a patient. It gives the impression of the Claimant exaggerating events that occurred years previously as retaliation about the reporting of the Claimant's (allegedly) assaulting a patient. According to what was stated in the Claimant's witness statement, Ms Singh throughout her employment made frequent derogatory references to black men and white individuals at work and the Claimant was offended by this.

91 More likely, the Tribunal finds, is that Ms Singh did occasionally, both in her dealings at work and outside work, make inappropriate comments that many people would consider racially offensive; and that, rather than being offended by this, the Claimant also, whilst the pair of them were friends, participated in such banter between them.

92 "Gora" and "Gori" are Sikh words for white man and white women. They are neutral, not derogatory. Ms Singh's clients would occasionally refer to individuals as "Gora" and "Gori". Ms Singh explained this to the Claimant. She was not offended by it.

93 It is more probable than not that, whilst they were friends, occasionally in conversations between the two of them, Ms Singh referred to black men as "chocolate"; and that she referred at least on one occasion to being attracted to a black man as a chocolate boy and that her dad and granddad would "kill her" if she went out with a chocolate boy. Ms Ntiri's evidence to this effect, the Claimant's former husband, was not seriously challenged in cross-examination. Nor does it seem unlikely that she would obtain strong disapproval from some Sikhs, in the light of their disapproval of Ms Singh holding the Claimant's daughter's hand and believing her to be Ms Singh's daughter from having had a sexual relationship with a black man.

94 Ms Singh, in her witness statement, referred to joking conversations they had about the Claimant's "bum" and those of others. They probably did, in the course of conversations outside work and probably occasionally inside work have conversations in the nature of banter about men and women's bodies and what they thought was attractive.

95 The Tribunal doubts, and makes no finding, that Ms Singh made comments about Bengali men being disgusting, short and stumpy perverts. She referred in her witness statement to having unwanted attention from men of Asian origins; and an occasion when a Bengali or Bangladeshi man touched her breast and telling the Claimant about being upset by this, so they did at least have discussions about Bengali men.

96 The Tribunal does not accept, nor find, that the Claimant was upset by these matters. It is highly unlikely that they would have had a friendship that persisted for some years before souring and continued to socialise together outside work. Ms Singh was clearly upset in parts of her evidence at the allegations of race discrimination made against her by Ms Singh; and it must have been upsetting to have such allegations, forming part of private discussions between friends taken out of context and forming the subject matter of accusations years later.

Issue 22.1(i)- (cross referring to paragraphs 9(i)-(ix) re-amended particulars of claim (relied on as part of constructive unfair dismissal claim):

On 3 January 2014, the Claimant warned Simon Cordon that her heavy workload increased the risk that that clients might 'slip through the net'.

On 6 February 2014, the Claimant disclosed information to senior management about the fact that her CRB had expired. It is a requirement for all staff working directly with children and vulnerable adults to have an enhanced CRB.

On 3 March 2014, the Claimant broke down in tears and explained to Michell Mountford

(the Claimant's manager) that her workload was too high.

On 7 – 8 April and 12 June 2014, the Claimant disclosed information about her high workload and resulting risks to Michelle Mountford during line-management meetings.

On 12 May 2014, the Claimant disclosed information to the Respondent about medical staff failing to complete risk assessment pro-formas and the potential for safeguarding information being missed.

On 15 July 2014, the Claimant wrote a further email to the Respondent setting out concerns about her workload and negative impact it was having on her health.

On 15 October 2014, the Claimant informed her line manager that her workload was too high.

On 7 November 2014, the Claimant met with Ms Mathy Rajanikanth, and expressed her concern regarding her high workload and the resulting risk.

On 10 November 2014, the Claimant met with Michelle Mountfort and Dr Ajaya, and warned them again of her high workload and the resulting risks.

On 12 November 2014, the Claimant sent an email to Michelle Mountfort and other managers detailing the Claimant's high workload and resulting risks.

On 17 May 2015, the Claimant emailed Michelle Mountfort regarding her high workload, safeguarding failures by her colleague Satveera Singh, and the resulting risks to service users.

Issue 21.2(ii) (cross referencing to paragraphs 10(i)-10(iii) re-amended particulars of claim:

On 15 July 2015, the Claimant sent an email to Michelle Mountfort and Simon Cordon describing problems which had occurred regarding safeguarding and avoiding administrative errors in provision of service to vulnerable clients, with a view to avoiding recurrence of such problems,

On 18 August 2015, the Claimant disclosed to the Respondent... that her colleague Satveera Singh had failed to properly conduct safeguarding checks.

On 6 June 2016, the Claimant disclosed to the Respondent her concern about closing cases when it was unsafe to do so.

97 The background to what are allegations of workload overload and issues concerning safeguarding is as follows.

98 The Respondent had three young persons' advocate roles. Ms Odei, the Claimant, held the role at the Respondent's Whitechapel Haven. Ms Jennifer MacPherson was the advocate based at the Respondent's Camberwell office (until she

left, as outlined below). Ms Sukhmeet Sawhney was the advocate based at Paddington.

99 Late in 2013 Ms MacPherson was absent from work for a considerable period of time.

100 On 7 January 2014 Ms Correia (the Claimant's line manager at that time) sent an email to Mr Cordon, copied to the Claimant. The email records that Ms Correia had just spoken with the Claimant and with Ms MacPherson who was currently off work and had outstanding paperwork and client appointments had been cancelled. Ms Corrreia recorded that the Claimant, after they had discussions together, had agreed to provide some cover to the young person service at Camberwell in Ms MacPherson's absence. She stated that Mercy (the Claimant) could be based at Camberwell two days a week to help out.

101 The email shows, therefore, that the Claimant's cover was initially intended to be a short-term arrangement to cover absence on Ms MacPherson's part.

102 In fact, however, Ms MacPherson left the Respondent's employment at the end of March 2014.

103 Recruitment to Ms MacPherson's post took longer than the Respondent had originally envisaged.

104 On 18 March 2014 Ms Mountfort (who in March 2014 replaced Ms Ms Correia as the Claimant's line manager) wrote an email to the Claimant. In the email she stated that she expected the Claimant to work at Camberwell for around six months; and that they were recruiting for a young's persons worker but that it was a long process.

105 The recruitment process took longer than envisaged and it was not until February 2015 that a replacement for Ms MacPherson commenced employment at the Camberwell Haven. The Claimant continued to provide some cover for the absent post (exactly how much was provided by her and how much by others is disputed between the parties) until around mid-February 2015, by which time the Claimant had carried out a handover with the incoming post holder.

106 In paragraph 30 of his closing submissions, Mr Otchie submitted that the requirement by the Respondent for the Claimant to work both at the Whitechapel and Camberwell sites for the period of time in question was a "blatant breach of her contract of employment". The Tribunal does not agree with this submission. Paragraph 8 of the further information section of the Claimant's job description states "the post holder may be required to undertake duties at any location within the Trust, in order to meet service needs." This clause, in the Tribunal's experience, is not uncommon.

107 The heart of this series of allegations concerns the extent of the Claimant's workload during the time that she was working both at the Whitechapel and Camberwell sites; and what steps the Claimant's managers took to support her with managing her caseload.

108 The Claimant's allegations concerning her workload are made more difficult for the

Tribunal to reach findings on because of the lack of specifics in the Claimant's own evidence. Her amended particulars of claim set out the allegation referred to above at paragraphs 9 (i) – (xi), but give no specifics beyond the assertions above.

109 In paragraph 19 of the Claimant's witness statement she made a passing reference to having an "excessive workload" but gave no specifics. Other than that generalised reference the Claimant appeared to give no specific details of her workload and she made no reference to the allegations contained in paragraph 9 of the amended particulars of claim. In his closing submissions Mr Otchie made only a brief reference to workload overload issues. It is unclear to the Tribunal, therefore, whether the Claimant pursues these allegations to any great extent, although there was some cross-examination of Ms Mountfort and Mr Cordon about allegations of work load overload.

110 The Tribunal has therefore needed to rely on its findings of fact on such contemporaneous documentation to which our attention was drawn by the parties' representatives; and the detailed evidence given in the witness statements of Ms Mountfort and Mr Cordon, together some limited cross-examination of these witnesses.

111 In summary, what the documentation the Tribunal has read, together with the witness statements and cross-examination show is:

111.1 The management support and supervision of the Claimant consisted of two parts. One was clinical supervision, undertaken at the time by Ms Vowles. The other was one-to-one meetings with the Claimant's line manager. From May 2014 onwards this was Ms Mountfort.

111.2 In Ms Vowles witness statement (although she did not attend the Tribunal, she was a witness for the Claimant) she referred to the Claimant missing 9 out of her 23 clinical supervision sessions between May 2014 and March 2015. She described the absences often arising as a result of childcare issues. She also referred to the Claimant finding it very difficult to keep up with all the paperwork.

111.3 Ms Vowles's evidence is consistent with the Claimant having a difficult time in her personal life. Her marriage broke up and she was having difficulties managing her job and childcare. It is also consistent with evidence from witnesses of the Respondent that the Claimant's organisational skills were weak.

111.4 Ms Mountfort, initially, sought to have weekly one-to-one meetings with the staff she line managed. As she got to know them and their work better, she reduced this to fortnightly, then three weekly meetings. Ms Mountfort made notes (not verbatim notes) together with action points of these meetings.

111.5 There are a few references only in Ms Mountfort's meeting notes to the Claimant having a high work load or feeling stressed because of her workload, and less than are suggested in the allegations contained in paragraph 9 of the amended particulars of claim.

111.6 Where there were references to the Claimant stating that she had a high workload or feeling stressed, the contemporaneous meeting notes of Ms Mountfort also refer to action points on her part to address these concerns. When the Claimant raised a concern, it was not ignored by Ms Mountfort but some action point listed specifically to address it.

