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EMPLOYMENT TRIBUNALS

Claimant: Mrs Jamna Patel

Respondents: (1) Barking Havering and Redbridge University
Hospital NHS Trust
(2) Mr Praveen Kumar Dhaduvai

Heard at: East London Hearing Centre

On: 14, 15, 16 & 21 June 2017

Before: Employment Judge J Brown

Members: Mr L O'Callaghan
Mrs L Conwell-Tillotson

Representation

Claimant: Mr J Feeney (Counsel)

Respondent: Mr C Edwards (Counsel)

JUDGMENT

The unanimous judgment of the Tribunal is:-

1. The Respondents did not discriminate against the Claimant because of her sex and/or age.
2. The Respondents did not harass the Claimant.
3. The First Respondent did not victimise the Claimant.
4. The First Respondent did not constructively dismiss the Claimant.

REASONS

Preliminary

1 The Claimant brings complaints of direct age and sex discrimination against both Respondents and age and sex harassment against both Respondents. She brings a complaint of victimisation against the First Respondent - a Hospital Trust - and constructive dismissal also against the First Respondent Hospital Trust.

2 The Claimant withdrew complaints of protected disclosure of detriment. She also withdrew allegations that the Second Respondent, Mr Dhaduvai, had discriminated against her because of age and sex, in allocating shifts. During her evidence to the Tribunal the Claimant withdrew complaints that Elizabeth Aden-Peart, her manager, had harassed her because of age and sex.

3 The issues were agreed between the parties. They were amended as the case proceeded and, showing the amendments, the issues were as follows:

CLAIMS

1.1 The Claimant has brought the following claims against the Respondents:

1.1.1 Direct sex discrimination under section 13 (1) Equality Act 2010;

1.1.2 Direct age discrimination under section 13 (1) Equality Act 2010;

1.1.3 Harassment related to sex under section 26 (1) Equality Act 2010;

1.1.4 Harassment related to age under section 26 (1) Equality Act 2010;

1.1.5 Victimisation under section 27 (1) Equality Act 2010; and

~~1.1.6 Detrimental treatment due to raising a protected disclosure under section 47B Employment Rights Act 1996;~~

~~1.1.7 Automatic unfair dismissal due to making a protected disclosure under section 103A Employment Rights Act 1996;~~

1.1.8 Unfair constructive dismissal under section 94 (1) Employment Rights Act 1996.

2 ISSUES

2.1 The issues to be determined at hearing are listed below.

3 DIRECT SEX/AGE DISCRIMINATION:

3.1 The question is whether the Respondents treated the Claimant less favourably than they treated or would have treated a person similarly employed, on the grounds of her sex or age.

3.2 The Claimant relies on the following comparators:

3.2.1 Maresh Bandaru (MB), who was a colleague of the Claimant and employed as an Admin Officer. In accordance with paragraphs 22 and 27 of the Details of Complaint, this is for the claim of sex discrimination only.

3.2.2 Vikram Gogna (VG), who was a colleague of the Claimant and employed as an Admin Officer.

3.2.3 Tom (Surname unknown) (TU), who was a colleague of the Claimant and employed as an Admin Officer.

3.2.4 And the appropriate Hypothetical Comparator.

3.3 The Tribunal will need to determine the following allegations against the First Respondent and in accordance with paragraph 7 of the Details of Complaint:-

3.3.1 Did the First Respondent:

a) Shout at the Claimant on the 22 July 2016?

b) Shout at the Claimant on the 1 May 2016 after a shift was re-assigned? The 1st Respondent got angry and started shouting at the Claimant. Karim asked for the 1st Respondent to calm down.

c) There were other occasions where the 1st Respondent shouted at the Claimant but the Claimant is unfortunately unable to provide specific dates of these other incidents. The incident took place between the Claimant and the 1st Respondent.

3.3.2 Did the First Respondent:

a) Say to the Claimant that she must do as he says on the 22 July 2016?

b) There were other occasions where the 1st Respondent stated the same to the Claimant but the Claimant unfortunately is unable to provide specific dates. The incident took place between the Claimant and the 1st Respondent.

~~3.3.3 Did the First Respondent allocate weekend shifts to the Claimant during her annual leave periods during the following periods:~~

~~a) Applied for leave on the 30 March 2015 for the period of 10-12 February 2016.~~

~~b) Applied for leave on the 17 September 2015 for the 18-22 April 2016.~~

~~e) Applied for leave on the 25 November 2015 for the period of 16-27 May 2016.~~

3.3.4 Did the First Respondent ignore the Claimant on the 15 July 2016. Between 13:30-14:00 the Claimant asked the 1st Respondent for help “Kumar can you please help as I am alone” but the Claimant was completely ignored by the 1st Respondent.

3.4 The Claimant contends that this treatment was because of her sex and/or her age.

4 ~~HARASSMENT ON THE GROUND OF SEX/AGE~~

VICTIMISATION (AGAINST THE SECOND RESPONDENT ONLY)

4.1 Did the allegations listed in paragraphs 3.3.1 – 3.3.5 take place and, if so, did this treatment constitute victimisation for the purposes of section 26(1) Equality Act 2010?

4.2 Did the following further allegations take place:-

4.2.1 Did Elizabeth Aden-Peart (EA) harass the Claimant at the meeting on the 24 November 2016?

4.2.2 Did EA speak to the Claimant in a patronising tone or single out the Claimant on the 25 November 2016?

4.2.3 Did EA speak to the Claimant in a patronising tone or single out the Claimant on the 28 November 2016?

4.2.4 Did EA single out the Claimant on the 30 November 2016?

4.2.5 Did the Second Respondent inform the Claimant on the 24 November 2016 that she needed to attend mediation?

4.3 If the allegations at 4.2 did take place, did this treatment constitute harassment for the purposes of section 26(1) Equality Act 2010?

5 VICTIMISATION

5.1 Did the Claimant submit a grievance in 2013 and/or the grievance on 5 October 2016?

5.2 If so, did either grievance constitute a protected act for the purposes of section 27(2) of the Equality Act 2010?

5.3 If so, was the Claimant subjected to the following treatment because she had done these protected acts:-

- 5.3.1 On the 24 November 2016 did EA:
- a) Say to the Claimant to re-activate her passwords when previously stated to do so the following day?
 - b) Suggest that the Claimant was not undertaking the work she had been asked to undertake which was untrue?
- 5.3.2 Did EA inform the Claimant that she must use her annual leave during her phased return to work?
- 5.3.3 Did EA single the Claimant out on the 25 November 2016?
- 5.3.4 Did EA single the Claimant out on the 28 November 2016?
- 5.3.5 Did EA keep the Claimant in the office till 16:00 on the 29 November 2016?
- 5.3.6 Did EA single the Claimant out on the 30 November 2016?
- 5.3.7 Did the Second Respondent keep the Claimant past her normal working time on the 30 November 2016?
- 5.3.8 Did the Second Respondent inform the Claimant on the 24 November 2016 that she needed to attend mediation?

