THE EMPLOYMENT TRIBUNALS

Claimant **Dr R Gunny**

Respondent **(1) Great Ormond Street Hospital for Children NHS Foundation Trust**
(2) Dr WK 'Kling' Chong

HELD AT: **London Central**

ON: **10 November to 1 December 2017**

Employment Judge: Mr J Tayler **Members: Mrs J Cameron**
Mr S Ferns

Appearances

For Claimant: **Ms S Jolly, Queen's Counsel**
For Respondent: **(1) Mr A Allen, Counsel**
(2) Ms C Harrington, Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is that the Claimant was subject to sex discrimination, harassment and victimisation in the manner set out in the reasons.

REASONS

Introduction

1. The Claimant brings complaints of sex discrimination, harassment and victimisation arising out of her treatment on her return to work with the Respondent after maternity leave.

Issues

2. The issues for determination were set out in a List of Issues, that was modified during the course of the hearing, and an final agreed Table of Allegations

Evidence

3. The Claimant gave evidence on his own behalf.

4. The Claimant called:

   4.1 Dr Wendy Jane Taylor

5. The Respondents called:

   5.1 Dr Kshitij ('Kish') Mankad, Consultant Neuroradiologist

   5.2 Dr Wui Khean 'Kling' Chong, Consultant Paediatric Neuroradiologist

   5.3
   1.1 Dr Jane Valente, Consultant General Paediatrician

   1.2 Miss Sarah James, Division General Manager for Neurosciences

   1.1 Loretta Seamer, Chief Finance Officer

2. The witnesses who gave evidence before us did so from written witness statements. They were subject to cross-examination, questioning by the Tribunal and, where appropriate, re-examination.

3. We were provided with an agreed bundle of documents. References to page numbers in this Judgment are to the page number in the agreed bundle of documents.

The Law

4. Sex is a protected characteristic for the purposes of the Equality Act 2010. ("EqA").

5. The Employment Appeal Tribunal in the **Law Society v Bahl** [2003] IRLR 640, made this simple point, at paragraph 91:

> "It is trite but true that the starting point of all tribunals is that they must remember that they are concerned with the rooting out certain forms of discriminatory treatment. If they forget that fundamental fact, then they are likely to slip into error".

6. The provisions are designed to combat discrimination. It is not possible to infer unlawful discrimination merely from the fact that an employer has acted unreasonably: see **Glasgow City Council v Zafar** [1998] ICR 120. Tribunals should not reach findings of discrimination as a form of punishment because they consider that the employer's procedures or practices are unsatisfactory; or that their commitment to equality is poor; see **Seldon v Clarkson, Wright & Jakes** [2009] IRLR 267.

7. Direct discrimination is defined by Section 13 EQA:

> **13 Direct discrimination**
>
> (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.

8. Section 23 EQA provides that a comparison for the purposes of Section 13 must be such that there are no material differences between the circumstances in each case. In **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 Lord Scott noted that this means, in most cases, the Tribunal should consider how the Claimant would have been treated if she had not had the protected characteristic. This is often referred to as relying upon a hypothetical comparator.

9. Since exact comparators within the meaning of section 23 EQA are rare, it is may be appropriate for a Tribunal to draw inferences from the actual treatment of a near-comparator to decide how an employer would have treated a hypothetical comparator: see **CP Regents Park Two Ltd v Ilyas** [2015] All ER (D) 196 (Jul).

10. Section 39 EQA provides that an employer must not victimise or discriminate against an employee by subjecting him to a detriment (section 39(4)(d) and section 39(2)(d).

11. Section 27 EqA provides that:

> 27(1) A person (A) victimises another person (B) if A subjects B to a detriment because—
> (a) B does a protected act, or
> (2) Each of the following is a protected act—
> (a) bringing proceedings under this Act; …
> (d) making an allegation (whether or not express) that A or another person has contravened this Act.

12. The protection against victimisation is an important aspect of ensuring that individuals can assert their right not to be subject to unlawful discrimination.