111.7 Nor has the Claimant provided convincing evidence that her workload was excessive over a prolonged period of time. It is true that it took approximately a year for Ms MacPherson's post to be replaced and this did have an impact on the Claimant who was at least in part responsible providing cover for her. The extensive documentation shows, however, that there were also steps taken to provide additional support to the Claimant for dealing with her Whitechapel workload; and that she was both given administrative and other support in dealing with the Camberwell workload and other individuals also had some responsibility for Ms MacPherson's workload. The evidence provided to the Tribunal, by Ms Mountfort and Mr Cordon, that the Claimant's workload was not greater than those of the other advocates appeared plausible and convincing; as was Mr Cordon's evidence that, from time to time, the Young Persons Advocates at the other Havens covered work at other venues.

111.8 Ms Mountfort herself was heavily impacted by Ms MacPherson's absence and the demands of taking on a new role, working many weekends herself above and beyond the hour she would normally be expected to work.

112 As regards the specifics of the Claimant's allegations, our findings were as follows.

113 The Tribunal was provided with no evidence (other than the bare assertion in the amended particulars of claim) that the Claimant warned Mr Cordon on 3 January 2014 that her heavy workload increased the risk that clients might slip through the net. Mr Cordon recollects having some discussions with her about covering some of Ms MacPherson's duties, around January 2014, but not of any such specific reference to risks.

114 It is correct that on 3 March 2014, when Ms Mountfort met the Claimant for the first time, the Claimant was tearful and talked to her about feeling stressed. At that stage Ms Mountfort was not the Claimant's line manager. We made no finding as to whether or not the Claimant referred to feeling stressed because of her workload after this passage of time – it was a brief conversation that took place over five years before this hearing.

115 Ms Mountfort's meeting notes for her meeting with the Claimant on 7 April make a reference to what the Claimant's caseload was and brief reference to there being too many, but no reference to any resulting risks. It is unclear what the Claimant refers to for 8 April – there are one-to-one notes for a meeting on 17 April where there was a reference to discussing workload levels but no reference to the Claimant feeling stressed about this and there was a reference to "admin staff supporting Mercy really well in her work". The notes for their meeting on 28 April refer to the Claimant being on top of work. The reference to discussing workloads levels and the words "four or five" were explained by

Ms Mountfort as being at the scale of up to ten, so indicating that workloads were not excessive at that point.

116 The one-to-one meeting on 12 June 2014, Ms Mountfort recorded that the Claimant had put her stress level as "6/7" (out of 10) and describing this to "too many tedious tasks". The Claimant's caseload appeared to have been lower at that point, recording the Camberwell caseload for the Claimant as being less than 10 and more than 10 at Whitechapel.

117 In the Respondent's extensive documentation (this was a very well documented case) there is no reference to the Claimant meeting Ms Mountfort on 15 July, nor was there any record of any email from the Claimant to the Respondent. The Claimant and Ms Mountfort had a one-to-one meeting on 16 July 2014 which does not record any particular concerns of the Claimant, although Ms Mountfort was concerned about the Claimant failing to attend clinical supervision meetings. In Ms Mountfort's mind it was very important that the Claimant attended clinical supervision both in order to have her work scrutinised and in order for the Claimant to receive the support and supervision she needed for her clinical work.

118 At their meeting on 15 October 2014 Ms Mountfort referred to the discussion about the Claimant's workload being high. In response, she referred to arranging for "Angela" to help for Wednesday the following week, and that "if get stuck, Angela can ask Sharon".

119 As regards the allegation concerning Ms Rajanikanth, Ms Rajanikanth was never the Claimant's line manager. She recollects one conversation in which the Claimant complained of having a high workload, and Ms Rajanikanth emailed the Claimant's line manager about this.

120 The conversation the Claimant had with Ms Rajanikanth appears to have been in November 2014, as the email in question was dated 5 November 2014 from Ms Rajanikanth to the Claimant and copied to Ms Mountfort.

121 Ms Mountfort's meeting notes on 10 November 2014 refer to "workload concerns" and "unable to keep up with demands of cases. Explored ideas of Saf or Sukhmeet assisting" (this being a reference to Ms Singh, the Asian persons advocate at Whitechapel; and to the young person's advocate at the Paddington site).

122 On 12 November 2014 a meeting took place between the Claimant, Ms Mountfort and Dr Ajayi at which an action plan was prepared for addressing the concerns raised by the Claimant; and the Claimant's managers also had concerns about the Claimant's organisation and paperwork.

123 There was a joint meeting on 12 November 2014 and also an email from the Claimant to Ms Mountfort and others.

124 The Claimant was off work sick between 4 December 2014 and 23 January 2015. The reasons given for sickness absence on her sick certificates were "stress related problem" and "migraines".

125 The Tribunal was also referred to an Occupational Health report obtained in November 2014. Although the report makes reference to the Claimant finding covering what she described as two full-time roles as increasingly difficult, there was also a cross in a box at the top of the report stating that the employee indicated a health problem that was likely to be unrelated to work. The Tribunal takes this to be difficulties the Claimant was experiencing after the break up of her marriage and in making childcare arrangements to which we have referred earlier above.

126 The Claimant followed up her meetings with an email to Ms Mountfort and others on 12 November 2014. Amongst the issues raised by her were several references to having too high a workload. At the end of her email she referred to writing the email because she felt that she had mentioned her workload several times and that the issue had not been addressed.

127 In response to the Claimant's email Ms Mountfort arranged a meeting with her and Dr Ajayi to discuss the workload. She sent an email to the Claimant later on 12 November 2014 with an action list in response to the concerns.

128 On 10 November Ms Mountfort and the Claimant had a one-to-one meeting to follow up the Claimant's concerns about her workload.

129 Ms Mountfort carried out an investigation as to the Claimant's workload; and another caseworker reviewed the Claimant's cases at the Camberwell Haven when the Claimant was off work sick at the end of 2014 and beginning of 2015.

130 What emerged from these investigations, from Ms Mountfort's perspective, was that the Claimant's workload difficulties were caused by poor organisation. She was not completing the spreadsheets which were Ms Mountfort's tool for the case workers to be able to keep an accurate record of the clients she had and what was needed with them. Many of the cases that were listed as cases that was still open were cases that could be closed. There are also new cases that she had taken on that she had not made the necessary entries for. From Ms Mountfort's perspective this left the Claimant with a feeling of being overwhelmed. The Tribunal accepts Ms Mountfort's evidence on this point. The documentation to which the Tribunal has been referred shows that other individuals, in addition to Ms Mountfort, considered the Claimant to have poor organisational skills. Nor, from the information with which the Tribunal was provided, did the Claimant appear to have heavier case load than the other two young persons advocates.

131 The last allegation in paragraph 9 of the amended particulars of claim concerning excessive workload refers to an email of the Claimant on 17 May 2015. The Tribunal was not taken to any such document- we were taken to documents referring to one-to-one meetings between the Claimant and Ms Mountfort on 13 and 19 May, but neither make any reference to the Claimant complaining of overwork.

132 The Tribunal turns, next, to the allegations in paragraph 9 of the re-amended particulars of claim concerning CRB checks, risk assessment proformas and safeguarding information and failures. Paragraph 10 of the Claimant's re-amended particulars of claim also make reference to this, although again, there is little detail in the Claimant's witness statement as to specifics. The terms "CRB" and "DBS" appeared to have been used

interchangeably by the parties.

133 At a one-to-one meeting between Ms Mountfort and the Claimant on 4 February 2015 reference is made to whether a CRB check needed to be done and that the Claimant's CRB had expired in March 2013. There was an action list that the Claimant would clarify whether it needed to be done. Paragraph 9(ii) of the re-amended particulars of claim, where the Claimant refers to disclosing the information about her CRB check on 6 February 2014, appears, therefore, to be the wrong date. At any rate, the Claimant did not give details in her witness statement as to who she spoke to, or wrote to, on that date.

134 On 28 February 2015 Ms Mountfort sent an email to the Claimant to clarify whether she needed to do a DBS application, stating that she thought it needed to be a priority and giving her the contact number of the person to contact.

135 Whether the Claimant did as requested by Ms Mountfort; whether the Respondent's HR department, if the Claimant did follow up on Ms Mountfort's request, responded to it; and whether the Claimant was working without a CRB updated disclosure that she needed was not made clear to the Tribunal. It is probable that the Claimant did not follow the issue up and that she had the clearance she needed. Years later, Ms Hudson considered the issue, as part of a grievance the Claimant had submitted (to which we refer later in our findings of fact). Ms Hudson referred to the NHS employer's guidance confirming that there is no legal requirement to carry out retrospective DBS checks; and commented that the responsibility for clearance lay also with the employee concerned. She also commented that if "MO" (the Claimant) had been concerned she would expect her to be a little more robust with HR to ensure that it was done.

136 Ms Mountfort's notes of her meeting with the Claimant on 12 May 2014 contain a reference "proformas-not completed fully by medical staff at FME", which appears to be what the Claimant is referring to at paragraph (v) of her re-amended particulars of claim. The Claimant made no reference this in her witness statement nor gave any details as to what she meant by it. Ms Mountfort, in her witness statement assumed that the Claimant must be referring to this but had no further records as to exactly what was discussed or whether there was any follow up on the point. The Tribunal is unable, therefore, to make further findings of fact on this.

137 The Claimant's reference at paragraph 10(i) of her re-amended particulars of claim to an email on 15 July 2015 is as follows. Although the Claimant stated that the email was to Ms Mountfort and Mr Cordon this was not in fact the case. They were copied in by her with the email. The email was addressed to the Whitechapel team of which the Claimant formed part. She raised what she described as being a number of issues. Amongst these issues was a section headed "safeguarding" which made reference to a number of points as to how referrals to the team were dealt with. So far as the Tribunal is aware the Claimant did not follow up on the issues raised in the email; nor are we aware as to whether any of the individuals to whom the email was addressed responded to it.

138 On 18 August 2015 the Claimant sent an email to Ms Mountfort making a number of complaints. One of these was a complaint that Ms Singh was refusing "to follow through with completing safeguarding tasks and then puts the file in my box for me to complete". This formed a number of complaints against Ms Singh, which are better dealt with later in our findings of fact concerning issue 15.3.

