



EMPLOYMENT TRIBUNALS

Claimant: Dr O M A Karim

Respondent: GMC

Heard at: Reading **On: 5, 6, 7, 8, 14, and 15 October 2021** (evidence)
22-24 February 2021 (closing submissions and Tribunal discussions) and **7 June 2021**

Before: Employment Judge Gumbiti-Zimuto
Ms D Ballard and Ms B Osborne

Appearances
For the Claimant: Ms K Monaghan, QC
For the Respondent: Mr I Hare, QC

JUDGMENT

The claimant's complaint of direct race discrimination is well founded and succeeds. The claimant's complaint of discrimination on the grounds of religion and belief is not well founded and is dismissed.

REASONS

1. Mr Karim (the Claimant) is a registered medical practitioner with the GMC (the Respondent). The Claimant is mixed race, Black African/European and he is a Muslim.
2. The Respondent is a Qualifications body for the purposes of sections 53 and 54 of the Equality Act 2010. The Claimant worked as a consultant urological surgeon at Heatherwood and Wexham Park Hospitals NHS Foundation Trust, later the Frimley Health NHS Foundation Trust ("the Trust").
3. On 7 March 2013, the Respondent received a number of concerns about the Claimant from Dr Mark Charig, on 1 April 2014, the Respondent's Case Examiners concluded that the complaints did not meet the realistic prospect test and the complaints closed with no further action. The Respondent also received information from the Bridge Clinic in April and July 2013 concerning complaints

which had been made against the Claimant. The Assistant Registrar decided that these matters did not pass Rule 4(2) of the General Medical Council (Fitness to Practise) Rules 2004 ("the 2004 Rules") in August 2013.

4. In October 2014, the Respondent received a copy of the Trust's external review of the operation of the Urology Department which was carried out by Professor Roche ("the Roche Report"). The Trust excluded the Claimant (among others) while the investigation was conducted. Professor Roche's was a preliminary investigation, carried out by a team of investigators and involving interviews with 13 members of staff at the Trust. The Roche Report identified a number of concerns about the Claimant and recommended that the Trust should carry out a full investigation into the allegations. The Trust commissioned Ms Julia Hollywood (an independent investigator) to carry out an investigation into the concerns relating to the Claimant (and others).
5. The Respondent opened an investigation into the Claimant (and others, including Mr L (one of the Claimant's comparators)) on 3 November 2014. The Assistant Registrar considered that the allegations passed the threshold in Rule 4(2) of the 2004 Rules.
6. The Respondent's Case Examiner concluded on 9 November 2014 that the allegations against the Claimant were sufficiently serious to justify referral to the Interim Orders Panel ("IOP"). On 26 November 2014, the IOP decided that it was not necessary to impose an interim order of suspension or conditions on the Claimant's registration.
7. The Respondent later received a copy of Ms Hollywood's report dated 4 December 2014 ("the Hollywood Report") which found the allegations that the Claimant threatened, verbally abused and/or intimidated AR (another consultant at the Trust) at a meeting on 16 January 2014 and that the Claimant influenced or manipulated the urology multi-disciplinary team members to say that another consultant's, Mr Motiwala's, penile/urethra cancer patient was discussed at a multi-disciplinary meeting when it had not been ("the MDT letter") proved. Ms Hollywood also found proved an allegation that the Claimant had sought in April 2014 to interfere with the evidence that an associate specialist at the Trust, Dr R, was planning to give to the Respondent in relation to Mr Motiwala.
8. The Respondent's Assistant Registrar decided on 29 January 2015 that the matter concerning Dr R merited investigation.
9. The Trust raised further concerns with the Respondent about the Claimant including that the Claimant made contact with Dr H (a GP) whilst his colleague, Mr Motiwala, was excluded and asked Dr H to provide him (the Claimant) with a letter that Mr Motiwala had written to a patient, in the knowledge that Mr Motiwala was not permitted to make contact with patients during his exclusion. The Respondent's Assistant Registrar decided that the matter concerning Dr H merited investigation.

10. On 2 February 2015, the Respondent's Case Examiner decided that the findings in the Hollywood Report and the further matter concerning Dr H merited referral to the IOP. At a hearing on 3 March 2015, the IOP decided to impose conditions on the Claimant's registration.
11. The Respondent's practice was to await the outcome of local or external investigations before progressing its own investigations. The Claimant resigned from the Trust with effect from 22 May 2015 before the matters came to a disciplinary hearing, this had the effect of bringing the Trust's investigations arising from the Roche and Hollywood reports in respect of the Claimant to an end.
12. The Claimant requested a review of the IOP conditions but this was declined in a decision dated 5 June 2015.
13. In February/March 2015, information was sent to the Respondent to suggest that The Claimant had been involved in a co-ordinated decision to remove the hospital manager (Mr Sandhu) at the Spire Thames Valley Hospital ("the Spire Hospital") in order to protect the Claimant's own position on the Medical Advisory Committee at the hospital. The Respondent contacted the Trust about the matter and had a telephone conversation with Mr Palfrey (the Claimant's Responsible Officer). On 2 July 2015, the Respondent's Assistant Registrar decided that this matter should be added to the investigation into the Claimant.
14. On 17 August 2015, the IOP revoked the interim condition on the Claimant's registration.
15. In February 2016, Mr Graves the investigating officer noted the concern that the Claimant had undertaken to identify the source of an anonymous whistle-blowing email to the Trust which raised concerns about Mr Motiwala. Although this matter had been identified in both the Roche and Hollywood Reports, this matter had not been considered by the Respondent earlier. Mr Graves raised the matter on his internal review of the allegations and on 12 August 2016, the Assistant Registrar (Mr Donnelly) decided that this concern should be added to the investigation.
16. The Respondent completed its investigation and sent the Claimant the draft particulars of the allegation on 31 March 2017, the Claimant responded on 9 May 2017. There was a further delay when Dr R indicated that he may no longer be willing to act as a witness.
17. The Claimant's case was referred to the Case Examiners on 22 May 2017 who decided on 29 September 2017 that the case should be referred to an MPT under Rule 8 of the 2004 Rules. The Respondent sent the draft allegation to the Claimant on 13 December 2017 in accordance with Rule 15 of the 2004 Rules.
18. The MPT hearing took place over 13 days between 26 March and 13 April 2018. The

Claimant made some admissions at the outset of the hearing. The MPT preferred the evidence of the Claimant to that of Dr R and did not find the contested paragraphs to be proved, noting that some of “*Mr Karim’s actions were not best practice*”, the MPT did not find misconduct to be made out.