13. The Courts have long been aware of the difficulties that face Claimants in bringing discrimination claims and of the importance of drawing inferences: **King v The Great Britain-China Centre** [1992] ICR 516. Statutory provision for the reversal of the burden of proof is now made by Section 136 EQA:

> 136 Burden of proof
>
> (1) This section applies to any proceedings relating to a contravention of this Act.
> (2) 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.
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

14. Guidance on the reversal of the burden of proof was given in **Igen v Wong** [2005] IRLR 258. It has repeatedly been approved thereafter: see **Madarassy v Nomura International Plc** [2007] ICR 867[1]. The guidance may be summarised in two stages: (a) the Claimant must established on the totality of the evidence, on the balance of probabilities, facts from which the Tribunal 'could conclude in the absence of an adequate explanation' that the Respondent had discriminated against her. This means that there must be a 'prima facie case' of discrimination including less favourable treatment than a comparator (actual or hypothetical) with circumstances materially the same as the Claimant's, and facts from which the Tribunal could infer that this less favourable treatment was because of the protected characteristic; (b) if this is established, the Respondent must prove that the less favourable treatment was in no sense whatever on the grounds of race or gender.

15. To establish discrimination, the discriminatory reason for the conduct need not be the sole or even the principal reason for the discrimination; it is enough that it is a contributing cause in the sense of a significant influence: see Lord Nicholls in **Nagarajan v London Regional Transport** [1999] IRLR 572 at 576.

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[1] The Court of Appeal confirmed in **Ayodele v Citlink Ltd v Napier** [2017] EWCA Civ 1913 that **Efobi v Royal Mail** UKEAT/0203/16/DA was wrongly decided on the section 136 issue.

16. There may be circumstances in which it is possible to make clear determinations as to the reason for treatment so that there is no need to rely on the section: see **Amnesty International v Ahmed** [2009] ICR 1450 and **Martin v Devonshires Solicitors** [2011] ICR 352 as approved in **Hewage v Grampian Health Board** [2012] ICR 1054. However, if this approach is adopted it is important that the Tribunal does not fall into the error of looking only for the principal reason for the treatment but properly analyses whether discrimination was to any extent an effective cause of the reason for the treatment.

17. The tribunal's focus "must at all times be the question whether or not they can properly and fairly infer… discrimination.": **Laing v Manchester City Council**, EAT at paragraph 75.

18. In considering what inferences can be drawn, tribunals must adopt a holistic approach, by stepping back and looking at all the facts in the round, and not focussing only on the detail of the various individual acts of discrimination. We must "see both the wood and the trees": **Fraser v University of Leicester** UKEAT/0155/13 at paragraph 79,

19. The time limit in which complaints of discrimination should be brought is set out in Section 123 of the EqA:

> "(1) … proceedings on a complaint … may not be brought after the end of—
>
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or
> (b) such other period as the Employment Tribunal thinks just and equitable.
>
> …
> (3) For the purposes of this section—
>
> (a) conduct extending over a period is to be treated as done at the end of the period;"

20. The time limit is adjusted to take account of pre-claim conciliation.

21. In considering whether it is just and equitable to extend time the Tribunal should have regard to the fact that the time limits are relatively short. Extension of time should be the exception, although the Tribunal has a broad discretion to extend time when there is a good reason for so doing: **Robertson v Bexley Community Centre (t/a Leisure Link)** [2003] IRLR 434. The fact that an employee is pursuing an internal grievance or other procedures is a factor that may be taken into account in determining whether time should be extended: **Apelogun-Gabriels v Lambeth London** BC [2002] ICR 713.

Findings of Fact

22. The Claimant started work at the first Respondent as a registrar in 2003. On 11 October 2004, the Claimant was employed by the first Respondent as a consultant in neuroradiology. The neuroradiology department undertakes highly specialist work, principally interpreting MRI and CT scans of the head and neck. Generally, the work does not involve interaction with patients.

23. On 11 November 2013, the Claimant commenced a period of maternity leave.

24. The second Respondent joined the first Respondent in 1994. He has at various times been the speciality lead for neuroradiology. At the time, the Claimant commenced her maternity leave the second Respondent had ceased being the speciality lead; but was responsible for the rota; and was a very senior member of the neuroradiology department.

25. The Claimant described the department at this time as being in a "high conflict situation". Unfortunately, the neuroradiology department has for many years suffered from factionalism with a culture of complaints and counter-complaints. The department has been characterised by conflict of a nature and intensity that would not be expected in a professional working environment. The second Respondent has played a significant role in that conflict.