139 It is unclear what issue 10(iii) refers to, that on 6 June 2016 the Claimant disclosed to the Respondent her concern about closing cases when it was unsafe to do so. The Claimant's witness statement did not refer to this. The Tribunal was provided with no documentary evidence specifically for this issue. There was no cross-examination on the matter.

Allegations of religious discrimination harassment (no longer pursued as race discrimination harassment)

Issue 4.2 unspecified date(s); Ms Singh would put stones or charms in a line on her desk saying there was negative energy in the shared office, one said regarding the Claimant's Christianity.

Issue 4.3 – unspecified date(s); Ms Singh would print CD's of religious chanting in the shared office and print off religious spells at the work printer

140 The first reference of the Claimant complaining about any of these matters, so far as the Tribunal was made aware, was at a one-to-one meeting the Claimant had with Ms Mountfort on 29 September 2014. Ms Mountfort recorded that one of the items discussed was "photocopying spells"; and under the list of actions recorded "Mercy to talk with staff member about photocopying spells". Ms Mountfort explained in her evidence that she liked to encourage staff members, so far as possible, to resolve issues between each other themselves. The Tribunal finds that the Claimant making a complaint to Ms Mountford about Ms Singh shows that, by then at the latest, their friendship had soured.

141 The Claimant appears not to have raised the matter with Ms Singh herself, as recorded in the list of actions. No reference was made, so far as the Tribunal is aware, in subsequent one-to-one meetings of the Claimant having discussed the issue with Ms Singh, nor of her continuing to complain about the matter.

142 The next reference to this issue forms part of a written complaint from the Claimant about various matters concerning Ms Singh; and was dated 18 August 2015. This email came after Ms Singh had reported to Ms Mountfort that the Claimant had hit a patient and appears to be part of the Claimant's responses to Ms Singh's reporting of the incident.

143 Ms Singh's evidence was that, on one occasion, she had printed in English a sanskrit prayer that she had been sent. She denied ever having printed "spells" and stated that she was not a wiccan. The Tribunal found Ms Singh's evidence more convincing than that of the Claimant's on the issue. Even on the Claimant's own written complaint she refers to being "alerted about the spells by a few members of staff" rather than stating that she had ever seen them herself. If the matter had been more than an isolated incident, and if the Claimant had truly been upset about it, it appears likely that she would have complained about it in other one-to-one meetings. By then her relationship with Ms Singh had deteriorated. Additionally, the impression given by the timing of the complaint made in the Claimant's letter of 18 August 2015 was of attempting to hit back at Ms Singh, when fearing that her own job was at risk after Ms Singh had reported her as to an allegation of hitting a patient; and the Claimant was probably exaggerating in order to hit out harder.

144 Ms Mountfort's notes of a one-to-one meeting with the Claimant of 13 May 2015 record her sending the Claimant an email in which reference was made to "Saf's chanting"; and, under actions, "Mercy to speak directly to Saf re: using headphones". This, the Tribunal finds, is probably a reference to Ms Singh occasionally singing to music that she was playing on her CD player; and that the music was sometimes classical music and sometimes music of a spiritual nature. Occasionally Ms Singh probably did quietly sing along with spiritual music, or "chant". The two verbal complaints were a symptom of the friendship between the Claimant and Ms Singh souring. It is likely that until the relationship soured the Claimant herself would occasionally request that Ms Singh would play certain songs and CDs, as stated by Ms Singh in her witness statement.

145 It is possible that the Claimant spoke with Ms Singh because the next email from Ms Mountfort to the Claimant, recording their one-to-one meeting on 19 May refers to "Saf's using headphones". Ms Singh's evidence, however, that the first occasion she knew that the Claimant had made a complaint about her using spells and chanting (in Ms Singh's view false allegations) was when Ms Mountford raised these issues with her at a supervision meeting on 11 September 2015 is convincing. It is supported by the email written by Ms Mountford on 14 September 2015 setting out the items discussed at that meeting. It is consistent with Ms Mountford supervision notes with the Claimant where she recorded that the Claimant would raise the raise the issue of photocopying spells with Ms Singh directly. If, therefore, the Claimant did raise the issue with Ms Singh of her chanting, it was probably done in passing and Ms Singh no longer remembers her doing so.

146 As regards the allegation of Ms Singh keeping stones or charms on her desk, Ms Singh agrees that she kept crystal stones in her office. She disputes, however, that she placed them in a line on her desk, or said that there was negative energy in the shared office, or that she once said any of these things regarding the Claimant's Christianity. The sentence in the Claimant's witness statement that Ms Singh was hostile to the Claimant's Christianity and that she would not have been treated in the ways alleged if she had not been a Christian appear to be an attempt to align the claim with religious discrimination, rather than something she considered to be the case before Ms Singh made a complaint, or report, to Ms Mountfort that the Claimant had hit a patient, as described in the paragraphs below.

147 The first complaint the Claimant made about this issue, so far as the Tribunal was made aware, was in a letter to Ms Mountford dated 18 August 2015 (to which we refer in greater detail later). She said that there when there was a disagreement between Satveera (Ms Singh) and her, Satveera would put charms or stones on her desk and say that there is negative energy in the room and her chanting would increase. She made a similar statement in her letter to Ms Mountford dated 20 March 2016 (which we also refer to in more detail later. In that letter she stated that the last occasion this took place was on 3 June 2015.

148 The Claimant's written complaints made no reference to the chanting, or spells, or crystals having any relationship to the Claimant's religion. She complained of the playing of a CD and chanting being distracting. The nature of Ms Singh's religion or beliefs was not explored during cross examination of her; and, therefore, we find them to be as stated by Ms Singh in her witness statement; namely that, although she was born into Sikhism, she was spiritual than religious.

149 In the Claimant's witness statement, in contrast, she made many complaints about Ms Singh's attitude to the Claimant's religion. For example, she stated that Ms Singh was very hostile to the fact that she (the Claimant) is Christian; disparaged her religion and vilified her for praying; and that she would put charms to protect herself from her prayers. The Tribunal finds the contrast in how the Claimant describes these complaints as significant; and done to seek to bolster her complaints of religious discrimination. We do not believe, or find, that Ms Singh did portray any such hostility to the Claimant's Christianity; and that Ms Singh's account that she once told the Claimant that the crystals would help with negative and heavy energy to be more plausible than the Claimant's account. In other words, she was making a general comment, to do with the stresses of the job, rather than about the Claimant.

150 When cross examined, Ms Singh referred to playing a variety of music; and that her chanting was a silent, internal process.

151 What probably happened is that, as the relationship between the Claimant and Ms Singh soured, aspects of their ways of working irritated each other, whereas previously they had not- they both complain, for example, in their witness statement (and the Claimant to Ms Mountford) of each other spending too much time talking about non work related matters. The Claimant's way of dealing with this was not to speak with Ms Singh directly about it, instead to complain to Ms Mountford. This is shown by the Claimant making complaints about Ms Singh's behaviour to her in supervision meetings with Ms Mountford and then in writing, but Ms Singh not making complaints about the Claimant's behaviour in her supervision with Ms Mountford, so far as the Tribunal was made aware. Ms Singh's way of dealing with her feelings towards the Claimant was to seek to distance herself from the Claimant, by using another office, when she could.

152 The issue of whether the Claimant's oral complaints to Ms Mountford about photocopying spells and chanting amounted to protected acts is disputed between the parties.

Issue 15.1 – Ms Singh accusing the Claimant of assaulting a service user on 19 June 2015, by embellishing the facts which she knew amounted to a minor consensual touching causing no pain

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Issue 15.2 – the Respondent instigated and conducted full disciplinary proceedings against the Claimant placing her at risk of dismissal

Issue 15.6 – on or around 25 February 2016, Mr Cordon requiring her to complete a performance management procedure

153 On 19 June 2015 Ms Mountfort was told by Ms Singh that, earlier that afternoon, the Claimant had struck a patient. She asked Ms Singh to put down what she had observed in writing and provided to her by the end of the day.

154 Ms Singh provided a witness statement as to the incident. Included in her witness statement were the following points:

154.1 The Claimant's client was in the waiting area, waiting to be seen by the

Claimant (Ms Singh was due to have clinical supervision at 2.00pm, so there was an issue as to where she should see the supervisor and where the Claimant should see her client).

154.2 The Claimant approached the client, who was sitting down, and said "what time do you call this, you are supposed to be in at 1.00pm" (in fact the Claimant had, at short notice, changed the time of the client's appointment from 2.00pm to 1.00pm, by asking a receptionist to text the client).

154.3 She saw the Claimant holding an A4 diary and with a swift movement lift the diary over her head, holding it with both hands as she smashed it down on the client's knee; and immediately the client screamed "aww" and started to rub her knee and leg.

154.4 When she confronted the Claimant about having just hit the patient her response was to say "yeah and so what", she showed no remorse and walked out.

154.5 She saw Simon Cordon walk past with two police officers (in this she was mistaken and later corrected her statement as, although Mr Cordon was due to be in the office that afternoon, he was elsewhere).

155 The incident took place on a Friday. The following Monday Ms Mountfort met the Claimant to discuss the incident with her. The Claimant's account was that she had tapped the client on her knee with a book due to "frustration" and "pressure from Saf (Singh) about supervision times and that the client had laughed.

156 Ms Mountfort reported the matter to Mr Cordon. She briefed him that the Claimant had, when challenged, agreed that she had struck the client but disputed the level of force reported by Ms Singh. She also told Mr Cordon that the Claimant's explanation for why she had struck the client had been that she had been stressed or irritated by Ms Singh.

157 Mr Cordon decided that the matter should be investigated by Ms Delaforce, the Matron of the Whitechapel Haven.

158 The Tribunal finds that, meanwhile, the Claimant was not allowed to carry out face-to-face work with clients, although she was allowed to conduct telephone interviews and the other aspects of her job. She was not, however, suspended from her work.

