Case Number: 1801842/2015
1800422/2016
1801206/2016

EMPLOYMENT TRIBUNALS

Claimant: **Mrs Z Khan**

Respondent: **Sheffield Health and Social Care NHS Foundation Trust**

Heard at: **Sheffield** **On: 11, 12, 13, 16, 17, 18, 19, 20 23, 24, 26 October 2017**

In Chambers: 26 and 27 October 2017

Before: **Employment Judge Brain**
Mr D Crowe
Mr D Fields

Representation

Claimant: In person
Respondent: Miss L Gould

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that:-

1. (By reference to the agreed list of issues) the Claimant's claims indentified as issues 1, 4, 7, 8, 9, 10 and were presented within the time limit provided for by section 123 of the Equality Act 2010. It is just and equitable that time be extended in order to vest the Tribunal with jurisdiction to consider the complaints identified as issues 2,3 and 5.
2. All of the Claimant's complaints fail on their merits and stand dismissed.

REASONS

1. Following a day for case management and reading which took place on 11 October 2017, the Tribunal heard evidence in this matter between 12 and 24 October 2017 inclusive. We received the Respondent's closing submissions on the afternoon of 24 October 2017 and the Claimant's closing submissions on the morning of Thursday 26 October 2017. The Tribunal then deliberated in chambers that afternoon and on Friday 27 October 2017. We reserved judgment following receipt of the parties' submissions. We now give our reasons for the judgment that we have arrived at.

2. The hearing was held in order to determine complaints advanced by the Claimant pursuant to three separate claim forms. The first claim (1801842/2015) was presented on 31 July 2015. Mandatory early conciliation commenced on 3 June 2015. The second claim (1800422/2016) was treated as being presented on 17 March 2016. The third claim (1801206/2016) was presented on 9 August 2016. Mandatory early conciliation for the second claim commenced on 10 March 2016 and for the third claim commenced on 21 July 2016.

3. The Claimant presented a fourth claim (case number 1800237/2017). This claim was stayed pending the outcome of this hearing pursuant to an order made by Employment Judge Burton on 2 March 2017.

4. The matter has had a very complex procedural history. It is unnecessary to recite that history in these reasons. This is primarily because the parties co-operated and agreed a list of issues to be determined at this hearing.

5. We shall set out the list of issues in full later in these reasons. It suffices to say at this stage that the Tribunal is concerned in this case with claims brought under the Equality Act 2010 of:-

    5.1. Direct discrimination because of relevant protected characteristics.

    5.2. Harassment related to relevant protected characteristics.

    5.3. Victimisation.

6. The relevant protected characteristics with which we are concerned are religion or belief and race. The relevant religion or belief is that of the Claimant (being of the Muslim faith). The relevant race is that of the Claimant, being British Asian.

7. The Tribunal heard evidence from the Claimant. She in fact presented two witness statements. They were similar in places. The two were taken together as her evidence. We heard evidence from 12 witnesses called by the Respondent. Miss Gould presented the Tribunal with a very helpful cast list of the witnesses called by the Respondent together with a brief description of their involvement in the matter. It is, we think, worth setting this out in full:-

    7.1. Julie Smalley (nee Sims) – manager, Adult Acute Services;

        (1) Second level of management above the Claimant on her first role at Forest Close.

(2) Accused of having interrupted the Claimant whilst at prayer and commented that she should not be praying in the office.

7.2. Janet Furniss – site service manager, Forest Close;

(1) The Claimant's manager as manager for the housekeeping team at Forest Close.

(2) Involved in the complaint against Julie Smalley and accused of having put the Claimant on a 'fraud database'.

7.3. Beverley Melluish – senior housekeeper, Pinecroft;

(1) The Claimant's line manager on her move to Pinecroft in December 2014.

(2) Accused of having complained to Maxine Statham about the amount of time the Claimant spent in prayer.

7.4. Maxine Statham – assistant service director for Adult Acute Services;

(1) The Claimant's senior manager on her move to Pinecroft in December 2014.

(2) Accused of having told the Claimant not to pray whilst at work during the review meeting on 14 January 2015 and relevant to the allegation against Beverley Melluish.

7.5. Elizabeth Johnson – head of equality and inclusion;

(1) Conducted investigation into bullying and harassment, including the complaint against Julie Smalley.

7.6. Toni Collins – band 5 nurse, previously staff nurse on ITS psychiatric intensive care ward;

(1) Alleged to have instructed the Claimant to work on a one to one basis with a known racially abusive client.

7.7. Ian Hall – HR directorate partner;

(1) Involved in the complaints by the Claimant against Julie Smalley and Toni Collins.

7.8. Adelaide Chibanda (nee Mukasa) – ward manager, Endcliffe Ward (psychiatric intensive care unit);

(1) Investigated complaints by the Claimant against Toni Collins.

7.9. Shirley Lawson – clinical nurse service manager, previously manger at Maple Ward;

(1) Investigated concerns about the Claimant's conduct and took the decision to suspend the Claimant;

(2) Relevant also to complaints about disciplinary procedural failings.

7.10. Sharon Booth – human resources advisor;

(1) Named in the complaint regarding the decision to hold a disciplinary meeting during Ramadan.

(2) Relevant to the additional complaints about disciplinary procedural failings.

7.11. Louise Hall (nee Robson) – human resources directorate partner;

(1) HR advisor to the disciplinary panel.

(2) Named in the complaint regarding the decision to hold the disciplinary meeting during Ramadan and of having advised the Claimant not to pursue an appeal regarding the disciplinary finding.

(3) Relevant to the additional complaints about the disciplinary procedural failings.

7.12. Fiona Goudie – consultant clinical psychologist and clinical director of strategic partnerships;

(1) Chair of the disciplinary panel.

(2) Named in the complaint regarding the decision to hold a disciplinary meeting during Ramadan and of having advised the Claimant not to pursue an appeal regarding the disciplinary findings.

(3) Relevant to the additional complaints about the disciplinary procedural failings.

8. Having introduced the witnesses, we shall now set out findings of fact. Once we have done that we shall consider the relevant law and then by application of the relevant law to the factual findings give our conclusions upon the issues before us.

9. Before setting out detailed factual findings it is, we think, worth noting some key dates. The reason for this is that the factual nexus of the three claims raised by the Claimant with which we are dealing is somewhat complex with overlapping events. A summary of the key procedural dates is set out below. (We shall refer in these reasons to the Respondent's witnesses by their initials and to Mrs Khan as 'the Claimant').

9.1. On 24 November 2014 the Claimant raised a bullying and harassment complaint against JS and JF (page 174 of the bundle). This was investigated by EJ whose report is at pages 274(1) to (118). EJ's report was concluded on 8 May 2015 and was sent to the Claimant on 19 June 2015.

9.2. The Claimant raised a grievance on 28 February 2015 that she had been placed with a patient ('TE') who was known to be racially abusive. The Claimant's grievance is at page 239. This was investigated by AC who completed her report on 13 January 2016 (pages 375 to 377).

9.3. The Claimant was suspended on 17 April 2015. The letter of suspension is at pages 269 and 270. A disciplinary investigation was carried out by SL assisted by SB. SL's management statement of case is at pages 384 to 492. Disciplinary action was taken against the Claimant. Disciplinary

hearings took place in May, June and July 2016 before a disciplinary panel chaired by FG who was supported by LH. The disciplinary hearing outcome was communicated verbally to the Claimant on 21 July 2016 and confirmed in writing pursuant to a letter sent to her by FG on 28 July 2016 (pages 556 to 561).

9.4. It is the Tribunal's hope that the recitation of the Respondent's cast list (setting out each witness's role in the matter) coupled with the summary of the key procedural dates gives a context and background in the light of which the detailed factual findings may now be better understood. We now turn to our findings of fact.

10. At the outset, the Tribunal observes that it is perhaps unfortunate that none of the witnesses (particularly those from the Respondent) gave a general overview of the Respondent's operation and functions in general and in particular at the several locations that feature in the case. It would have been helpful if this had been set out clearly in at least one of the Respondent's witness statements.

11. The Claimant commenced work for the Respondent on 10 March 2014 as a cook/housekeeper at Forest Close. The job description and person specification for this role is at pages 460 to 463. From this, we read that the Respondent is *"a health and social care NHS Foundation Trust providing a range of diverse services including: generic and specialist mental health care; services for people with learning disabilities; drug and alcohol services; improving access to psychological therapies (IAPT); GP primary care services; dementia care services; and community based services for those with long term neurological conditions".* The job of cook/housekeeper was for a fixed term contract of 12 months. Forest Close is a 44 bedded rehabilitation and recovery service. The role was for 20 hours per week between 4 o'clock pm and 8 o'clock pm between Monday and Friday inclusive.

12. The Claimant had worked for the Respondent before. According to page 390 (within SL's report referred to at paragraph 9.3) this was for a period of around five years "between 2001 and June 2006 in administration and secretarial roles".

13. Because of the bullying and harassment complaint that she had raised on 24 November 2014 to which we have referred at paragraph 9.1, the Claimant moved to work at the Pinecroft recovery ward as a housekeeper from 8 December 2014. She worked there in that capacity until the expiry of the fixed term contract on 9 March 2015.

14. The Claimant also worked for the Respondent as a flexible staffing band 2 support worker. Again according to page 390, the Claimant began working in this capacity at Forest Close and thereafter at Birch Avenue nursing home from 6 June 2014. SL says that the Claimant did not apply for or undergo an interview for that post it being accepted practice for housekeeping staff to work flexible staffing support worker shifts.

15. The Claimant was then interviewed on 21 August 2014 to work as a support worker elsewhere within the Trust. She was offered the post of flexible staffing band 2 support worker on 28 October 2014. The job description is at page 456 (again part of SL's management statements of case). In that

capacity, she worked on a number of the acute wards. According to page 390 these included Rowan, Burbage, ITS plus ward GI (a psychiatric intensive care ward), Stanage, Dovedale and Maple wards. TC gives a brief description of the ITS ward as "a psychiatric intensive care ward" in paragraph one of her witness statement. At paragraph 4 of her witness statement, SL describes Maple ward as "an adult acute mental health in-patient ward". It does bear repeating that it is unfortunate that no comprehensive description of this important background information was provided for the benefit of the Tribunal by the Respondent.

16. The Claimant remains an employee of the Respondent in the flexible support worker role. However, she is suspended from work in that capacity. Her role as cook/housekeeper came to an end with the expiry of the fixed term contract.

17. In her capacity as manager of the housekeeping team at Forest Close and direct line manager of the Claimant, JF undertook a number of supervision meetings with her. Notes of the supervision meetings of 29 April, 3 June and 19 June 2014 are at pages 156 to 158 respectively. The first two of these supervisions in fact took place before the Claimant commenced her flexible support worker role.

18. In her witness statement the Claimant described JF's comments in the supervision of 29 April 2014 (page 156) as "patronising". In evidence given under cross-examination the Claimant did not explain why she had this perception and accepted that it was appropriate for JF to raise the issues there recorded. Amongst the matters of concern to JF was that of professional boundaries. It was recorded the Claimant had been experiencing problems with a couple of the patients who had been seeking her out. JF instructed the Claimant to seek the assistance of the staff nurse in charge of the shift should this problem continue. She also recommended the Claimant to detach herself from the previous role that she had held with the respondent and to concentrate upon her substantive role as a housekeeper. JF also told the Claimant to be aware at all times of confidentiality issues.

19. In evidence given under re-examination, JS was taken to the supervision note of 29 April 2014. JS was not of course a party to the supervision meeting. However, she was aware of one patient in particular who was exhibiting delusional and problematic behaviour and had been approaching the Claimant when she (the Claimant) was at prayer. JS said that this was one of the reasons why the Respondent preferred the Claimant to take prayer in private and out of view of the patients.

20. The issue of professional boundaries was raised again on 3 June 2014 (page 157). The Claimant fairly acknowledged this to be a genuine issue.

21. The note at page 157 records in the final box that the issue of praying was raised with the Claimant. The relevant entry says that JF "discussed the importance of praying in a nice quiet environment and not in the office area where there are constant disruptions – Zeema *(sic)* to use the OT office or the treatment room where she will not be disturbed". The OT office is that used by the occupational therapists employed by the Respondent.

22. In her evidence in chief given at paragraphs 6 to 8 of her witness statement JF says that the administration office (where the Claimant took prayer) was not considered appropriate as it was used by staff who wanted to access the computers and as a reception area for visitors and service users. In addition, there was the issue around the patient mentioned by JS (whom JF describes as having a "particular fixation on praying").

23. The Claimant denied that this issue had been raised with her by JF on 3 June 2014. The Claimant said that the OT room was no quieter than was the administrative office. Her evidence was that the reverse was often the case as on at least some occasions OT staff would work late. This would inhibit the Claimant taking prayer at around the time of her arrival at work to commence her shift. The Claimant also cast doubt upon the accuracy of the note as she maintained that the electronic signature on the document at page 157 was not hers and her first name had not been spelled correctly in the electronic signature.

24. In evidence given under cross-examination, JF said that she typed up the documents at page 157 and put it in the Claimant's tray for her to read through. She said that she typed up the note from the handwritten note that she wrote during the supervision meeting itself. The handwritten note was placed by JF in the confidential waste bin once she had completed the typewritten version.

25. The Claimant's case was that the supervision note of 3 June 2014 had been altered by JF after the event by way of the addition of the passage about the issue of praying. This is a very serious allegation to raise against JF. We find on balance that JF did not fabricate this document and that it accurately reflects matters discussed. There is some merit in some of what the Claimant says around the Respondent's supervision notes. There is inconsistency in the Respondent's approach in that the supervision of 3 June 2014 purports to be signed by those participating in the meeting whereas those of 29 August and 19 June 2014 do not. We accept that the electronic signature at page 157 is not that of the Claimant who would hardly misspell her own name. The Respondent has also not helped itself by not having the Claimant sign the supervision notes and by the practice of disposing of the handwritten notes once they have been typed up. However, against that must be weighed the Tribunal's determinations upon the issue of the Claimant's credibility (about which we shall have more to say subsequently: see in particular paragraphs 59,79, 80 to 85, 101 and 125) and the inherent improbability of JF jeopardising a long career in the NHS by agreeing to fabricate a document as part of a conspiracy to discriminate against the Claimant. The Claimant did not advance any reason (let alone any credible reason) why JF would be motivated to act in this way against her.

26. The next incident chronologically concerned the issue of absences between 9 and 11 June 2014. Before turning to that however it makes sense for the sake of completeness to deal with the supervision of 19 June 2014 the notes of which appear at page 158. The first box is entitled 'recent investigation' and appears to be around work that the Claimant had been undertaking at Sheldon House. This home is a private concern independent of the Respondent. The Claimant, as she was entitled to do, was working both for

the Respondent and this private employer. It appears that the Respondent had sought a reference from Sheldon House which had not been forthcoming. The Claimant accepted that it was reasonable for the Respondent to make enquiries of her around her work at Sheldon House. We can see from the relevant passage in the supervision notes at page 158 that the Claimant informed JF that she had received a verbal warning at Sheldon House "for attitude/tone of voice towards her peers and patients and they were actively monitoring this through supervision". The Claimant also told JF that she was suspended from her work at Sheldon House.

27. The Claimant's work at Sheldon House had in fact come under scrutiny nine days before at a verification meeting held on 10 June 2014. As we shall see, one of the complaints against JS and JF raised by the Claimant was in connection with questions they raised about the Claimant's work at Sheldon House at a meeting held on 9 June 2014. As EJ later determined in her investigation report into the Claimant's bullying and harassment complaint, there were concerns that the Claimant had taken a photograph or video of a patient who had lived at Forest Close and who then moved to Sheldon House. This came to light on 9 June 2014 and the Claimant was questioned about it. EJ concluded in her report that the Claimant had attended work, been questioned upon this matter and then had gone home sick. Before going home on 9 June 2014 the Claimant was told that there was going to be a meeting the next day. This was going to take the form of a verification meeting under the Respondent's disciplinary policy.

28. The disciplinary policy is in the bundle commencing at page 155(28). Section 6.4 deals with the issue of verification, the purpose of which is said to be "to check whether there is a legitimate issue that needs to be investigated further". Paragraph 6.4.5 provides that the employee should be offered the opportunity to bring a union representative or work colleague to a verification meeting. The meeting should not be delayed unreasonably to accommodate the union representative. LJ found as a fact that the Claimant brought a friend to the meeting to accompany her on 10 June 2014. The Claimant then returned to work as normal on 11 June 2014.

29. EJ was critical of the management's handling of this matter finding that the Claimant was afforded little time to arrange a union representative. We refer in particular to page 274(4). EJ was also critical of the Respondent's failure to inform the Claimant of the outcome of the verification meeting "thus leaving the outcome ambiguous for [the Claimant]".