26. Dealing with these conflicts in broadly chronological order. We heard evidence from Dr Taylor. She joined the neuroradiology department in 1994. She had a contract under which she worked 50% for the first Respondent and 50% at Queen's Square. Due to a dispute with the male surgeons at Queen's Square she decided to resign and asked to work 100% at the first Respondent. The second Respondent was against this idea as he felt that Dr Taylor's specialist area, interventional neuroradiology, would not provide sufficient work for a full-time member of staff. We did not consider that this dispute was of relevance to the dispute that later occurred with the Claimant.

27. A significant dispute with another consultant neuroradiologist, Dr Owens, arose out of a relatively minor matter about claims for payment of the congestion charge. The second Respondent told us that the charge could only be claimed if a consultant had to bring a specific weight of files into the hospital. It was suggested that Dr Owens had improperly claimed the congestion charge. This led to an investigation by the first Respondent's anti-fraud team which concluded that there had been inappropriate claims. However, it was decided in 2008 that no disciplinary action would be taken against Dr Owens. This was part of the background to a meeting of the radiology department on 5 March 2010 at which there was reference to attempts by mediators to address the long-standing issues about "team working and personal behaviours within the consultant body", P2159. At the meeting, it was stated that the congestion charge issue remained the "elephant in the room". It was noted at the meeting that generic themes included "factions". It was stated that there was a perception of a "dysfunctional department". Mediation was suggested. Dr Owens was considering raising a grievance at about this time. A letter of complaint was sent to the GMC by a number of consultants on 6 May 2010, raising the

congestion charge issue, although a decision had been taken back in 2008 that no disciplinary action would be taken, P2163. Both the second Respondent and the Claimant were signatories to the letter. We consider that the letter to the GMC shows a culture of complaint being met with counter-complaint. The GMC commenced an investigation. Dr Owens applied for judicial review. It was subsequently accepted that Dr Owens had been fully exonerated.

28. A friend and colleague of Dr Owens, Professor Rosendahl, complained to the GMC about the second Respondent on 18 June 2010, alleging that the second Respondent had told her "in confidence" during an appraisal that Dr Owens guilty of fraud and that the second Respondent had sought to recruit her to his personal campaign against Dr Owens, P1473. Professor Rosendahl wrote again on 9 January 2012 alleging that Dr Owens had been bullied and harassed by the second Respondent for a number of years, P251.

29. On 5 July 2011 Dr Ording Muller complained that the second Respondent had had offered to show her a police report in respect of the allegations against Dr Owens and subsequently had criticised her on the basis that she had told a colleague about their conversation. Dr Ording Muller stated that she had told the second Respondent that she thought it was wrong of him, in his position as unit lead, to offer to show her police report about Dr Owens that could influence her to think less highly of Dr Owens. This is an example of factionalism in the department and of the tendency of the second Respondent to attempt to recruit people to his way of thinking

30. There was a significant dispute between the second Respondent and another consultant neuroradiologist, Dr Saunders. Dr Saunders had a first period of maternity leave in 2005 and a second period of maternity leave in 2008. Thereafter, her relationship with the second Respondent had deteriorated. The second Respondent had raised concerns about her commitment and capability. Dr Saunders submitted a grievance against the second Respondent under the first Respondent's Harassment and Bullying Policy on 26 March 2013, P254. In the grievance Dr Saunders alleged, amongst other things, that the second Respondent had spread gossip about her, had emphasised minor errors to undermine her position, had isolated and ignored her, had not listened to her point of view, had raised minor typographical errors and had sought to get others involved in her specialist area of work. The types of complaints that she raised were very similar to the types of allegations the Claimant has subsequently raised in these proceedings. Dr Saunders grievance was dismissed. Dr Saunders did not claim that she had been subject to sex or maternity discrimination. The Claimant supported the second Respondent in his defence of the complaint brought against him. She was, at the time, unsympathetic to Dr Saunders and considered that there were issues with her capability. Subsequently, the Claimant has revised her views. We accept her evidence that Dr Saunders has told her that at the time she raised a grievance she considered that being female and a working mother was a factor in her treatment. We also accept the Claimant's evidence that during the investigation of Dr Saunders grievance Dr Chong was asked when the relationship had started to deteriorate and said to the Claimant that he thought it had been after Dr Saunders had children.