159 In paragraph 39 of the Claimant's witness statement she stated that she "continued working and seeking patients". This statement is an example of some concerns the Tribunal has with the reliability of the Claimant's evidence. When cross-examined on this she accepted that she was stopped from seeing patients, although she stated that it was one month or two months after the incident that she was stopped. In fact, Mr Cordon's evidence that, from the Monday, he was prevented from seeing patients face-to-face from the next working day after the incident was far more convincing; and the Claimant herself, in a statement she wrote not long after the incident, referred to not being able to see the client again because of the allegations against her.

160 In August 2015 Ms Delaforce produced her investigation report. Her recommendation was that the matter should be considered at a disciplinary hearing. Included in her report were the following points:

160.1 When (the Claimant) was asked by her whether what she had done would be seen as a physical assault she replied that it could be seen as assault.

160.2 It was clear that the Claimant had made physical contact with the client's knee, although she stated that she did not believe it was an assault.

160.3 When challenged about her behaviour of hitting a client with a book, the Claimant was overheard by two witnesses to say "so what" which could indicate that there was no regret or reflection on her part for her actions.

160.4 She did not appear to have reflected on her actions as her behaviour and boundaries to her clients seemed rather blurred and unenforced.

161 The Claimant also did her own statement in which she stated that she attacked her client's knee with a book, that the client had giggled and she had informed the client that she "should not be naughty". She stated that she had been unable to contact the client due to the allegation made against her. The Claimant's statement confirmed that there was a disagreement between her and Ms Singh as to whether she had hit the client with force, as per Ms Singh's account; or merely tapped her on the knee, as was the Claimant's account.

162 Mr Cordon also asked Dr Ajayi to contact the service user about the incident. The service user supported the Claimant's account of the event. In part of his witness statement Mr Cordon stated that the Claimant had relied heavily on the fact that the client did not complain about the incident and that he did consider this. He went on to state that it was common for victims in their line of work to accept whatever treatment they receive; and that they tend to feel responsible and blame themselves for things that might have happened to them. The Tribunal does not have the expertise to determine whether or not this is the case; and Mr Cordon was not an expert witness.

163 The Respondent, as one would expect, has a disciplinary policy. Amongst the actions listed under the policy as amounting to gross misconduct are any form of assault upon a patient, member of the public or fellow employee.

164 Mr Cordon wrote to the Claimant to require her to attend a disciplinary hearing to consider the allegation that on 19 June 2015 she had physically assaulted a Haven client using her diary. She was advised that, if substantiated, these allegations may constitute gross misconduct and result in disciplinary action being taken against her, up to and including dismissal.

165 The disciplinary hearing started on 12 February 2016, with the Claimant not in attendance; and was reconvened on 18 February 2016, with the Claimant in attendance together with her trade union representative.

166 In the course of the disciplinary hearing Mr Cordon asked the Claimant whether

Saf (Ms Singh) should not have reported the incident; and the Claimant accepted that reporting the incident was the right thing to do. Later one she accepted that she should not have made physical contact, although she also stated that the incident had been exaggerated by Ms Singh.

167 The Claimant's trade union representative, in summing up, stated that the Claimant, on reflection, saw that what she had done could be deemed as an assault. The Claimant herself stated that, in hindsight, she would report it.

168 The outcome of the disciplinary hearing was that Mr Cordon decided to give her a final warning coupled with placing her on a capability plan. He set out what the themes of the capability plan would be. He also informed the Claimant that he had considered a range of options including whether her conduct met the definition of gross misconduct which could have resulted in his dismissal; that he needed her to understand how seriously they viewed the incident and had determined a finding of serious misconduct with a final written warning and the stated conditions. Mr Cordon also provided a detailed explanation for his decision. Included in Mr Cordon's explanation was that, during the disciplinary hearing, he asked both Ms Singh and the Claimant to demonstrate the level of force used. Ms Singh demonstrated by raising her arms above her head. The Claimant held the piece of paper given to her at chest height with both hands and moved it fairly swiftly to the knee of Ms Delaforce (on whom she was demonstrating the incident). Mr Cordon decided to give the Claimant the benefit of the doubt in deciding that the force used was more than a tap but that the actual contact with the client's knee may have been light and the client was not physically injured.

169 The Claimant did not appeal against her final written warning. When cross-examined on why she did not appeal, her response was that her trade union representative advised her against it. When re-examined (Mr Otchie's re-examination of the Claimant appeared to consist more of asking the same or similar questions as put in cross-examination with the hope of getting a different or better response) the Claimant stated that her union representatives attitude that her union representative told her not to bother "you've got your job". This evidence suggests that the Claimant's own trade union representative (a regional trade union officer) considered that the Claimant was lucky not to have been dismissed.

170 The Tribunal makes some additional findings on issues 15.1, 15.2 and 15.5.

171 Did Ms Singh embellish the facts? The Tribunal finds that the truth probably lay somewhere between the Claimant's account of the incident being a light tap; and Ms Singh's account of considerable force causing the client to scream. If she had screamed, as there were individuals nearby, they would probably have heard it.

172 Equally, the Claimant probably underplayed the incident by describing it as no more than a light tap. The demonstration she gave at the disciplinary hearing, raising a piece of paper provided to her by Mr Cordon to her chest with both hands and bringing it down reasonably swiftly suggest that it was more than a tap.

173 In so far as Ms Singh did embellish the incident why did she do this?

174 The Tribunal finds that, to the extent Ms Singh embellished the incident, this was due to the breakdown of her relationship with the Claimant, which had nothing whatsoever to do with the Claimant's colour or racial or ethnic origins. The Claimant, when giving her written statement of the account, referred to having moved offices a few days before incident because of feeling uncomfortable in the shared space. Earlier in our findings of fact the Tribunal has referred to complaints the Claimant had made verbally to Ms Mountfort about Ms Singh and this being indicative of a souring in their relationships when they had previously had a close friendship.

175 The Claimant had the same colour and racial origins when she and Ms Singh were close friends as when their friendship has soured. The Claimant herself, as indicated by us, made numerous complaints against Ms Singh. These, equally, were a symptom of the souring of their friendship, with Ms Singh having the same colour and racial origins both whilst the two of them were friends and when they were not.

176 The Claimant has frequently asserted that the Respondent, and Mr Cordon and Ms Mountfort in particular, wanted to "get rid of her". The outcome of the disciplinary hearing shows this allegation to be demonstrably incorrect. Had Mr Cordon wanted to dismiss the Claimant the incident provided an ideal opportunity for him to do so. He could have accepted Ms Singh's account and given some reasons for this, bearing in mind the Claimant's conflicting evidence about this and other issues during the disciplinary hearing, her lack of insight and remorse she had demonstrated at various stages of the disciplinary process and dismissed her.

177 As regards Mr Cordon combining giving the Claimant a final written warning with placing her under a capability plan, to an extent the capability plan followed concerns raised by the incident itself.

178 To an extent, however, items highlighted in the conditions attached to the Claimant's final written warning went beyond those that followed from the incident itself. Mr Cordon required the Claimant to demonstrate all other performance management procedures such as absence management; and an ability to demonstrate management of client case lists and case closure. These exceeded the scope of the disciplinary allegations against the Claimant; and conflated long standing performance issues that concerned Mr Cordon. It might have been fairer management by Mr Cordon to have sent a further letter to the Claimant before the reconvening of the disciplinary hearing to have notified the Claimant that he would also be considering the wider concerns at the disciplinary hearing. The intention of Mr Cordon, however, does not suggest any unfavourable treatment on racial grounds. He wanted the Claimant to address the concerns he and the Claimant's manager had about her capability to perform certain aspects of her job. At most, it suggests that performance management procedures should have been invoked earlier, before the incident in question arose. There are numerous documents within the bundles of documents showing difficulties Ms Mountfort was having with the Claimant's time recording, time off in lieu and absence recording.

Issue 15.3 – Ms Mountfort's failure to investigate her formal grievance dated 18 August 2015 complaints of discrimination/harassment properly or at all

179 On 19 August 2015 the Claimant sent an email to Ms Mountfort attaching a letter dated 18 August 2015 making complaints against Ms Singh. These included:

179.1 She often refers to other members of staff who are white as "gora" or "gori" and also black males as chocolate boys. I find this very offensive especially working within a multicultural environment at the Haven Whitechapel.

179.2 She complained that Satveera (Singh) had been racially and culturally offensive. She referred to the incident forming the allegation contained at 4.1 of the list of issues.

179.3 For over 18 months continuously Satveera's morning routine had been playing a CD in the office of prayers and chanting which can be very distracting for more than an hour.

179.4 I was alerted about the spells by a few members of staff as they had seen recipes of spells having been printed and copied.

179.5 She would put charms or stones in a line on her desk and say that there is negative energy in the room and her chanting will increase (a reference to the allegation contained at Issue 4.3 above and referred to earlier in our findings of fact).

179.6 Complaining that Ms Singh made comments about gay male colleagues in public, or taking pleasure in exposing their sexuality to other people in public places (no questions were asked about this allegation).

179.7 She (the Claimant) had moved office. She did not wish to work in such an environment where she was subjected to an hour plus of chanting in the morning and then hours of conversation rather than work.

179.8 If this was resolved I believe that the alleged allegation would not have been fabricated (a reference to Ms Singh's complaint against the Claimant).

180 The timing and content of the Claimant's complaint suggests that it was a form of counter-attack on Ms Singh for having reported her over the incident with the Claimant's client.

181 The Respondent accepts that the Claimant's letter dated 18 August 2015 and subsequent grievance dated 20 March 2016 were protected acts within the meaning of the Equality Act (issue 13.2); but not the oral complaints on 29 September 2014 and 13 May 2015 (issue 13.1).

182 Ms Mountfort discussed the contents of the Claimant's letter at a meeting between the two of them on 19 August 2015 having taken advice from the Respondent's Human Resources department as to how to proceed. The Claimant and Ms Mountford agreed that Ms Mountfort would raise the Claimant's concerns with Ms Singh and give feedback on what has taken place.

183 On 24 August 2015 Ms Mountfort met with the Claimant to complete a workplace

stress assessment. Ms Mountfort had not, by then, spoken with Ms Singh about the issues raised by the Claimant. During the meeting to complete the Claimant's workplace stress assessment it was recorded that the Claimant would consider two options for her letter; namely, informal action by Ms Mountfort with Ms Singh, or raising a grievance; and that the Claimant would let Ms Mountfort know.