~~6 PROTECTED DISCLOSURE~~

- ~~6.1 Did the Claimant submit a grievance in 2013 and/or the grievance on 5 October 2016?~~
- ~~6.2 If so, did either grievance constitute a protected disclosure; in particular:-~~
- ~~6.2.1 Was the disclosure a qualifying disclosure?~~
 - ~~6.2.2 Was it made in the public interest?~~
- ~~6.3 Did the allegations listed in paragraphs 3.3.1 – 3.3.4 and 5.3 take place?~~
- ~~6.4 If so, does this constitute a detriment for the purposes of section 47B of the Employment Rights Act 1996?~~

7 UNFAIR CONSTRUCTIVE DISMISSAL

- 7.1 There is no dispute that the Claimant resigned on 5 December 2016.
- 7.2 Was the reason or principle reason for dismissal because she had made a protected disclosure? (S 103A ERA)
- 7.3 Was the dismissal an act of victimisation (s. 27 EqA)?

- 7.4 The Claimant relies on the allegations herein as amounting to a fundamental breach of contract.
- 7.5 The Claimant relies on the 3 implied terms; to maintain trust and confidence, to provide a safe system of work and to deal with grievances fairly and timeously. If there was a fundamental breach of contract, did the Claimant resign because of this fundamental breach of contract?
- 7.6 Did the Claimant delay in resigning and so affirm the contract?

8 TIME LIMITS: DISCRIMINATION

- 8.1 Did any of the acts complained of take place outside the time limits set out at section 123(a) of the Equality Act 2010?
- 8.2 If so, do these acts form part of conduct extending over a period so as to bring them within the time limits set out at section 123(a) of the Equality Act 2010?
- 8.3 If any of the Claimant's claims are out of time, would it be just and equitable to extend time?

4 The Tribunal heard evidence from the Claimant. It heard evidence from the Second Respondent, Mr Dhadvai, her former manager. It also heard evidence from Elizabeth Aden-Peart, the Claimant's manager, and Carol Russell, the First Respondent's Radiology Service Manager. There was a bundle of documents. Both parties made submissions. The Tribunal made a decision, first, on liability.

Findings of Fact

5 The Claimant started employment with the First Respondent Hospital Trust on 21 January 2002. The Second Respondent, Mr Dhadvai, started work for the First Respondent in February 2003. Both the Claimant and Mr Dhadvai were working as filing clerks in the X-ray department at this time. For many years the Claimant and Mr Dhadvai had good, congenial working relationship.

6 In more recent years, the Claimant has been employed as a Band 3 and Band 3 Administrative Officer. In March 2012 Mr Dhadvai was promoted to the position of Office Manager.

7 There have been a number of disagreements between the Claimant and her colleagues and managers in recent years. In November 2011, Julie Kingham, Office Manager, made a file note about a meeting she had had with members of staff to discuss an incident in the workplace. Ms Kingham recorded that the Claimant had reacted defensively and had said that Ms Kingham was taking sides with other members of staff. Ms Kingham recorded that her purpose had been to try to sort out the issues, but that the meeting with the Claimant had had the opposite effect, page 107. Ms Kingham was aged

in her mid to late 50s. The Claimant went off work for three days in November 2011. On her return, she completed a sickness self certification form, wherein she said that her absence was because of, "Stress due to constant shouting by members of staff", page 108. In evidence to the Tribunal, the Claimant said that the members of staff concerned were Anne Green, who was aged in her 60s, and Julie Kingham.

8 In oral evidence the Claimant agreed that she had had a clash with Kathleen Machin, a colleague, in early 2012, concerning annual leave.

9 The Claimant submitted a grievance against the Second Respondent, Mr Dhaduvai, on 25 February 2013, page 120. In it, she complained that Mr Dhaduvai was treating her unreasonably in relation to the times that she was required to be at work, arising out of an increase in her working hours by one hour a week under Agenda for Change. She said that Mr Dhaduvai did not listen to her when she raised issues and that he had an issue with her speaking up. The Claimant said that Mr Dhaduvai came from India, where women were treated as second class citizens and men did not listen to women, but regarded the men's words as final. The Claimant said that Mr Dhaduvai had difficulty in communicating at meetings and that this made him angry and occasionally resulted in shouting, page 120 – 123.

10 The Claimant said, in her grievance, that Mike Cotter, a Human Resources Officer, had held a meeting with the Claimant and Mr Dhaduvai to discuss the Claimant's hours, but that Mr Cotter had not been interested in the Claimant's views and had given her an ultimatum. The Claimant also said that Mr Dhaduvai had a personal friend, Naresh Bhandaru, who made many mistakes, but that the Second Respondent had done nothing to manage it and other staff had to spend time correct these mistakes.

11 It was agreed between the parties that Naresh Bandaru was a man aged in about his 30s.

12 The Claimant's written grievance was not shown to Mr Dhaduvai at the time, but Mike Cotter from Human Resources did meeting Mr Dhaduvai to discuss the issues surrounding the Claimant and her hours.

13 On 2 April 2013 Naresh Bandaru submitted a list of complaint concerning the Claimant, page 131A. This complaint was not shown to the Claimant. The complaint said that it was a formal complaint against the Claimant for harassing and bullying and inappropriate behaviour in front of staff and patients.

14 The Claimant told the Tribunal that she has no recollection of the incident raised by Naresh Bandaru. In his letter, Mr Bandaru had said that the Claimant was unpredictable and behaved in an unnecessarily rude way for no reason. In evidence to the Tribunal, the Claimant agreed that she had argued with Mr Naresh Bandaru on other occasions. She said that the Second Respondent, Mr Dhaduvai, had taken the Claimant to Mike Cotter about an argument with Mr Bandaru.

15 In December 2013 the Claimant and Lesley Weston, a woman aged in her 60s, had an argument at work, during which both shouted. The Claimant wrote a three page account at the time, in which she said that Ms Weston had bullied and intimidated her and

others. She said that the front desk was subjected to unacceptable behaviour by Ms Weston. The Claimant told the Tribunal that this is the only time that the Claimant had shouted in the work place and that she and Lesley Weston had resolve their differences in a meeting and had hugged to make up.

16 Mr Dhaduvai went on secondment from September 2013 to provide project support. This secondment was at a higher grade to his Radiology Department Manager role. Mr Dhaduvai continued to do some work managing the reception and administration team in the Radiology Department about two days a week.

17 On 1 April 2016 Mr Dhaduvai was appointed as Radiology Productivity and Improvement Manager. Around this time, administrative staff in the Radiology Department were regraded, from Band 2 to Band 3, and were required to rotate through different administrative tasks in the Department; in particular, to work in all booking roles for MRI scans, ultrasound scans and CT scans, as well as working in reception and in the Radiology call centre.

18 Initially, in the Employment Tribunal, the Claimant alleged that Mr Dhaduvai deliberately allocated the Claimant weekend overtime at times when she was on leave, so that she could not work this overtime; and that the Second Respondent, Mr Dhaduvai, unfairly allocated lucrative overtime work to himself and to younger employees. The Claimant later withdrew this allegation. The Second Respondent told the Tribunal that he allocated equal amounts of overtime to all staff on the overtime rota, on a strictly rolling basis. The Tribunal notes that the documentary evidence in the bundle supports the Second Respondent's evidence on this and that, therefore, there was no evidence of unfairness.