19. On 17 August 2018 the Claimant brought complaints of direct discrimination on the grounds of race and religion. The issues in the claim were agreed at a preliminary hearing on 10 September 2019.
20. Race and religion or belief, are protected characteristics under section 4 of the Equality Act 2010 (“EqA”). Section 13 EqA provides that *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.* Section 23 EqA provides that *on a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.*
21. Section 53 EqA that *a qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification by subjecting B to any other detriment.*
22. Section 123 EqA provides that *a complaint within section 120 may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. 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 on it.* In this case the Respondent takes no issue in respect of the jurisdiction of the Tribunal to consider the Claimant’s complaints having regard to the limit for the presentation of such complaints. We consider that it is just and equitable to extend time to allow the Claimant to bring complaints in respect of any matters brought before us which might be out of time.
23. The burden of proof is set out in section 136 EqA which provides *if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. This does not apply if A shows that A did not contravene the provision.*
24. There are two necessary elements to make out a claim for direct discrimination (1) less favourable treatment of the claimant; and (2) that the treatment was “because of a protected characteristic”.
25. Section 1 of the Medical Act 1983 provides that the overarching objective of the General Medical Council in exercising their functions is the protection of the public.
26. Allegations against registered doctors are first considered by the Registrar (delegated

to a number of Assistant Registrars) who is required to refer them to the Case Examiners if they fall within the statutory definition of an allegation that a doctor's fitness to practise is impaired. ¹The Registrar is empowered to carry out investigations and once referred by the registrar the Case Examiners must consider the allegations who have to power to decide (a) that the allegation should not proceed further; (b) to issue a warning to the practitioner in accordance with rule 11(2); (c) to refer the allegation to the Committee under rule 11(3) for determination under rule 11(6); or (d) to refer the allegation to the MPTS for them to arrange for determination by a Medical Practitioners Tribunal. The Registrar has the power to refer an allegation to an Interim Orders Panel ("IOP") if, at any stage, the Registrar is of the opinion that an Interim Orders Panel should consider making an interim order in relation to a practitioner. The IOP where satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a fully registered person, for the registration of that person to be suspended or to be made subject to conditions, may make an order (a) that his registration in the register shall be suspended for a period not exceeding eighteen months (b) that his registration shall be conditional on his compliance, for a period not exceeding eighteen months, with such requirement as the Panel think fit to impose. The IOP shall review the order within the period of six months beginning on the date on which the order was made. Where an interim suspension order or an order for interim conditional registration has been made an IOP may revoke the order or revoke any condition imposed by the order. ²

27. The Registrar may refer an allegation to Case Examiners under rule 10 of the 2004 Rules and if after considering the allegation it appears to the Case Examiners that the practitioners fitness to practise is impaired they may recommend that the practitioner be invited to comply with such undertakings as they think fit.
28. Rule 12 of the 2004 Rules sets out the circumstances where a decision not to refer an allegation to a medical and a lay Case Examiner or, for any other reason, that an allegation should not proceed beyond rule 4 may be reviewed by the Registrar.
29. The Respondent has attacked the Claimant's credibility pointing to a number of features of his evidence, contending that he lacks insight by his refusal to accept any responsibility for the dysfunction at the Trust and by continuing to describe in oppositional terms his former colleagues, and stating that he was unable to disentangle his criticisms of the Trust from his case against the Respondent. While the criticisms made of the Claimant are carefully crafted from the material placed before us having had the opportunity of hearing all the evidence in this case we do not accept that the Claimant lacks credibility and also note that none of the issues of concern relate to clinical issues. We consider that he did see a difference between the role of the Respondent and the Trust in the events that he complains of.
30. The Claimant believed that his referral to the GMC, the Respondent, by the Trust

¹ Rule 4, The General Medical Council Fitness to Practice Rules (2004 Rules)

² Section 41A Medical Act 1983

was malicious and the Respondent's treatment of him was discriminatory. An adverse outcome could signal the end of his career, the loss of the means to earn a livelihood and damage to his international reputation of excellence. In our view considered in that context his response his conduct of these proceedings has been measured and his credibility is in our view intact.

31. We take on board that the Respondent was not the Claimant's employer, but the statutory regulator exercising disciplinary functions in pursuit of its over-arching objective to protect the public. The Respondent's staff who made decisions in the Claimant's case had never met him nor had any face-to-face contact with him. Decisions made in the Claimant's case were recorded contemporaneously in writing. There were a number of decisions and a number of decision-makers involved in the Claimant's case.
32. We address each of the matters raised as less favourable treatment in the list of issues in turn and finally set out our overall conclusions.

The GMC's making application to the Interim Orders Panel in November 2014.

33. In a decision made on 9 November 2014 the Claimant was referred to the IOP. There were five concerns raised about the Claimant. The registrar considered that there was sufficient apparently cogent evidence to determine that it was necessary for the protection of patients, for the Claimant to be referred to the IOP.
34. The Claimant in his submissions addresses the matter by stating at paragraph 43: *"In making the referral to the IOP, R exaggerated the complaints against C and minimised the analogous complaints against ML. Thus R stated in the referral that the C had "[f]acilitated the excision of a tumour... against 'all walk in cancer guidelines'". This had not been alleged anywhere and was patently untrue. Further, LG did not mention the MDT complaint in ML's case under the headings "protecting patients" or "public interest" (i.e. the grounds for the application), though did so in the case of C. There is no explanation for this except that LG sought to overstate the complaints against C to make the prospect of an order more likely. R plainly cannot claim to know what was operating on the mind of LG at the time. However, it is clear from the Guidance that the complaints made did not conceivably reach the threshold for an IOP order."* The Claimant then says that *"the logical inference is that the reason for the referral in C's case, and its presentation, was his race and/or religion."*
35. The conclusion of the Tribunal is that at this stage of the investigation, as the Respondent contends, there were patient safety and public interest concerns. The decision and referral is compliant with the procedures, Mr L (ML), one of the Claimant's comparators, was treated in a similar manner. From our view point of the evidence, there is not a suggestion of exaggeration in the case of the Claimant. Following the Roche report there were different matters considered and taken into account in the decisions in the cases of the Claimant and Mr L only one of which appeared in both cases. On this matter in isolation and at this stage we are unable to draw an inference of discrimination on the grounds of

race or religion.

The failure of the GMC to close its investigation after the first IOP when it was clear that the issues raised were issues relating to the management of the urology department and therefore matters for his employer (the Trust).

Failure to undertake a comprehensive review of the case against the Claimant following the failed IOP application in November 2014 and to close the investigation.