30. EJ's bullying and harassment investigation also encompassed issues around the Claimant's sickness absence arising from the events of 9, 10 and 11 June 2014. She found that the Respondent's electronic record showed the Claimant as being on sick leave on 9 and 10 June 2014. EJ looked at the Trust policy which provides that an employee who becomes ill during the working day (as the Claimant had done on 9 June) will be credited with having worked that day and will not be classed as absent for sick pay purposes although the absence will be recorded for monitoring purposes. She appears to reach no conclusion about the accuracy or otherwise of the electronic record concerning 10 June 2014. The accuracy of that entry must be doubtful

given that the Claimant did attend work in order to go to the verification meeting.

31. This was of concern to the Claimant generally but in particular because, following an absence on 1 and 2 September 2014, she was told that she had hit a trigger under the Respondent's management and sickness absence policy by virtue of having had three periods of absence over a period of three months (there being two days of absence in July 2014 in addition to those recorded for June and September 2014). EJ concluded that the Claimant should not have been regarded as having been off sick on three occasions in three months given that she had had no absences in August 2014. That said, she found that it was reasonable for JF to speak to her in line with managing sickness absence policy. The Claimant was also concerned that she was incorrectly recorded as being absent with depression. JF explained to her that the electronic record provides standard codes for different types of illness.

32. The Claimant says little about the events of 9 to 11 June 2014 in her witness statement. However, the Tribunal's attention was drawn to what was described as a "grievance for JF and JS" at pages 728 to 740. The Claimant told us that this document was not presented to the Respondent in connection with any of the investigations which the Respondent undertook into her employment. Rather, it was supplied to the Respondent as part of the litigation process, the Claimant having prepared the document upon the advice of her then solicitor. The Respondent appeared to take no issue with the Claimant about what she had written at pages 728 to 740 around the sequence of events of those three days. It was not in dispute the Claimant had attended work on 9 June 2014 and had gone off work sick. Nor was it in dispute that she had come into work to attend the verification meeting the following day and then worked as normal on 11 June.

33. We see at pages 159 and 160 the sickness absence return to work form signed by JF on 4 September 2014. This followed the Claimant's absences on 1 and 2 September 2014 attributable to her having a cold. JF records in box 32 that the Claimant had hit the trigger point by reason of having had three periods of sickness.

34. JF was also concerned that on 1 September 2014 the Claimant had worked a flexi shift at Birch Avenue between 7.30 in the morning and 3 o'clock in the afternoon but then reported as sick for her substantive shift at Forest Close. JF was also concerned that on 3 September 2014 she had emailed to advise that due to childcare issues she would need to change her shift at Forest Close to a morning shift. This was agreed but it was subsequently discovered that the Claimant had worked the afternoon shift at Birch Avenue.

35. The Claimant realistically acknowledged that the matters around the work that she had undertaken on 1 and 3 September 2014 were bound to be a concern to JF. However the Claimant was concerned that JF had not raised the issue with her until 18 September 2014 at a supervision meeting and that JF had before that meeting reported concerns to Robert Purseglove, NHS accredited counter fraud specialist. Following that referral Mr Purseglove emailed JF (at page 161). Mr Purseglove's opinion was that there was insufficient evidence

to warrant a criminal investigation and recommended that matters be dealt with as a "management/performance issue".

36. JF told us at paragraph 10 of her witness statement that it was in fact JS who had contacted Mr Purseglove by telephone to discuss concerns about the Claimant's flexi shift working pattern. Mr Purseglove therefore made an error, she said, when he referred in his email at page 161 to it being JF who had instigated the referral to him. Regardless of who instigated the referral, the Claimant fairly accepted that it was a reasonable step on the part of the Respondent to have done so.

37. The Claimant explained, in relation to 3 September 2014, that she had re-arranged her shift thinking that a friend of hers who would normally look after her children could not do so that afternoon. However, the Claimant's friend subsequently was able to look after her children thus enabling the Claimant to work a flexi shift which she subsequently arranged at Birch Avenue.

38. Certain aspects of the Respondent's management of the Claimant around this time are unsatisfactory. Firstly, there was justified criticism of the Respondent upon the part of EJ for failing to relay to the Claimant what was happening following the verification meeting of 10 June 2014. The issue simply appears to have gone away but doubtless would have caused the Claimant some anxiety as she was not kept informed and, as far as she was concerned, the matter was hanging over her. Secondly, EJ's conclusions were difficult to understand around the sickness absence issue. If 9 June 2014 was recorded as sickness absence for management purposes then it seems to the Tribunal that the Claimant had reached a trigger point given the subsequent absences in July and on 1 and 2 September 2014 (those being within three months of 9 June). EJ also did not deal with the question of why the Claimant had been recorded as absent on 10 June 2014 when that was not the case.

39. Unsurprisingly, the Claimant was concerned about the possibility that her name featured on a fraud database. She in fact discovered the existence of the letter at page 161 (referred to in paragraph 35) pursuant to a subject access request made under the Data Protect Act 1998. This is pleaded in her second ET1 (in particular at page 91 of the bundle). In response, the Respondent pleaded (page 123) that a potential fraud referral was made on or around 9 September 2014 about an alleged "false sickness declaration" and an alleged "false report to support a change of shift".

40. Upon the question of the Claimant appearing upon a fraud database, IH conducted some enquiries of Mr Purseglove in late December and early January 2016 (pages 370(1) to (6)). IH's enquiries proved negative. Mr Purseglove said that there was no record of the Claimant upon the NHS fraud intelligence database.

41. Before us, the Claimant expressed some scepticism about the outcome of IH's enquiries. She made the fair point that in the document at page 161 a reference number was allocated. Nonetheless, IH's evidence was that the Claimant's name does not appear upon the NHS fraud intelligence database (paragraph 27 of IH's witness statement).

42. The Claimant also cross-examined IH in connection with this issue around alleged non compliance by the Respondent with its own procedures. By

reference to the disciplinary policy, the Claimant suggested to IH that when making a reference to the counter fraud department the human resources ('HR') department would be involved. The same issue was raised by the Claimant with JS. JS was taken to the disciplinary policy manager's guide that commences at page 155(61). In particular at page 155(70) guidance is given that if the suspected misconduct is related to fraud the manager should not contact the employee or police until the manager has contacted the counter fraud team and the Respondent's human resources department and they have confirmed that the manager may then make contact. When she was asked about this provision, JS said that HR had not been informed of the matter (presumably by either her or by JF) because nothing came of the referral and there was no issue going forward.

43. There is some merit in the Claimant's complaint that her immediate line manager's reaction to her conduct on 1 and 3 September 2014 may be perceived by some to be heavy handed. That is not to say that there were not legitimate management concerns. On any view, it was appropriate for JF and JS to be concerned about the Claimant's conduct over the two days in question (on 1 and 3 September 2014). Objectively, it cannot be said to be outside the range of reasonableness for it to be thought that a referral to counter fraud was inappropriate. We have no doubt that other managers may have taken a different approach to matters and dealt with it, as Mr Purseglove suggested, simply as a management issue given that the Claimant could easily have been prevented from being allocated flexi shifts pending those management discussions. The risk of any ongoing concern or loss to the Respondent could therefore have quite easily been mitigated.

44. We now turn to the events of 9 September 2014. There occurred that day what became known between the parties as the 'prayer incident'.

45. The Claimant's evidence in chief about this is as follows:-

> *"I arrived to work on 9 September 2014 and began to pray. I was praying on the other side of the office in front of the car park window but no one could see in as there were blinds, this is where I was disrupted in my prayer by Julie Smalley who walked up to me and stood behind me so close up that I had to stop praying. If I would have gone down in to what we call Rukhu where you bow down with hands on knees it would have been impossible as Julie was standing behind me so close I would have not been able to do this as I would have ended knocking her (Julie) over, refer to page 735. I was harassed and bullied again by the manager Julie Smalley and spoken to in a very hostile manner. I was told you are not allowed to pray here and go and find yourself somewhere else to pray. I rang Clive Clarke crying again and alerted him. I had been praying in that office for months so I could not understand the issue. It felt like things were being made a misery at work so I leave my job. Please refer to page 739 another incident of bullying and harassment at this point I was very upset. Life became miserable, I just felt so unhappy every time I came into work. There was always something the managers would have a go about".*

[We interpose here to say that Clive Clarke is the deputy chief executive of the Respondent].

46. JS's evidence about the prayer incident is as follows (citing from her witness statement):

"(4) I am aware that Zaeema has alleged that on 9 September 2014 I interrupted her whilst she was praying in the main office at Forest Close and then commented she should not be praying in the office. I dispute Zaeema's version of events and I am extremely upset and disappointed that she had accused me of discriminating against her because of her faith. I deny the allegation against me in its entirety.

(5) The alleged incident occurred on 9 September 2014 at Forest Close. The bungalows at Forest Close are laid out in a square with four bungalows in this particular section which represent each side of a square. The entrances all face each other with a courtyard in the middle. I was in the bottom bungalow in my office looking out of the window when I saw a taxi pull out and one of the service users get out.

(6) The service user looked unwell and she was unaccompanied. I decided that she looked like she needed help and so I went to inform one of the nurses from one of the other bungalows that she didn't look well.

(7) As you leave my office, there is a door directly opposite which leads to the admin office. The admin office has an external glass door leading to the courtyard and a number of large windows, making it very visible from the outside. It acts as the main reception area for Forest Close and as such it is a busy area which usually has staff, service users and visitors coming and going.

(8) As I was rushing from my office, I burst into the admin room rather quickly as I was concerned for the service user's well being. I took a few steps forward and was surprised to see Zaeema praying on the floor of the admin office. Zaeema had not arrived for work on time for her shift, which was due to start at 4pm, so I wasn't even aware that she was in the building as she had not come to see me to let me know that she had arrived. I was initially shocked when I saw her on the floor and somewhat embarrassed I had disturbed her and so my immediate reaction was to apologise.

(9) I looked out of the glass door and could see that some of the nurses had greeted the service user and she was being taken care of. By that point Zaeema had acknowledged that I had come into the room and we then had a conversation, but not the one described by Zaeema in her claim.

(10) I apologised to Zaeema for interrupting her but explained that this was a public office space with people coming and going, so it wasn't appropriate for her to pray there. I also expressed the view that the admin office did not provide Zaeema with a quiet space conducive for her prayers. She didn't say anything in response but looked hurt that I had said that she shouldn't pray in the admin room.

(11) Prior to that incident it had been made clear to Zaeema that she should not use the admin office to pray. During her supervision meeting with Janet Furniss on 3 June 2014, Zaeema was told to use the OT office or the treatment room where she would not be disturbed, as opposed to the admin office where there were constant disruptions (page 157). As far as I am

aware, there were no incidents of Zaeema praying in the admin office after the supervision meeting in June 2014, before the incident on 9 September 2014, which suggests that she was using the OT office or treatment room as instructed.

(12) I didn't tell Zaeema to stop praying as alleged, nor did I make the comments referred to by Zaeema in her claim. I told her there were lots of suitable places to pray in the building and actually took her to the OT office to show her. I left her there to finish her prayers. When she came back to the admin office later she seemed fine".

47. We have seen (at paragraph 45 above) that the Claimant made reference in her evidence in chief (in her witness statement) to page 735. The relevant entry pertaining to 9 September 2014 is in fact at pages 735 and 736. This is within the grievance document prepared by the Claimant upon the advice of her solicitor to which we referred earlier at paragraph 32.

48. In this document the Claimant gives some additional information not contained in her witness statement. She said:-

> "*I rang work at 3.40 to tell them I was going to be late, due to the tram disruption I was stuck in traffic at the bottom of Penistone Road. I arrived at work at 5pm. I went to bungalow 1, said hello to staff. I came back to Core House. I thought I will say my Dhuhr prayer (midday prayer) before time ran out for this prayer to be said. I was praying at which 2 minutes later Julie Smalley walked into the office, she stood fairly close behind me that I had to stop praying and see to her. Julie Smalley said "your suppose to tell people that you're here and lock this door". Julie also said I shouldn't really be praying here in the office, its all about commonsense. I shouldn't really be praying in the office. How old are you? I mean, I don't want to have an argument about this its all about using commonsense why can't you find yourself somewhere else to pray. Julie said I mean I come into the office to walk through the other door to see to one of the clients and didn't expect to see you on the floor praying. It is not very professional. I said you could still have gone through, I would have just continued praying. Julie then said in great hostility now you are being critical of me"*.

The relevant passage of this document then concludes with the Claimant saying that JS suggested that the Claimant use the OT room which affords greater privacy.

49. The Tribunal was assisted upon this matter by a photograph of the administration office provided by the Respondent during the course of the hearing. There was no dispute that this was an accurate photograph of the administration office (albeit that, unsurprisingly, some of the furniture and items featured on the photograph were not familiar to the Claimant, she not having been there for some time). There was no dispute that the photograph was taken in the direction of JS's travel into the admin office that day and that she was heading for the door which one can see toward the left of the photograph.

50. The Claimant and JS both marked on the photograph the spot where each says the Claimant was praying on the day in question. JS has the Claimant

praying towards the left of the room and in the path that JS would have had to take from the entrance door towards the exit door that features upon the photograph. The Claimant says that she was praying in a location towards the right of the photograph out of way of the thoroughfare that JS would take. The Claimant's account is that she was praying facing towards the window that one can see to the right of the door where JS was heading. Thus, the Claimant had her back to the entrance door and to JS when she entered.

51. Upon this incident the following evidence was given by the Claimant under cross-examination:-

51.1. The Claimant had arrived late upon the day in question. In the normal course she would arrive at work early in order to pray at 3.50 pm before commencing her shift at 4 o'clock pm.

51.2. It is not the Claimant's case that JS told her not to pray at all but rather that the Claimant should find somewhere else to take prayer.

51.3. The Claimant denied that she had taken prayer in an inappropriate location or that she was blocking JS's way through the administrative office. It was suggested to the Claimant that this isi an unlikely account as she would have had no reason to disturb the Claimant had the Claimant not been in her way.

51.4. It was suggested to the Claimant that JS's mention of the OT room was consistent with the encouragement for her to use it given to her by JF at the supervision meeting on 3 June 2014. This the Claimant denies. She said that JF had not mentioned the OT room until the supervision of 18 September 2014.

51.5. The Claimant fairly accepted that the description given by JS of the admin room at paragraph 7 of JS's witness statement (cited above) was accurate.

51.6. The Claimant also accepted that JS was rushing in order to attend to the needs of a patient and that the Claimant did not see JS enter the room.

51.7. The Claimant nonetheless said that she could not understand why JS had stood close to and behind her. She rejected Miss Gould's suggestion that this was because she had just encountered the Claimant who had her back to the entrance door and was praying in a location quite close to it.

51.8. Although the Claimant accepted that it was possible to see into the admin office from the courtyard, she said that she would not have been observable upon that day because she had drawn the blinds. It was suggested to the Claimant that there was no mention in her witness statement of having done so. Although the Claimant had not expressly said that she had drawn the blinds she did say in her witness statement that there were blinds obscuring the view of the admin office from onlookers.

51.9. The Claimant did not engage with Miss Gould's point that being visible while taking prayer was inappropriate by reason of the experience of mental health patients seeking her out and having become fixated upon her.

52. The following points emerged from the evidence of JS given during cross-examination:-

52.1. JS had not expected to see the Claimant praying in the admin office as she had not reported her late arrival at work to JS. We should say that JS accepted that the Claimant did not have to report to her upon each day. Also, on behalf of the Respondent, Miss Gould accepted that it was reasonable for the Claimant to take prayer in the admin office that day due to her late arrival. It was not the fact of her praying that was the issue but rather the location that was of concern.

52.2. The Claimant suggested to JS that it was a necessary tenet of the Muslim faith that she pray in a certain direction. JS said in reply that, "*whatever way you faced you were still in my way*".

52.3. JS accepted that the admin office would not be particularly busy at around 5 o'clock pm in the evening. She said that usually only the cleaners would be expected to be there around that time.

52.4. The Claimant put to JS that throughout the year prayer times change for those practising the Muslim faith. JS asked rhetorically how the Claimant expected her to know that.

52.5. JS denied that she had told the Claimant to use some commonsense or that she disliked the Claimant.

52.6. The Claimant suggested that JS showing her the location of the OT room was inconsistent with her evidence that that was where the Claimant was expected to pray if she had been told this earlier by JF. JS could see no reason why she should not have shown the Claimant the location of the OT room after the prayer incident.

53. JS was interviewed by EJ as part of her investigation into the Claimant's bullying and harassment grievance. This interview took place on 25 March 2015 and is in the bundle commencing at page 274(64). At page 274(70) JS makes mention of Faye Dudley, an assistant psychologist, who it seems informed JS that the Claimant did pray in the admin office. Faye Dudley said that the Claimant would routinely turn the radio off when she wished to pray. JS said that she was not aware of the Claimant's practice of praying in the admin office before the prayer incident. That said, we agree with the Claimant that what Faye Dudley told JS is good evidence that the Claimant did pray in the admin office. JS told EJ that the Claimant had a wounded look upon her face when she came across her taking prayer and looked at JS like "she had kicked her in the face" (page 274(66)).