19 The Claimant contended that, on about 1 May 2016, she was working with Karim Conteh, Deputy Radiology Manager, and was discussing the evening and weekend cover Duty List. The Claimant said that she asked Mr Dhaduvai, the Second Respondent, a question and he responded by shouting. The Claimant contended that Karim Conteh asked the Second Respondent to calm down and listen to the question the Claimant was asking.

20 Mr Dhaduvai told the Tribunal that the Claimant had complained to him that he had swapped her shifts with those of another colleague, **Dileep Sukamaran**. The Second Respondent said that he resolved the complaint by allowing the Claimant to work Mr **Sukamaran's** shift. In evidence at the Employment Tribunal, the Claimant agreed that she was given the shift that she wanted. The Second Respondent denied shouting during the incident. When Karim Conteh was interviewed about the incident he said that he had told the Claimant to have a word with the Second Respondent, to ensure fairness. Mr Conteh said that the Claimant and the Second Respondent had had a discussion on the day, there were no raised voices, and resolution was reached, page 193.

21 On the balance of probabilities, the Tribunal finds that the Second Respondent did not shout during this discussion about shifts on 1 May 2016. In fact, the Second Respondent gave the Claimant the shift that she wanted and a witness to the discussion, Karim Conteh, said that there were no raised voices during the discussion.

22 It is not in dispute that, on 15 July 2016, the Claimant asked the Second

Respondent to help her out in the Radiology call centre when a colleague was going for a lunch break. In evidence to the Tribunal, the Claimant said that the Second Respondent had initially responded by saying, "Ok". The Claimant told the Tribunal that she had later telephoned the Second Respondent again. The Claimant was confused in her evidence. First, she said that the Second Respondent just ignored her and, then, she said that he said he would come at 3.00pm. Later still, the Claimant said that the Second Respondent had told the Claimant that she should try to get someone else to help her. Her witness statement gave her different account, once more, saying simply that the Second Respondent had ignored the Claimant completely, but had attended at 3.00pm to help the Claimant younger colleague. The Second Respondent told the Tribunal that the Department was understaffed that day, but that he always tried to help when he was asked. Given the contradictory evidence the Claimant gave to the Tribunal, the Tribunal does not accept the Claimant's contention that the Second Respondent ignored the Claimant's request for help, or otherwise declined to assist her.

23 It is not in dispute that, on 22 July 2016, the Second Respondent produced a rota for the following week, which showed the Claimant working in both the CT and MRI Departments on the following Thursday and Friday. The Claimant told the Tribunal that, when she raised this with the Second Respondent, he immediately started shouting at her, saying that he was in charge and that the Claimant would have to do as he said. The Claimant said that she then approached Caroline Russell, who spoke to the Second Respondent. The Second Respondent told Ms Russell that there was no mistake in the rota, as the Claimant was a fast worker and had done it before. The Claimant denied that the Second Respondent had apologised to her; she said that she would not have gone to Caroline Russell if the Second Respondent had apologised.

24 Mr Dhaduvai told the Tribunal that he had made a mistake in putting the Claimant in both the CT and MRI departments; he had told the Claimant that he would rectify it and that she could work only in the MRI department. Once he had agreed to change the rota to put the Claimant on the MRI department, he told the Claimant that, when the rota was finalised, people would have to work to it. The Second Respondent told the Tribunal that the Claimant was still not happy and went to see Caroline Russell, because she did not want to work in the MRI department.

25 Caroline Russell told the Tribunal that the Claimant did come to see her that day. Ms Russell was surprised and suggested that the Claimant talk directly to the Second Respondent; however, it appeared that the Claimant had already done so, but was still not happy, because she did not want to work in the MRI department. Ms Russell told the Tribunal that she met with the both and the Second Respondent had explained that there had been a mistake and that the Claimant's name should not have appeared twice. Ms Russell told the Tribunal that mistakes in rotas are common.

26 The Claimant contended that Ms Russell's evidence contradicted the evidence that she had given to an investigation, in which Caroline Russell told the investigator that Mr Dhaduvai had said to her, "There were no multiple duties: based in one place and training in the other."

27 The Tribunal finds Caroline Russell's Tribunal evidence did not contradict what she told the investigation. She told the investigation that the Second Respondent had reassured the Claimant that she would not be performing multiple duties. The Tribunal

accepted Mr Dhadvai's and Ms Russell's evidence that the Second Respondent had already agreed to alter the rota. They corroborated each other evidence and we preferred their evidence to the Claimant's evidence. We accepted Ms Russell's evidence that mistakes in rotas are a common occurrence. The Tribunal found that there was mistake in the rota and the Claimant would not have been expected to work, at the same time, in two different places. The Tribunal concludes that, while the Claimant was genuinely upset, the Claimant continued to be upset because she did not want to work in the MRI Department. Given that Mr Dhadvai confirmed that the Claimant was not required to work in multiple places, the Tribunal concludes that it was unlikely that Mr Dhadvai shouted at the Claimant about this. The rota was rectified and there was no need for any confrontation between the Claimant and Mr Dhadvai.

28 With regard to Mr Dhadvai telling the Claimant that the rota would have to be followed, the Tribunal finds that Mr Dhadvai, as a manager, was simply telling the Claimant that, for practical reasons, a finalised rota would need to be followed by the staff on it.

29 The Claimant went off work, sick, with stress, on 23 July 2016. Her line manager at that time, Elizabeth Aden-Peart, referred the Claimant to Occupational Health for a report. The Occupational Health Adviser reported on 5 September 2016. The report stated that the Claimant was fit for work, but that the Claimant had said that her absence was due to issues at work and that the Claimant was unlikely to return until the workplace issues had been resolved, page 165. The Adviser said that:

“There needs to be a full and frank dialogue between Ms Patel and her employer about the issues in the workplace. This may need to escalate to formal mediation.”

The report advised that, without management intervention, the Claimant's absence, sanctioned by her GP, was likely to continue in the longer term. The adviser said that, in his opinion, a structured return to work would not benefit the Claimant. The report stated that the Claimant had declined the opportunity to speak to a Counsellor about her work issues.

30 The Claimant attended an informal sickness review meeting under the Respondent's Sickness Absence Management Policy on 22 September 2016, page 168A. In the meeting, the Claimant said that her issues were with Mr Dhadvai. She said that she was willing to come back to work, as long as the First Respondent dealt with Mr Dhadvai. She said that she did not want the Second Respondent to speak to her.

31 On 5 October 2016 the Claimant met with the First Respondent's Employee Relations Team, to hand in a written grievance, page 169 – 171. In the Claimant's written grievance, she referred to her previous written grievance and reiterated her belief that the Second Respondent came from India, where men did not listen to women and would not let women speak up. She said Mr Dhadvai harassed, shouted at and victimised the Claimant for raising issues. She made a number of complaints about the Second Respondent, including his behaviour in shouting at her on, for example 1 May and 22 July, and ignoring her on 15 July. She said that Mr Dhadvai had stated, on a number of occasions, that he would like to see “the oldies” leave the Department and be replaced by younger staff. The Employment Relations Adviser, who met the Claimant on 5 October

2016, said that she would meet Elizabeth Aden-Peart, to gain the manager's perspective. She said that she would look for 2013 case, keep the Claimant updated, and would hand the matter to Carol Babb on her return to work on 17 October 2016, page 172. The Adviser confirmed all this in writing to the Claimant on 11 October, page 173. She said that, once she had gathered the information, she would discuss the matter with the Head of Employee Relations, who would decide whether a formal investigation would be conducted.