36. The Roche Report raised a number of complaints about the Claimant and others including the Claimant's comparator Mr L. The allegations were considered by the registrar under rule 4. The allegations against both the Claimant and Mr L were referred to the IOP. The IOP concluded that there was insufficient information to warrant an interim order on the basis of patient safety in the Claimant's case and In Mr L's case.
37. The Respondent contends that the complaint made by the Claimant set out in the list of issues at 3 a and c are misconceived because there is no mechanism to lawfully close the case without referring the case back to the Case Examiners.
38. The Claimant contends that once the first referral to the IOP had resulted in no order, the proper thing to do was to review the complaints and consider whether a continuing investigation was justified. The Claimant says that none of the issues, separately or together could conceivably meet the high threshold required for misconduct impairing fitness to practise. The Claimant submits that the absence of a reconsideration of the Claimant's case, and the failure to close it, is unexplained. The Claimant's treatment is contrasted with that of Mr L. In Mr L's case after referral to the IOP his case was sent back to the Trust who decided to take no further action.
39. To the extent that the Claimant's complaint is that his case should have been closed after the first IOP without reference back to the Case Examiners such a complaint is not well founded because there is not power to do so. The Claimant's complaint properly considered however in our view is that he was treated differently to Mr L because his case continued but Mr L's case was closed.
40. There was however a difference in the cases of Mr L and the Claimant that explains the difference in treatment at this stage. Following the Hollywood Report, in contrast to the Claimant, none of the allegations against Mr L were considered well founded and the Respondent's Case Examiners in closing his case noted that the Hollywood Report found that four of the five concerns were not supported by the evidence and in respect of the fifth concern the Trust had decided not to proceed with a disciplinary hearing, the Case Examiners decided that the realistic prospect test was not met and closed the case with no further action. This was not the position in the case of the Claimant.

The decision to apply for a second time to the IOP in February 2015

41. The second referral to the IOP was made after the Hollywood Report was published. The Hollywood Report contained additional allegations relating to Dr R where adverse findings were made against the Claimant. The Hollywood Report considered that there was evidence that three of four allegations against the Claimant were well founded. The Claimant was informed that he was to be subject to a disciplinary hearing and the Claimant was excluded from the Trust. Whilst excluded from the Trust the Claimant had a private practise and these patients were not covered by his exclusion from the Trust. It was considered that it was in the public interest to make a second referral to the IOP. Conditions were imposed on the Claimant's practise by the second IOP.
42. The positions of the Claimant and the Respondent could not be starker in respect of the second referral to the IOP. The Claimant says that there can be no explanation for the referral: The Respondent on the other hand says that it is difficult to understand how this can be a particular of discrimination when the IOP made an order in relation to the Claimant's registration and he did not exercise his statutory right to challenge it in the High Court under s.41A(10), even though he was legally represented and his right to do so was clearly explained to him.
43. Following the publication of the Hollywood Report Mr L's case was closed by the Respondent. Two of the allegations faced by the Mr L and the Claimant were the same. (See B764 and G16). In the case of Mr L the allegation of threatening AR was not considered well founded (allegation 1) while the same allegation against the Claimant was considered well founded.
44. In the decision to refer the Claimant to the second IOP there appears to be a difference in the way that the Claimant was treated in comparison to Mr L. Unlike the Claimant the Hollywood Report largely exonerated Mr L making only one adverse finding which was not taken further by the Trust. In Mr L's case the Case Examiner concluded that there was not a realistic prospect of establishing the required standard of proof in respect of these allegations.
45. One of the allegations that the Claimant was faced with following the first IOP was *"That a penile cancer patient of Mr HM's was operated on without the patient's case being discussed by the Multi-Disciplinary Team ('MDT'). This and other guidelines were breached in this case. When the matter was investigated , Mr Karim is said to have bullied members of the MDT to mislead the investigator by signing a letter to the effect the patient's case had indeed been discussed by the MDT, but that the records of the discussion had been lost."* This allegation was considered sufficiently serious to warrant the matter being put before the first IOP in the Claimant's case.
46. In Mr L's case the allegation was made that the same letter had been signed by him knowing that the information in the letter was false. After the Hollywood Report these allegations remained for consideration by the Respondent, in its decision to close the case against Mr L the Respondent dealt with the issue in the following way: *"In this case, however, we see that thirteen other members of the MDT also signed the letter agreeing that the case had been discussed, and that*

the patient had been diagnosed with urethral cancer. We also note the histopathology report which supports this diagnosis. We make no finding in this decision about whether or not the patient had penile cancer or whether it was discussed at MDT: we are aware that there remains a dispute about these matters and that other expert opinion reach a different conclusion about the diagnosis. However, in light of the available evidence, we are of the opinion that there is no realistic prospect of establishing that Mr Laniado signed the letter knowing the contents to be untrue, or that he had not taken reasonable steps to check the contents."

47. There is evidence of a difference in the treatment of the Claimant in contrast to Mr L. The allegations against the Claimant and Mr L arose out of substantially the same matters and were similar allegations. In the one case it was considered that there was no realistic prospect of success in the other the matter was pursued relying on what must have been the same evidence. In the Claimant's case though there was the additional matter relating to Dr R.

The failure to put the Claimant's comments on the Hollywood report before the second IOP hearing until the last minute.

The failure to undertake a comprehensive review following receipt of the Claimant's statement setting out the factual inaccuracies in the Hollywood Report in February 2015.

48. The Respondent made the decision to refer the Claimant's case back to the IOP, on 2 February 2015. The Claimant was notified of the referral to the second IOP on 4 February 2015. The Respondent knew that the Claimant had been given until 27 January 2015 to comment on the Hollywood Report. The Claimant made detailed comments on the Hollywood Report. The Claimant complains that no consideration was given to awaiting those comments before making a decision on referral. The Hollywood Report was sent to the IOP without the Claimant's comments. Following receipt of these comments, no consideration was given to withdrawing the referral on the basis that evidence had become available suggesting that the Claimant's fitness to practise was not impaired, and no review was undertaken.
49. The Respondent says in respect of this point that the 2004 Rules make no provision requiring the Respondent to seek a registrant's comments before referral to the IOP. The Respondent's letter of invitation to the IOP is entirely standard: it provides the Respondent's documents and invites the Claimant to provide any documents he wishes to rely or to bring them along to the hearing. This cannot be a detriment. The Respondent further states, that the contention that the failure to undertake a comprehensive review following receipt of the Claimant's statement setting out the factual inaccuracies in the Hollywood Report in February 2015 reveals a misunderstanding of the Respondent's processes. There is no provision for "reviewing" a decision to open an investigation.
50. In respect of this allegation there is no actual comparator. As the Respondent says the complaint alleged by the Claimant, failing to review, was not required under the rules. The Claimant's documents were provided to the IOP albeit the

Claimant says they were provided late, the Respondent says that there is no requirement pointing to a time for presentation. The Tribunal do not consider that there has been less favourable treatment, the Claimant on the evidence before us would not have been treated any differently to anyone else in the same or similar circumstances. In respect of the failure to undertake a review we consider there is no less favourable treatment in not doing a review because there is no scope in the process for a review. The matter is considered by the Case Examiners when the investigation is complete.

The failure to approach Spire Hospital following the Charig allegation and instead deciding to take that matter up with Mr Palfrey of the Trust.

The failure to consider that the Trust was manipulating the regulatory process to the Claimant's detriment.