54. The Claimant was interviewed by EJ on 16 February 2015. The notes of that interview commence at page 274(31). The Claimant was represented at the interview by Gill Hancock (who we shall refer to as GH) and who is a very experienced trade union representative. At the interview, the Claimant

complained (at page 274(36)) that she had nowhere to pray. She also accused JS of lacking communication and diversity skills.

55. EJ's conclusions about this matter may be found at pages 274(9) and (10) (being part of the report that she prepared commencing at page 274(1)). LJ determined that it was unlikely that JS had made the remarks attributed to her (around the issue of the Claimant not using her commonsense and questioning her maturity) but did find that JS's "non verbal communication" may have given the impression to the Claimant such was being implied. EJ concluded on the other hand that it was understandable that JS was uncomfortable when she found the Claimant on the floor in the office which may have accounted for her coming across negatively towards the Claimant.

56. It is common ground between the parties that the Claimant was engaged in prayer at around 5 o'clock pm on 9 September 2014 when that she was told to stop doing so by JS in that location, that JS encouraged her to pray elsewhere, that JS was surprised to see her there and that JS was in a rush to attend to a patient's needs. The issues between the parties are about the precise place upon the floor of the admin office where the Claimant was taking prayer and about what was said. There is also no dispute that JS did not tell the Claimant that she could not pray at all.

57. Given our earlier findings at paragraph 25 about the probity of the supervision notes of 3 June 2014, we find as a fact that the Claimant had been encouraged to use the OT or treatment room for prayer. That encouragement is of course inconsistent with any suggestion of a negative attitude towards prayer upon the part of the Respondent. The Tribunal does not consider it necessary to determine whether the Claimant in fact took prayer in the OT room. There is a paucity of evidence from both sides upon this issue. It is sufficient, we think, to make a determination from the evidence that the Claimant did take prayer in the admin office (at the very least from time to time). That is plain upon the face of the Respondent's own documents and in particular the entry at page 274(70) referred to at paragraph 53.

58. We also find that JS was sharp with the Claimant immediately after the prayer incident. This is upon the basis of EJ's determinations that JS was sharp with the Claimant albeit that her reaction was understandable given that JS was anxious to attend to a patient and had found her way (on her case) blocked by the Claimant. We do not find that JS uttered the words about the Claimant lacking commonsense and maturity. Had JS said so we have little doubt that that evidence would have found its way into the Claimant's witness statement. That said, we accept the Claimant's case JS was cross with her and that the Claimant could reasonably have perceived that to be the case by reason of JS's demeanour.

59. Upon the question of the location of where the Claimant took prayer, the Tribunal finds it inherently unlikely that the Claimant was where she says she was (by reference to the mark made by her on the photograph). If that were to be the case, then JS would have had to detour by moving to her right to approach the Claimant from behind. It makes no sense for JS to have done this if she was rushing through the admin office in order to attend to a patient. It is worth reminding ourselves that JS only entered the admin office in the first place because she perceived that a patient needed help. It is more

probable that JS took the quickest route open to her and therefore, in our judgment, more likely that the Claimant was taking prayer where JS says that she was than in the location marked by the Claimant.

60. The next supervision meeting took place on 18 September 2014. The issue of working hours was raised. JF says that the Claimant asked to change her shift pattern to 5.00 o'clock pm to 9.00 o'clock pm due to child care issues. JF told the Claimant that that could not be facilitated but offered her the option of working from 10 o'clock am to 2 o'clock pm. The Claimant refused that offer. JF's evidence was that the Claimant was hostile towards her at this supervision meeting. In cross-examination, the Claimant accepted that JF had offered the 10 o'clock am to 2 o'clock pm shift and that she had done so in order to accommodate the Claimant's child care issues (JF thinking that these hours would be suitable and would fit around her children's schooling). It was suggested that JF was being supported to which the Claimant replied "not entirely".

61. The Claimant emailed Mr Clarke on 18 September 2014 (page 168). She complained that JF had reduced her to tears. Mr Clarke replied the following day to say that he had forwarded the email to Richard Bulmer (service director for the acute inpatient service) to deal with. It was suggested to the Claimant that this was a reasonable act of delegation upon the part of the deputy chief executive of the Respondent.

62. On 8 November 2014 a barrister who was, it seems, in the process of being instructed by the Claimant emailed Mr Clarke about a grievance against him. This is difficult to understand as no grievance was raised against Mr Clarke. The Claimant denied that her barrister had given any advice about the limitation periods for actions brought in the Employment Tribunal under the 2010 Act.

63. On 10 November 2014 the Claimant emailed Mr Clarke again (page 171). The Claimant intimated a wish to institute a bullying, harassment and victimisation complaint against JS and JF. Mr Clarke acknowledged receipt of the email the following day and directed the Claimant to the Respondent's bullying and harassment policy. That policy is to be found in our bundle at pages 139 to 155.

64. On 21 November 2014 Mr Clarke's PA advised the Claimant that in order to proceed with her formal complaint it would be necessary for her to complete the attached paperwork pursuant to the bullying and harassment policy. We refer to page 173. The Claimant acted upon that advice and presented the complaint that we see at page 174. The Claimant said there that JS and JF had been constantly victimising, harassing and bullying her to which Lynne Crapper of the Respondent's HR department had contributed. It was this complaint that was investigated by EJ and which culminated in her report at pages 274(1) to (118).

65. The Claimant's complaint was acknowledged by IH on 26 November 2014 (page 182). IH told the Claimant that the matter would be considered by the joint screening group on 2 December 2014. This was done and the Claimant was informed on 4 December 2014 that the issues raised by her were to be

investigated under the bullying and harassment procedure (pages 193 and 194).

66. At around this time, Camran Munir, Muslim Chaplain, emailed Mr Clarke. The email is dated 17 November 2014 and is at page 181(2). Mr Munir referred to having had a pastoral chat with the Claimant who had told him "how upset she feels due to the way she has been dealt with regarding praying at work". The Claimant had told Mr Munir that "she has placed a complaint against her line managers as she feels that she is not given the same allowance to pray as staff taking a smoke break". The email from Mr Munir to Mr Clarke was copied in to the Claimant. IH reasonably inferred from this that the Claimant had given Mr Munir consent to disclose to Mr Clarke what had transpired during the course of the pastoral meeting. We refer to paragraph 24 of IH's witness statement.

67. A couple of days later, on 19 November 2014, the Claimant emailed Mr Munir (pages 198 and 199). This was around concerns that the Claimant had "on my observations within the mental health service" having "seen some Muslims being given a non halal diet". The Claimant went on to say that, "I witnessed this at Forest Close on Monday 17 November 2014 where a Muslim brother was given ham sandwiches to eat, when I intervened and asked staff he shouldn't be having them sandwiches and why is he being given that. I was told by staff that they have to give the client a choice according to the policies so where does the service have to implement a person's religious needs and where can they override certain beliefs of a person due to policies". The Claimant said that this was not the first occasion upon which this had happened.

68. Mr Munir responded on 24 November 2014. He told the Claimant that it was part of the Respondent's policy to cater for and respect the cultural and religious needs of service users. Mr Munir went on to say that, "service users can expect that they will be treated in illness as they would wish to be treated when fit and well. Therefore if a service user when fit and well follows certain dietary requirements (halal in this case) then they should be made aware of any choice they make, and if they are not in a state to choose, then it is required as part of their faith to be fed a halal diet. This would be the same in the case of a Muslim going into a coma. I would expect any staff member to raise concerns when they feel that something inappropriate is taking place". Mr Munir copied Mr Clarke and Sally Ross, the chaplain team leader, into his reply. We refer to pages 198 and 199.

69. The Claimant moved, upon an interim basis, from Forest Close to Pinecroft with effect from 8 December 2014. This was as a consequence of the grievance that she had raised against JF and JS. Plainly, it was appropriate for her to move to a different work location pending the outcome of the grievance. The Claimant accepted in cross-examination that she had agreed to the move which had also been endorsed by Jim Buck, her trade union representative. The move had been discussed in advance at a meeting of 3 December 2014.

70. The arrangements for the move were recorded in a letter sent to the Claimant by MS dated 11 December 2014 (pages 195 and 196). The Claimant's work patterns for the first and second weeks of her work at Pinecroft were set out.

The working pattern for the second week was that to be followed pending the conclusion of EJ's investigation into the grievance. The hours differed from those at Forest Close in that the Claimant was to work from 8 o'clock am to 12 noon on Wednesday and Thursday.

71. The Claimant was supernumerary at Pinecroft. The reason for the change to the working hours on Wednesdays and Thursdays was to accommodate the Claimant's child care arrangements. MS observed in the letter of 11 December 2014 (at page 196) that the Claimant had "mentioned that you had already booked some flexible staffing shifts across some of the in-patient wards which may conflict with your interim shift pattern. It was agreed that you would identify which shift patterns were in conflict and speak to the relevant ward manager to change your flexible shifts".

72. BM undertook a supervision induction meeting with the Claimant on 18 December 2014. The notes are at pages 200 to 203. The following evidence was given by the Claimant about this meeting in the course of her cross-examination:-

72.1. She acknowledged that BM had told her that she regarded Pinecroft as being a new start for the Claimant. BM effectively shut down the attempts by the Claimant to discuss with her the issues that had arisen at Forest Close as that was for others to deal with.

72.2. MS had told the Claimant that 15 minutes was not adequate notice that she was unable to attend her shift. This arose out of an incident that took place on 16 December 2014. The Claimant explained that one of her children had become unexpectedly ill at around that time. According to the work schedule (recording flexible shifts introduced during the course of the hearing as document E) the Claimant had worked a flexi shift on 16 December 2015 starting at 7 o'clock am and finishing at 3 o'clock in the afternoon. The Claimant said that it was whilst she was on her way to Pinecroft that she was told that her child had become ill. The Tribunal accepts the Claimant's account but also finds that it was within the range of reasonable managerial prerogative for BM to advise the Claimant that more notice of absence needed to be given if possible.

72.3. The Claimant had spoken to IH regarding annual leave over the Christmas and New Year period. BM had checked the position and had noted that no annual leave had been booked by her for this period. The Claimant said that she needed annual leave for that time as her childminder was going to go to Belgium. Although BM observed that more notice was usually required, she did grant the Claimant's request to take the Christmas period off as annual leave. She also recorded 16 December 2014 as carer leave.

72.4. BM noted that the Claimant had been late upon two occasions (on 8 and 11 December 2014).

72.5. BM recorded that the Claimant had started a shift and wished to pray. BM said that she had told the Claimant that she should not pray in the office and directed her to the prayer room. The Claimant in cross-examination fairly accepted that the administrative office at Pinecroft was too busy to be conducive to prayer. She therefore did go to the prayer

room at the invitation of BM. The Claimant accepted that there was no suggestion that BM had prevented her from praying.

72.6. BM referred to some confusion around her shift patterns that had occurred on 23 December 2014. MS had received an email on 22 December 2014 saying that the Claimant was expected to be working a flexi shift on the Stanage ward which clashed with her substantive hours at Pinecroft.

73. The work schedule at document E introduced in the bundle records the Claimant as having worked on the Stanage and Rowan wards between 25 December and 1 January 2015 (when she had been granted annual leave). The Claimant attributed some of the difficulties around shift patterns to the Respondent having altered her shift pattern. Mr Buck had raised a complaint on the Claimant's behalf about this.

74. A number of concerns were being raised by staff members about the Claimant being unable to remember where she was meant to be working and not prioritising her substantive position (pages 206 to 208 and 210 to 212). We refer for example to the emails at page 211 emanating from Sarah Siddaway, administrative assistant, flexible staffing office and Angela Hinchsliff, assistant flexible staffing manager. Each raised concerns about the Claimant's management of her hours.

75. On 5 January 2015 IH said to MS and Ms Hinchsliff that he thought it a good idea to meet with the Claimant to discuss the concerns and in particular about her taking flexi shifts that conflict with her substantive position.

76. MS was sufficiently concerned that she arranged a meeting with BM for 5 January 2015. BM handed to MS a copy of the notes of the meeting with the Claimant of 18 December 2018 to which we have referred (at pages 200 to 203). Following that discussion, and in light of the concerns raised with other members of staff as shown in the emails at pages 206 to 208 and 2010 to 212 arrangements were made for MS and IH to meet with the Claimant.

77. We can see from the emails at pages 206 to 208 that JS was being kept informed by BM and MS of the issues that arisen at Pinecroft. The Claimant cross-examined MS as to the appropriateness of involving JS in this matter as it was contrary to the new line management arrangements that had been entered into in early December 2014. MS accepted that she and BM were to be the Claimant's line managers while she worked at Pinecroft. However, she said it was not the case that it was inappropriate for JS to be kept informed of the Claimant's progress.

78. The Claimant may be correct in her evidence that some of the conflicting shift patterns between her substantive role and her flexible support worker role were not attributable to her. It is however the case that a number of individuals (including the two members of staff referred to at paragraph 74) were becoming concerned about the Claimant's management of her time. On any view, given these concerns, it was reasonable for the Respondent to seek to discuss matters with the Claimant. Further, it plainly lay within the Respondent's managerial prerogative to inform the Claimant's substantive line manager (JS) of her progress at Pinecroft and the difficulties that were arising. To suggest that JS should have no knowledge of the Claimant's progress

while effectively on secondment in another workplace within the Trust is unrealistic.

79. The Claimant continued to have concerns about Muslim service users' dietary requirements. She raised an issue in evidence about the Christmas menu served to the service users (during Christmas 2014). The Claimant said that on Christmas Day non-halal hot dogs had been served to Muslim service users. When this was put to BM she maintained that hot dogs had been served on Christmas Eve and not Christmas Day. To corroborate her case BM produced during the course of the hearing a copy of the menu itself. This corroborates BM's evidence (although it makes no reference to there being an alternative of halal hot dogs in answer to which BM said that notices were displayed advising that those with dietary requirements could discuss them with the housekeepers). It was suggested by the Claimant that BM had fabricated the Christmas menu. To substantiate this allegation she said that parts of it were presented in different typing fonts. The Claimant also expressed surprise that the Respondent had kept the menu from 2014. BM said that it was kept in order to inform discussion in subsequent years about what food had proved popular and what food had not.

80. There was a further supervision meeting on 6 January 2015 attended by the Claimant and BM. The notes are at page 214. The Claimant contended that this document was a fabrication on the part of BM. This was upon the basis that the Claimant was named as Zaeema Khan at the top of the document and yet was referred to as 'ZA' in the body of it. The Claimant also noted that BM's signature had been placed between two entries rather than at the end of the document. Further, the Claimant maintained the signature purporting to be hers at the very bottom of the document had been forged.

81. The Claimant accepted in cross-examination that she had agreed to be supervised by BM. This therefore gave veracity to the entry after BM's signature which concerned supervision issues.

82. The Claimant put to BM that she went by the name of Akhtar at the time of the supervision. However, she is named as Khan at the top of the document.

83. There is some merit in the Claimant's point upon this issue. As late as 24 December 2014 she was addressed by the name of Akhtar by IH (page 205). Further, towards the end of the hearing, she introduced into evidence an email from her of 26 March 2015 requesting a change of name from Akhtar to Khan upon the Respondent's Insight system (which is a patient record system).

84. Against that, she was named as Khan upon the Respondent's 'staff profile' from January 2015. The staff profile (a copy of which is in the bundle commencing at page 471) records incidents between patients and members of staff. The profile for incidents concerning the claimant between 5 August 2014 and 4 December 2014 (pages 471 to 477) is in the name of Akhtar. The profile for incidents from 14 January 2015 (commencing at page 478) is in the name of Khan. Insight is a separate system to the staff profile. This is sufficient to persuade the Tribunal that the Claimant went by the name of Khan from January 2015. The Respondent can only have changed her name at the behest of the Claimant. It is understandable that BM would refer to the

Claimant as 'ZA' even after the change of name in circumstances where BM was accustomed to so referring to her. The apparent inconsistency is unfortunate but understandable and explicable.

85. Furthermore, the Claimant offered no explanation or no credible explanation for why BM would be motivated to fabricate a document and thus jeopardise her 28 year career with the Respondent. The Claimant did not take issue with the contents of the supervision note at page 214. There is nothing within the supervision note that in anyway implicates the Claimant in nay wrongdoing of any sort. As with the similar tampering allegation made against JF around the supervision notes from June 2014 and the allegation against BM around the Christmas 2014 menu, the Tribunal determines the Claimant's allegations against the Respondent of tampering or forging documents to be not credible.

86. On 14 January 2015 the Claimant met with MS and IH. GH was in attendance in her capacity as the Claimant's trade union representative. There are no minutes of the meeting. However, MS did send a detailed letter to the Claimant recording the matters that had been discussed (pages 218 and 219).