32 On 13 October 2016 Elizabeth Aden-Peart wrote to the Claimant, confirming the outcome of the informal sickness review meeting. Ms Aden-Peart said that the Claimant had told her that she was suffering from work related stress following perceived bullying and harassment at work. Ms Aden-Peart said that the Claimant had made allegations of bullying against the Second Respondent and was intending to contact Human Resources to arrange a meeting about it. She said that the Claimant had been unable to provide a date for return to work. Ms Aden-Peart said that, if the Claimant did return to work, Ms Aden-Peart would aim to ensure the Claimant remained on reception duties while her bullying complaint was looked into, but could not promise that this would happen indefinitely.

33 Ms Aden-Peart explained to the Tribunal that, if the Claimant worked in reception, she would not encounter the Second Respondent.

34 In her letter to the Claimant, Ms Aden-Peart said that, if the Claimant did not return to work in 14 days, a formal long term sickness absence meeting would take place under the Respondent's policy, page 175 – 176.

35 The Claimant responded to Ms Aden-Peart's letter by email on 17 October 2016. She said, of Ms Aden-Peart's letter:

"I do not consider this letter to be impartial. You have used adjectives that portray me to have made possible false allegations.", page 177.

36 In the Employment Tribunal, the Claimant was asked which adjectives in Ms Aden-Peart's letter suggested the Claimant had made false allegations. Despite being given several minutes to do so, the Claimant was unable to answer.

37 The Claimant attended formal sickness review meeting on 9 November 2016, page 180A. The Claimant agreed to return to work. On the Human Resources Department's advice, Ms Aden-Peart agreed to the Claimant returning on a phased basis, despite Occupational Health having advised that this would not be of benefit.

38 The Claimant contended that Elizabeth Aden-Peart said that the Claimant should use her annual leave during her phased return to work and that this had upset the Claimant, because the Claimant should not be using annual leave for her phased return. The Claimant was cross-examined about this at the Tribunal and, initially, accepted that it had been suggested to her that she could use some of her annual leave after her phased return ended; but then the Claimant said that this was not how it was put at the time. Ms Aden-Peart told the Tribunal that, in the formal meeting, Carol Babb had said that the Claimant had accumulated annual leave during her sickness absence and that the

Claimant could use it before, or after, coming back to work. Carol Babb was an Employee Relations Adviser.

39 The Tribunal found Elizabeth Aden-Peart's evidence on this to be more credible than the Claimant's. Ms Aden-Peart gave the context in which the suggestion was made: that the Claimant had accumulated untaken annual leave during her sickness absence. The Tribunal found that Carol Babb suggested to the Claimant that she could - but was not required to - use accumulated annual leave before, or after, her phased return.

40 During the formal sickness meeting on 9 November 2016, Ms Aden-Peart and Carol Babb offered the Claimant the opportunity to see Carol Russell that day, to discuss her bullying allegations. The Claimant declined the offer, saying that she was not ready to do so. The First Respondent had not given the Claimant any prior warning of the suggested meeting with Ms Russell.

41 On 9 November 2016 Ms Aden-Peart wrote to the Claimant, confirming the outcome of the formal sickness review meeting. She said that the Claimant would return to work on a two week phased return and would return to the main reception for one month, shadowing colleagues, before returning to full administrative clerical duties. The letter said that Ms Aden-Peart had discussed the Occupational Health report with the Claimant. She said:

“They have recommended that there needs to be a full and frank dialogue between us about the issues in the workplace. They have also suggested this may need to escalate to form a mediation. I am happy to instigate this on your return.” Page 181.

42 The Claimant returned to work on 24 November 2016. When she did so, she was shadowing colleagues. It was agreed that, on 24 November, Ms Aden-Peart told the Claimant that there was no rush for the Claimant to obtain a password for the computer and that the Claimant could do it the following day, 25 November. The Claimant told the Tribunal that, despite this, later on in the afternoon of 24 November, Ms Aden-Peart asked the Claimant why she had not already obtained a password from IT. The Claimant also said that Elizabeth Aden-Peart had told the Claimant that she was not undertaking the work that she had been asked to do. Ms Aden-Peart told the Tribunal that she did not ask why the Claimant had not obtained a password. She said that she did not single the Claimant out and did not speak to staff in an accusatory way, but would have spoken to the Claimant gently.

43 The Tribunal found that Ms Aden-Peart's evidence regarding this was convincing. It found that Ms Aden-Peart may have asked the Claimant if she had got a password that afternoon, but that, if she did so, she did so in a gentle, enquiring way. The Tribunal concluded that Ms Aden-Peart appeared, throughout her evidence, to be a mild mannered and supportive manager and that it was unlikely that she spoke in any authoritarian way towards the Claimant about this, or about her duties on 24 November.

44 Ms Aden-Peart had a meeting with the Claimant in the afternoon of 24 November. The Claimant contended that, during that meeting, Ms Aden-Peart had told her that she had to attend mediation. Ms Aden-Peart agreed that she had said that the Claimant should contact Carol Russell. Following the meeting, Ms Aden-Peart emailed the

Claimant, confirming what she and the Claimant had agreed. She said that they had agreed:

“I will meet regularly with you to discuss how best to support you. You will arrange a meeting with Carol Russell to discuss the allegation of bullying.” Page 183.

45 The Claimant did not reply to the email, or contradict it at the time. The Tribunal finds that the Claimant agreed that it would be she who would contact Carol Russell to discuss the allegation of bullying.

46 This agreed procedure, whereby the Claimant was to contact the senior manager about the allegation of bullying, was contrary to the First Respondent’s written grievance procedure, which required the First Respondent to arrange a meeting to discuss the grievance, rather than putting the onus on the employee to do this.

47 The Claimant contended that, on her return to work, whilst she was shadowing colleagues, Ms Aden-Peart came to the reception area on a number of occasions and asked the Claimant if she was answering the phone, or asked the Claimant specifically why she was not attending to patients. Ms Aden-Peart denied that she singled the Claimant out, but said that it was possible that she asked the Claimant if she was answering the phone. Ms Aden-Peart explained to the Tribunal that the Respondent hospital was coming out of Special Measures at the time, and that one of the reasons the hospital had been put in Special Measures was “patient experience”. Patients did not feel that they had good experience at the hospital. She said that the hospital was now aiming to answer telephone calls, for example, within three rings. Ms Aden-Peart denied that she would tell her staff to stop seeing to patients, or to do something else, if they were seeing to patients already. She said that she would have said something like, “Would you mind answering the telephone”. She would not have made it rude, or abrupt, orders and would not single people out.

48 The Tribunal finds that Ms Aden-Peart may well have asked the Claimant to answer the telephone, or to see patients, who were queuing, but that this part of her management responsibility to improve the service the hospital provided to patients. Such instructions were not inconsistent with the Claimant shadowing colleagues at reception. It was not inconsistent with shadowing others for the Claimant to be asked to carry out reception work, as others were doing. On all the evidence, the Tribunal does not find that Ms Aden-Peart singled the Claimant out, or was patronising to her; although it does appear that the Claimant was sensitive to being asked to take on duties.