31. A component of the dispute with Dr Saunders was a concern that she was not doing her full share of work and was not complying with departmental procedures. As part of an attempt at mediation, it was agreed that a Standard Operating Procedure ("SOP") would be introduced. This set out, in highly detailed terms, what would be expected of consultants in the neuroradiology department. It was principally a mechanism to check on Dr Saunders, with the possibility of action being taken against her if she failed to comply the detailed provisions of the SOP.

32. Dr Jan, started as a locum consultant in November 2013, partly to cover the Claimant's maternity leave. Other parts of the Claimant's role were covered by another locum, Dr Ash Ederies

33. Just after the Claimant had commenced maternity leave the SOP was signed by Dr Mankad on behalf of the second Respondent, Dr Mankad himself, Dr Ederies and Dr Jan (P410; the signed copy was produced as an additional document). It was noted on the SOP that the Claimant was on maternity leave and so had not signed. It was also noted, that Dr Saunders was on sick leave. Her health had deteriorated and she had commenced what was to become a period of long-term sickness.

34. When the Claimant's maternity leave commenced relations between the Claimant and the second Respondent were reasonably good. They had not yet come into conflict. The Claimant had been, to an extent, part of the second Respondent's faction.

35. A number of the consultants in the neuroradiology department carry out private work at the Portland Hospital. On 2 January 2014, the second Respondent wrote an email to the Claimant asking whether she would be able to start reporting at the Portland from 10 January 2014, P376. The Claimant confirmed that she would, and arrangements were put in place.

36. In March 2014, the Claimant met with the second Respondent and Dr Mankad at a cafe in the British Museum and discussed plans for the Department and the Claimant's return. Dr Mankad stated in passing that he had been appointed as Acting Lead for Neuroradiology. The Claimant was disappointed that she had not been considered for this role. She has withdrawn her complaint against the second Respondent about Dr Mankad's appointment to the acting role.

37. In May 2004, a suggestion was made to change the time one of the epilepsy multidisciplinary team (MDT) meetings. The Claimant had specialised in epilepsy. When she went on to maternity leave she was responsible for three epilepsy MDT weekly meetings known as Epi 1, Epi 2 and CESS. The suggestion was to change the time of the CESS meeting to Friday morning. That would have been inconvenient for the Claimant on her return from maternity leave. The second Respondent objected to the proposal as he anticipated that the Claimant would continue to lead that meeting.

38. As part of the SOP it was identified that the MDT meetings were not equally divided. The second Respondent led one weekly meeting, neurology. Dr Mankad led one weekly meeting, neuro oncology. There were more MDT meetings in the Claimant's specialist area than in the specialist areas of the second Respondent and Dr Mankad.

39. In August 2014, there were email exchanges between the second Respondent and the Claimant that are fundamental to understanding this dispute. In reaching our factual conclusions about those emails we have had regard to the totality of the evidence and have analysed them in that context. That is important in considering what was meant by the words that were used; although, in large part, we consider that their meaning is clear; the emails mean what they say.

40. On 27 August 2014 at 7:53 PM the second Respondent sent an email to Dr Mankad and the Claimant, P1521. He started off by saying:

> "As discussed. We have decided to prepare a 'Breach document' in anticipation of next week's meeting with Cathy Cale."

41. Attached to the email was a copy of the SOP and the "breach document". The breach document set standards to determine whether there had been a failure to comply with the SOP. It is an extraordinary document. For example, a breach would occur if a person was one minute late for an MDT meeting with "zero tolerance" for such a breach. Zero tolerance was the benchmark for every entry on the breach document. The final measure was described as "behaviours attitude" with a requirement there should not be "an[y] form of bad behaviour (direct/indirect, spoken/implicated/written) that comes to notice"; with zero tolerance. The document was designed to catch out Dr Saunders on her return from sickness so that she could be subject of disciplinary action for any minor infraction of the SOP.

42. The second Respondent went on to state:

> "I have also drafted Job plans for a proposed team of 5 members on the following principles:
>
> - Maximal separation between DS and each of the three of Us whenever possible
> - Concordance with existing Job Plans
> - Maintaining existing leads on MDTs"

43. Job plans were attached to the email. Although it was stated that the principal would be maintaining existing leads on MDTs the Claimant was no longer to be lead for the Epi 2 MDT, although she would be the overall lead epilepsy.

44. The second Respondent stated:

> "Rox, I had two uncertainties in preparing your timetable. You should have another 0.5 SPA indicated *IF* your DCC PA times are 9 - 5 instead of 8 - 6. Also you could consider passing on one/both of your monthly MDTs to the 5th consultant."