51. The Claimant carried out work at the Spire Hospital and the Bridge Clinic. By an email, Mark Charig informed the Respondent that he had been told that Parm Sandhu had been suspended or dismissed to stop the investigation into Mr Motiwala and that the Claimant and others had manipulated his loss of privileges from Spire and the Bridge Clinic.
52. On 10 December 2014 the registrar contacted them asking for *“any further information you might have about this complaint or any other concerns.”* The Bridge Clinic replied promptly stating *“We have received only two formal complaints in relation to his practise at the clinic... In both instances the complaint was resolved to the patient's satisfaction...I can confirm that no concerns have been raised about Mr Karim's practice”*. The Spire Hospital replied stating that *“there have been no complaints or concerns regarding Mr Karim”*.
53. The registrar carried out further enquires by writing to the Medical Director at the Trust on the 10 March 2015. Mr Edward Palfrey contacted the Respondent by telephone an attendance note of that call recorded that *“he had no proof of what had occurred but he gleaned some information from contacts made to the Spire. ..The concern was PS (Parm Sandhu) was removed to ensure that Mr Karim could remain on the MAC and due to the feeling by the MAC that PS was causing trouble”*. The account given by Mr Palfrey was not correct. The registrar summarised the position in a note that included the following, *“It is alleged that Mr Karim was involved in a vote of no confidence against the Hospital Manager, Mr Sandhu, so that he could remain a member of the Medical Advisory Committee (MAC).”* The note continues, *“Although we do not have a lot of information about his incident and we definitely need to request further information from the Hospital as to the reason for Mr Sandhu's departure, I think that this should be treated as adverse. This appears to be a further example of manipulating and intimidating behaviour which indicates there could be a pattern of concern.”*
54. The Claimant contends that there can be no explanation for the Respondent's investigator contacting the Trust and the only inference can be that the Respondent's investigator considered she would find support for Mr Charig's allegations from the Trust in the absence of any criticism from Spire. The Claimant says that the Respondent's investigator did not appear to consider that

the Trust might itself be hostile to the Claimant and thus inclined to paint a poor picture of the Claimant with a view to manipulating the process. The Claimant argues that the Respondent's investigator was looking for allegations against the claimant, "*however trivial, however old and however much they contradicted accounts from those who actually knew about the claimant's conduct and competence*". The Claimant contends that this matter could not have been evidencing misconduct of a sort that impairs a doctor's fitness to practise and notwithstanding, the Respondent triaged this allegation.

55. The Respondent contends that there was a complaint about Claimant's role (among others) in the removal of Mr Sandhu from Mr Charig so it was entirely appropriate for the Respondent to write to the Trust since the complaint referred to "the involvement of a number of Frimley Health Consultants" and had been discussed at a recent ELS (Employment Liaison Service) meeting held with the Trust. The Respondent states that it not only wrote to the Trust but it also wrote to the Spire Hospital. Finally it is said that once the investigation into all matters was complete, the Case Examiners decided that this matter should not proceed to the MPT. The Respondent contends that the Claimant has not identified a basis on which the Respondent could or should have concluded that the Trust was manipulating the process.

56. We agree that the Claimant must show some basis on which we could conclude that the Respondent could or should have been aware that the Trust was manipulating the process. From the Respondent's point of view the Trust, like all employers, was required to refer concerns about fitness to practise to the Respondent and it had done so in the Claimant's case. Also the Trust had commissioned two independent reports (Professor Roche and Ms Hollywood) which had identified concerns about the Claimant. In the contact between Mr Palfrey and the Respondent's investigator we apprehend nothing that should have led to the conclusion that the Trust was manipulating the process. The allegation made by Mr Charig was investigated and ultimately was not progressed to the MPT by the case examiner. What is not clear is why in the face of information from the Spire indicating no support for the allegation and stating that there were no complaints about the Claimant the investigation appears to have continued to seek evidence on that issue.

The failure to review the case once it became clear that Mr Palfrey of the Trust had lied about the Claimant being involved in the removal of Mr Sandhu.

A failure to undertake a full review of the Claimant's case following the third IOP hearing.

57. A third IOP hearing took place on 17 August 2015. The Respondent had added the Spire allegations and put them before the IOP. At this IOP hearing, the restrictions on the Claimant's practice were revoked. The Spire wrote to the Respondent informing it that the allegation had been investigated and determined that the Claimant did not play any part in the removal of Mr Sandhu, a letter arrived with the Respondent on the 14 August 2015. Further, a copy of an email making clear that the Claimant had no involvement in the removal of Mr Sandhu

was also sent to the Respondent in a letter date dated 14 August 2015. Although these latter documents were sent for the express purpose of being placed before the IOP they were not put before the IOP, and the Respondent continued to rely on the Spire allegation.

58. The Claimant contends that in relying on the Spire allegation the Respondent did so with no evidence whatsoever that the allegation was true other than hearsay gossip. The Claimant contends that the Respondent must have known that this was misleading. Rather than reviewing the case against the Claimant when the restrictions were lifted, the Respondent pursued the Spire allegation further despite receiving three letters from the Spire saying the Claimant had done nothing wrong.
59. There was no evidence that Mr Palfrey had lied at the relevant time, the Claimant did not make his complaint that Mr Palfrey lied until 18 April 2018 some five days after his MPT hearing concluded. The Respondent's position is that the allegation that a failure to carry out a review after the IOP is misconceived because there is no mechanism for the Respondent lawfully to close an investigation without referring the matter to the Case Examiners under Rule 8.
60. The Respondent did not know that the evidence that came from Spire until 14 August 2015, this was very close to the date of the IOP hearing. We are not clear why the material was not placed before the IOP. At the IOP the restrictions placed on the Claimant were lifted. We do not consider that the failure to review after the IOP was less favourable treatment because a review is not something that would happen, under the relevant procedures, at that time. What is not so clear is why the matter remained a live issue in the absence of evidence to support the allegation.
- The failure to interview Mr Motiwala who was present during the conversation with Mr Rao (AR) on the 16 January 2014.*
61. The Respondent did not at any time interview Mr Motiwala, the Claimant contends that the failure to do this was inexplicable and that the Respondent's explanation for this, put forward by Ms Farrell, was untrue. The Respondent contends that it's general practice is not to interview potential witnesses who are subject to an on-going linked investigation since this may lead a doctor under investigation to incriminate themselves. The Claimant says that this was untrue.
62. The Claimant says that there were complaints against AR and, notwithstanding this, a statement was sought from AR in an attempt to garner evidence against the Claimant. The reason for the failure to obtain a statement was not the outstanding complaint rather it was that AR was not a credible witness. What Ms Farrell states in her statement is not supported by the evidence, "*we had an open investigation against Mr Rao's evidence and in light of that, it would have been inappropriate to rely on Mr Rao's evidence, as it was inappropriate for the GMC to seek to obtain a witness statement where there is a linked investigation.*" However, the Respondent did seek to obtain witness statement from AR. It is not clear why there appeared to be a departure from the 'general practice' in respect

of obtaining evidence from AR and not Mr Motiwala, both cases were linked to the Claimant's case. The Claimant suggests the distinction between the AR and Mr Motiwala is that in the former case the evidence was in the hope of gathering evidence against the Claimant, while in the latter case a critical witness who might have undermined the case against the Claimant.