87. A number of issues were discussed at the meeting including that of the Claimant taking prayer. The relevant passage in MS's letter dealing with this reads as follows:-

> *"During our discussion on work at Pinecroft, we have started to talk about praying. You explain that as a practising Muslim you pray five times a day which are fairly structured depending on the time of year it is. Presently you wanted to pray at 3.50pm and 4.30pm. It was agreed by all parties that you would undertake your prayer at 3.50pm before attending your shift at Pinecroft. We then discussed the prayer at 4.30pm which falls within your shift pattern on the days you work from 4pm to 8pm. We discussed whether there was any flexibility, you did suggest that in order to save time it might be better if you brought your own prayer mat into work and simply found an empty room on the Pinecroft to pray rather than have to walk upstairs to the designated prayer room, as this would save time. I checked whether you were happy to do this and you confirmed you were. You also proposed that you made up the time spent praying at the end of your shift ie if you spent 10 minutes praying then you would simply work until 8.10pm. I confirmed I would check with Bev and the service, however in principle I thought these arrangements would be absolutely fine".*

88. In her evidence in chief (given in her witness statement) the Claimant says that, "a complaint was raised with Maxine Stratham who had a meeting on 14 January 2015 that I spend too long praying than doing any work and it was raised as a concern. I was left confused as Beverley *[Melluish]* was the one who pointed out using the prayer room when I suggested I was going to quickly pray in the staff room. Refer to page 218-221 and 754". The Claimant goes on to say that, "at the meeting of 14 January I was told I cannot pray as Maxine will be getting further advice on this matter from the Muslim chaplain refer to page 754 to 755 and 220 to 221".

89. Page 754 comprises part of a diary of events maintained by the Claimant for the period between 10 November 2014 (mistakenly recorded as 2015) and 30 March 2015. The salient passage about the meeting of 14 January 2015 in this document reads as follows:-

> *"At this meeting a concern was raised that I spend too much time off the ward than on the ward. I was confused and asked what do you mean? A complaint was raised I spend more time praying than actually doing any work. I asked who had raised the complaint. Maxine said Bev just had concerns. I was shocked. I stated Bev she is actually the one who encouraged me to go and use the prayer room. Maxine said that I am not allowed to pray at all, Gill spoke and told her you can't do that and if you were to do that then you will be opening up a big can of worms for yourself. I explained its not like I was taking an hour to pray its just 10 minutes and you can't tell a Muslim they are not allowed to pray as that is part of their requirements as a Muslim. I questioned and what about my so called colleagues who go for a cigarette break. They go for more than one and they go for a long time as well. I got told as they need a break and distress* [we think that the Claimant meant to say 'de-stress'] *they were allowed. I found it unfair that I was being told I can't pray. I was told until Maxine had spoken to the chaplain I'm not allowed to use the prayer room. Maxine then asked "do you have to pray". I thought what kind of question is that. I replied yes I do? Maxine looked at suggesting if I take 10 minutes to pray I should stay behind 10 minutes but said she would talk to the Muslim chaplain and get his advice. But I was not to pray until she had clarified the situation of prayer duties by the chaplain".*

90. MS's evidence in chief upon this issue is as follows:-

> "(16) One of the issues discussed at the meeting was about the arrangements for the Claimant to pray whilst at Pinecroft. As I am not of the Muslim faith, I confessed to not being aware of exactly when, how often or what the Claimant's requirements were with regard to her daily prayers and agreed to speak with our head of equality and inclusion, Liz Johnson. I did seek some advice on the issue from Liz following the meeting and she provided me with some guidance (see page 221). Liz spoke with the Muslim chaplain at the Trust, Camron Munir, who confirmed that Zaeema could pray when needed but if she was not then entitled to a break she would have to make this time up.
>
> (17) Zaeema explained that she needed to pray five times a day and she suggested that she pray at 3.50pm before her shift and then again at 4.30pm. Zaeema indicated that there was a degree of flexibility in this respect but suggested it would save time if she was to provide her own prayer mat and if she could use a quiet room rather than having to make the 2 to 3 minute walk to the designated prayer room.
>
> (18) Zaeema also proposed that she make up the time spent praying at the end of her shift".

91. The following emerged from the evidence of the Claimant given under cross-examination:-

91.1. It was suggested that it was inherently unlikely that BM would on the one hand complain to MS about the amount of time that the Claimant was spending on prayer while on the other not seek to restrict the Claimant from so doing when she joined Pinecroft and, on the contrary, encourage her to use the prayer room. The Claimant fairly agreed that BM had encouraged her to pray and had shown her where the prayer room was at Pinecroft. The Claimant said that she had later found out that BM had complained to MS about the amount of time that the Claimant was taking.

91.2. There was no evidence in chief given to the effect that BM had complained to MS about the amount of time that the Claimant spent in prayer. This the Claimant accepted although she maintained that it had been discussed at the meeting of 14 January 2015.

91.3. The Claimant said that she was not allowed to pray at 4.30pm after 16 January 2015. It was suggested to the Claimant that had that been the case then GH and the Claimant may have been expected to have strongly protested.

91.4. The Claimant accepted that EJ had given guidance to MS about the issue of prayer and had copied Camron Munir into her email upon this issue (pages 220 and 221). There appears to have been no response from Mr Munir to EJ's email and no suggestion from Mr Munir that the Claimant had complained to him that she was banned from praying while on her shift.

91.5. The Claimant accepted that there was no protest from her that she had been banned from praying during her hours of work at Pinecroft. There certainly had been opportunities so to do. For example, as we have seen, the Claimant met with EJ on 16 February 2015 as part of her investigation into the bullying and harassment complaint (pages 228 to 234). The Claimant was represented by GH at the meeting. There was no reference there to the Claimant having been banned from prayer.

92. The following emerged from the evidence of MS given during cross-examination:-

92.1. MS maintained she had never said to the Claimant that she could not pray during her working hours. MS said that it would have been wrong to do so and that had she done so she would have expected IH and GH to step in during the course of the meeting of 14 January 2015. MS said that the meeting was pleasant.

92.2. MS denied that GH had objected to the Respondent's attempts to ban or restrict the Claimant prayer (there being no such attempt). MS said that GH had raised an issue about prayer and was simply seeking to draw a parallel with colleagues who took smoking breaks.

93. In his evidence in chief, IH said that he and MS were very happy with the outcome of the meeting of 14 January 2015. He felt that a way forward had been agreed with the Claimant. He said that the Claimant had been happy to engage with the Respondent in order to reach an agreed solution as to how to accommodate her prayer needs during her shift pattern.

94. MS said in her evidence that it was the Claimant who had suggested making up the time taken for prayer at the end of her shift. IH corroborated MS's account that it was agreed that the Claimant would pray when needed and would make up her time. IH corroborated MS's evidence that GH "was particularly vocal during the meeting when the prayer issue was discussed and drew comparisons between the time taken to pray and the smoke breaks taken by some of Zaeema's colleagues, which was a point that Maxine and I agreed with." IH goes on to say that, "had Maxine told Zaeema that she could not pray as alleged then I am absolutely certain that Zaeema's trade union representative would have raised a formal complaint on her behalf. Also if the letter that was sent to Zaeema and Gill Hancock following the meeting did not accurately reflect what was discussed at the meeting, I am sure that either Zaeema or Gill would have responded and sought to correct it".

95. It is unfortunate that no one from the Respondent reverted to the Claimant upon the prayer issue. The passage in the letter that we cited above at paragraph 87 could reasonably be interpreted by the Claimant as an arrangement whereby the Respondent would revert to her to confirm that what had been agreed was acceptable to all. It is therefore understandable that the Claimant was left with some uncertainty around the issue. Furthermore, this was not the first occasion upon which there had been an issue of communication between the Respondent and Claimant: we refer to the failure to revert to the Claimant after the verification meeting of 10 June 2014.

96. Against that, however, we find it simply not credible that the Respondent would have placed an outright ban upon the Claimant from taking prayer during her shift. Such would have been contrary to the spirit of the meeting of 14 January 2015. It would also have been contrary to BM welcoming the Claimant taking prayer and showing her the whereabouts of the prayer room when she started to work at Pinecroft. Furthermore, had the Respondent sought to impose a prayer ban one may readily have anticipated strenuous objection from the Claimant and her very experienced trade union representative neither of whom where reticent about raising issues of concern. We therefore find as a fact that BM did not seek to complain to MS about the amount of time that the Claimant was taking in prayer, the Respondent did not seek to ban the Claimant from praying and the Claimant continued to pray during the rest of her time working on the Pinecroft ward. The Claimant's diary at pages 750 to 759 contains an entry (at page 755) of 15 January 2015 where the Claimant says that she spoke to Mr Munir about the prayer ban and of 9 February 2015 where the Claimant contends that MS informed her that the prayer ban remains. We reject this account for the same reasons given earlier in this paragraph. Had such events occurred we have little doubt that Mr Munir and GH would have had something to say about such a serious matter.

97. Other issues were discussed at the meeting of 14 January 2015. MS raised with the Claimant the issue about the Claimant booking flexi shifts which clashed with her substantive shifts on Pine Croft and about her time management. MS was also concerned that on one occasion she had booked three shifts in a row which meant that she would have been working non-stop

for approximately 24 hours. MS was rightly concerned about the health and safety implications of working for so long without a break. The issue of the Claimant's leave over the Christmas period was raised in connection with whether or not she had overtaken her leave entitlement.

98. The Claimant cross-examined MS upon this issue. She suggested that the only flexi shift that had clashed with her substantive role was one worked on Stanage ward on 23 December 2014 and that that had not been her fault. The Claimant's case is difficult to understand given that the email of 22 December 2014 at page 204 is around a flexi shift that she had meant to be working on Stanage that day and that the Claimant had let Stanage down by being unable to work there.

99. The Claimant also suggested to MS that she would not deliberately have booked to work 24 hours without a break as that would give rise to very difficult child care issues and, understandably, she would not wish not to see her children. That doubtless is a valid point telling against the Claimant booking so many consecutive shifts. MS said that the system did show the Claimant having booked or made arrangements to work 24 hours without a break.

100. The Tribunal accepts that the Claimant would not have made arrangements to work 24 hours without a break not least by reason of the domestic difficulties to which that would give rise. The Tribunal does accept that was shown upon the Respondent's system. That said, MS impressed the Tribunal as a very capable manager such that she would not have raised an issue with the Claimant that did not exist. The Tribunal therefore accepts that there was some kind of error around this matter. Whatever the rights and wrongs of the booking of the flexi shifts on 22 and 23 December 2014, the fact remains that (as we have observed already) a significant number of those working for the Respondent were becoming concerned about the Claimant's time management such that it was plainly within the Respondent's managerial prerogative to discuss these issues with her on 14 January 2015. There were also issues on the Claimant's side. On 24 December 2014 Mr Buck protested about her shift pattern being changed without her consent (page 746). A meeting to discuss these issues was plainly warranted for the benefit of all concerned.

101. On 3 February 2015 BM held a further supervision meeting with the Claimant. BM noted further concerns about lateness. She also noticed that the Claimant had come into work wearing high heeled boots which were not suitable. The Claimant suggested to BM that this was not an accurate note as she could not wear high heeled shoes or boots. This observation prompted LH, when she was called to give evidence, to observe that at a meeting that she attended on 8 June 2016 (to which we shall come) the Claimant had been wearing high heeled boots. LH told us that she had thought to herself at the time that she (LH) would be unable to wear "those wedged heels". The Claimant cross-examined LH to the effect that her heels that day had not been "that high". That line of cross-examination did not sit easily with her own evidence that she was unable to wear her high heeled boots or shoes at all.

102. There is no record within the notes of the supervision meeting of 3 February 2015 of the Claimant protesting about BM banning her from praying during

her working hours at Pine Croft. The meeting presented an opportunity to raise the issue. This further corroborates our earlier findings of fact that the Respondent did not seek to impose any form of prayer ban upon her.

103. On 9 February 2015 MS wrote to the Claimant to inform her that her fixed term contract would end on 10 March 2015 (page 226). She was informed that the Respondent was not intending to extend her contract beyond that date. In supplemental evidence in chief given when she was called to give evidence, MS told us that she made arrangements to go to the Pinecroft ward to hand this letter to the Claimant personally. MS said that when she met her the Claimant did not say that she was prevented from praying upon the Pinecroft ward by BM. To the contrary, MS said that the Claimant showed her where her prayer mat was kept. Again, this corroborates our findings upon the prayer ban issue.

104. On 16 February 2015 EJ interviewed the Claimant in the presence of her trade union representative. This was part of EJ's investigation into the bullying and harassment complaint (as we have said).

105. We have made reference to this meeting already. Additional points worth noting are that the Claimant said that things started to go "sour" when she began working flexi shifts. She accepted that there were issues with lateness caused by public transport difficulties (in particular the work to the Sheffield tram system). The Claimant went through the issues that were of concern to her: the issues around 9, 10 and 11 June 2014; the request to change her working hours and JF's offer that she may work from 10.00 o'clock am to 2.00 o'clock pm; the issues that had arisen at Sheldon House regarding the picture of the patient upon her mobile telephone and the Sheldon House reference issue; and the issue around the fraud data base. The Tribunal notes in passing that a meeting arranged to discuss issues that had arisen on 23 July 2014 had been postponed until 30 July as it was Eid. That the Respondent was prepared to accommodate Eid points towards an organisation tolerant of different religious views and conscious of diversity issues.

106. On 18 February 2015 EJ wrote to the Claimant (pages 236 and 237). She set out her understanding, following her meeting with the Claimant of 16 February, of the incidents and issues to be investigated by EJ pursuant to the bullying and harassment complaint of 24 November 2014. These were:-

106.1. The Respondent being concerned about her having a picture of a former resident (and now a resident of Sheldon House) upon her mobile telephone.

106.2. The reference from Sheldon House.

106.3. Timekeeping and flexi shifts.

106.4. The changing of her hours.

106.5. The Claimant hitting a trigger under the sickness policy.

106.6. The prayer incident of 9 September 2014.

106.7. A general complaint of feeling upset and belittled by JF and JS.

107. On 26 February 2015 EJ wrote to the Claimant. She copied IH and GH into the email which is at page 238. She recorded that she had discussed the matter with the Claimant and the Claimant had not said that anything was missing from the list of the seven issues to be investigated by EJ who therefore proceeded upon that basis.

108. On 28 February 2015 the Claimant raised a complaint about an incident that had occurred upon the ITS ward on 23 February 2015. The email is at page 239. It was (correctly) treated by the Respondent as a further grievance.

109. The Claimant said that she had arrived to work a flexi shift on 23 February 2015. She discovered that a patient ('AM') was on the ward. The Claimant had had a problem with AM in the past. In fact, the incident with AM is recorded in the staff profile to which we have referred previously at paragraph 84. At page 474 we can see that AM subjected the Claimant to a physical assault while the Claimant was undertaking a shift upon the Burbidge ward.

110. Upon raising her concerns about AM the Claimant was then moved to work with TE (another patient). The Claimant complained in her email of 28 February 2015 that TE "is racist towards Muslims and was very verbally abusive. He would not accept any help from me. When I tried to assist him he kept saying "you dirty Muslim, I don't want any help from you, you bitch". The Claimant raised a question in her email as to why she was asked to work with TE in circumstances where staff "were fully made aware of how racist this man is". She complained that she had had to put up with 20 minutes of racial abuse.

111. TC is a staff nurse on the ITS ward. Her evidence is that, "on the morning of 23 February 2015 I arrived at work and checked the handover book. The handover book had a written request asking that I swap Zaeema out of the ward. It did not state the reason why Zaeema needed moving but I later found out that this was because a patient (AM) had been moved to the ITS ward and she had previously physically attacked Zaeema on another ward". TC goes on to say that, "I instructed members of staff to work on different areas so that Zaeema would not come into contact with AM and instructed Zaeema to work with another patient TE. At the time of asking Zaeema to work with TE on a one to one basis she did not object or mention that she had an issue working with him. At that time, I was not aware that TE had a history of expressing intolerant views about Muslims. I recall that I subsequently became aware that TE was unhappy at being escorted by Zaeema. As far as I remember the only other member of staff who was available to swap with Zaeema was a new flexi worker, but she needed inducting to the ward prior to being placed on any observations (she was also a Muslim)."

112. TC's witness statement continues:-

"(6) Shortly after starting the shift Zaeema approached me and said she couldn't work with TE and that he didn't like her because she was a Muslim. I was on the phone to the other acute wards at that stage attempting to have her moved because of the issue with patient AM. She didn't specifically say that TE had said anything offensive to her at that stage.

(7) I explained to Zaeema that I was already in the process of trying to find someone for her to swap from another ward and was in the process of making

calls to arrange this when Zaeema first approached me. After explaining the position, Zaeema went back to work with TE.

(8) Zaeema approached me again whilst I was making calls to arrange her move away from the ITS ward. I can't recall how many times Zaeema came to me and don't recall her complaining about anything specific TE had said to her. I explained that until I could secure her replacement I had no one else available and that as TE was blind I needed her to stay with him until I could secure someone for her to swap with, which I hoped would not take very long to arrange.