49 On 29 November 2016 Ms Aden-Peart conducted a return to work meeting with the Claimant, to complete a return to work form. The meeting was scheduled to start at 14.30 although it may have started closer to 14.45. Both the Claimant and Ms Aden-Peart expected the return to work meeting to take about 15 – 20 minutes. The meeting, in fact, lasted until 15.25, 25 minutes after the end of the Claimant’s working day, page 185.

50 The Claimant told the Tribunal that, during the meeting, Ms Aden-Peart discussed the Claimant’s grievance and made telephone calls to Human Resources. Ms Aden-Peart told the Tribunal that the Claimant said she did not see the point of a return to work meeting and asked about her grievance. Ms Aden-Peart reminded the Claimant that she was to contact Ms Russell. Ms Aden-Peart felt that they were going round in circles. Ms

Aden-Peart told the Tribunal that she was aware that the meeting was running on, after the Claimant's leaving time, but that she concluded that the Claimant was content to stay and that Ms Aden-Peart should listen to the Claimant for as long as it needed to show that she was listening.

51 On the evidence, the Tribunal concludes that the Claimant did not ask for the meeting to end. On both the Claimant's evidence and Ms Aden-Peart's evidence, they were discussing the Claimant's grievance. The Tribunal decides that, given the Claimant did not end the meeting, the Claimant was content to participate in the meeting and that Ms Aden-Peart was correct in her assumption that the Claimant was content to stay.

52 The next day, Ms Aden-Peart emailed Ms Russell, saying that the Claimant wished her bullying allegations to be investigated and that it had been agreed, in the Claimant's sickness meeting and on 24 November, that the Claimant would arrange a meeting with Ms Russell. Ms Aden-Peart said that, at the Claimant's return to work meeting, the Claimant had said that she would contact Ms Russell when the Claimant felt ready to do so.

53 On 30 November 2016 the Claimant was completing a patient's details on a computer when Ms Aden-Peart asked her to attend to patients who were queuing. The Claimant contended that Ms Aden-Peart singled her out by doing so when the Claimant was already busy and other members of staff were available. Ms Aden-Peart accepted that it may not have been obvious to her that the Claimant was already dealing with patients. Nevertheless, she said that it was not her practice to interrupt staff, who were already dealing with patients, to tell them to attend to others.

54 The Tribunal accepted Ms Aden-Peart's evidence that she did not intentionally interrupt the Claimant when the Claimant was dealing with a patient to tell her to deal with another one. If she did this, the Tribunal finds that it was a genuine error. The Tribunal accepted Ms Aden-Peart's evidence, because interrupting staff who were dealing with patients already and directing them to deal with others would have been completely contrary to Ms Aden-Peart's responsibility to improve patients' experience.

55 The Claimant objected to Ms Aden-Peart's instruction and said that Ms Aden-Peart was picking on her. She said this, either in the reception area or in Ms Aden-Peart's room, which was a small part of the reception area. Ms Aden-Peart invited the Claimant to a seminar room, which was away from the reception area, and told the Claimant that, if she had concerns, then the Claimant should discuss them with Ms Aden-Peart in private and not in a public space. Ms Aden-Peart followed up this meeting with an email on 30 November, in which she said that she had made a reasonable request for the Claimant to help the patients in reception and the Claimant had stated that Ms Aden-Peart was picking on her. Ms Aden-Peart recorded that she had spoken to the Claimant privately in the seminar room and had told her that, if the Claimant had concerns, she should discuss them in private. Ms Aden-Peart said:

"The processes have changed and need to be adhered to for the efficient running of the service."

Ms Aden-Peart concluded that:

“You stormed out of the room, this behaviour is not acceptable.” Page 187.

56 Later, on 30 November 2016, the Claimant went to Carol Russell and said that she was concerned that Ms Aden-Peart was picking on her and was speaking to her in a patronising and belittling way. Ms Russell suggested that the Claimant meet with Ms Aden-Peart to discuss the Claimant’s concerns in an open and honest way. Ms Russell and Ms Aden-Peart told the Tribunal that Ms Aden-Peart arranged this meeting for the next day, 1 December 2016, at 14.30. At the meeting, the Claimant said that she felt picked on and singled out and was unhappy about being asked to do things by Ms Aden-Peart. She said that she knew how to do the job already. Ms Aden-Peart explained that there were new procedures in place, which had been introduced since the Claimant had gone on sick leave, and that the Claimant needed to shadow colleagues in order to integrate into the new team. Ms Aden-Peart also said that the Claimant needed to be responsive to patients when the reception was busy. The Claimant said that she was already aware of that and did not need Ms Aden-Peart to point it out. The Claimant agreed to follow the phased return to work plan. The meeting overran once more and ended at 15.30. The Claimant did not ask to leave at 15.00. This was the second time in a few days when the Claimant had stayed late at work because of meetings. None of the attendees at the meeting felt that the meeting had made significant progress.

57 On 2 December 2016 Carol Babb, Employee Relations Officer, emailed the Claimant, telling her that Brian Green had been appointed to investigate her grievance and asking the Claimant to attend a grievance meeting on Monday 5 December 2016, page 189.

58 On 5 December 2016 the Claimant’s husband hand delivered the Claimant’s letter of resignation to Ms Aden-Peart. The Claimant’s letter said that she was resigning with immediate effect and said, “..This is due to the stress and harassment I have endured since my return to work from sick leave on Thursday 24 November 2016”, page 190.

59 Caroline Russell acknowledged the Claimant’s letter on 6 December 2016, saying that she was sad that the Claimant had resigned after so many years of service and wished to her the best for the future. Ms Russell outlined the events of the previous week and said that she had explained to the Claimant, in their meeting, that it was part of the Claimant’s line manger’s job to ensure that the Claimant was supported on her return to the department and that this would entail Ms Aden-Peart asking the Claimant to undertake specific tasks, or requesting that the Claimant follow a specific process. She said that they had also discussed the importance of the Claimant shadowing colleagues and reintegrating into the team, page 191.

60 Brian Green, Radiology Manager, undertook a fact-finding investigation into the Claimant’s grievance on 5 and 6 December 2016 and produced a report dated 12 December 2016. Mr Green interviewed Abdul Karin Conteh, Caroline Russell, Mr Dhadvai, Z Choudhury and M Cotter.

61 In Mr Green’s report, he said that there might be grounds for investigating the allocation of evening and weekend shifts, but that the responsibility for such allocation now rested with another team member, so that no further problem should occur. In his conclusions Mr Green also said:

“I found no evidence of persistent or continued bullying or intimidation although it was recognised by some interviewees that Praveen Kumar Dhaduvai can become frustrated when communicating challenging or controversial information and an apology was forthcoming in the incident regarding duplication on the weekly rota.”

62 Mr Green stated that, from the Claimant's personnel file, there was a pattern of repeated complaints against different line managers, followed by the Claimant taking periods of sick leave, page 197.