63. The Tribunal do not consider there is a credible explanation for the difference in the way that Respondent treated AR and Mr Motiwala in terms of gathering evidence in the Claimant's case. The distinction in treatment in our view is explained by the fact that AR was a critical witness of the Claimant while Mr Motiwala was a witness who might be thought friendly to the Claimant.

The failure to progress exactly the same allegation against Mr Laniado by Mr Rao about the 16 January 2014 meeting.

64. Following the Roche Report, a complaint against Mr L in relation to the meeting of 16 January 2014 in respect of the complaint relating to AR was triaged. This referred to the terms of reference for Mr L's Hollywood Report covering whether Mr L threatened and/or intimidated AR on 16 January 2014 or allowed another senior consultant to do so without being challenged. The Hollywood Report found, in Mr L's case, that AR was not credible and rejected his evidence that he felt intimidated or bullied by Mr L.

65. The Claimant states that the Respondent decided not to pursue the allegation against Mr Laniado but did so against the Claimant, it is the Claimant's case that there is and can be no explanation for this and the only proper inference is that it was because of the Claimant's race and/or religion.

66. The Respondent contends that there is a distinction between the Claimant and Mr L. The Hollywood Report found none of the allegations against Mr L to be well-founded. Given the very different findings of the Hollywood Report and Mr Laniado's insight the Trust decided to continue working with him. That is very different from the Claimant where the relationship was brought to an end by a compromise agreement after litigation had been issued by the Claimant. The Case Examiners closed the case against Mr L because the realistic prospect test was not met.

67. The Tribunal is satisfied that there is a difference in the way that the Claimant was treated in contrast to Mr L. The difference was because of the findings made by the Hollywood Report in the case of Mr L did not justify proceeding against him, including the AR allegations which were not considered credible in Mr L's case. While there is a difference in the overall conclusions of the Hollywood report. In the Claimant's case the Respondent presented a basis for continuing proceedings based on AR, a witness not considered credible in the case of Mr L.

Bringing and continuing proceedings against the Claimant in respect of allegations in respect of which there was no prospect of any MPT finding that the Claimant's fitness to practise was impaired generally, and particularly when: (i) There was no basis for any finding that the Claimant's fitness to practice was

impaired by seeking to ascertain who had sent the malicious email of the 10 November 2013; (ii) In respect of the complaint relating to Mr Rao, Mr Rao did not provide any witness statement, nor was he interviewed by the GMC, and the matters accepted by Claimant could not in any view lead to a finding that his fitness to practise was impaired. (iii) In respect of the allegations relating to Dr Robinson, failed to take into account the inconsistencies in that account and the failure of Dr Robinson to mention the allegations until November 2014 when deciding whether to proceed with that allegation. (iv) There was nothing improper in the Claimant contacting the GP (Dr Hayter) to seek medical records to assist a colleague.

68. The Claimant contends that there was no prospect of any MPT concluding that the Claimant's fitness to practise was impaired by reason of any of the allegations against the Claimant, separately or together. Instead of drawing the investigation to a speedy close, on 3 August 2016, the Respondent pursued a further allegation concerning the Claimant's investigation into the email sent by AR "falsely claiming to be a junior "whistleblowing" doctor". The allegation was brought to the attention of the Respondent two years beforehand in the Roche Report and the Respondent had decided to do nothing. The Claimant says that the Respondent failed to interview AR at any time, notwithstanding his centrality both in relation to the "whistleblowing" email. That the Respondent failed to take account of the weaknesses in Dr R's evidence and Dr R's failure to make the complaint against the Claimant until many months after the events concerned. The Respondent's explanation for not doing so (an outstanding complaint) was untrue. The Claimant argues that there was nothing improper about the Claimant's contact with Dr H despite the Claimant accepting in his MPT hearing that his "actions were wrong". The Claimant's actions could not have constituted misconduct so serious as to call into question the Claimant's fitness to practise.
69. The Respondent states that the Claimant admitted that he conducted an investigation to identify the author of an anonymous email. The reason for the decision to triage this matter was because it was part of a pattern of behaviour. The Claimant did not at any point before the MPT hearing raise the matters which led the MPT to find this matter did not amount to misconduct. On the information before the Case Examiners, applying the realistic prospect test, they were entitled and correct to refer this to the MPT because the Case Examiners were looking at the particulars of allegation as a whole and the Claimant had accepted the link between this allegation and his request for his money back from AR.
70. The Respondent argues that in respect of the complaint relating to the 16 January 2014 incident with AR the draft allegation stated that the request for his money back was made by the Claimant with the intention of threatening or intimidating AR. If that was made out and had taken place at a meeting with other colleagues about other matters in the canteen, it would involve a breach of paragraphs 36 and 37 of Good Medical Practice and could call into question the Claimant's fitness to practise. In respect of the complaint relating to Dr R, the Hollywood Report found the allegation that the Claimant sought to interfere with the Respondent's investigation to be well-founded and a potential breach of Good Medical Practice. It was not the role of the case Examiners to resolve the conflict of evidence. In due course the MPT did not find Dr R to be a credible witness.

71. As to contacting Dr H what the Respondent says is that this was yet another example of the Claimant seeking to protect Mr Motiwala. The Hollywood report considered it to be serious and to raise probity concerns.

72. In relation to each of these matters, the Claimant's successful defence of the proceedings depended crucially on the MPT accepting his evidence and (where relevant) rejecting that of the Respondent's witnesses. If the case could never have led to a finding of impairment, a "half-time submission" would be the usual course, that one was not made demonstrates that the Claimant's representatives knew that the MPT needed to hear the Claimant's account before determining the contested matters.

73. In our view the Claimant admitted that he had conducted an investigation to identify the author of the email, the 16 January incident was about an allegation of threatening or intimidating Mr Rao. They raised issues for the MPT to consider. The conclusion of the Tribunal is that there was no less favourable treatment. The MPT saw and heard witnesses, up until that point there been simply a paper exercise by the Case Examiners. The claims were considered potentially serious. In allowing them to proceed to the MPT there is no less favourable treatment.

Despite forming the view that Mr Rao was unreliable and conveying that view to Mr Laniado when ceasing the investigation against him in 2016 proceeding with the allegation concerning Mr Rao against the Claimant.

The failure to take account of the fact that the Trust ceased to investigate the disciplinary matters against the Claimant in May 2015 and determined there be no further action.