45. DCC is an acronym for Direct Clinical Care. SPA is an acronym for Supporting Professional Activities; time set aside for activities that support a consultant's professional development, including keeping up-to-date with medical journals, writing and teaching. There was a concern that some consultants were using SPA time to undertake their private practice.

46. Prior to her maternity leave the Claimant undertook her duties at the first Respondent, for a total of 40 hours per week, by working for long days 8am to 6pm for four days each week. The Claimant had not suggested to the second Respondent that she was intending to reduce her hours. She had made it clear that she wished to return to her full role.

47. On 28 August 2014 at 7:46 AM the Claimant sent a first email response in which she stated P1522:

> "Ok this will take a bit of time to figure out! Happy to devolve some MDT but not epilepsy?"

48. In writing this email we do not accept the suggestion that the Claimant was accepting the possibility of giving up an epilepsy MDT, but was raising the possibility of giving up some other MDT or MDTs: the question mark at the end of the sentence meant "is that okay".

49. The Claimant sent a second email at 9:33 AM stating, P1522:

> "Re: DCC - yes 9-5 would now be more manageable for me but I can't fit this in easily. I have to find 30 hrs of DCC in the week. Open to suggestions on how (I don't want to give up Uch or tues pm but could put some DCC work into Monday as long as it is accepted I don't need to be on site for all SPA work).

50. The Respondents have contended that the Claimant was stating that she wished to change her working hours to 9 to 5. While she thought that would be more manageable for her, she made it clear that she did not think that it could easily be done. She did not suggest that she wished to give up any of her work. She noted that she needed to find 30 hours of DCC time each week. She was open to suggestions as to how this DCC work could be fitted into the week. She noted that she did not wish to give up her work at University College Hospital or stop taking Tuesday afternoons off. The Claimant suggested the possibility that she might do some SPA work off-site. We accept that her view was that her duties were such that the second Respondent's suggestion of moving to work 9 to 5 would probably not be workable.

51. The second Respondent replied at 12:21pm with a lengthy email that he must have taken some significant time in drafting: P1523. He started by stating:

> "You may need to seriously rethink your life priorities with this one! There was an element of this with Dawn and I wouldn't want you to end up going down the same path."

52. In his oral evidence the second Respondent described these two sentences as an attention-grabbing headline. We consider, against the backdrop of the totality of the evidence, the meaning is clear. The second Respondent in referring to "life priorities" was specifically referring to his perception that there would necessarily be a change in the Claimant's priorities as a result having had a baby. The second Respondent believed that the Claimant would not be able to continue with the totality of her previous professional obligation as a new mother. He assumed that the Claimant must be intending to reduce her work hours; whereas we consider that the Claimant had made it clear that she thought that this probably could not be done. The second Respondent found it very difficult in his evidence to explain why he felt he needed such an attention-grabbing headline referring to Dr Saunders. We consider that he felt that Dr Saunder's problems had arisen from her seeking to undertake too many professional activities as a working mother which had, in his perception, led to a deterioration in her performance. The second Respondent found it difficult to explain what the "this" was in comment "there was an element of this with Dawn". We consider that "this" is a reference to her seeking to maintain what he considered were too many professional obligations as a working mother. When the second Respondent stated "I wouldn't want you to end up going down the same path" this was a straightforward threat to the Claimant. Dr Saunders had been off sick for a year and relations with her in the department had all but broken down. The second Respondent was suggesting that was the future that awaited the Claimant if she sought to maintain her full workload.

53. In the next sentence, the second Respondent effectively stated that he thought it would be unrealistic for the Claimant to continue with the full range of work she had undertaken before her maternity leave:

> "You are effectively signing yourself up to a contract which is going to be challenging to sustain in the long term"

54. He went on to refer to the intention of management to ensure that SPA time was properly used; meaning that generally it would have to occur on site.

55. The second Respondent referred to the Claimant's roles at the first Respondent, the Portland Hospital, UCL and West Mid and stated:

> "The choice would depend on your priorities."

56. This was a reference to the Claimant's priorities as a woman returning from maternity leave, which the second Respondent believed would necessitate a reduction in her workload.

57. The second Respondent referred to a number of potential new opportunities. However, we consider that that was against a backdrop of him suggesting that, overall, the Claimant should be looking to reduce her work on return from maternity leave.