(9) The ITS ward has a limited number of staff and the range of tasks that each staff member can perform depends upon their level of training. This in turn will determine how staff are allocated patients, as managing some patients needs will require a greater level of training and experience. All of the other members of staff on shift on 23 February 2015 have been allocated patients on this basis and given the level of Zaeema's training and experience I did not consider it possible to re-allocate any of these patients to Zaeema so that she was not working with TE".

113. TC says that there was nothing further that she could have done without compromising on patient safety. She said that her paramount duty was to her patients. She moved the Claimant to another ward around 20 minutes after she had raised her first concerns about working with TE. TC fairly acknowledges that she "may have been a bit short with Zaeema" on the day in question. She attributes this to the pressure that she (TC) was under.

114. The Claimant says little in her witness statement about this incident other than to say that she was put "on a one to one with a racially abusive client". She expands upon the incident in her diary of events. She complained about TC's manner when she protested about having to work with TE. The Claimant says that she was told in a hostile manner by TC just to get on with her job. She then says that TE subjected her to abuse based upon her race and religion. Although the diary entry at page 755 recording the abusive words used is not in identical terms with that in the grievance at page 239 the general gist is the same.

115. In evidence under cross-examination the Claimant accepted that TC had no link with the other wards upon which the Claimant had worked. The Claimant accepted this to be the case but said that those nurses who had worked on the Stanage ward were aware of TE's racism. The Claimant fairly accepted that TC had to prioritise the welfare of the patients but maintained that there were other staff members who could have relieved her from having to care for TE thus avoiding her being subjected to abuse. The Claimant maintained there would be a record of TE's abusive behaviour within the notes.

116. TC explained in evidence following questioning from the panel that it would not have been a practical possibility to swap the Claimant with one of the other six members of staff working on ITS ward that morning because each had their own specialist tasks to carry out. TC said that she had not had the opportunity of looking at TE's notes prior to the allocation of the Claimant to work with him.

117. IH asked AC to investigate the Claimant's grievance about the events of 23 February 2015. IH decided that AC should do this in her capacity as ITS ward manager. AC made arrangements to meet the Claimant on 24 March 2015 to discuss her complaint. A note of that meeting is at pages 256 to 258. Again, the Claimant was represented by GH.

118. The Claimant gave an account consistent with that in her email of 28 February 2015 about what had occurred. It was put to the Claimant by Miss Gould that neither she nor GH took the opportunity of mentioning to AC that she (the Claimant) had been subjected to a prayer ban during her time working at Pine Croft. The Claimant accepted this to be the case but said (with some justification) that AC's remit was to look into the incident of 23 February 2015.

119. Although chronologically out of sequence, it is perhaps convenient to record that AC met with TC about this matter on 4 September 2015. The notes of that meeting are at pages 343 to 345. Here, TC gives an account consistent with the passages from her witness statement that we have already referred to. The delay in AC interviewing TC was attributable to the latter's sickness absence to which she refers in her witness statement.

120. On 16 April 2015 the Claimant met with SL, IH and Yvonne Robson of the Respondent. The Claimant was represented by GH. This was a verification meeting held under the relevant provisions of the disciplinary policy to which we have already made reference.

121. SL gives the background to the calling of this meeting in her witness statement. She says at paragraph 6 that she was on leave between 30 March and 8 April 2015. Upon her return on 9 April 2015 she was contacted by members of staff who made her aware of concerns that they had about the Claimant that arose while the Claimant was working upon the Maple ward doing flexible staffing shifts.

122. SL goes on to say, "there were two particular concerns that were brought to my attention initially. The first was an allegation that Zaeema had accessed a patient's Facebook account whilst on one to one observations with that same patient and then shared photographs from the patient's Facebook page with an agency support worker, Alice Phillips. The second concern related to the fact that Zaeema had provided assurances that she had achieved level 3 in Respect training (which was a requirement for handling patients), when in fact she had failed to pass the course that had taken place three weeks earlier."

123. SL says that she discussed the matter immediately with MS to ask for advice as to how to proceed. A decision was taken to honour the flexi shifts that the Claimant had already booked on Maple ward. SL then spoke to Mark Walton, another senior nurse on the ward. Mr Walton told SL that Emmie West was the staff nurse who had first raised concerns about the Claimant accessing the patient's Facebook account. SL sent an email to Miss West on 9 April 2015 to ask for more information (page 487). Miss West responded on 10 April 2015 (page 487). She told SL that she (Miss West) had been told about the incident by Alice Phillips. Miss Phillips had informed Miss West that whilst on one to one observations of a patient the Claimant had accessed the patient's Facebook account and found photographs of the patient which she then shared with Miss Phillips and commented upon them. Miss Phillips sent

an email to SL on 15 April 2015 (page 406) summarising what she had witnessed.

124. A third incident then took place on 14 April 2015. SL had been notified that the Claimant had volunteered to help restrain a patient despite not having the necessary training. SL was informed about this incident by the deputy ward manager Nicola Swann. SL was also emailed about this incident by Becky Hughes on 15 April 2016.

125. SL and MS decided that given the nature of the concerns that they had around the Claimant arising out the three incidents it was appropriate to arrange an urgent verification meeting. This was convened on 16 April 2015. The notes are at pages 265 to 267. Folowing an adjournment during the meeting (between 3.30 and 4.30pm) SL decided to undertake a formal investigation to determine whether any misconduct had taken place. SL suspended the Claimant from duty. The suspension letter is at pages 269 and 270.

126. The Claimant said in evidence that she had not looked up the Facebook profile photographs of the patient (referred to as Abo) on her own phone. It was her case that Abo's mother had got into her account upon her (the mother's) phone. At the verification meeting the Claimant said that she did not look at Abo's Facebook profile or talk to other members of staff about them. It is the case that the notes of the verification meeting do not record the Claimant saying that access to the Facebook profile was via Abo's mother's telephone and not the Claimant's phone. The Claimant did have the opportunity of amending the verification meeting notes. This she did. However, there was no amendment upon the question of whose phone had been used to access the Facebook profile. The verification meeting notes as amended by the Claimant were introduced into the bundle as document A. The Respondent acknowledged receipt of the Claimant's amendments at the disciplinary meeting held on 23 June 2014 (page 444).

127. On 17 April 2015 GH notified IH, SL, SB and EJ that she would no longer be representing the Claimant. GH said that the reason for this was that the Claimant's membership had lapsed in January. In her diary of events (at page 758) the Claimant said that GH had decided not to represent her on the day of her suspension. The Claimant said that GH had given an "excuse … something to do with my subs and she didn't want to lose her job. It was suggested I should get a lawyer." We agree with Miss Gould's submission that this contention has little credibility. Firstly, GH is a very experienced trade union representative. It is unlikely in the circumstances that she would fear for her job or have any reason so to do. Secondly, in its disciplinary policy the Respondent recognises the right of employees to be represented by a certified trade union official. The disciplinary policy affords no right of representation to anyone other than a trade union official or fellow employee. It is therefore in our judgment unlikely that GH would advise the Claimant to "get a lawyer" to assist her to matters move on to a disciplinary hearing.

128. On 8 May 2015 EJ completed her report into the complaint that she was investigating. The report was sent to the Claimant on 19 June 2015 (page 281). We have commented upon some of EJ's conclusions already: in

relation to the verification meeting issue and the issue around the Claimant's sickness absences on 9, 10 and 11 June 2014.

129. In relation to other issues pertinent to the Claimant's claims LJ found in general terms that there was no evidence of bullying and harassment of her by JF and JS. Upon the prayer incident (as we have said already) EJ found that JS had been made to feel uncomfortable by encountering the Claimant at prayer and disturbing her and had come across negatively towards the Claimant. EJ did not uphold the Claimant's complaint that negative remarks had been made to her but found that the Claimant may have perceived negativity by reason of JS's non verbal communication upon the day of the incident. EJ considered that JS's and JF's actions in tackling issues around the Claimant's lateness and timekeeping were reasonable and appropriate.

130. EJ concluded by acknowledging that the Claimant should have received a letter formally providing her with the outcome of the verification meeting held on 10 June 2014. She was critical of the lack of clarity in the procedures associated with the disciplinary policy.

131. The Claimant put to EJ that she had taken longer to complete her bullying and harassment investigation than allowed for by the Respondent's policy. Although the Tribunal was not taken to it, we note from page 142 of the bundle (clause 6.4.1 of the bullying and harassment procedure) that the investigating manager should aim to complete the investigation within two months. Plainly, in this case, that timescale was exceeded. This was a theme to which the Claimant returned in connection with the subsequent disciplinary investigation. A number of the Respondent's witnesses (in particular FG, IH and LH) readily acknowledged that the timescales were exceeded. In fact, they all said that it was rare to complete a disciplinary investigation within the policy timescales. The Claimant, with some justification, asked rhetorically the purpose of the policies if the timescales are so routinely breached.

132. On 12 May 2015 SL wrote to the Claimant asking her to attend a formal investigation interview under the Respondent's disciplinary policy. The meeting was scheduled for 27 May 2015. This was rearranged for 23 June 2015 at the request of the Claimant who, unfortunately, was in hospital in May and therefore unable to attend.

133. The letter reconvening the meeting was sent by SL to the Claimant on 10 June 2015 (page 277(1) and (2)). The meeting was arranged for 23 June 2015. The venue was given in the letter as Wardsend Road. It was accepted by the Respondent that the venue was in fact Wardsend Road North. The Claimant put to SL during cross-examination that this had caused some confusion and her taxi driver had taken her to the wrong place. She only arrived on time thanks to the taxi driver's local knowledge that there were NHS premises at Wardsend Road North. For her part SB candidly acknowledged the error and apologised to the Claimant. The Claimant also put it to SB that although she had turned up on time ready to start at 2 o'clock pm as scheduled the meeting did not get underway until 2.30pm.

134. The Respondent's notes of the meeting are in the bundle commencing at page 444. We note from the heading that the commencement time is

recorded as 2.30pm with no reference in the notes as to whether or not the meeting had been meant to commence at 2 o'clock pm.

135. There is some merit in the Claimant's complaints about the notification to her both of the venue and the commencement time. This is a further instance of poor communication with the Claimant upon the part of the Respondent. Such has certainly not assisted matters.

136. On 1 July 2015 the Claimant met with EJ, IH and Richard Bulmer to discuss the outcome of EJ's investigation. A follow up letter from EJ is at pages 308 and 309. She advised the Claimant of her right to request a review under the bullying and harassment policy. The Claimant did not seek a review.

137. On 13 January 2016 AC wrote to the Claimant with the outcome of her investigation into the Claimant's grievance of 28 February 2015. AC found that the initial response that the Claimant received regarding TE was inadequate and that the Claimant's complaints were not dealt with "in the most sensitive way". That said AC did find that TC informed the Claimant that she was trying to move the Claimant to another ward. TC admitted that she was short with the Claimant. AC acknowledged there to be mitigation for this by reason of TC's "personal ill health stressors". AC's report is at pages 357 to 363. As part of her investigation she had conducted a review of the Insight notes held by the Respondent about TE whilst he was on Stanage ward. There are a number of entries in January and February 2015 (prior to the incident of 23 February 2015) of TE making discriminatory comments based upon race and religion.

138. Just prior to the Claimant being notified of the outcome of the grievance being investigated by EC, a letter was sent to SL by Sally Ross. This is at page 374(1). Sally Ross informed SL that Camron Munir had been contacted by Mohammed Ali, the leader of the Pakistani Muslim Centre in Sheffield. Mr Ali had himself been contacted by the Claimant regarding her concerns about non-halal food being given to Muslim service users at Forest Close as well as an issue regarding prayer time for the Claimant. Sally Ross informed SL that the Claimant "told Mohammed Ali (who then told Camron Munir) that, if her concerns are not in her opinion adequately addressed, she will take these issues to the press."

139. IH emailed Sally Ross and Camron Munir on 1 February 2016 (page 383(2)). IH said that the prayer issue was the subject of proceedings in the Employment Tribunal. He therefore felt unable to discuss the matters pending the outcome of the litigation. He goes on to say that, "I was unaware of the allegations regarding Forest Close and her concerns regarding halal food. If you are willing, I thought it would be a good idea for the three of us to meet to discuss a way forward, as I think this is something that we need to look into." From the email exchanges at pages 383(3) and (4) it appears that Mr Munir visited the Fulwood ward and met with IH to discuss issues around capacity and diet.

140. As we have seen, this was an issue that had been raised in November 2014 at the behest of Mr Munir following a pastoral conversation with the Claimant. When asked in cross examination about the nature of the Claimant's complaint against the Respondent regarding this issue (and IH's dealings with

it in particular) the Claimant complained about the manner in which IH had gone about matters. She did not say what it was about IH's conduct that caused her concern. She said that she would cross-examine IH when he came to give evidence. When she got her opportunity to cross-examine IH she asked him why the matter was being raised again in May 2017 (by reference to the email at pages 921 and 922). IH said that he was "just chasing it up."

141. It has to be said that the evidence from each party upon this issue was somewhat unsatisfactory. It was difficult to understand the nature of the Claimant's complaint. However, we infer that she was concerned to find that the issue around halal food had not been fully resolved by May 2017 (hence IH's email at page 921). There is some merit in the Claimant's complaint about this as the impression the Tribunal formed is that the Respondent had not got to the bottom of the issue raised by Sally Ross on 11 January 2016 and by Mr Munir in late 2014.

142. On 4 January 2016 SL wrote to the Claimant to notify her of the outcome of her disciplinary investigation (pages 370(7) and (8)). SL notified the Claimant that she was required to attend a disciplinary hearing in order to answer the following allegations:-

142.1. On 31 March 2015 she misused/inappropriately used her knowledge of a patient to access her details and information on social media (Facebook).

142.2. On 31 March 2015 she breached the Respondent's Mobile Communication Devices' policy by using her mobile phone to access information about a patient via social media while on duty.

142.3. On 31 March 2015 she failed to have due respect for a patient's dignity by accessing social media (Facebook) photographs of a patient whilst on a one to one observation with the patient.

142.4. That on 31 March 2015 she failed to follow the Respondent's Observation of Inpatients policy and left the patient with whom she was on a one to one observation, to share with another member of staff and to comment upon what she had accessed on her mobile telephone about the patient.

142.5. While on a one to one observation, she failed to follow the Respondent's Observation of Inpatients policy by leaving a patient in order to answer the office telephone.

142.6. That she put clients at risk by embellishing information about patients and incidents leading to potentially unnecessary and unsuitable changes in care or treatment for patients, and to the inaccurate recording of patient information in their records.

142.7. That she failed to work within her role boundaries by sharing her own opinions and made value judgments about patients to other professionals, based on speculation and hearsay.

142.8. She breached a staff member's confidentiality by attempting to engage other staff members in discussions about his association with a patient.

142.9. She gave false information about her training and skills and about her ability to participate in the physical restraint of a patient (respect), in response to a request for an imminent review of a secluded patient.

143. The Claimant was informed that the disciplinary hearing was to be held at stage four of the Respondent's disciplinary policy. Therefore this gave rise to the possibility of dismissal. The Claimant was told that SL was to present the Respondent's case. She was to be supported by SB. The Claimant was told that the management's case would be forwarded at least 20 working days before the hearing and that the Claimant should submit her case at least five working days before the hearing date. She was notified of her right to be accompanied by a trade union representative or a colleague from the Respondent.

144. SL's statement of case is at pages 384 to 492. We have in fact referred to this document before: in particular, page 390 and the helpful information given there by SL about the Claimant's career with the Respondent.

145. The statement of case contains 24 appendices. We can see that the relevant witnesses were interviewed by SL between 15 April and 7 May 2015 before SL undertook her formal interview with the Claimant on 23 June 2015.

146. In relation to the latter, appendix 24 consists of emails of 15 September and 7 October 2015 concerning attempts made by SL to obtain the Claimant's agreement to the contents of the investigatory meeting notes of 23 June 2015. By reference to these emails (at pages 491 and 492) we can see that the Claimant did not agree with the minutes (which were sent to her on 8 July 2015). On 7 October 2015 SB told the Claimant that unless she responded upon this issue by 16 October 2015 the Respondent would proceed upon the basis that its notes were the most accurate record of the meeting.

147. The Claimant was concerned about the length of time that the disciplinary process took. The Respondent sought to attribute at least some of the delay to her failure to deal with the issue of the investigation meeting notes.

148. The Claimant did not return to the Respondent upon the issue of the accuracy of the notes. On 15 October 2015 she wrote to ask the Respondent to communicate with her solicitors (page 355). Miss Gould's instructions were that those solicitors did not write to the Respondent to notify any disagreement with the contents of the investigation meeting minutes. At all events, the Claimant said that the Respondent then delayed for an unreasonable length of time between the middle of October 2015 and 4 January 2016. There is some merit in this as there was little by way of explanation for the delay from mid- October 2015.