A failure to apply the Guidance contained in the Hooper report on the treatment of whistle blowers or to take account at any stage of the Claimant's status as a whistle blower.

74. The Claimant considers these matters together because of the relationship between them and says that the Hollywood Report expressed doubts about the reliability of AR and in particular concerning his evidence relating to the meeting of 16 January 2014 and Mr L. The Respondent then concluded that the complaint against Mr L concerning the meeting of 16 January 2014 was "not adverse" and did not pursue that allegation against Mr L any further. The Trust ceased its investigation of the Claimant following his resignation and settlement. Notwithstanding that the Trust had ceased its investigation, the Respondent did not reconsider or review the complaints against the Claimant. The Claimant further contends that he was a whistleblower, notwithstanding this, the Respondent paid no attention to the Hooper Report (2015).

75. The Respondent says, in relation to proceeding with the allegation in respect of AR, the draft allegation put to the Claimant stated that the request for his money back was made with the intention to threaten AR and/or intimidate him and

potentially a breach of paragraphs 36 and 37 of Good Medical Practice. The question of the Claimant's intention could only be determined by the MPT after hearing evidence.

76. As to the failure to take account of the Trust's decision to discontinue the disciplinary proceedings the Respondent states that it did take account of this in refusing the Claimant's request for an early review of his IOP conditions. The Trust did "*not come to any conclusion on the issues which were under investigation. ... The concerns therefore still remain*". The Respondent has an entirely distinct jurisdiction to protect the public.

77. Regarding the alleged failure to apply the Hooper Report Guidance the Respondent explains that the Hooper Report was delivered 19 March 2015 by which time the Claimant's case had been triaged and the investigation started. The Hooper Report was not applied retrospectively to any doctor.

78. The Tribunal is satisfied that there was a difference in the way that the Claimant was treated in contrast to Mr L. That is, despite forming the view that AR was unreliable and conveying that view to Mr L when ceasing the investigation against him in 2016, it proceeded with the allegation concerning AR against the Claimant. In respect of the other two matters set out above the Employment Tribunal did not find that there was any less favourable treatment of the Claimant.

The prolonged delay in dealing with the complaints against the Claimant. Delaying taking witness statements until 2016.

79. The Claimant contends that there was extraordinary delay in investigating and prosecuting the complaints against the Claimant totalling three and half years. The target time for completion of an investigation is 6 months for cases that are not expected to go to a MPT and 9 months if the case is such as to indicate that it might go to the MPT and 12 months for other cases. The Claimant states that the Respondent says it "*understands that being under investigation can be stressful and we will try our best to finish our investigation as soon as possible*". It is said that the explanations for the delay, (i) the investigation was complex and (ii) to ensure there was no duplication in the interviewing of witnesses, the Claimant's investigation should run parallel with the investigation against Mr Motiwala, are inadequate and incredible. The complaints against the Claimant and the investigation into them in fact were not complex. The Claimant says there was no basis for the delay and the explanations are not credible. The only proper inference is that this treatment was because of the Claimant's race and/or religion.

80. The Respondent contends that there were a number of reasons for the time taken in the investigation of the Claimant's case. The Respondent waited for the outcome of the Trust investigation. The Trust informed the Respondent of the outcome on 27 May 2015 and this accounts for seven months of the time taken. The investigation was complex because of the link to Mr Motiwala's case. 15 out of 32 witnesses were relevant to both the Claimant's and Mr Motiwala's cases. The Respondent points out that the Claimant accepted that it would not have

been appropriate to interview those witnesses separately in relation to his case and that of Mr Motiwala. The Respondent pointed to the Claimant's acceptance in questioning that a number of matters in his investigation were linked to Mr Motiwala. The Respondent's witnesses explained that the Claimant's case and Mr Motiwala were linked. A further period of 6 months was attributable to an error in triaging a matter in relation to Mr Motiwala which had previously been found to be not adverse and this accounted for a further six months because the cases of the Claimant and Mr Motiwala were linked. There were numerous other allegations, over and above the final allegations which were relatively short, considered as part of the investigation. Reading into these cases when Investigation officers changed took time. Delays are common in the Respondent's investigations of doctors of all races for a variety of reasons. The investigation plan produced by the Respondent shows interviews scheduled with witnesses from the beginning of May 2016, this cannot be described as a lengthy delay.

81. The Tribunal's conclusions are that the overall delay, the apparent tenacity in investigation of the peripheral complaints require explanation. A determination whether the explanation is a credible explanation for the delay must be made. We reject the contention that the allegations were complex. The allegations were simple allegations often involving allegations about the behaviour of the Claimant determined from a consideration what one person said and what the Claimant's explanation is. The final allegations, (a) being rude to a colleague (AR complaint), (b) exercising misjudgement in contacting Dr H for assistance in HM's investigation, (c) writing a memo indicating that the cancer was urethral and not penile (MDT), (d) pressurising Dr R to withdraw his statement to the Respondent; (e) investigating the authorship of the "*whistleblowing*" email, were not complex.
82. The Claimant had agreed the underlying facts into the allegations of being rude to a colleague (AR complaint); exercising misjudgement in contacting Dr H for assistance in HM's investigation; and investigating the authorship of the "*whistleblowing*". The Claimant did so at an early stage and there was little if any need for further investigation. All the evidence in substance relating to the AR complaint had therefore been obtained by December 2014; All the evidence in substance relating to the Dr H complaint had therefore been obtained by January 2015. All the evidence in substance relating to the authorship of the "*whistleblowing*" complaint had been obtained by July 2014. At the MPT, the witnesses called by the Respondent included Dr R, Dr Ho, Mr L, Dr H and JK whose evidence was available very early on and in respect of which there is nothing complex about their statements. In the period between 3 November 2014, the first triage decision, and the end of 2016, there appears to have been nothing done by the Respondent to progress the allegations against the Claimant. The Parm Sandhu, Spire Hospital allegations were resolved by 16 December 2015.
83. Of the allegations against Mr Motiwala two matters overlapped with the allegations against the Claimant, the allegation of manipulating waiting lists which the Hollywood Report found that there was no evidence of this in the case of the Claimant, in December 2014. The MDT matter was resolved in February 2014.

84. We reject the contention that the investigation was complex and note that the Trust investigation took up 7 Months, we also note that there was no third party investigation, e.g. police investigation that was awaited, there were no clinical concerns in the Claimant's case that required the use of expert evidence. The connection with the case of Mr Motiwala was a decision made by the Respondent, it was not essential, it was a choice made by the Respondent as to how this matter the Claimant's investigation was managed.
85. The delay caused real problems for the Claimant he was faced with a prolonged threat to his career and reputation, and the stress that accompanied it for a period of about three years. The Respondent did not appear to have a system for monitoring the length of time cases were in the system or these causes of any delay. No data that casts any light on the racial or other breakdown of those affected by delay has been produced other than the anecdotal evidence of Ms Farrell which appeared to show that there were other cases where there was delay in the conduct of cases.