184 Ms Mountfort did discuss with Ms Singh one of the Claimant's complaints against her, namely of chanting out loud and recorded this discussion in an email to Ms Singh on 14 September 2015. Ms Singh's response was that she sometimes had her CD playing softly in the background but that she did not chant out loud during working hours. Ms Mountford accepted Ms Singh was being honest in what she said and that she had not chanted out loud with Ms Odei in the office. Her explanation for this was that she had been in the office once when Ms Singh was playing music and that her recollection was that the volume was low and that she could have asked her to turn it off or down if it was distracting.

185 On 28 September 2015 Ms Mountfort conducted a long-term sickness absence meeting with the Claimant, this meeting being during the course of the Claimant's sickness absence between 3 August 2015 and 14 January 2016. A transcript of the meeting was provided in the bundle of documents for the Tribunal. In the course of the meeting they discussed the Claimant's complaint about Ms Singh. There was a discussion about whether the Claimant would be putting in a formal grievance. Ms Mountford stated that if she was going to put in a formal grievance she would need to get dates and witnesses and that they could not investigate something without that.

186 On 27 November 2015, during a telephone conversation, the Claimant stated that the "IAPT" therapist had told her that her letter of concerns were enough for action to be taken. In response Ms Mountfort reiterated that the options were for Ms Mountfort have a discussion and action plan with Ms Singh; or for the Claimant to raise a grievance. Ms Mountfort reiterated that they needed dates and specifics to proceed with a grievance.

187 On 17 February 2016 Ms Mountfort conducted a workplace stress assessment with the Claimant. The Claimant raised the issue of being in conflict with Ms Singh and being worried about seeing her again when returning to work. In response Ms Mountfort reminded the Claimant that she wanted her to first speak to potential witnesses and then provide a detailed grievance which could then be investigated under the Trust grievance policy. In response the Claimant stated that she had spoken to two potential witnesses out of three or four.

188 The Claimant's complaints against Ms Singh had therefore, by the time the Claimant returned from sickness absence on 23 January 2015, remained in a kind of limbo for about five months. On 29 February 2016, following a meeting with the Claimant earlier that day, Ms Mountfort sent an email to the Claimant referring to the Claimant's desire to raise a grievance and agreeing that she would submit that within two weeks (by 15 March) so that it could be actioned.

189 The Claimant did not comply with the deadline. On 20 March 2016 she, however, submitted a formal grievance (or further grievance, the parties being in dispute as to whether the Claimant's letter dated 18 August 2015 was a formal grievance).

Issue 15.4 – on or about 28 January 2016, Ms Mountfort terminating her four week phased return prematurely and without prior consultation

190 This issue can be dealt with relatively shortly.

191 At a meeting on 3 December 2015, when discussing arrangements for when the Claimant would return to work from a sickness absence, Ms Mountfort and the Claimant agreed that the Claimant could return on a phased basis. This was of benefit to the Claimant both in allowing her a gradual reintroduction to work when returning from long term sickness absence and being paid at her full-time contractual rate whilst working reduced hours on her phased return.

192 Ms Mountfort's evidence was that she had informed the Claimant about the phased return entitlement being up to 37.5 hours within a four week period; and that she added an additional six hours above her entitlement. Ms Mountfort was not cross-examined on this evidence. Both elements of the Claimant's allegation at Issue 15.5 are, therefore, incorrect.

Issue 15.7 – Ms Mountfort's failure to investigate her formal grievance dated 20 March 2016 complaint of discrimination/harassment properly or at all

193 On 20 March 2016 the Claimant sent Ms Mountfort a document headed "Grievance against Satveera Singh Asian Development Worker". She complained that she was unable to share a workspace with Ms Singh; and stated that Ms Singh did not demonstrate respect to staff, visitors and clients with respect to race, culture, sexuality and religion. Her complaints were along similar lines to her letter dated 18 August 2015.

194 The following day Ms Mountfort sent an email to the Claimant acknowledging the grievance and notifying the Claimant that she was in discussions with HR about it.

195 On 13 April 2016 Ms Mountfort sent the Claimant another email, notifying her that she had asked the senior management team to approach potential investigators on her behalf because they would be seeking someone outside the Havens.

196 On or around 13 April 2016 Ms Mountfort asked Mr Cordon to find a suitable investigator and he agreed to do so.

197 By the time of the Claimant's resignation on 20 June 2016 Mr Cordon had not appointed an investigator to investigate the Claimant's grievance. He gave various explanations for this, particularly:

197.1 Discussions Mr Cordon had with HR about whether he would be the appropriate person to whom the investigation report should be submitted.

197.2 That the Claimant had told a number of people about her grievance and the disciplinary hearing and that this had affected Ms Singh, so that it was important to ensure that Ms Singh was informed about this; and that Ms Singh was on extended leave.

197.3 HR advised Mr Cordon that the individual he had initially approached might not be appropriate as her level of seniority would cause difficulty in getting an officer at a higher level to consider any appeal the Claimant might make.

197.4 He did not consider the matter to be an urgent priority within his overall list of responsibilities.

197.5 He had met the Claimant and updated her on these matters (he did not do so in writing and, as he did not state that he had updated her more than once, the Tribunal assumes that it was once only).

197.6 During the first two weeks in May Ms Mountfort was on annual leave and he wanted Ms Mountfort to inform Ms Singh about the grievance (the Tribunal takes this to mean that by then Ms Singh had returned to work but Ms Mountfort was not available to speak with her).

197.7 It had taken the Claimant 8 months to submit this grievance and the allegations within it were historic.

198 In fact, the Claimant's grievance against Ms Singh was never investigated by the Respondent, an issue we return to later below.

Issue 15.8 – on or around 24 April 2016, Mr Cordon refused the Claimant's request to reduce her hours

199 On 13 April 2016 the Claimant sent an email to Ms Mountfort asking to reduce her hours from 5.00pm down to 4.00pm, due to childcare. The Claimant's contractual hours had changed from 37.5 to 32 hours when she returned to work in about January 2016.

200 Ms Mountfort discussed the Claimant's request of Mr Cordon. They both had concerns about the Claimant's request to reduce her hours. At a line management meeting on 21 April 2016 she notified the Claimant that she and Mr Cordon had discussed the request and had concerns about reducing her hours. Mr Cordon explained that the concerns were:

200.1 The Claimant would not be at this service at appropriate times at an important window of opportunity for any of her clients who were at school or college students.

200.2 The request would result in a further reduction in young person's advocate capacity and would require backfilling.

200.3 Mr Cordon was aware of previous reduced hours and flexible working requests that had been agreed together with the Claimant having made late TOIL requests, making TOIL requests assumed by her to be allowed but not properly authorised, a sickness absence record leading her to be subject to the Trust's sickness absence management, lateness in arriving at work and times when she had texted in to say that she would not be in,

often due to childcare issues.

201 The Claimant was cross-examined that the reasons given to her that she would not be in the service at appropriate times, the reduction in capacity would require back filling and a previous reduction in hours had been agreed were legitimate factors; and the Claimant agreed with this.

Issue 15.9 – on or around 16 May 2016, Ms Mountford putting undue pressure on her to see a patient presenting with psychiatric symptoms which was beyond the Claimant's level of expertise

202 The Claimant did not make clear what incident she was referring to. Nor did she make clear what was the pressure she said Ms Mountfort put her under. It was, however, put to Ms Mountfort in cross examination that Ms Mountfort had put pressure on the Claimant to see a patient with psychiatric issues and that this was above her level. In response Ms Mountfort disagreed and stated that if a patient was above their competence it was their responsibility to say so, so that arrangements could be made for someone else to see them.

Issue 15.10 – on or around 16 May 2016 Ms Mountfort putting undue pressure on her to provide statistical information about all her clients every two days

203 Ms Mountfort expected the young person's advocates to complete spreadsheets at the end of each day. This was intended to be of benefit both to the advocates in being able to keep track of their workload; and as a management tool. If done on a daily basis it was quick and easy to do.

204 The Claimant was not singled out in the expectation that she should complete her spreadsheets daily – it was something she expected all advocates to do. The requirement cannot, therefore, have anything to do with the Claimant's colour or racial origins; or have been imposed to the Claimant's detriment because of any grievance.

Issue 15.11 – on or around 27 May 2016, Mr Cordon informally reprimanded the Claimant for cancelling a meeting with him. Mr Cordon advised the Claimant that she had not met the requirements of a formal capability plan and instigated a formal meeting on 6 June 2016

205 As referred to earlier above, the final warning Mr Cordon had given the Claimant referred, as part of its conditions, to starting of a capability process. This was a process being managed by Mr Cordon as an outcome of the disciplinary hearing, rather than by Ms Mountfort, the Claimant's line manager. Mr Cordon was implementing the capability plan as part of the Respondent's informal capability procedures. His expectation was for the process to be completed successfully within four weeks starting. He set a series of objectives. The capability procedure at that stage was an informal stage of the Respondent's capability procedures.

206 Mr Cordon had various meetings with the Claimant to discuss progress on the performance objectives that he had set her, which required the Claimant to provide evidence that she had met the objectives.

207 From Mr Cordon's perspective, the Claimant was failing to provide the necessary evidence of meeting the necessary performance standards. He was due to meet the Claimant on 27 May 2016 to discuss the plan.

208 The Claimant failed to attend the meeting. She did not contact Mr Cordon directly to notify him that he wished to rearrange the meeting. Instead, she directed another member of staff to do so. Her explanation was that an urgent appointment had arisen.

209 Mr Cordon was irritated with the Claimant over the manner of her cancellation of the meeting. It had already been rescheduled more than once, with the Claimant having rearranged it. He was irritated that the Claimant did not contact him directly; and that he was not contacted by her as soon as the problem had arisen. He sent her an email stating that he had decided to make his assessment about the informal capability plan on the basis of the information he had.