63 On 16 January 2017 the Claimant replied to Caroline Russell's letter. The Claimant said that, amongst other things, Ms Aden-Peart had used the word “allegations” to describe the Claimant's grievance against Mr Dhaduvai, but that the Claimant felt that it was a clear case of bullying. She said:

“I told Elizabeth I would meet with Carol Russell when I felt ready. Elizabeth brought up this subject three times in my first four days at work and she also stated that “if Caroline Russell asked for a meeting herself then you would perceive this as bullying” so she did the bullying on your behalf.”

64 The Claimant also said that Carol Babb had informed her that Carol Babb had given the grievance case to Ms Russell, for Ms Russell to investigate, but that Ms Russell still had not interviewed Mr Dhaduvai, despite having had a written statement from the Claimant since October 2016. The Claimant went on to say that, after she had return to work, on numerous occasions Ms Aden-Peart would allocate the Claimant task and then, a few minutes later, ask why the Claimant was doing the task and state that she had never asked the Claimant to do it. The Claimant said that Ms Aden-Peart would continuously ask the Claimant to do things when four other people were available. The Claimant said that, when she raised matters with Ms Russell, she expected Ms Russell to resolve matters, but that Ms Russell had not been supportive. The Claimant said, “In my view Elizabeth had not been honest when reporting to you and therefore I felt that there has been a breakdown in trust and confidence.” Page 197.

65 The Respondent's Bullying and Harassment policy was not available to the Employment Tribunal. The Claimant had been provided with the Respondent's Dignity at Work Policy when she submitted her grievance and she was already in possession of the Bullying and Harassment policy, page 173. Ms Russell told the Tribunal that, normally, the First Respondent investigates all grievances informally, rather than formally, and seeks a mediated solution. Ms Russell told the Tribunal that she considered that it was important to try to resolve matters informally, rather than staff going through the stress of a formal investigation. Ms Aden-Peart also told the Tribunal that the Respondent's normal practice was for an investigator to meet, first, with the person raising the grievance, before meeting other people.

66 The Respondent's Grievance Policy, which was in the Tribunal Bundle, showed that the onus was on the Respondent to arrange meetings.

67 The Tribunal accepted that the First Respondent's normal process was for an investigator to arrange a meeting with the person who raised the grievance, to discuss the grievance, before meeting any other party. The Tribunal found that it was normally the Respondent's investigator who would arrange the meeting. This accords with the

Tribunal's experience of how a grievance and harassment investigation processes are conducted in the workplace. The Tribunal also accepted that it was the First Respondent's practice to attempt to investigate all grievances informally and to arrange mediation. This appears to have been the practice adopted by the First Respondent with regard to every one of the complaints the Claimant raised, but also with regard to complaints raised against her by other employees, over the years.

68 The Claimant contended that 7 of her colleagues had left the Respondent Trust because Mr Dhadvai had treated them badly because of age and/or sex and that Mr Dhadvai had said he wanted to "get rid of the oldies" in the Department. She was asked about this in evidence, but gave the names of 4 colleagues who had left, rather than 7. Mr Dhadvai was also asked about these allegations. He provided detailed evidence of the reasons why members of staff had left. With regard to Derek Jacobs, he said Mr Jacobs was aged 65 and retired because his wife had retired too and he had planned to do this for a long time. He said that Kathy Machin, aged 66, left because of her poor health. **Kanchan Dodia**, aged 60, retired, but back to work on the Respondent's Staff Bank. He said that Eve Cohen, aged 66, had left because she had planned her retirement. Mr Dhadvai gave a reason for the departure for every single one of the employees who had left the Respondent Trust. These reasons were not to do with age or sex. The Tribunal accepted Mr Dhadvai's evidence regarding this. He had convincingly detailed knowledge of the reasons for each employee leaving.

The Relevant Law

69 By s39(2)(c)&(d) *Equality Act 2010*, an employer must not discriminate against an employee by dismissing him or subjecting him to a detriment.

70 By s40(1)(a) *EqA 2010* an employer (A) must not, in relation to employment by A harass a person (B) who is an employee of A's.

71 Direct discrimination is defined in s13 *EqA 2010*.

72 Harassment is defined in s26.

73 The shifting burden of proof applies to claims under the *Equality Act 2010*, s136 *EqA 2010*.

Direct Discrimination.

74 Direct discrimination is defined in s13(1) *EqA 2010*: "(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

75 Age and sex are each a protected characteristic, s4 *EqA 2010*.

76 In case of direct discrimination, on the comparison made between the employee and others, "there must be no material difference relating to each case," s23 *Eq A 2010*.

Victimisation

77 By 27 Eq A 2010, “ (1) A person (A) victimises another person (B) if A subjects B to a detriment because—

- (a) B does a protected act, or
- (b) A believes that B has done, or may do, a protected act.

Each of the following is a protected act—

- (a) bringing proceedings under this Act;
- (b) giving evidence or information in connection with proceedings under this A
- (c) doing any other thing for the purposes of or in connection with this Act;
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.”

78 Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

“Because”- Causation

79 The test for causation in the discrimination legislation is a narrow one. The ET must establish whether or not the alleged discriminator’s reason for the impugned action was the relevant protected characteristic. In *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, Lord Nicholls said that the phrase “by reason that” requires the ET to determine why the alleged discriminator acted as he did? What, consciously or unconsciously, was his reason?.” Para [29]. Lord Scott said that the real reason, the core reason, for the treatment must be identified, para [77].

80 If the Tribunal is satisfied that the protected characteristic is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it had a significant influence, *per* Lord Nicholls in *Nagarajan v London Regional Transport* [1999] IRLR 572, 576. “Significant” means more than trivial, *Igen v Wong*, *Villalba v Merrill Lynch & Co Inc* [2006] IRLR 437, EAT.

Detriment

81 In order for a disadvantage to qualify as a “detriment”, it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to “detriment”. However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, *Shamoon v Chief Constable of RUC* [2003] UKHL 11.

Harassment

82 s26 Eq A provides

“(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

.....

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.”

83 In *Richmond Pharmacology Ltd v Dhaliwal* [2009] IRLR 336 the EAT held that there are three elements of liability under the old provisions of s.3A RRA 1976: (i) whether the employer engaged in unwanted conduct; (ii) whether the conduct either had (a) the purpose or (b) the effect of either violating the claimant's dignity or creating an adverse environment for her; and (iii) whether the conduct was on the grounds of the claimant's race.

84 Element (iii) involves an inquiry into perpetrator's grounds for acting as he did. It is logically distinct from any issue which may arise for the purpose of element (ii) about whether he intended to produce the proscribed consequences.

85 This guidance is instructive in respect of harassment claims under s26 EqA, albeit under the EqA, the conduct must be for a reason which relates to a relevant protected characteristic, rather than on the grounds of race or sex. There is no requirement that harassment be “on the grounds of” the protected characteristic – *R(EOC) v Secretary of State for Trade and Industry* [2007] ICR 1234.

Burden of Proof

86 The shifting burden of proof applies to claims under the *Equality Act 2010*, s136 EqA 2010.

87 In approaching the evidence in a case, in making its findings regarding treatment and the reason for it, the ET should observe the guidance given by the Court of Appeal in *Igen v Wong* [2005] ICR 931 at para 76 and Annex to the judgement.