149. Upon this issue, the Claimant said (on the second day of the hearing following the Tribunal's reading day) that the transcript of the meeting produced by her (commencing at page 760 of the bundle) had been handed to the Respondent's solicitor at the judicial mediation held in this case. The

Respondent's solicitor denied that this was the case. The Claimant said that she had covertly recorded the meeting of 23 June 2015 and had from that produced the transcript that features in the bundle. The Respondent had not had the opportunity of listening to the recording and verifying the Claimant's transcript by the time the matter came before us.

150. On 22 February 2016 FG wrote to the Claimant. The disciplinary hearing was scheduled for 23 and 24 March 2016. The Claimant was notified that Alice Phillips, Lucy Woodward, staff nurse at Maple ward, and Becky Hughes, deputy ward manager at Maple ward were to attend as witnesses. FG wrote again on 17 March 2016 to tell the Claimant that she had not yet received the Claimant's statement of case (pages 493 to 496).

151. Unfortunately, SL became ill the day before the hearing. The Claimant was aggrieved that she (the Claimant) came in on 23 March 2016 only to find that the matter was postponed. SL and FG explained that it had been hoped that SL would be well enough to attend on 23 March 2016 hence a decision was taken not to postpone the meeting. Unfortunately, SL was unable to attend and hence the matter was postponed.

152. On 6 April 2016 the Claimant was notified that the re-arranged disciplinary hearing would take place on 5 May 2016. FG recorded that at the hearing on 23 March the Claimant had brought a friend with her as the work colleague who the Claimant had intended to accompany her was unavailable. FG told the Claimant she had agreed to the Claimant's friend remaining in the room during discussions concerning the need to re-arrange the hearing. FG said that she was not prepared to work outside of the Respondent's policy upon the next occasion and therefore the Claimant should ensure that she be accompanied by a recognised trade union official or a work colleague. The letter of 6 April 2016 omitted Alice Phillips from the list of witnesses (in contrast to the list appearing in the letter of 22 February 2016).

153. On 27 April 2016 FG wrote to the Claimant to say that she had still not received the Claimant's statement of case. This had been scheduled for submission no later than 26 April. (In the event, the Claimant presented her statement of case on 4 May 2016).

154. On 3 May 2016 FG emailed the Claimant. This followed concerns that the Claimant had expressed about the willingness of her work colleague to accompany her at the disciplinary hearing. FG sought to reassure the Claimant that there would be no negative impact upon the Claimant's work colleague should he or she choose to support her. The Claimant did not avail herself of FG's invitation for the Claimant or the Claimant's colleague to discuss matters with either FG or LH about any concerns they may have had.

155. The Claimant's statement of case is the document that appears at page 505 to 508. LH confirmed that this was handed in to her by the Claimant outside of the timescales prescribed in FGs earlier correspondence. Nonetheless, the Respondent was content to accept its late submission.

156. The notes of the disciplinary hearing of 5 May 2016 are at pages 509 to 517. An issue arose almost at the outset around missing paperwork. Appendices 2 and 3 (being the Observation of Inpatient's policy and a 'confidentiality statement') were missing from the pack. SL ensured that they were handed

to all parties at the outset of the meeting. SL gave the Claimant an opportunity of reviewing the matter and asking whether she was content to proceed. The Claimant confirmed that she was.

157. The Claimant attended the disciplinary hearing unaccompanied. FG, LH, SL and SB were present on behalf of the Respondent (in their respective capacities).

158. It is not necessary to set out the detail of matters discussed at this hearing. At the conclusion of the first day of the hearing FG wished to see the Insight notes for some of the patients who were being referred to. We see the relevant reference at page 517.

159. The reconvened hearing took place on 16 May 2016. The notes are at pages 518 to 521. It is recorded that SL had provided copies of the documents requested by FG.

160. The Claimant said (at page 518) that she wished for Alice Phillips to be called to give evidence in order that she could question her. LH said that she had emailed Alice Phillips to try to get her to attend. However, Alice Phillips was unwilling to attend and could not be compelled so to do as she no longer worked for the Respondent.

161. In supplemental evidence, SB told us that she had emailed Alice Phillips to try to get her to attend the disciplinary hearing. However, Ms Phillips had declined as she was undertaking a dissertation and also did not live locally. SB said that Alice Phillips had not returned her calls or answered her emails. In evidence under cross-examination, SB accepted that her emails addressed to Alice Phillips did not appear anywhere in the bundle.

162. Again, it is not necessary to recite the matters discussed on 16 May 2016. The matter was further adjourned upon the basis that only one of the witnesses referred to in FG's letter of 25 May 2016 was available. The disciplinary hearing was adjourned to 8 June 2016.

163. The Claimant had requested that Mark Walton, Lisa Croft, Alice Phillips, Lucy Woodward, Emmie West and Nicola Swann attend the disciplinary hearing. Only Mark Walton had been available on 16 May 2016. FG agreed that the Claimant's request for an adjournment in order to enable Lisa Croft to attend was reasonable.

164. In relation to the other witnesses whom the Claimant wished to question FG's views (as set out at pages 523 and 524) were as follows:-

164.1. Alice Phillips no longer worked for the Respondent.

164.2. It was not necessary for Lucy Woodward to attend upon the basis that Mark Walton (as well as Lucy Woodward) had been present upon the day of the Facebook incident. Therefore, the Claimant had the opportunity of asking Mark Walton about the issue.

164.3. FG took a similar view around Emmie West. As Mark Walton was present, FG considered it unnecessary for the Claimant to question Emmie West about the Facebook incident. Further, Emmie West had witnessed a further patient incident but as the Insight notes were available her attendance was unnecessary.

164.4. In relation to Nicola Swann, her evidence related to an issue around information that the Claimant had allegedly shared with a patient's relative. FG considered Nicola Swann's attendance to be unnecessary upon the basis that SL had confirmed that those comments were not part of "the management case allegations".

165. In relation to the latter, the Claimant had some well founded concerns. The notes of the meeting with Nicola Swann are at page 421. Nicola Swann alleged that the Claimant had made a disclosure to the patient's mother that the patient "had been raped since she was 13". Nicola Swann said that she was horrified that the Claimant had made that disclosure.

166. When she cross-examined SL, the Claimant asked why Nicola Swann's notes of interview were in the management statement of case if her evidence was irrelevant to the allegations being faced by the Claimant. SL said that it was not her decision as to whether or not Nicola Swann's notes of interview may be "removed" from the management statements of case. (By this, we understood SL to be referring not to a physical removal of them by FG as they were there to be seen but, rather, that FG should disregard them). SB, in evidence under cross-examination, agreed with the Claimant that the Nicola Swann notes could have been left out of the management's statements of case as what she had said about the Claimant's alleged disclosure did not form any part of the allegations against her.

167. In the Tribunal's judgment, the Claimant entertained well founded concerns about the presence of this material within the disciplinary pack. On any view, at the very least, it was irrelevant material but which had the potential to be highly prejudicial to the Claimant.

168. As we say, the disciplinary hearing was adjourned to 8 June 2016. On 2 June 2016 the Claimant acknowledged receipt of FG's letter (being that at pages 523 and 524). The Claimant's email acknowledgement is at pages 525 and 526. She protested about FG's decision concerning Emmie West and Lucy Woodward and expressed her disappointment that Alice Phillips was unable to attend. The Claimant maintained her position that she also wished to question Nicola Swann.

169. The Claimant raised no objection in this email to the date of the reconvened disciplinary hearing. In fact, 8 June 2016 fell during the fasting month of Ramadan. When asked why she had not made reference to this when the date was fixed for 8 June 2016 the Claimant explained that the Islamic religion depends upon the lunar month. Accordingly, there was uncertainty as to the calendar date upon which the fasting month would begin. The Claimant then asked rhetorically why the Respondent's human resources department would not have been aware that 8 June 2016 fell during Ramadan.

170. It is difficult to see upon what basis the Claimant considered that the Respondent should have been aware of this in circumstances where she was not. The Claimant asked each of the Respondent's witnesses whether or not they had had diversity training. All of them had. The Tribunal accepts each of the Respondent's witnesses' evidence upon this, the training being mandatory. However, the Claimant appeared to have an inflated expectation of the degree of knowledge to which the diversity training would lead. SB was

asked by the panel for comment upon the nature of the diversity training. She told us that the aim was to give employees a broad awareness of diversity without going into the specifics of the various religions and religious festivals. SB said that the diversity training was around "appreciating and respecting diversity."

171. The notes of the disciplinary hearing held on 8 June 2016 are at pages 527 to 536.

172. It is recorded that, at the outset of the meeting, FG said that she recognised that the meeting was taking place during Ramadan. She said that additional breaks may be taken if required.

173. Lisa Croft gave her evidence. The matter was then adjourned at about 10.30. SL had left the room as the meeting broke for the adjournment. However, SB recorded the following in her note (at page 528):-

> *"ZK* [the Claimant] *fell on the way out of the meeting and stated it was due to Ramadan. In the side room ZK said that the meeting should not have been booked during Ramadan. LR* [whom we have referred to as LH being her married name] *replied that ZK could have told us in advance of the day if the hearing date was inconvenient and it was not for us to say what was and was not appropriate. ZK asked how long they would take. LR explained the process. ZK stated it would take more than one day to question SL and Ramadan lasts one month, but* [we] *may as well carry on. LR stated if ZK wanted an adjournment this is something she would need to put to FG. ZK said she would think about it. LH checked about ZK's physical well being – ZK stated she was ok*".

174. Upon resumption of the meeting, FG is recorded as saying that, "staff do work during Ramadan and this meeting has been scheduled in-line with Trust policy. If we take frequent breaks and maybe finish early would this meet your needs? I'm conscious that you fell and you may feel dizzy." The Claimant replied that she was content to carry on provided that she was given breaks.

175. An issue arose about SL having reported the Claimant to the safeguarding authorities before a decision was reached on the disciplinary case. SL said that she had tried to make a safeguarding alert (which did not identify the Claimant). In her witness statement SL drew a distinction (at paragraph 17) between a safeguarding alert (which does not identify the staff member) and the referral of a staff member to the safeguarding authority (that does). SL explained that a safeguarding alert is submitted to the relevant community team manager (being the safeguarding manager). In the event, SL could not raise a safeguarding alert with the relevant community team manager anyway as both of the patients concerned lived outside the Respondent's geographical area.

176. It was the Claimant's case that SL's report (or at any rate her attempt to report) a safeguarding alert was in breach of the Respondent's disciplinary policy. The Claimant took us to page 155(36) and in particular paragraph 3.10. There, it is said that a referral to the independent safeguarding authority will only occur once a disciplinary decision has been made following an investigation. In cross-examination, Miss Gould suggested to the Claimant

that there was a distinction between a safeguarding alert on the one hand and a referral as envisaged in clause 3.10 on page 155(36) on the other. The Claimant fairly accepted that in principle the Facebook issue may give rise to safeguarding concerns (although she maintained that she had done nothing wrong). It was put to the Claimant that she had suffered no detriment because the safeguarding alert (even if it had been successfully filed) would not have named her in any event.

177. Around the events of 8 June 2015, the Claimant asked FG if she had ever fasted. FG said that she had for medical reasons. Before us, FG appeared sympathetic to the fact that the Claimant would feel faint, it being the fasting month.

178. LH said that she had no experience of fasting. The Claimant questioned her about the apparent belief that she had that at least part of the reason why the Claimant fell on the way out of the meeting because she was wearing inappropriate footwear. The Claimant rightly put it to LH that there was no mention of this being a factor in her falling within the minutes of the meeting.

179. Towards the end of page 213, the Claimant asked SL why she had spoken to Bernard Turner on 16 April 2015. This was in connection with the issue of the Claimant's Respect training. SL said that it was part of the verification process. The issue of Bernard Turner's discussion with Lisa Croft about the Claimant's level of training formed the basis of a breach of confidentiality issue raised by the Claimant (and which, as we shall see, appears in the list of issues to which we shall come).

180. The disciplinary hearing was adjourned again. FG rescheduled it for 30 June 2016. The Claimant emailed on 19 June 2016 to say that she would be going into religious seclusion. She therefore asked for the date to be arranged for after 9 July 2016. We refer to pages 537 and 538.

181. The Claimant asked FG why she had fixed the meeting for 30 June 2016, that being during the fasting month. FG said that she did not take the view that meetings could not be held during Ramadan. In any event, the matter had been easily resolved as the Respondent had agreed to postpone the date upon being informed that the Claimant would be in religious seclusion. LH said that it was she who had in fact made arrangements for 30 June 2016 as it was "just the next available date". LH accepted, under questioning from the Employment Judge, that she had not asked the Claimant whether the date would be convenient or if it fell within Ramadan.

182. On 29 June 2016, FG wrote to the Claimant. She was told that the re-schedule disciplinary hearing would take place on 14 July 2016. We refer to page 540.

183. The minutes of the meeting of 14 July 2016 are at pages 545 to 551. The Claimant presented a written summary which is at pages 542 to 544.

184. At page 549, it is recorded that SL raised an issue about her support worker role at Sheldon House and in particular whether the Claimant had ever been disciplined about a similar misconduct issue whilst there. This is a reference to the incident the subject of the verification meeting of 10 June 2014. The Claimant objected to this line of questioning upon the basis of relevance. SL

maintained it was relevant if she had previously been disciplined "for similar things".

185. The matter was then adjourned. Upon the resumption FG invited the Claimant's further comments. The Claimant complained about the matter being a witch hunt. She said that "in this file you have gone back to 2003 … you have gone back to 2005". This was a reference to the document at appendix 18 being a supervision note of 22 June 2005. This related to the Claimant's previous period of working for the Respondent. Concerns about boundary issues had been discussed with the Claimant in 2005.

186. The Respondent's position was that it was reasonable for this issue to be raised with the Claimant if part of a pattern impacting upon patient safety.

187. FG said that she gave no weight at all to the Sheldon House issue that had been raised by SL. However, she did give some weight to the concerns that had been raised with the Claimant about the respecting of boundaries during her previous period of working for the Respondent.

188. Towards the end of the disciplinary hearing minutes we note that the Claimant read from the prepared summary (that being the document at pages 542 and 544). She confirmed her wish to attend the next meeting at which FG was going to deliver the outcome. The Claimant maintained that she was subject to a witch hunt.

189. The final paragraph of the meeting notes show LH recording concerns raised by the Claimant that she did not consider that she had had enough time to present her case. The Claimant maintained in her cross examination of FG and SB that the Respondent had had many hours to present their case whereas she had been given just 25 minutes. When asked about this FG said that the Claimant had been given the opportunity to say something further but had not wished so to do. FG also said that she thought that the Claimant was referring to the time that she had been allowed on 8 June 2015 as opposed to during the course of the domestic proceedings generally. FG said that LH had told her about what the Claimant had said once she had shown the Claimant from the premises.

190. When asked about this issue, LH said that she had thought the Claimant was meaning to refer to how long the disciplinary process had taken altogether and was not specifically meaning to refer what had happened on 8 June 2016. LH accepted that she had not asked the Claimant what else it was that she wanted to say. LH said that that would have been the obvious thing to have done.

191. On 16 July 2016 the Claimant emailed FG and LH (page 552). She said that she had been reflecting upon matters and had taken some advice following the meeting of 8 June 2016. She said that that meeting was rushed and she did not get the opportunity to say everything that she wanted to. It was this email that gave FG the impression that the Claimant's complaint to LH at the conclusion of the meeting of 14 July 2016 was about the meeting that had taken place on 8 June.

192. The reconvened hearing took place on 21 July 2016. FG read from the letter that was subsequently sent to the Claimant on 28 July 2016 giving her the

outcome. The letter is at pages 556 to 561. The minutes of the meeting of 21 July 2016 are at pages 553 to 555.

193. The Claimant did not seek to say anything further. She did not give any evidence before us or make any submissions as to what else she wished to say that she had not had the opportunity of so doing.

194. By reference to the allegations set out at paragraph 142 above, FG upheld the allegations at 142.1, 142.3, 142.7 and 142.9. She did not uphold the other allegations. The Claimant was issued with a final written warning. The final written warning was to remain upon the Claimant's record for a period of 18 months.

195. Under cover of the letter of 28 July 2016, the Claimant was sent minutes of the disciplinary hearings that had taken place between March and July 2016.

196. The Claimant did exercise her right of appeal. The Tribunal was informed that FG's decision was upheld. We shall say nothing further about the appeal as it is the subject of the fourth claim which, as we say, was stayed pending the outcome of these proceedings.

197. The Claimant's evidence is that she was discouraged from appealing by FG and LH. Both of them denied this. On balance, we prefer the Respondent's evidence. The alleged encouragement of the Claimant not to appeal is incompatible with FG's letter of 28 July 2016 clearly setting out the Claimant's right of appeal and the Claimant having been informed at the final disciplinary hearing of that right.