210 Mr Cordon decided to place the Claimant on a formal capability plan and gave the Claimant a detailed explanation for this. He referred to numerous parts of the plan where the Claimant had given no, or only partial evidence. The Tribunal was taken to the documentation in question which, indeed, shows that the Claimant had not provided the evidence required of her.

Issue 15.12 – on or around 14 January 2016 Ms Mountfort threatened the Claimant with disciplinary action because she declined to attend a meeting and/or close cases when it was inappropriate and contrary to safeguarding policy to do so

211 Ms Mountfort was due to have a supervision meeting with the Claimant on 13 June 2016. The Claimant cancelled the meeting whilst Ms Mountfort was travelling to meet her. In the course of her email the Claimant set conditions on the meeting with Ms Mountfort; namely, either to audio record the line management meetings, have a member of staff present, or have a member of the clinical team closed her cases on her behalf.

212 Ms Mountfort telephoned the Respondent's HR Department for advice. The advice she received was that the options were inappropriate and if she wanted any inaccuracies to be corrected, to ask her to do so. Ms Mountfort was also advised by HR that it was a requirement to meet with the line manager and failure to do so could result in disciplinary action. The Claimant's job description contained a requirement for her to attend regular line management meetings.

213 On 14 June 2016 Ms Mountfort sent an email to the Claimant summarising the advice she had received from Human Resources.

214 As regards the Claimant's allegation that she was being forced to closed cases inappropriately, the Claimant's evidence on this, such as it was, was unconvincing. The nature of the service involved a turnover of clients so that it was important to close cases when the service being offered had been provided; and to open cases as soon as new clients came under the Claimant's care. Ms Mountfort's evidence that the Claimant was weak on these aspects of her job was convincing and supported by documentation to which the Tribunal's attention was drawn.

The Claimant's resignation

215 The Claimant attended a line management meeting with Ms Mountfort on 20 June 2016. She brought with her a letter giving notice to resign from her position with 8 weeks' notice, the employment to terminate on 29 July 2016. She gave Ms Mountfort her resignation letter at the end of the meeting.

216 In a document dated 20 June 2016 the Claimant issued a grievance against Ms Mountfort. As, by then, the Claimant had resigned the details of her complaints are not of great relevance to her constructive dismissal claim. At the beginning of the letter, however, she did state that she was concerned and disappointed that this would be her third attempt to raise concerns concerning her line management at the Haven's Whitechapel and was a formal grievance against Ms Mountfort.

217 The wording of this grievance suggests, and the Tribunal finds, that part of the Claimant's reasons for resigning were dissatisfaction at the Respondent's failure to deal with the grievances (or complaints) that she had already raised, including those of 19 August 2015 and 20 March 2016.

218 A greater part of her reasons for resigning were fears that she would shortly be dismissed. At the end of her meeting on 20 June with Ms Mountfort she talked about panicking when she received emails from Simon Cordon and how upsetting the performance capability programme was for her. Ms Mountfort's evidence was also consistent with evidence given by the Claimant that she believed that the Respondent was trying to get rid of her (although, as referred to earlier above, this was not correct).

219 At a meeting Mr Cordon had with the Claimant on 22 June 2016, during the course of which the Claimant told Mr Cordon that he "had always wanted to sack her", he asked her whether she wanted to resign and whether she wanted to reconsider her decision. The Claimant confirmed that she had decided to resign and did not want to reconsider. If Mr Cordon had truly been wanting to dismiss the Claimant he need not have offered for her to withdraw her resignation. Instead, he would have accepted it with alacrity.

220 The Claimant also, following her resignation letter, raised a grievance against Mr Cordon.

221 Both the grievances against Mr Cordon and Ms Mountfort were considered by Ms Hudson.

222 Ms Hudson did not, however, consider the Claimant's grievance against Ms Singh and was unaware of it. Ms Wallbank set out to the Claimant terms of reference for Ms Hudson's investigation and sent them to the Claimant, who did not challenge them. Her terms of reference did not include her letters dated 18 August 2015 and 20 March 2016 containing her complaints against Ms Singh and her terms of reference dealt only with her complaints made in her letters after her resignation. The parties disputed why the Claimant's complaints against Ms Singh were not investigated by Ms Hudson. It is difficult, and unnecessary, to make findings of fact about this, as by then the Claimant had resigned and she makes no complaints about Ms Hudson's handling of her grievances.

Ms Wallbank was not a witness and there was little cross examination on the issue.

223 Ms Hudson investigated the Claimant's grievance and, whilst she found that there were some aspects of management that could have been handled better, she did not uphold the grievances.

Time Limits Issues

224 The Claimant's explanation for not submitting her claim earlier was as follows.

225 Although she had been a trade union member, of Unison, from 2012 they did not have enough staff.

226 The Claimant stated that she did not know about Employment Tribunal time limits and that she knew nothing about Employment Tribunals. She left the matter to Mr Wood, who was the trade union person (from Unite) that she was seeing and relying on.

227 The Claimant was cross-examined about her brother, who was present at this Employment Tribunal at the outset of this hearing, being a solicitor. The Claimant responded that although he is a solicitor, he practices in criminal law.

Overall assessment of the evidence

228 From all the evidence heard by the Tribunal and the multiplicity of issue we have been required to consider (some listed directly on the attached list of issues, some only through cross referencing to the Claimant's re-amended particulars of claim our findings are as follows.

229 Both Ms Mountfort and Mr Cordon had an impressive grasp of detail and had, clearly, put in a lot of work in reading the extensive documentation in the case. Their evidence, on the whole, was impressive.

230 There was a considerable amount of evidence to suggest that the Claimant was difficult to manage. She had fallouts with numerous colleagues and with managers more senior to her. In addition to the complaints against Ms Singh, Ms Mountfort and Mr Cordon that formed the subject matter of these proceedings, she also made a complaint against Ms Rajanikanth, although she did not co-operate in seeking to address or resolve it. Ms Mountfort, in her witness statement also referred to conflicts the Claimant had with Ms Smith, an Interim Service Delivery Manager in post whilst Ms Rajanikanth was on maternity leave; and with Ms Sawhney, a young person's advocate at the Haven Paddington. There are numerous references to the Claimant failing to comply properly with procedures for recording of time off in lieu, notification of absences, taking time off at short notice and other ordinary requirements of the Respondent's employees. There was convincing evidence to support Ms Mountfort's references to the Claimant being weak on her organisational skills. It was also noteworthy that, despite the numerous (unjustified) allegations of race discrimination made against her by the Claimant, she was able to give a balanced picture of the Claimant's strengths as well as her weaknesses (as per her response to the question from the judge about the Claimant's strengths).

231 As regards Mr Cordon's evidence there were times when his responses appeared a little patronising, such as, for example, numerous occasions when he told the Tribunal that this part of his evidence was important – we are an experienced Employment Tribunal and well capable of listening to witness evidence and deciding for ourselves what is important. Nevertheless, apart from his delay in getting an investigator appointed for the Claimant's grievance on 20 March 2016, and the respect in which he widened the capability plan beyond the allegation for which the Claimant was attending her disciplinary hearing, he treated the Claimant fairly. Both Ms Mountfort and Mr Cordon were probably more lenient than other managers might have been with regard to such matters as the Claimant's record keeping, timekeeping, notification of absences and general organisation.

232 Did the Respondent reasonably and promptly afford a reasonable opportunity to the Claimant to obtain redress of her grievances?

233 As regards the Claimant's grievance, or complaint, dated 18 August 2015, the Tribunal considers that both the Claimant and the Respondent bear responsibility in the delay up to 20 March 2016, with the Claimant being at least as much responsible for the delays as Mountfort.

234 On the Respondent's part, Ms Mountford was requiring the Claimant to find witnesses if the grievance was to be considered as a formal grievance. The Tribunal considers this to be a mistaken approach on her part. Whilst obtaining information from witnesses is important, if there are any, it should not be a pre-requisite for making a grievance; and not all matters about which employees complain have witnesses. It is not uncommon, for example, for acts of sexual harassment to be carried out with no witnesses present.

235 On the Claimant's part, she was reminded by Ms Mountford on a number of occasions that she needed to decide what she would do. The Claimant neither gave Ms Mountford details of any such witnesses; nor, until 20 March 2016, did she state that she wanted her complaints to be investigated whether or not she was able to obtain witnesses. She failed to provide Ms Mountford with sufficient clarity as to how she wanted the matter dealt with.

236 As regards the Claimant's grievance dated 20 March 2016, the Tribunal finds that the Respondent did not deal with it reasonably and promptly.

237 In the three months between the Claimant submitting her grievance on 20 March and her resignation on 20 June, the Respondent had failed even to appoint someone to investigate it. The Claimant's grievance raised serious complaints which, if true, demonstrated various forms of unlawful discrimination on the part of Ms Singh. Under the Respondent's disciplinary procedures unlawful discrimination is listed as gross misconduct. If found to be true, therefore, Ms Singh had committed acts of gross misconduct. It is important that grievances are dealt with reasonably and promptly, rather than being allowed to fester.

238 The Tribunal appreciates that the Respondent in general, and Mr Cordon in particular, had many pressures on their time. Some delay, particularly if accompanied by regular updates as to attempts to make progress in dealing with the grievance may well

have not been unreasonable; and the Claimant herself could also have put more pressure on as to the delay on Mr Cordon's part. In effect however, the investigation of the Claimant's grievance had not started in the three months between her issuing it and resigning; in a context of a serious complaint of unlawful discrimination having already been outstanding since August of the previous year.

239 The Respondent's failure to make any meaningful progress in investigating the grievance during the three months in question was, therefore, a failure to comply with the implied term of the Claimant's contract of employment to reasonably and promptly afford a reasonable opportunity for the Claimant to obtain redress of the grievance she had. Issues 21.2 (iii)(b) 25.1 are made out on the Claimant's part in respect of her grievance dated 20 March 2016 (alleged failure to address her concerns and the employer must give an employee a reasonable opportunity to obtain redress in respect of a grievance).