Proceeding to the MPT hearing in March 2018.

86. The Claimant contends that in determining whether to proceed to an MPT there must be an assessment as against the "Realistic Prospect Test" which has two stages concerning (i) the factual allegations involving an analysis of the weight of the evidence; and (ii) the question whether if established, the facts would demonstrate that the practitioner's fitness to practise is impaired to a degree justifying action on a doctor's registration.
87. The Realistic Prospect Test assessment in the Claimant's case took place in March 2017. In respect of four of the allegations the Claimant argues that the evidence available could not meet the test, in one allegation the Respondent's assessment found it was unlikely to meet the test, in one allegation the seriousness of the allegation was questioned and an allegation depended on the credibility of a extremely reluctant witness.
88. The second stage of the Realistic Prospect Test inquiry concerns the test of fitness to practise, that involves considering the Guidance in Good Medical Practice to assess fitness to practise. The Respondent is not an employer, it is a regulatory body, matters of misconduct are matters for an employer. The guidance recognises this and a high threshold must be met if regulatory intervention is to be justified. The Claimant says that notwithstanding the weak evidential basis for the factual allegations draft charges were put to the Claimant and through his lawyers he provided a detailed rebuttal.
89. On 1 July 2017, a further Realistic Prospect Test assessment was undertaken that was identical in every respect to that undertaken in March 2017. The charges were nearly identical to the draft charges. The Claimant contends that having regard to matters identified in the Reasonable Prospect Test assessment, the charges were bound to fail. Notwithstanding this, the Respondent proceeded with a charge based on the allegation concerning Dr R, and called Dr R as a witness before the MPT. It also proceeded with a charge based on the AR complaint.

90. The Respondent replies that the Claimant admitted investigating the email from AR dated 10 November 2013. On the information before them and applying the Realistic Prospect Test, the Case Examiners were plainly entitled and correct to refer this to the MPT. The Case Examiners were looking at the particulars of allegation as a whole.
91. The Respondent states that the draft allegation relating to the 16 January 2014 incident with AR stated that the request for his money back was made with the intention to threaten AR and/or intimidate him. If that was made out and had taken place at a meeting with other colleagues about other matters in the canteen, it would plainly involve a breach of paragraphs 36 and 37 of Good Medical Practice and the question of Claimant's intention could only be determined by the MPT after hearing evidence from the Claimant.
92. The Hollywood Report found the allegation relating to Dr R, namely that the Claimant sought to interfere with the Respondent's investigation, to be well-founded and a potential breach of Good Medical Practice. The Respondent was aware that this matter would turn on Dr R's credibility as a witness. The Case Examiners noted that there was a "dispute about the facts" and a "conflict of evidence", but that it was not their role to resolve that. If made out, the allegation would be a serious matter since Dr R was doing his professional duty. Ultimately the MPT did not find Dr R to be a credible witness.
93. In respect of contacting Dr H, the Respondent says this was yet another example of the Claimant seeking to protect Mr Motiwala at a time when Mr Motiwala was prohibited from contacting referring GPs.
94. In relation to each of these matters, the Claimant's successful defence of the proceedings depended on the MPT accepting his evidence and (where relevant) rejecting that of the Respondent's witnesses. The Claimant's representatives did not make a submission of no case to answer at the MPT and the Respondent's witness Mr Jackson QC stated that if he considered that there was no proper basis for a finding of misconduct/impairment, he would have raised the matter with the Respondent and invite them to reconsider pursuing the case.
95. The Tribunal do not consider that there was any less favourable treatment in the Claimant's case being put to the MPT. The Case Examiners had come to the conclusion that there was a case which met the Realistic Prospects Test. The fact that significant elements of the case turned on the credibility of the witnesses meant that it was for the MPT to make a decision on the allegations. However, in respect of the manner in which the Respondent dealt with the AR allegations there was an inconsistency in the treatment of the Claimant and Mr L. In the Claimant's case the AR allegations were to be left to the MPT to determine. When in respect of the Respondent's assessment of what was substantially the same evidence in the case of Mr L the evidence was not considered sufficiently credible to be taken further.

By its conduct in the MPT hearing, including: not disclosing relevant evidence and witnesses statements; selective redaction of Mr Motiwala's statements; and by continuing to allege a lack of integrity after the charges against the Claimant were found not to be proven.

96. The Claimant contends that the Fitness to Practise Rules require that all documentary evidence *relating to* an allegation to go before the MPT must be disclosed. The Claimant pointed out in his statement that a voluminous amount of documentary evidence (including the AR tape) was not disclosed. That fact is not disputed. John Graves had conduct of the Claimant's case by this stage and he was unable to explain the absence of full disclosure.

97. The Respondent replies that the obligation to disclose relates only to the "allegation" put to the doctor, the disclosure obligation does not apply to all the evidence uncovered in the course of an investigation. The Claimant's lengthy list of matters he says the Respondent should have disclosed are not relevant to the allegation he faced, they relate to his character or clinical practice neither of which was in issue. The Claimant's representatives accepted in correspondence after the MPT hearing that any alleged non-disclosure did not "materially affect the outcome". As such, even if there were failures, they caused no detriment.

98. The Tribunal do not consider that there was less favourable treatment in the conduct of the MPT hearing. The evidence we have heard did not raise a concern that the presentation or conduct of the Claimant's case at the MPT was done in a way that was unfair or resulted in a detriment to the Claimant.

Conclusion

99. BME doctors are 29% of all UK doctors however employers make 42% of their complaints about BME doctors. UK graduate BME doctors are 50% more likely to get a sanction or warning than white doctors. There is a chart produced in the papers we were provided (D181) that illustrates the risk of different types and ages of doctors being complained about and of those complaints being investigated, by ethnicity and place of primary medical qualification, in 2010-2013. This further illustrates the position of adverse position of BME doctors when compared to white doctors. In carrying out its work in respect of the complaints about the Claimant the Respondent should have been conscious and aware of this background.

100. Mr Donnelly, an Investigation Manager, stated that he had equality and diversity training in 2014 or 2015, that the Respondent considers this mandatory, and there is refresher training every two years. He described the course as being about treating people fairly. Mr Donnelly had not done a course specifically on unconscious bias training but some of the training he has done does talk about that area. Case examiners receive training on unconscious bias but Mr Donnelly had not received it. The course that Mr Donnelly attended covered stereotyping. Mr Donnelly was not clear on whether he had read the Respondent's equal opportunity policy. When questioned by Ms Monaghan he said that the "*Equality Opportunity Policy sets out what discrimination means. It is some time since I*

read GMC policy. I am reluctant to state what it says. I may be referring the Equal Opportunity Strategy document."