88 In *Madarassy v Nomura International plc*. Court of Appeal, 2007 EWCA Civ 33, [2007] ICR 867, Mummery LJ approved the approach of Elias J in *Network Rail Infrastructure Ltd v Griffiths-Henry* [2006] IRLR 865, and confirmed that the burden of proof does not simply shift where M proves a difference in sex and a difference in treatment. This would only indicate a possibility of discrimination, which is not sufficient, para 56 – 58 Mummery LJ.

Unfair Dismissal

89 *Section 94 Employment Rights Act 1996* states that an employee has the right not to be unfairly dismissed by his employer. In order to bring a claim of unfair dismissal, the employee must have been dismissed.

90 By section 95(1)(c) ERA 1996, an employee is dismissed by his employer if the employee terminates the contract under which he is employed, in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. This form of dismissal is known as constructive dismissal.

91 In order to be entitled to terminate his contract and claim constructive dismissal, the employee must show the following:

91.1 **The employer has committed a repudiatory breach of contract.** Every breach of the implied term of trust and confidence is a repudiatory breach, *Morrow v Safeway Stores* [2002] IRLR 9;

91.2 **The employee has left because of the breach,** *Walker v Josiah Wedgwood & Sons Ltd* [1978] ICR 744;

91.3 **The employee has not waived the breach-** in other words; the employee must not delay his resignation too long, or indicate acceptance of the changed nature of the employment.

92 The evidential burden is on the Claimant. Guidance in the *Western Excavating (ECC Limited) v Sharp* [1978] ICR 221 case requires the Claimant to demonstrate that, first the Respondent has committed a repudiatory breach of his contract, second that he had left because of that breach and third, that he has not waived that breach.

Nature of Repudiatory Breach

93 In order to establish constructive dismissal based on a repudiatory breach of the implied term of trust and confidence, the employee must show that the employer has, without reasonable and proper cause, conducted himself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between them, *Mahmud v Bank of Credit and Commerce International SA* [1997] ICR 606, *Baldwin v Brighton and Hove City Council* [2007] ICR 680, and *Bournemouth University Higher Education Corporation v Buckland* [2009] IRLR 606.

94 The question of whether the employer has committed a fundamental breach of the contract of employment is not to be judged by the range of reasonable responses test. The test is an objective one, a breach occurs when the proscribed conduct takes place.

95 To reach a finding that the employer has breached the implied term of trust and confidence requires a significant breach of contract, demonstrating that the employer's intention is to abandon or refuse to perform the employment contract, Maurice Kay LJ in *Tullett Prebon v BGC* [2011] IRLR 420, CA, para 20.

Reasonableness

96 If the Claimant establishes that he has been dismissed, the ET goes on to consider whether the Respondent has shown a potentially fair reason for the dismissal and, if so whether the dismissal was in fact fair under s98(4) ERA 1996. In considering s98(4) the ET applies a neutral burden of proof. It is not for the Employment Tribunal to substitute its own decision for that of the employer.

Discussion and Conclusion

97 In coming to its conclusions, the Tribunal has taken into account all the facts, but, for clarity, it has addressed each issue separately.

Direct Age and/or Sex Discrimination

98 Issue 3.3.1(b). Did Mr Dhadvai shout at the Claimant on 1 May 2016 after a shift was reassigned and did Karim Conteh asked Mr Dhadvai to calm down? The Claimant alleged this at the Tribunal and had also raised these allegations in a grievance dated 5 October 2016. The Second Respondent denied he shouted and it was agreed that the Second Respondent had reassigned the relevant shift at the Claimant's request. On the Tribunal's findings of fact, the Tribunal has concluded that the Second Respondent did not shout at the Claimant. The Tribunal has noted that Karim Conteh said that there were no raised voices during discussion.

99 Issue 3.3.1(a) Did Mr Dhadvai shout at the Claimant on 22 July 2016? This issue related to Mr Dhadvai having put the Claimant on a rota, working in two places at once. On the Tribunal's findings of fact, this was a mistake, which was rectified promptly by Mr Dhadvai and there was no confrontation between the Claimant and Mr Dhadvai. The Claimant, however, remained upset, believing the matter not to have been resolved because she did not wish to work on the MRI Department.

100 Issue 3.3.1(c) Did Mr Dhadvai shout at the Claimant on other occasions? There was evidence from the investigation report that Mr Dhadvai became frustrated in communicating information. Mr Dhadvai denied shouting at the Claimant in evidence to the Tribunal. The Claimant has not provided specific details of other occasions when Mr Dhadvai is alleged to have shouted at her, although she raised this allegation in her grievance in 2013. The Tribunal has not made findings that Mr Dhadvai shouted at the Claimant on other occasions. The Tribunal has not found that Mr Dhadvai shouted as the Claimant alleged. It finds, however, that the Claimant has made a significant number of complaints about managers shouting over the years. The Tribunal concludes that it is more likely that the Claimant believed others to be raising their voices when, in fact, the interactions were within the normal bounds of professional behaviour. The Tribunal noted that the Claimant took exception to the wording of Ms Aden-Pear's letter arising out of a sickness review meeting, saying that Ms Aden Pear had used adjectives which doubted the Claimant's allegations. When the Claimant was cross-examined about this, however, she was unable to provide an explanation for her assertion. This supported the Tribunal's conclusion that the Claimant believes others are behaving unreasonably when, in reality, they are acting within normal bounds of professional behaviour.

101 Issue 3.3.2. Did Mr Dhadvai say to the Claimant that she must do as he says on 22 July 2016? On the Tribunal's findings of fact, Mr Dhadvai changed the rota so that the Claimant was not required to work in two places at once. However, the Claimant

remained unhappy, because she did not want to work on the MRI department. The Tribunal has found that Mr Dhadvai did say that, when the rota was finalised, people would have to work to it. The Tribunal has not found that Mr Dhadvai said to the Claimant in stark terms that “she must do as he says”. Mr Dhadvai explained that the rota had to be followed for practical reasons.

102 The Tribunal has found that the Claimant has not made out the facts on which she relies in bringing her sex discrimination and age discrimination complaints against Mr Dhadvai.

103 Issue 3.3.2 (b). The Claimant alleged that Mr Dhadvai said that she must do as he said, on other occasions also. Again, there were no specific details of this. On our findings, Mr Dhadvai, as a manager, explained to the Claimant that rotas need to be followed and that managers have practical reasons for making decisions, which staff need to follow. The Tribunal does not find that Mr Dhadvai spoke to Claimant in a dictatorial way.

104 Issue 3.3.4. Did Mr Dhadvai completely ignore the Claimant on 15 July 2016 when she asked for his help? As the Tribunal has found, the Claimant gave a number of contradictory accounts of this. The Tribunal has found that, given the wholly contradictory evidence which the Claimant gave the Tribunal, it did not accept the Claimant’s contention that Mr Dhadvai ignored the Claimant’s request for help, or otherwise declined to assist her.

105 In general, the Tribunal accepted Mr Dhadvai’s evidence that members of staff did not leave the Respondent Hospital Trust because they felt discriminated against because of their age, or sex, but because of wholly unconnected reasons. The Tribunal had not upheld the fact the Claimant relies on in bringing her claims of age and sex discrimination and harassment against Mr Dhadvai and, therefore, those claims fail.