Closing Submissions

240 Both representatives gave typed closing submissions, supplemented by oral submissions.

241 Both representatives gave submissions on the relevant law, the findings of fact the Tribunal was invited to make and the conclusions we were invited to draw.

242 We do not set out the submissions in detail, although we have read them and listen to them carefully and borne them in mind.

Conclusions

The burden of proof

243 The Tribunal has considered whether the burden of proof passes to the Respondent in respect of the Claimant's allegations of race and religion or belief discrimination.

244 As regards the complaints of direct discrimination the Claimant relies on hypothetical comparators. In such cases it may be better to consider directly the question of why the Claimant as she was, namely whether or not it was on the prohibited ground or not, rather than going through the steps set out in the *Igen v Wong* case. Neither of the parties' representatives closing submissions covered reasons for why the burden of proof shifted or did not shift. For some of the allegations, for example issue 4.1 and 4.2 (stones and religious chanting) it is questionable whether our findings of fact disclose any detrimental treatment in order for the burden of proof provisions to require consideration.

245 The Tribunal doubts whether, apart from how the Respondent responded to the Claimant's written complaints, or grievances and, possibly, the decision to instigate a disciplinary investigation and proceedings, that the burden of proof shifts to the Respondent to prove that the did not commit the discrimination contended for by the Claimant. For example, although the Claimant received detrimental treatment by receiving a final written warning, what she did to the patient was, within the Respondent's disciplinary procedures, an act of gross misconduct for which the Claimant could have

been dismissed. We have, however, considered the Respondent's explanations for the treatment of the Claimant for the issue in question and whether or not we accept that there was no unlawful discrimination whatsoever, whether conscious or unconscious.

Issue 4.1 Ms Singh commented that she felt uncomfortable holding the Claimant's daughter's hand, because the women in Ms Singh's community would consider she had been a 'dirty girl' by having a sexual relationship with a black man

246 This incident did not take place in the course of the Claimant's employment, as required under section 109 EqA. It was a social event attended by the Claimant and Ms Singh, as part of the friendship that had developed between them. No other work colleagues were present. It was an Asian wedding event and did not take place at the Respondent's workplace. It was not on a working day.

247 This complaint, therefore, fails. It is unnecessary, therefore, to consider whether to extend time limits. As it was over four years between the incident occurring and the Claimant complaining to her employers about it, had we been considering the Limitation Act factors in considering whether to extend time limits, we would not have extended time limits for this complaint.

issue 4.2 Ms Singh would put stones or charms in a line on her desk saying there was 'negative energy' in the shared office, once said regarding the Claimant's Christianity

Issue 4.3 Ms Singh would play CDs of religious chanting in the shared office and print off religious spells at the work printer

248 There are a number of elements required under section 26 EqA in order for race or religion or belief discrimination harassment to succeed.

249 The Claimant needs to show that the behaviour, in so far as the Tribunal found it to have taken place, was unwanted. For the most part, at the time, the Tribunal finds and concludes that the behaviour was not unwanted at the time. The Claimant, around September 2014, probably felt minor irritation at hearing from gossip from a colleague or colleagues that Ms Singh had printed something on the printer that was not to do with her work (which the Claimant described as "a spell", Ms Singh as a Hindu prayer) and raised it with Ms Mountford. The other complaints were more in the nature of a backlash against Ms Singh reporting to Ms Mountford that the Claimant had hit a patient than the conduct truly being unwanted at the time, as set out in our findings of fact above.

250 Whether the conduct concerned (again, in so far as the Tribunal found it to have taken place) related to a relevant protected characteristic is doubtful. The crystal stones were not of a religious nature, but felt by Ms Singh to dispel negative energy. To the extent that Ms Singh played religious music, or chanted, this may have been related to Ms Singh's religion or belief which were, as stated in our findings of fact, more of a general spiritual nature than Sikh.

251 Viewed objectively, the Tribunal does not find or conclude that the conduct had either the purpose or effect of creating the requisite hostile etc environment. It was as set out above, to a large extent not unwanted conduct. Although the friendship between the

Claimant and Ms Singh soured, there was no convincing evidence of any hostile behaviour from Ms Singh towards the Claimant. The spark that lit the flames that have led to most of the many allegations in this litigation were not the actions at issues 4.1 to 4.3, but Ms Singh reporting to Ms Mountford that the Claimant had hit a patient and, although the Claimant disputed Ms Singh's account as to how much force she had used, she did accept during the disciplinary process that she had hit a patient.

252 Issues 4.2-4.3 are also listed (issues 10-12) as direct discrimination because of religion or belief.

253 For similar reasons that the Tribunal found that Ms Singh did not create the necessary hostile etc environment to the (small) extent that the matters alleged occurred, they did not amount to detrimental treatment. Neither did they take place because the Claimant is a Christian, as stated by the Claimant in her witness statement and described in our findings of fact earlier above.

254 The claims, therefore, fail.

Issues 13-20- allegations of direct race discrimination and victimisation

Issue 15.1- Ms Satveera Singh accusing the C of assaulting a service-user on 19 June 2015, by embellishing the facts which she knew amounted to a minor consensual touching causing no pain

255 The Respondent accepts that the Claimant's written complaints (it disputes whether the first was a formal grievance) dated 18 August 2015 and 20 March 2016 were protected acts; but disputes whether her oral complaints to Ms Mountford on 29 September 2014 and 13 May 2015 were protected. The Claimant's letter dated 18 August 2015 was a written complaint about many issues concerning her workplace, particularly about Ms Singh, including allegations of discrimination and the Tribunal agrees with the Claimant that it was a grievance.

256 As regards the oral complaints there was nothing said to Ms Mountford on either occasion that suggested that Ms Singh was committing an act of religious or race discrimination, nor did Ms Mountford understand her to be making any such complaint. They were not protected acts within the meaning of section 27 EqA.

257 For the reasons set out in our findings of fact, to the extent that Ms Singh did embellish the facts, it had nothing to do with the Claimant's race or religion. It should also be borne in mind that at the disciplinary hearing, when asked whether reporting the incident was the right thing to do, the Claimant accepted that it was. The complaints of direct discrimination fail.

258 As regards victimisation, the Claimant's first protected act was her written complaint dated 18 August 2014. This was made after Ms Singh's reporting of the incident with the service user on 19 June 2015, so the victimisation complaint must fail. Additionally, even if the earlier oral complaints had been protected acts, Ms Singh was unaware at the time that the Claimant had made them, so could not have treated the Claimant detrimentally because of them. Additionally, the complaint would have failed for

similar reasons as the direct discrimination complaint fails, particularly that the treatment did not occur because the Claimant did a protected act.

Issue 15.2 The R instigated and conducted full disciplinary proceedings against the C placing her at risk of dismissal;

Issue 15.5 On or around 25 February 2016, Mr Cordon issuing the C with a final written warning with several conditions attached;

Issue 15.6 On or around 25 February 2016 Mr Cordon requiring her to complete a performance management procedure.

259 As set out in the Tribunal's findings of fact above, the Claimant herself at her disciplinary hearing accepted that Ms Singh reporting the incident was the right thing to do; and that she had made physical contact with the patient. There were good reasons, therefore, for a disciplinary investigation to have been put into place. There were ample reasons for Ms Delaforce to have recommended that the matter be considered at a disciplinary hearing, her reasons being described above in our findings of fact, and for Mr Cordon to accept her recommendation, as set out in our findings of fact.

260 The Tribunal has given some consideration as to how Ms Mountfort and Mr Cordon dealt with Ms Singh's complaint that the Claimant had hit a patient; and how they dealt with the Claimant's complaints against Ms Singh, which included complaints of various forms of discrimination. Although any contrast in how they were dealt with was not put on the Claimant's behalf, and Ms Singh was not a named comparator for this issue, we have given it consideration. Both involved, if true, potential gross misconduct under the Respondent's procedures. In the case of Ms Singh's complaint against the Claimant, the matter proceeded to a disciplinary investigation. In the case of the Claimant's complaints against Ms Singh, no disciplinary investigation was instigated.

261 As to whether Ms Singh was a true comparator, her reporting involved a client of the Claimant and was a detailed complaint, made on the day the incident took place. There were other individuals nearby, able to say what the Claimant had said on the day about the incident. In contrast, in the Claimant's first grievance, dated 18 July 2015, no dates were given as to when any of the alleged incidents took place and no witnesses were given. Ms Mountfort was attempting to get more details from the Claimant and the Claimant was failing to give them, although stating that she would do so.

262 The Claimant, in her second grievance dated 20 March 2016 did give some dates as to when she said the incidents occurred, although the dates given were mostly vague and some were of events from a long time ago. In neither case is the contrast between how the respective complaints were treated a true comparison, although they might give evidence of how a hypothetical comparator would have been treated. The incidents were different, the details given in the complaints was different, the corroboration of the incidents was present with Ms Singh's complaint and absent with the Claimant's complaints.

263 As regards the first grievance, Ms Mountfort preferred, where possible, for employees to take responsibility for colleagues to resolve difficulties between each other

themselves; and she also wanted more information from the Claimant.

264 As regards the Claimant's second grievance, Mr Cordon made some attempts to start an investigation and failed to do so, for the reasons given in our findings of fact; and Ms Hudson investigation into the Claimant's grievances did not include the Claimant's grievances against Ms Singh, for the reasons given in our findings of fact.

265 Although we have made some criticisms as to how Ms Mountfort and Mr Cordon dealt with the Claimant's grievances, we are satisfied that the failings were in no sense whatsoever on the prohibited grounds. We accept Ms Mountfort's and Mr Cordon's explanations, to that extent. The Tribunal believes, and finds, that if the Claimant had witnessed Ms Singh hitting a patient, reported the incident that day, had others nearby to give details, for example, that Ms Singh had said "so what", Ms Singh would have been subject to disciplinary procedures.

266 The Claimant's own trade union advisor advised the Claimant against appealing against the decision and appears to have thought that the Claimant should be grateful that she was not dismissed. Under the Respondent's disciplinary procedures, the Claimant had committed an act of gross misconduct and could have been dismissed. Contrary to the Claimant's case, the Respondent was not trying to "get rid of her."