198. In the course of her evidence, the Claimant referred to a white British comparator named Lee Latham. The Claimant's case is that Mr Latham "had a fling" (as the Claimant put it) with a patient but was not disciplined. SL's evidence is that a young female patient had become besotted with Mr Latham. SL investigated matters, moved him from Maple ward for a few days before concluding that there was no foundation to the patient's allegations. He therefore returned to Maple ward. A safeguarding alert was raised but no further action was warranted. The patient was moved to another ward. The patient had suggested that she was pregnant by Mr Latham. SL said that suspension of Mr Latham was not warranted in the circumstances.

199. Having set out our findings of fact we now turn to a consideration of the relevant law. The Claimant complains of direct discrimination because of the relevant protected characteristics of her religion or belief and race. She also complains of harassment related to those protected characteristics. She brings a complaint of victimisation in addition.

200. The statutory provisions as to prohibited conduct are to be found in chapter 2 of part 2 of the 2010 Act. The relevant sections for our purposes are: section 13 (direct discrimination); section 26 (harassment); and section 27 (victimisation).

201. The prohibited conduct is made unlawful in the workplace pursuant to the provisions to be found in part 5 of the 2010 Act. As the Claimant is and was at all material times (for the purposes of the 2010 Act) an employee of the Respondent section 39(2) is engaged. This provision prohibits discrimination

by an employer against an employee by (amongst other things) subjecting the employee to a detriment. By section 39(4) an employer must not victimise an employee by, amongst other things, subjecting the employee to any detriment. By section 40, an employer must not, in relation to employment, harass an employee.

202. Upon the direct discrimination case, the crucial question to determine is whether the Claimant received less favourable than would have been afforded to an actual or hypothetical comparator in the same or similar circumstances. If less favourable treatment is shown, was that upon the grounds of the relevant protected characteristics (in this case religion or belief and race)? Or was it for some other reason? The focus primarily must be upon why the Claimant was treated as she was.

203. All of the characteristics of the Claimant which are relevant to the way her case was dealt with must be found also in a comparator upon the claim brought under section 13 of the 2010 Act. However, the circumstances of the comparator need not be precisely the same but they must not be materially different. One has to compare like with like. The treatment of a person who does not qualify as a statutory comparator because the circumstances are in some way materially different may nevertheless be evidence from which a Tribunal may infer how a hypothetical statutory comparator would be treated. Inferences may be drawn and one permissible way of judging a question such as this is to see how unidentical but not wholly dissimilar cases were treated in relation to other individual cases.

204. Where the discrimination alleged is not inherent in the act complaint of because it does not by its nature strike at the protected characteristic, the act complained of may be rendered discriminatory by the motivation, conscious or unconscious, of the alleged discriminator. The Tribunal must ask itself what the reason for the alleged discriminator's act was and if the reason is that the Claimant possessed a relevant protected characteristic, then direct discrimination may be made out.

205. We now turn to the harassment complaint. Section 26(1) makes clear that there are three essential elements: unwanted conduct; that has the prescribed purpose or effect; and which relates to a relevant protected characteristic. In many cases, there will be considerable overlap between these elements. For example, the question of whether the conducts complained of was unwanted will overlap with the question of whether it created an adverse environment for the employee.

206. A stand alone claim of harassment does not require a comparative approach (in contrast to direct discrimination). It is not necessary therefore for the Claimant to show that another person was or would have been treated more favourably. Instead, it is necessary to establish a link between harassment on the one hand and the protected characteristics in question on the other.

207. Unwanted conduct can include a wide range of behaviour including spoken or written words or abuse. The second limb of the definition of harassment requires that the unwanted conduct in question has the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. (For short, we refer to the second

limb of this as *'intimidating etc.'*) Accordingly, conduct that is intended to have that effect will be unlawful even if it does not in fact have that effect. Conduct that in fact does have that effect will be unlawful even if that was not the intention. Therefore, a claim brought on the basis that the unwanted conduct had that purpose involves an examination of the perpetrator's intention. A claim brought upon the basis that that was the effect of the alleged perpetrator's behaviour involves a consideration of the perception of the Claimant, the other circumstances of the case and whether it was reasonable for the conduct to have that effect. The test therefore has both subjective and objective elements to it. The objective aspect of the test is primarily intended to exclude liability where a claimant is hypersensitive and unreasonably takes offence. Importantly however the Tribunal must consider whether it was reasonable for the conduct to have that effect on that particular claimant.

208. Finally, in order to constitute unlawful harassment, the unwanted and offensive conduct must be related to a relevant protected characteristic.

209. We now turn to victimisation. A claimant seeking to establish that he or she has been victimised must firstly show that he or she has been subjected to a detriment and secondly that this was because of a protected act. The Tribunal has to consider whether the claimant was subjected to a detriment because he or she had done a protected act or because the Respondent believed he had. If there is detrimental treatment but this was due to another reason then the victimisation claim will not succeed.

210. Section 136 of the 2010 Act sets out the relevant provisions of the 2010 Act upon the issue of burden of proof. This provision applies at all proceedings brought under the Act. Section 136(2) provides that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that a person contravened the provision concerned, then the Tribunal must hold that the contravention occurred. However, that provision does not apply should the Respondent show that it did not contravene the provision.

211. By section 123 of the 2010 Act proceedings may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable. For the purposes of section 123, conduct extending over a period is to be treated as done at the end of the period and failure to do something is to be treated as occurring when the person in question decided upon it.

212. The issue of the time limit goes to the question of the Tribunal's jurisdiction. It is therefore incumbent upon the Tribunal to consider whether any of the Claimant's claims are time barred and if so whether it is just and equitable to extend time to enable the Tribunal to consider them. If the claims have been presented out of time, the Tribunal has a very wide discretion in determining whether or not it is just and equitable to extend time. The Tribunal is entitled to consider anything that it considers relevant. However, time limits are exercised strictly in employment cases. There is no presumption that time should be extended on just and equitable grounds. It is for the Claimant to persuade the Tribunal that it is just and equitable to extend time. The exercise of discretion in favour of enlarging time is the exception rather than the rule.

213. In exercising our discretion, we may have regard to the check list contained in section 33 of the Limitation Act 1980 which governs the exercise of discretion in relation to time limits in personal injury cases brought before the County Court or the High Court. This requires a Court to consider the prejudice that each party would suffer as a result of the decision reached and to have regard to all of the circumstances of the case and in particular the length of and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the party sued has co-operated with any requests for information, the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action and the steps taken by him or her to obtain appropriate advice once she knew of the possibility of taking action. The relevance of some or all of these factors depends upon the individual case and Tribunals do not need to consider all of the factors in each and every case.

214. We now turn to the list of issues and to our conclusions. It is expedient, we think, to set out each of the 11 allegations and our conclusions upon each of them in turn.

215. The first allegation is that on 9 September 2014 JS interrupted the Claimant whilst at prayer. This is alleged to be both direct discrimination and harassment upon the grounds of religious belief. We refer to our findings of fact at paragraphs 44 to 59. It is the case that JS interrupted the Claimant while she was at prayer. She interrupted her in the sense of coming across her kneeling up on the floor in the admin office. This caused JS to question what the Claimant was doing and caused the Claimant to stop her prayers. There was nothing inherently discriminatory in JS's act. Her motivation for asking the Claimant what she was doing is that the Claimant was in her way as she was going through the admin office in order to attend to a patient. There is no evidence of any actual comparators of a different race or different religion or belief being more favourably treated than was the Claimant in similar circumstances and nothing from which the Tribunal can infer how a hypothetical comparator of a different race or religion or belief would have been treated.

216. That said, the Tribunal has little difficulty in accepting that had JS come across any other individual standing in her way she would have spoken as harshly to them as she did to the Claimant regardless of what that individual was doing at the time. The Tribunal accepts that JS would have spoken in similar terms: to anybody else manifesting a different religious or non-religious belief in a similar location to that occupied by the Claimant on 9 September 2014; to anybody else not undertaking a manifestation of religious belief but doing something else upon the floor at that particular location; and would have done so in any case regardless of race. JS acted as she did because the Claimant was in her way as she hurried to attend to a patient. She would have treated anyone who so got in her way in the same manner.

217. The Tribunal draws an inference in favour of the Respondent upon these issues upon the basis that: the Claimant was prepared to postpone the meeting in July 2014 to accommodate Eid (paragraph 105); that the Respondent ensures that all of its employees are trained in diversity issues; that BM welcomed the Claimant praying when she moved to Pinecroft and

showed her the whereabouts of the prayer room; that the Claimant was not prevented from praying at Forest Close after 9 September 2014; and that we find as a fact that the Claimant was permitted to continue to pray during her working hours after she had moved to Pinecroft.

218. The Tribunal finds that the conduct of JS on 9 September 2014 did not constitute harassment. We accept that JS's conduct in interrupting prayer was unwanted conduct as far as the Claimant was concerned. However, we find that unwanted conduct was not done by JS with the purpose of violating the Claimant's dignity or creating an intimidating etc environment for her. Rather, JS interrupted prayer for the simple reason that the Claimant was in her way as JS sought to attend to a patient's needs.

219. As we say, the Tribunal finds that JS's conduct was not with the intention of violating the Claimant's dignity or creating an intimidating etc environment for her. The question that then arises is whether JS's conduct could be said to have had that effect. We can accept that from the Claimant's perspective that JS's conduct did have that effect. However, in the Tribunal's judgment, this element of the claim fails upon the basis that it was not reasonable for the Claimant to consider that JS's conduct had that effect. It must have been readily apparent to the Claimant that the reason for the interruption of prayer was JS's anxiety to attend to a patient's needs and to her duties as a senior employee of the Respondent. In so far as the Claimant interpreted JS's actions as being directed at interrupting her prayer the Tribunal holds that the Claimant was hypersensitive and unreasonably took offence. In the circumstances therefore it is not reasonable for JS's conduct to be considered to have the proscribed effect upon the Claimant.

220. But for the fact that the Claimant is Muslim it is unlikely that she would have found herself in JS's way that day. However, that is not the appropriate test as to whether or not JS's conduct related to the relevant protected characteristic of religious belief. The question to be determined is the reason why JS interrupted the Claimant. The reason why was that the Claimant was in her way when she (JS) wished to attend to a patient's needs

221. The second issue arises out of the allegation that at the meeting of 14 January 2015 the Claimant discovered that BM had complained to MS about the amount of time that the Claimant spent in prayer and the subsequent investigation. This is alleged to be both direct discrimination and harassment upon the grounds of religious belief.

222. This allegation fails on the facts. We refer to paragraphs 87 to 96 above (in particular, paragraph 91). We found that BM did not complain to MS about the amount of time the Claimant spent in prayer. Accordingly, there are no facts from which the Tribunal could decide in the absence of any explanation from the Respondent that there was a contravention of sections 13 and 26 of the 2010 Act in relation to this matter.

223. The third issue concerns the allegation that on 14 January 2015 MS told the Claimant that she was not allowed to pray. This allegation is said to constitute direct discrimination, harassment and victimisation. It arises from the events at the meeting of 14 January 2015.

224. We refer again to paragraphs 87 to 96. We find as a fact that MS did not tell the Claimant that she was not allowed to pray. These allegations therefore fail, there being no facts from which the Tribunal may decide in the absence of any explanation from the Respondent that these provisions were contravened.

225. For the purposes of the victimisation claim, the Claimant advances as protected acts her complaint to the Muslim chaplain of 15 January 2015 that she was told that she was not allowed to pray at work, her complaint while at work of 23 February 2015 (about having to work with TE) and her grievance arising out of the events of 23 February 2015 raised on 28 February 2015. The Tribunal accepts that in principle all of these are capable of being protected acts as they are allegations that the Respondent contravened provisions of the 2010 Act. However, the Claimant's claim is fundamentally flawed as these protected acts post-date the meeting of 14 January 2015 said to constitute the detriment of the prayer ban. The protected acts cannot have caused any detriments to the Claimant arsing from the 14 January meeting in any event.

226. The fourth issue for consideration arises out of the allegation that the Claimant was suspended on 16 April 2015. This is said to be an act of direct discrimination upon the grounds of religious belief and victimisation.

227. Dealing firstly with the victimisation complaint arising out of the fourth issue, the Tribunal presumes that the protected acts are the same three as in relation to the third issue (set out at paragraph 225). Those three protected acts were identified in paragraphs B8, B9 and B10 of the Scott schedule at page 56 as being the relevant protected acts: we refer to the preliminary hearing before the Employment Judge which took place on 14 December 2015 (in particular paragraph 3.2 at page 64).

228. It is difficult to see any causal link between the Claimant doing those protected acts upon the one hand and being suspended pursuant to the disciplinary policy on the other. The Claimant did not suggest any such link to any of the Respondent's witnesses. This allegation is further weakened by the fact that AC conducted a thorough investigation in relation to the incident with TE of 23 February 2015 (which gave rise to two of the protected acts) and largely upheld her complaint. In those circumstances it would be surprising were the Respondent to subject the Claimant to the detriment of suspension for having made a protected act that was conscientiously investigated and upheld. Furthermore, the reason for the Claimant's suspension was because of the conduct issues raised by her colleagues and drawn to SL's attention. We refer to our findings of fact at paragraphs 120 to 125. There was no evidence that any of those involved were aware of the protected acts.

229. The reason why the Claimant was suspended because of concerns that SL had about her conduct. The Claimant was not suspended because of her religious belief. The Tribunal accepts that SL would have suspended an employee of a different religious belief or no religious belief who was alleged to have committed similar acts of misconduct as those alleged against the Claimant. There was simply no evidence to the contrary.

230. The fifth allegation is that on 23 February 2015 the Claimant was made to work on a one to one basis with a racially abusive client. This was identified as an alleged act of harassment related to religious belief at the preliminary hearing that came before Regional Employment Judge Lee on 20 January 2017 (page 138(110)). There was a suggestion that this may also be an act of victimisation. This was to be the subject of clarification from the Claimant. We understand this not to have been done.

231. Even if this is pursued as an act of victimisation, it is difficult to see any causal link between the relevant protected acts (at paragraphs 225 and 227) on the one hand and the Claimant being assigned to work with TE on 23 February 2015 on the other. There was no suggestion made by the Claimant to any of the Respondent's witness (in particular TC and AC) that this was the case. It is not even clear whether or not AC and TC knew of the protected acts anyway.

232. Dealing with the harassment complaint arising out of this allegation, we can accept that been made to work alongside TE was unwanted conduct. Plainly, TE's conduct on any view violated the Claimant's dignity and created an intimidating etc environment for her and was related to the relevant characteristic of religious belief. The Respondent has no liability for the acts of TE. The question however is whether the Respondent (through its employees) so treated the Claimant.

233. We hold that the Claimant was not assigned to work with TE with the purpose of violating her dignity or creating an intimidating etc environment for her. The simple fact of the matter is that TC did not know of TE's propensity for racial and religious abuse. She had not seen the patient notes before assigning the Claimant this task. There was no reason for her to look at them beforehand. It was not suggested by the Claimant that she ought to have done. That said, being assigned to work alongside TE clearly had the proscribed effect.

234. Again, but for the fact of the Claimant's religion, TC's conduct in assigning her to work alongside TE would not have had the effect of violating the Claimant's dignity or creating an intimidating etc environment for her. However, that is not the test. The test is the reason why TC assigned the Claimant to work alongside TE. The reason why this was done is because of the demands upon the service that morning and the specialist tasks being undertaken by the half a dozen or so other members of staff present that day. TC's focus was on the needs of the service. The unwanted conduct on the part of the Respondent thus did not relate to the Claimant's religious belief.

235. It is significant that as soon as TC found out that the Claimant was having difficulty with TE TC set about moving the Claimant away from him as soon as was practically possible. An inference is drawn in favour of the Respondent against a finding of unlawful harassment upon this issue upon that basis. Had the Respondent (through TC) acted with the purpose of violating the Claimant's dignity or creating an intimidating etc environment for her the Tribunal may have expected the Respondent to move with less speed than it did to resolve the situation. Further, an inference favourable to the Respondent is drawn from the fact that the Respondent took care not to place the Claimant to work alongside AM at the outset of the shift.

236. The sixth issue arises out of the allegation that JF reported the Claimant for fraud. This is said to be harassment upon the grounds of religious belief. As a fact, it was JS who contacted counter-fraud. Again, we have little doubt that the report made by JS on 9 September 2014 was unwanted conduct as far as the Claimant was concerned. We hold that JS did not do this with the purpose of violating the Claimant's dignity or creating an intimidating etc environment for her related to her religious belief. The purpose of reporting the Claimant for fraud was pursuant to JS's belief that it was her duty so to do based upon her reasonably held (but ultimately unfounded) suspicion that the Claimant was manipulating shifts for her financial benefit. We have little doubt that to be reported for fraud would violate an employee's dignity and create an intimidating etc environment for him or her. However, the key question is the reason why JS did this. We find it was nothing to do with the Claimant's religion but, as we say, pursuant to JS's duty as a manager when faced with suspected fraud.

237. The seventh issue arises out of the allegation that the Respondent decided to hold the disciplinary meeting on 8 June 2016 during Ramadan. This is alleged to be direct discrimination and harassment upon the grounds of religious belief.