Victimisation Claims

Issues 4.2.1, 4.2.2, 4.2.3, 5.3.1, 5.3.2, 5.3.3 and 5.3.4

106 The Claimant submitted grievances in 2013 and on 5 October 2013, in which she made allegations of sex discrimination. These were protected acts. The Tribunal has made findings about Ms Aden-Peart’s behaviour towards the Claimant on 24 November, 25 November and 28 November 2016. The Tribunal has found that Ms Aden-Peart may have asked the Claimant if she had obtained a password, but did so in a gentle and enquiring way. It has found that Ms Aden-Peart appeared, throughout her evidence, be a mild-manner and supportive manager and that it was unlikely that she spoke to the Claimant in an authoritarian way. The Tribunal has noted that, in later meetings with the Claimant, Ms Aden-Peart and Ms Russell explained to the Claimant that the Claimant was coming back to the Trust when there were new systems and procedures in place and that it was appropriate for Ms Aden-Peart to give the Claimant guidance and instruction and to check that the Claimant was doing things in the appropriate way.

107 The Tribunal finds that this is what Ms Aden-Peart was doing at all times. It accepted Ms Aden-Peart’s evidence that the Trust was coming out of Special Measures

and that it was important that staff were carrying out new processes correctly and promptly. The Tribunal finds that any instructions which Ms Aden-Peart gave to the Claimant on 24, 25 and 28 November were instructions to ensure the Claimant was following new processes and procedures appropriately. These were normal management interactions. Ms Aden-Peart was not singling out the Claimant, or giving her any unreasonable instructions. Those actions by Ms Aden-Peart, therefore, did not amount to detriments.

108 Issue 5.3.2. Did Ms Aden-Peart tell the Claimant she must use her annual leave during her phased return to work? On the Tribunal's findings of fact, the Tribunal found that Carol Babb told the Claimant, during a meeting on 9 November, that the Claimant had accumulated annual leave during her sickness absence and that the Claimant could use this before, or after, coming back to work. The Tribunal did not find that Ms Aden-Peart told the Claimant that she needed to use her annual leave during her phased return to work. In the meeting on 24 November 2016, Ms Aden-Peart told the Claimant that she should arrange a meeting with Carol(ine) Russell, to discuss her grievance, as the Claimant had already agreed to do so. The Tribunal does not find that Ms Aden-Peart said anything unusual during this return to work meeting, or anything that was outside that normal management interactions with the Claimant.

109 Issue 5.3.5. On 29 November 2016 Ms Aden-Peart conducted a return to work meeting which lasted until 15.25. During the meeting, Ms Aden-Peart and the Claimant discussed the Claimant's grievance and Ms Aden-Peart listened to what the Claimant had to say. This went on for some time. The Claimant did not ask to end the meeting and the Tribunal has concluded that the Claimant was content to participate in it.

110 Issue 5.3.6. On 30 November 2015 Ms Aden-Peart asked the Claimant to attend to a patient. Ms Aden-Peart accepted that the Claimant may have been dealing with another patient, but that this was not obvious to Ms Aden-Peart. The Tribunal accepted Ms Aden-Peart's evidence that she did not intentionally interrupt the Claimant when the Claimant was dealing with another patient; and if she did interrupt, she did so in error.

111 Issue 5.3.7. Ms Russell held a meeting with the Claimant and Ms Aden-Peart on 1 December. The meeting again extended beyond the Claimant's working hours while the three discussed the Claimant's concerns and the hospital's requirement for the Claimant to learn new ways of working, following her absence. Again, the Claimant did not ask to leave.

112 The Tribunal finds that, with regard to Ms Aden-Peart instructions to the Claimant, at all times, these were not detriments, but normal management requests. The Claimant had a sense of grievance arising out of them, but the sense of grievance was unjustified. Ms Aden-Peart's request to the Claimant to arrange a meeting with Ms Russell was not a detriment. Ms Aden-Peart was trying to ensure that the Claimant's grievance was addressed. Ms Aden-Peart was following the process which she and the Claimant had agreed, during a previous sickness absence meeting, for the Claimant to arrange the meeting. The Claimant was clear that she would arrange a meeting and would do so in her time.

113 With regard to keeping the Claimant at work for additional half hours after the end of the Claimant's working day, the Tribunal concludes, on balance, that this was not a

detriment: the Claimant was content to stay in the relevant meetings. Nevertheless, even if it did amount to a detriment, the Tribunal finds that the Claimant was not asked to stay in the meetings because of her grievances, or because she had done a protected act. The Claimant stayed in these meetings simply because the Claimant and her managers were discussing her issues and Ms Aden-Peart and Ms Russell were trying to address the Claimant's issues, hear what the Claimant had to say and explain their actions.

114 Accordingly, the Claimant's complaint of victimisation fails.

Constructive Dismissal

115 The Tribunal considered whether the Respondent breached a fundamental term of the Claimant's contract by breaching a duty of trust and confidence, or failing to provide a safe system of work, or failing to deal with the Claimant's grievances fairly and promptly.

116 The Tribunal has found that the Respondent did not discriminate against the Claimant because of age or sex and did not victimise her. The Tribunal has found that the Respondent's managers managed the Claimant's work, but that the Claimant felt aggrieved by this. However, the Tribunal concludes that the Respondent had a reasonable and proper cause for all its actions. It was giving instructions to the Claimant in ways of working, on her return to the workplace after absence. The Tribunal concludes there is no evidence that the Respondent failed to provide a safe system of work.

117 With regard to dealing with the grievances fairly and promptly, the Tribunal has found that the Claimant agreed that she would arrange a meeting with Carol(ine) Russell, to discuss the grievance, on her return to work. While this process was contrary to the Respondent's policy, that was what the Claimant agreed. It is quite clear from the evidence that the Claimant wanted to meet Ms Russell when the Claimant was ready to do so - and not before. In the Claimant's letter of 16 January 2017, the Claimant complained that Ms Aden-Peart was asking the Claimant to meeting with Ms Russell during her first four days at work. The Claimant clearly wanted to meet with Ms Russell in her own time.

118 The Tribunal has accepted the Respondent's evidence that its normal process was to meet the person bringing the grievance, first, rather than any other party to the grievance. Given that that was its normal policy, it was not the Respondent delayed investigating the grievance; it was the Claimant who delayed it, by not arranging the meeting which she had agreed to arrange. Accordingly, the Tribunal finds that the Respondent did not delay in investigating the grievance and that there was no breach of any fundamental term, so that the Claimant was not entitled to resign to claim constructive dismissal.

119 Even if the delay in the grievance did amount to a fundamental breach of contract, the Tribunal finds that the Claimant did not resign in response to such a breach. In her letter of resignation, and in her letter of 16 January, the Tribunal finds that the Claimant made clear that she was resigning in response to what she perceived as Elizabeth Aden-Peart's harassment of her and treatment of her since the return and not with regard to delay in the grievance. Accordingly, the Tribunal finds that the Claimant was not entitled to resign and claim constructive dismissal. She was, therefore, not dismissed and cannot bring a claim of unfair dismissal. Necessarily, a claim of victimisation regarding an alleged

dismissal also fails.

Employment Judge J Brown

17 June 2017