101. Mr Smyth, Medical Case Examiner, stated that equality and diversity is a mandatory training for all staff. He referred to the Respondent's "*Equality, diversity and inclusion strategy 2018-2020*" pointing out that training is provided based on this document. He went on to say that he did not remember reading the document and accepted that it is a high level strategy document and not a training document. Mr Smyth at paragraph 23 of his witness statement recognised that BME doctors "*are more likely to be referred to the GMC for fitness to practise concerns than their peers... and more likely to be investigated by us and, ultimately, to receive a sanction.*" Mr Smyth stated that he thought that he had equality, diversity and inclusion training on 5 occasions or less in 14 years of employment with the Respondent and that this included unconscious bias training.
102. Ms Farrell, Assistant Director of Investigations, stated that she had equality and diversity training, she could not remember when this had taken place but stated that the Respondent has "*semi-regular training every two years*". Some of her training was online and some was face to face training. The online training takes about 1 hour, she stated that she had unconscious bias training, more than 2 years and less 5 years ago, the training covered stereotypes.
103. Mr Graves, an Investigations Officer, stated that he joined the Respondent in 2014 and that he did an induction course which included modules about treating people fairly, the training programme was mandated to take place every two years. He has not received unconscious bias training from the Respondent or training about stereotypes.
104. The Claimant states that the Respondent does not have an equal opportunities policy and says of the documents produced on equality and diversity that "*are high level strategy documents but they are not the policies one expects to see in employment related environments. This is significant for the drawing of inferences.*" The Claimant relies on EHRC Employment Code of Practice, paragraph 18.1 and 18.3 which points out that an equal opportunity policy is a way of ensuring an organisation checks itself against the possibility of discrimination occurring by stating in a policy the steps to be taken to minimise risk and promulgating the policy to those concerned. That has not happened here the Claimant says.
105. The Respondent replied that the criticism of the Respondent as having no equal opportunity policy is based on a misunderstanding, the Respondent as an employer has an equal opportunity policy, it was not asked to produce it therefore it was not provided. (We are unclear whether this was stated by any witness.) The Respondent goes on to state that there are a number of documents at L22-L28 which demonstrate a commitment to equality and diversity, rather than being subject to criticism of being high level strategy documents, they should be seen as showing how seriously the Respondent takes matters of equality and diversity.

106. The Respondent's witnesses and Ms Monaghan may or may not have been at cross purposes during her questioning of the witnesses when in discussion about equal opportunity policy and the question whether the Respondent had such a policy as Mr Hare contended. Whether Mr Hare is right or wrong about that we noted that the Respondent's witnesses were aware that BME doctors are more likely to be referred to the GMC for fitness to practise concerns than their peers and are more likely to be investigated by the GMC and, ultimately, to receive a sanction. The Tribunal was concerned that there was, in our view, a level of complacency about the operation of discrimination in the work of GMC or that there might be discrimination infecting the referral process. We formed this view after considering the answers given to the questions around the Respondent's equal opportunity policy, training around equality and diversity issues and the failure of all the witnesses to express how if at all the awareness of the overrepresentation of BME doctors in complaints to the GMC was considered in the investigation process at any stage or whether discrimination may have been a factor consciously or unconsciously in the allegations faced by the Claimant.
107. We are asked to make a comparison of the cases of Mr L and the Claimant. For this purpose we must be satisfied that there is no material difference between the circumstances relating to each case. We note that in the case of Mr L the Hollywood report found that there was an issue of probity and dishonesty in respect of the signing of the letter at the MDT. This is comparable to findings made in the Claimant's case by the Hollywood report on this issue. The Respondent considered that there was a link with the case of Mr L and Mr Motiwala as they did with the Claimant. In Mr L's case the Respondent considered that this need not hold up the index concerns, whilst in the Claimant's case, it remained linked to Mr Motiwala resulting in a significant further delay. In the case of Mr L the Respondent took into account that he was operating in a dysfunctional environment at the Trust, but in the Claimant's case any such recognition was not given the same weight.
108. We have come to the conclusion that there is a difference in the treatment of the Claimant in contrast to Mr L, a white doctor. We do not consider that there has been a credible explanation for the difference in the treatment. While the conclusions on the Hollywood Report may have justified no further action by the Trust in respect of Mr L, where substantially the same matters arise in the case of the Claimant and Mr L we would expect to see them treated in substantially the same way. They were not, in the case of the Claimant the AR incident continued under investigation and in Mr L case the matter was not continued by the Respondent it was referred back to the Trust.
109. The Tribunal consider that the way that the Respondent dealt with the allegations made by Mr Charig concerning alleged events at the Spire Hospital suggests that the Respondent was looking for material to support allegations against the Claimant rather than fairly assessing matters presented. While the Respondent can be excused for not going behind the allegations made by an employer and taking them at face value it must have to give those allegations a fair review and proper investigation.

110. There was a significant delay in this case. The Respondent received the Roche report in October 2014 and the Hollywood Report in December 2014, the Claimant's case was not concluded until April 2018. Much of the delay in this case arose from the linking of the Claimant's case to that of Mr Motiwala. Some of the delay arose due to the time that the Trust took to conclude its internal investigations. However, the Tribunal is of the view that the link between the Claimant's case and Mr Motiwala's case was a matter of convenience, it was not necessary for justice to be done in either case that they were linked. The administrative convenience of linking the cases for the purposes of the investigation is extinguished when the investigation is concluded in either case. In the Claimant's case much of the evidence was available from an early stage.
111. The Tribunal was concerned that there is a level of complacency about the possibility of the operation of discrimination in the referral made to the GMC. The Tribunal noted that the answers given to the questions of the Tribunal about the equal opportunity policy.
112. Taking all these matters into account we have come to the conclusion that there was less favourable treatment of the claimant in the way that he was treated in contrast to Mr L and also in the delay in dealing with his case. Taking into all the evidence including the statistical evidence about race which show a higher degree of adverse outcomes for BME doctors we consider that there is evidence from which we could conclude that the difference in treatment of the Claimant in comparison with Mr L and the delay were on the grounds of his race. We have not been able to conclude that we accept the explanations provided by the Respondent for the difference in treatment as showing that the Claimant's race did not form part of the considerations. The circumstances we have come to the conclusion that the Claimant's complaint of race discrimination is well founded.
113. While there was statistical evidence underpinning the Claimant's case on race there was no similar evidence in respect of religion. We did not consider that the Claimant's religion is likely to have been a factor in the less favourable treatment of the Claimant.

Directions

114. The parties are to send to the Employment Tribunal, within 28 days of the date that this judgment is sent to the parties their dates to avoid for listing of a remedy hearing with a proposed time allocation for such a hearing.



Employment Judge Gumbiti-Zimuto
Date: 7 June 2021

Sent to the parties on: .16 June 2021...
THY

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For the Tribunals Office

Public access to employment tribunal decisions:

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.