238. We refer to our factual findings at paragraphs 168 to 178. In particular, at paragraphs 169 and 170, we determined that there was no basis upon which the Respondent could reasonably have known that 8 June 2016 fell during Ramadan in circumstances where the Claimant herself did not. Therefore, the reason why 8 June 2016 was alighted upon as a date for the reconvening of the adjourned disciplinary hearing was simply because it was the next available date. There is no evidence that a comparator going through a disciplinary process of a different religion of no religion was more favourably treated in that inconvenient dates for him or her were avoided in advance. An inference is drawn in the Respondent's favour that FG offered breaks and an early finish and LH suggested that the Claimant may wish to apply to FG for an adjournment. The direct discrimination complaint therefore fails upon the facts.

239. Inferences against the contention that this was an act of direct discrimination may be drawn in favour of the Respondent upon the basis that the Claimant did not object to attending the hearing on 8 June 2016 notwithstanding that it fell during Ramadan and that the Respondent offered the Claimant the opportunity to take breaks. Further, the Respondent was prepared to adjourn the disciplinary hearing scheduled for 30 June 2016 and postpone matters upon the Claimant informing the Respondent that she would be in religious seclusion upon that date.

240. We can accept that scheduling a disciplinary hearing during Ramadan was unwanted conduct as far as the Claimant was concerned. However, we find that that scheduling was not done with the purpose of violating her dignity or creating an intimidating etc environment for her. The Respondent scheduling the adjourned disciplinary hearing upon that date was as a consequence of reasonable ignorance that it fell during the fasting month. That reasonable ignorance points very much away from the Respondent scheduling the disciplinary hearing in order to subject the Claimant to harassment related to

her religious belief. We can accept that scheduling the hearing during the fasting month had the proscribed effect upon the Claimant.

241. But for the fact that the Claimant is Muslim, the date would have had no particular religious significance and therefore scheduling it during the fasting month did have the effect of violating the Claimant's dignity and creating an intimidating etc environment for her. Again however the 'but for' test is not the correct one. The Tribunal has to ask itself the reason why the Respondent scheduled the meeting for when it did. For the same reasons as in connection with the direct discrimination complaint, the Tribunal determines that the Respondent scheduled the meeting for the next available date which, as it turned out, unfortunately coincided with the fasting month.

242. We now turn to the eighth complaint. This relates to irregularities in the way that the disciplinary hearings took place. All of these are alleged to be harassment upon the grounds of race.

243. There are 13 elements to this allegation. We shall take each in turn.

244. The first is that paperwork relied upon by management was not included in the disciplinary bundle. We refer to paragraph 156. The Tribunal determines as a fact that this was simply an administrative error upon the part of SL and SB. It was not in anyway causally connected to the Claimant's race. Therefore, while we can accept that this would be unwanted conduct as far as the Claimant was concerned we find it not to have been undertaken with the purpose or effect of violating her dignity or creating an intimidating etc environment for her related to her race.

245. The second allegation under the eighth issue was that the Respondent breached confidentiality in that office staff were allowed to talk with one another. This was a difficult allegation for the Tribunal to understand. We understood it to relate to in particular to discussions between Lisa Croft and Bernard Turner about the Claimant's Respect training (paragraph 179) and IH discussing the issue around halal food with the Muslim chaplain (paragraphs 66,68 and 138 to 140).

246. The latter aspect of the matter was not easy to understand as on any view the Claimant had raised concerns about dietary issues in November and December 2014 (pages 198 to 199) and towards the end of 2015/early 2016 (page 374(1)) and must have contemplated that those to whom she spoke would pursue matters further. Indeed, that appears to have been the intention. It is difficult to see any issue of breach of confidentiality and therefore that allegation fails upon its facts.

247. Further, we find that there was nothing wrong with Bernard Turner discussing with Lisa Croft the nature of the Claimant's Respect training. An issue around had arisen around patient safety. We see nothing inherently wrong with an enquiry being made by the Respondent about training that had been undertaken by a member of staff pertaining to an issue arising upon the ward. Again, therefore, that allegation fails on the facts.

248. The third aspect of the eighth issue is that SL and SB researched 13 years back into the Claimant's work history to try and discredit her. As a fact, we

have determined that SL and SB did do this. We refer to paragraphs 183 to 185 above.

249. We share the Claimant's misgivings about SL and SB's conduct. We can accept SB's point that researching back into an employee's history may be relevant to patient safety issues if a pattern can be established. However, here, the Claimant had had a significant career break. Further, she was undertaking a fundamentally different role for the Respondent when she worked as a housekeeper to that which she had been undertaking between 2001 and 2006. That said and whatever the misgivings the Tribunal has about the Respondent looking so far back into the Claimant's previous employment record, we see no basis for a suggestion this was harassment related to the Claimant's race. We have little doubt that this was unwanted conduct as far as the Claimant was concerned and it did violate her dignity and create an intimidating etc environment for her. In our judgment, she reasonably felt uncomfortable that the Respondent had delved so far back into her work history. The Respondent's conduct thus had the proscribed effect. We are however satisfied that this was undertaken by SL and SB with a view to determining whether or not there was a pattern of the Claimant not respecting proper patient/staff boundaries. This was nothing to do with the Claimant's race.

250. The fourth aspect of the eighth issue is that the Claimant was denied being able to call and question witnesses (in particular Alice Phillips). Again, the Tribunal does have some misgivings about the Respondent's approach to this matter. This is not, of course, an unfair dismissal complaint. Were it to be, the Tribunal would have concerns as to whether the Respondent acted within the range of reasonable responses in preventing the Claimant from questioning those witnesses whom she wished to attend the disciplinary hearing.

251. It is however difficult to see how this undoubtedly unwanted conduct (which we can accept the Claimant would reasonably consider to have the effect of being intimidating conduct on the part of the Respondent by shutting out the Claimant's questioning of key witnesses) was in any way related to the Claimant's race. Quite simply, the reason why the Claimant was prevented from questioning those whom she wished to cross-examine was because FG took the view that there was no need for those witnesses to attend for the reasons explained in FG's letter at pages 523 and 524.

252. The fifth aspect of the eighth issue was that the Claimant was questioned about things that were not allegations and was not given the opportunity to challenge witness evidence. It is convenient to take the sixth and seventh issues at the same time. These were that the Claimant "was questioned about things that were not presented" and "witness statements were removed when they should not have been".

253. The Tribunal understands that all three of these issues related to the Nicola Swann notes at pages 417 to 421. Again, we can accept that this was conduct that was unwanted as far as the Claimant was concerned and that reasonably left her feeling that her dignity was violated and that an intimidating etc environment had been created for her. It was, to say the least, unfortunate that this material (which was irrelevant to any of the

allegations being faced by the Claimant) was left in the disciplinary hearing pack for FG to read. The allegation against the Claimant relayed by Nicola Swann was extremely serious and the Claimant can be forgiven for considering it to be highly prejudicial to her. Indeed, she was correct to consider that to be the case. In addition, SL questioned the Claimant about the events at Sheldon House. For the same reasons, we can accept that the Claimant reasonably considered this to be unwanted conduct in violation of her dignity and which created an intimidating etc environment for her.

254. It is difficult to understand why the Nicola Swann interview notes were left in the bundle. No satisfactory explanation was forthcoming from the Respondent. It is also difficult to understand why SL questioned the Claimant about Sheldon House and why FG allowed her so to do. Again, that was unwanted conduct. While not done for the purpose of violating the Claimant's dignity and of creating an intimidating etc environment for her, it reasonably had that effect upon the Claimant. The issues at Sheldon House were irrelevant to the issues at the disciplinary hearing.

255. All of that being said, the Tribunal is satisfied that SL and FG were not in any way motivated to act towards the Claimant as they did by reason of the Claimant's race. The reason why these papers were left in and irrelevant questions asked of the Claimant about Sheldon House seemed to the Tribunal to be by reason of the less than satisfactory handling of the disciplinary process by the Respondent in general and in relation to this matter in particular. Although a comparator approach is not applicable in harassment cases, how people of different races (in a race discrimination claim) have been treated may be relevant to the drawing of inferences of harassment. There is simply no suggestion that anybody of a different race would have had their disciplinary issue dealt with any better than was the Claimant in this case. In fact, the reverse is the case, the Respondent accepting that the disciplinary procedure timescales are regularly breached and exceeded.

256. The eighth element of the eighth allegation relates to the failure upon the part of the Respondent to call witnesses. This largely replicates the fourth element of the eighth allegation (dealt with at paragraphs 250 and 251). The complaint fails for the same reasons.

257. The ninth element of the eighth allegation is an allegation that the Claimant was subjected to intimidating behaviour. The tenor of the Claimant's questioning of the Respondent's witnesses upon this issue was that the Claimant equated intimidation with her subjective feelings of finding herself in a stressful environment. The Respondent's witnesses who were asked about this readily acknowledged that the Claimant found herself in a stressful situation. However, that is not the same as the Respondent's witnesses subjecting the Claimant to intimidation. No specific examples of intimidation (as opposed to feelings of stress) were given by the Claimant. This allegation therefore fails upon the facts.

258. The tenth element of the eighth issue is that the Claimant did not get a fair opportunity to speak. She alleges that she kept being interrupted by the panel. The Claimant did not give any specific examples of this. On any view, upon a fair reading of the disciplinary hearing notes and the investigation

meeting notes the Claimant was given plenty of opportunity to speak. The Respondent's witnesses had cause to interrupt the Claimant from time to time in order to prevent her from going off on a tangent and so that she would stick to the issues in the case. In the course of her cross-examination of the Respondent's witnesses the Claimant did not refer to any particular instances of unwarranted interruption. This allegation therefore fails upon the facts.

259. The eleventh element of the eighth allegation is that the Respondent did not adhere to many of its policies. There is merit Claimant's contention upon this issue. Indeed, the Respondent's witnesses readily accepted this to be the position. The difficulty for the Claimant is that the Respondent's evidence was that policies were regularly breached for all regardless of protected characteristic. There was therefore nothing to suggest that the failure to comply with its policies in this case was related to the Claimant's protected characteristic of race.

260. The twelfth element of this allegation was that the Claimant was not given enough time to present her case. This largely turned upon the comment which the Claimant made to LH at the conclusion of the meeting of 14 July 2015 (paragraphs 189 and 190).

261. We have found as a fact that the Claimant was given the opportunity of presenting her case at the several disciplinary hearings. She was also able to present her statement of case and her written summary (on 14 July 2015).

262. That said, the Respondent did not help itself by the way in which it handled the issue after the Claimant's complaint to LH after the hearing of 14 July 2015. It would have been an easy step for the Respondent to email the Claimant to ask her what it was that she wished to say. The weakness in the Claimant's case upon this issue, however, is that she did not give any evidence to the Tribunal or make any submissions about what it was that she had wanted to say and that she was prevented from saying. This allegation therefore fails upon the facts.

263. The final element of the eighth allegation is that the disciplinary panel had access to a letter from Capsticks (the Respondent's solicitors) which shows that the panel was not impartial. This was a difficult contention to understand. The Respondent is entitled to seek such legal advice as it sees fit. The letter in question was not produced for the benefit of the Tribunal. This therefore fails upon the facts.

264. The ninth issue is that the Claimant was advised by FG and LR not to pursue an appeal. This was said to be harassment upon the grounds of race. We refer to paragraphs 197. This allegation fails upon the facts.

265. The tenth allegation is that upon various dates between November and December 2014 the Respondent made enquiries with the hospital chaplain about the concerns raised by the Claimant regarding non halal food being given to Muslim patients. This was said to be victimisation upon the grounds of religious belief. The protected act for the purposes of this allegation was alleged to be the Claimant's complaint about JS.

266. The Tribunal can accept that the complaint about JS and JF of 24 November 2014 (page 174) is a protected act. However, this issue fails upon the facts

as it is apparent that the Muslim chaplain contacted the Respondent at the behest of the Claimant following the Claimant having raised issues (paragraphs 66, 68 and 138 to 140). The Claimant therefore wanted the matter to be investigated and it is difficult to see how IH doing so would have subjected the Claimant to any detriment. Further, IH's conduct appears unrelated to the bullying and harassment complaint anyway, but, rather, was prompted by the concerns raised separately by the Claimant with the Muslim chaplain.

267. The eleventh and final issue is the Claimant's complaint that she was reported to the safeguarding authorities before a decision was reached upon disciplinary matters. This was said to be victimisation following the complaint raised by the Claimant about JS and JF. Again, that complaint is a protected act. It has that status as it raises a complaint about a possible contravention of the 2010 Act. As a fact the Claimant was not reported to the safeguarding authorities anyway. It is difficult to see any causal link between the Claimant undertaking this protected act on the one hand and SL's conduct arising out of the incidents on Maple ward on the other (paragraphs 175 and 176). The Claimant did not suggest any such link to any of the Respondent's witnesses. Furthermore, SL sought to make a safeguarding alert referral pursuant to her duties as a manager arising out of what the Claimant accepted to be a potential safeguarding issue (arising out of the Facebook incident). This complaint therefore fails upon the facts.

268. We now turn to the issue of the Claimant's jurisdiction to consider the Claimant's complaints. No time issue arises out of the seventh, eighth, ninth and eleventh issues.

269. The first, second, third and fourth issues were presented to the Tribunal on 31 July 2015. The early conciliation procedure was commenced on 3 June 2015. That being the case, therefore, it seems to us that the fourth allegation (arising out of the suspension on 16 April 2015) was presented in time.

270. That leaves the first, second and third allegations. Upon the first allegation (arising out of JS interrupting the Claimant whilst at prayer) the Claimant had raised her grievance on 24 November 2014 and had, prior to her presentation of the ET1, been interviewed by EJ and was awaiting the outcome of the investigation. The Claimant alleged, several times during the proceedings, that the Respondent was guilty of institutional racism. In those circumstances the Claimant considered that the incident of 9 September 2014, the meeting of 14 January 2015 and EJ's investigation to be part of a continuing course of conduct.

271. We hold, as a fact, that the first allegation coupled with EJ's investigation into it is a continuing course of conduct which had not come to an end by the time that the first ET1 was presented. EJ's report was not sent to the Claimant until 19 June 2015.

272. We hold that the events of 14 January 2014 (comprising issues two and three) to be one-off and specific events independent of JS's conduct and EJ's investigation. After all, the second and third allegations arise out of the conduct of others than JS and EJ.

273. Thus, issues two and three were presented outside the relevant time limit. Issues one and four were presented within the relevant time limit.

274. The second ET1 was deemed to have been presented on 17 March 2016 2016 (with the EC procedure commencing on 10 March 2016) and relates to issues five and six.

275. The fifth issue (arising out of the TE incident of 23 February 2015) was presented out of time. Again, it is a specific and isolated incident unrelated to the Claimant's issues around JS, JF and EJ.

276. The sixth issue concerns JF reporting the Claimant for fraud on 9 September 2014. The Tribunal accepts that to be part of a continuing course of conduct for the same reason as in relation to issue one (paragraphs 270 and 271). Therefore, we find that issue five was presented out of time and issue six presented in time.

277. The next matter upon which limitation issues arise is issue ten. This concerned the Respondent making enquiries with the hospital chaplain about the concerns raised by the Claimant regarding non halal food being given to Muslim patients. The Tribunal finds this claim to have been presented in time it being part of the continuing course of conduct arising out of the Claimant's concerns regarding JS and JF and the management of Forest Close.

278. For those issues held have been presented out of time the Tribunal holds it just and equitable to extend time to enable the Tribunal to consider them. As far as the Claimant was concerned, all of the issues combined were part of her contention (unfounded though it may be) of institutional racism. It would be difficult for the Claimant to divorce the issues when, as far she was concerned, everything that was happening around her was part and parcel of that state of affairs.

279. We find less than convincing the Respondent's argument that the cogency of the evidence has been affected. The only concrete example given by the Respondent was the difficulty that JS subsequently had in identifying the Claimant's position when praying in the admin office on 9 September 2014. However, that forms part of issue one the subject of the ET1 presented on 31 July 2015. The Respondent had ample opportunity to take a proof of evidence from JS long before it did so. Any lack of cogency in JS's evidence was therefore attributable not to any delays upon the part of the Claimant but rather to the Respondent not having, it seems, taken a proof of evidence from JS within good time of the presentation of the first ET1.

280. In the circumstances therefore, the Tribunal holds that it is just and equitable to extend time to vest the Tribunal with jurisdiction to consider the Claimant's complaints.

281. The Tribunal thus has jurisdiction to consider the Claimant's claims. Those claims fail on the merits.

282. There remains the Claimant's fourth claim still to be dealt with (case no: 1800237/2017). The parties shall write to the Tribunal within 21 days of the date of promulgation of this judgment setting out their position upon how to proceed with the fourth claim together with any suggested directions and Orders.

Case Number: 1801842/2015
1800422/2016
1801206/2016

Employment Judge Brain
Date: 12 December 2017