267 Issues 15.1 and 15.2, therefore, fail.

268 Issue 15.6 requires some detailed consideration by the Tribunal. As set out in our findings of fact, the outcome of the disciplinary hearing by Mr Cordon was to include conditions on her final warning, namely completing an (at that stage informal) performance management procedure. The disciplinary hearing was, however, to consider the allegation that she had assaulted a patient and did not include the allegations of poor performance that led to Mr Cordon instigating the Respondent's informal capability procedures. Paragraphs 9-12 of the ACAS Code of Disciplinary and Grievance Procedures contain advice about informing an employee of the problem before the disciplinary hearing and considering the employee's responses to it at the disciplinary hearing. What he needed to have done was to have included his concerns about the Claimant's performance in the sense of her capability before she attended her disciplinary hearing so that she could consider them and respond to them. Although, however, Mr Cordon's handling of the disciplinary hearing, in this respect, did not comply with the ACAS Code, our findings of fact above show that Mr Cordon's concerns about the Claimant's capability were genuine, and justified. Moreover, they were confirmed by the Claimant failing to perform the tasks required of her under the informal procedure, causing Mr Cordon to need to consider moving onto the formal stages of the Respondent's capability procedure. Whilst, therefore, there was a failing in how the disciplinary hearing was dealt with, the Tribunal is satisfied that it was in no sense whatsoever because of her race or her grievance.

269 The complaint in issue 15.6, therefore, fails.

Issue 15.4- on or about 28 January 2016, Ms Mountfort terminating her four-week phased return prematurely and without prior consultation

270 The Tribunal's findings of fact show that Ms Mountfort did not terminate the Claimant's four-week phased return prematurely but in fact allowed her more than four weeks and did inform her about this. This complaint, therefore, fails.

Issue 15.3- Ms Mountfort's failure to investigate her formal grievance dated 18 August 2015 complaints of discrimination/harassment properly or at all

Issue 15.7- Ms Mountfort's failure to investigate her formal grievance dated 20 March 2016 complaints of discrimination/harassment properly or at all

271 On these issues the Tribunal considers that the burden of proof shifts to the Respondent to disprove discrimination, in other words for the Tribunal to consider the Respondent's explanations for what occurred.

272 As described in our findings of fact above, we consider that both Ms Mountfort and the Claimant bear responsibility for the failure to investigate her grievance dated 18 August. Ms Mountfort was requiring the Claimant to obtain witness evidence if it was to be treated as a formal grievance; and the Claimant for not acting more promptly in response to what Ms Mountfort was asking.

273 To the extent that Ms Mountfort was at fault in how the Claimant's first written grievance was treated, was it in any sense whatsoever because of her race? The Tribunal concludes that it was not. She was not preventing the Claimant from bringing a grievance but she was wanting further evidence and clarity from her, as she had been advised by the Respondent's Human Resources department. The Claimant failed to provide that clarity or the further evidence asked for her, so was at least as much responsible as Ms Mountford for the delays. The Tribunal is satisfied that the delays on Ms Mountford's part were in no sense whatsoever because of the Claimant's race.

274 As regards the Claimant's grievance dated 20 March 2016, although issue 15.7 refers to Ms Mountfort, there is no dispute that Ms Mountfort passed that onto Mr Cordon to deal with; and the explanations for the delay in having it investigated were given by Mr Cordon.

275 The Tribunal has considered Mr Cordon's explanations for his delay in getting the Claimant's grievance investigated. As described in our findings of fact the Tribunal considers his failings in this respect to be a breach of the implied term of contract that an employer will reasonably and promptly afford a reasonable opportunity to its employees to obtain redress of any grievance they may have. We are satisfied, however, that this failure on his part, had nothing whatsoever to do with the Claimant's race.

276 When viewing Mr Cordon's treatment of the Claimant as a whole, he treated her fairly, even generously. He gave the Claimant a final warning, when he could have dismissed her. He gave her a fair opportunity to complete the informal capability procedure before moving to the formal stage. When the Claimant resigned, he made her an offer to withdraw her resignation. After the Claimant had resigned, and raised grievances against both Ms Mountford and Mr Cordon, these grievances were investigated by Ms Hudson. The Tribunal does not accept, therefore, as submitted on behalf of the Claimant, that the Respondent could not handle the sensitive nature of her

racial and religious complaints.

277 The Tribunal concludes, therefore, that the complaints fail both as complaints of direct discrimination and victimisation.

Issue 15.8- On or around 24 April 2016, Mr Cordon refused the C's request to reduce her hours

278 As set out in the Tribunal's findings of fact, the Claimant accepted when cross examined, that the reasons given to her for the concerns Mr Cordon had about a (further) reduction in the Claimant's hours were legitimate factors. There was nothing to suggest that they had anything to do with the Claimant's race or protected acts. The complaints fail.

Issue 15.9- On or around 16 May 2016, Ms Mountfort putting undue pressure on her to see a patient presenting with psychiatric symptoms which was beyond the C's level of expertise

279 As described in the Tribunal's findings of fact, it was not made clear by the Claimant what patient she was referring to or what was the pressure she was said to have been put under. Nor was it made clear whether, and if so why, the Claimant disagreed with Ms Mountfort's statement that if a patient was above her competence it was her their responsibility to say so, so that arrangements could be made for someone else to see them. The Claimant has failed to set out the factual basis for her claim and it fails.

Issue 15.10- On or around 16 May 2016 Ms Mountfort putting undue pressure on her to provide statistical information about all her clients every two days

280 As set out in the findings of fact, the Claimant was not being singled out. Ms Mounfort expected all young persons' advocates to keep spreadsheets up to date and considered it an important management tool. The complaint fails on our findings of fact and no question of any shifting of the burden of proof arises.

Issue 15.11- On or around 27 May 2016, Mr Cordon informally reprimanded the Claimant for cancelling a meeting with him. Mr Cordon advised the Claimant that she had not met the requirements of the formal capability plan and instigated a formal meeting on 6.6.16

281 As described in the findings of fact above, the Claimant failed, despite being given more opportunity than Mr Cordon needed to give her, to complete the tasks required of her under the informal capability procedure. The meeting that had been arranged was part of the informal process that Mr Cordon expected and hoped the Claimant would complete successfully. We accept Mr Cordon's reasons for feeling irritated at the fact and manner of how the Claimant cancelled it, particularly in the context of the Claimant having already re-arranged the meeting more than once. The Tribunal has no reason to believe that Mr Cordon would not have been equally irritated at any employee cancelling a similar meeting with him; or that he would not have started formal capability procedures for any employee who had failed to comply with the requirements of an informal capability procedure that he had done his best to help him or her fulfil, whether or not they had previously performed a protected act under the Equality Act. These complaints fail.

On or around 14 June 2016 Ms Mountfort threatened the Claimant with disciplinary action because she declined to attend a meeting and/or close cases where it was inappropriate and contrary to safeguarding policy to do so

282 The Tribunal's findings of fact show that Ms Mountfort, on advice from Human Resources, was making a reasonable management instruction to meet with her and the Claimant was putting conditions on their meeting which Ms Mountfort was advised were inappropriate. The warning, or threat, about possible disciplinary action was about the Claimant's reluctance or refusal to meet Ms Mountfort, not about the issue of closing cases which was one of the items they had been discussing at meetings.

283 As stated in the findings of fact above, the Claimant's evidence that she was being asked to close cases when it was inappropriate to do so was unconvincing; and Ms Mountfort's evidence about the Claimant's poor organisational skills being the reason for cases that needed to be closed remaining open and cases that needed to be opened not being opened was convincing.

284 We do not believe that the burden of proof shifts for this issue; but if it does we accept the explanation given by Ms Mountfort as being in no sense whatsoever because of the Claimant's race or the grievances she had raised. The complaints fail.

Constructive unfair dismissal claim

285 The Tribunal's findings of fact show that the Respondent failed to investigate the Claimant's grievance dated 20 March 2016 reasonably and promptly. This amounted to a fundamental breach of contract.

286 As the implied term as to grievances is a free standing implied term of contract, it is unnecessary to consider the other contended for breaches of contract set out in issues 25.2-25.5.

287 The Tribunal findings of fact also show that the Claimant resigned at least in part because of the Respondent's fundamental breach of contract.

288 The Claimant did not affirm the breach of contract- it continued up to the date of the Claimant's resignation.

289 The Claimant was, therefore, dismissed within the meaning of section 95(1)(c) ERA.

290 The Respondent did not present a case in closing submissions that if, contrary to the Respondent's primary case, the Claimant were to be held to have been dismissed, the dismissal was nevertheless fair. As, however, in the pleaded case, the Respondent asserted that, if held to have been dismissed, the reason was capability and fair, we deal briefly with the issue.

291 The reason or principal reason for the Claimant's (constructive) dismissal was the Respondent's fundamental breach of contract in how they dealt with the Claimant's grievance dated 20 March 2016. This is not a fair reason for dismissal within the meaning

of sections 98(1) and (2) ERA. Nor could the Respondent have come close to establishing that capability was the principal reason for the Claimant's dismissal. Mr Cordon was at the start, nowhere near the conclusion of beginning formal capability procedures against the Claimant. As to the Claimant, whilst she believed that the Respondent was wanting to "get rid of her", she believed that the Respondent's treatment of her was because of racial discrimination on the part of the individuals concerned, not shortcomings as to her capability.

Remedy hearing

292 We invite the parties to seek to resolve remedy themselves. Meanwhile, please give your dates of availability for the months of December and January, and your time estimates for the remedy hearing, within 14 days of receipt of this judgment, failing which the remedy hearing will be fixed without taking account of availability of the parties and representatives. The Claimant should also provide the Respondent an up to date schedule of loss and remedy statement; after which the Respondent should provide the Claimant with their counter schedule of loss. If need be the Tribunal can make case management orders, but it is hoped that the parties can do any necessary case preparation by agreement between themselves.

Employment Judge Goodrich
Date: 16 October 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON
23 October 2019
V Roberts
FOR THE TRIBUNAL OFFICE