58. The second Respondent went on to state:

> "So the broad categories are:
>
> - Earning good money
> - Time for family and personal life
> - Developing & Maintaining a reputation / leadership role"

59. Again, this demonstrates his view that as a returning mother there would have to be a change of priorities to allow additional time for "family and personal life".

60. The second Respondent went on:

> "You can pretty much guarantee that your professional life will be interesting and challenging! I guess in the end it may depend on which aspects you can feel comfortable and not resent giving up (eventually, this also means giving it to someone else)

61. We consider it is clear that the second Respondent felt that on returning from maternity leave the Claimant must necessarily be going to "give up" some of her work.

62. The second Respondent concluded by stating:

> "In the end it's your call, but if you would like to explore more 'team' based solutions we'd need to bring in Kish at some stage. Either way, the pressures of your existing commitments in the 'do nothing' option might risk your sanity!"

63. While we accept that there was likely to be some redistribution of work as a result of the SOP and the appointment of a fifth consultant, we do not consider that was what the second Respondent was referring to in this comment. He was referring to the Claimant seeking to maintain her professional duties on return from maternity leave and his belief that retaining them all would be too much for her. The reference to "sanity" was particularly stark in circumstances where Dr Saunders, who the second Respondent felt had similarly tried to maintain an excessive workload as a working mother, had been off sick for a year.

64. The Claimant replied at 12:50 PM stating (1526):

> "Yes I know most of this and thanks for general advice. I was responding to your initial comment *if* I was 9-5. At the moment I have planned childcare around my existing week including extended days."

65. We do not accept the Respondents' suggestion that this shows that the Claimant was happy with the email that the second Respondent had sent. We consider that the "thanks for general advice" was ironic. The Claimant was keen to avoid direct confrontation with the second Respondent. However, she made it clear that she had only been responding to the suggestion that the second Respondent had made that she might move to work 9 to 5.

66. The Claimant responded to the breach document in a separate email chain. On 28 August 2014, at 14:16, the Claimant sent an email to the second Respondent and Dr Mankad:

> "Ok re: master document - I can accept only about 50 per cent of the statements (or their limits), the ones I consider relevant to a professional, quality driven service. A lot of these are not and are unreasonable/ unworkable. Sorry, that's just my opinion."

67. The second Respondent replied at 5:15pm, P423:

> "The same standards will apply to all of us, including Dawn of course."

68. The Claimant replied on 30 August 2014, P422:

> "Well of course I can't stop you discussing it at your meeting. However the document at present looks too punitive and if I may say so a bit petty"

69. That was an understatement.

70. The meeting with management took place on 3 September 2014. The second Respondent summarised the meeting in an email he sent at 5:33 PM, P420:

> "Cathy started with a summary of the current position as seen by management which was in essence that there was no good reason why Dawn should not return to work. The summary of the Trust position was that there was insufficient evidence to take any other action. She said that historical matters had to be put aside and 'we need to move on'.
>
> The next few minutes then led to a rather blunt threat to us, based on their perception that we had been obstructive and unprofessional in our conduct with regard to Dawn's return. …

> Once she had finished, I realised that there had been no mention of the issues of competency. Kish and I then started quoting examples from the whole timeline of competency issues. We followed it up with a reminder of the activities that DS had been involved in during her period of illness (lectures, papers and medicolegal work)."

71. This was another example of the second Respondent meeting complaint with counter- complaint, that included a suggestion that Dr Saunders had been carrying out work for others while absent from the first Respondent which had been discovered by monitoring her.

72. The email exchange between the Claimant and the second Respondent was a catalyst to a breakdown in relations between them. However, the process was not immediate; and they continued to have some normal professional interactions for a few months.

73. The Claimant alleges that in September and October 2014 the second Respondent sought to exclude her from a short-listing process for a new consultant neuroradiologist role. On 25 September 2014, the Claimant sent an email to the second Respondent stating that she understood that applications had been received for a new post and that she would like to be involved in short listing on her return, P1540. The Claimant did not receive a response as the second Respondent was on holiday. The Claimant chased on 28 September 2014. The second Respondent replied on 30 September 2014 stating that the shortlisting pack had been sent out but that he would ask whether the Claimant could be involved in short listing, if not on the interview panel. The second Respondent was informed that there could be only one member of the Department on the shortlisting panel. The Claimant asked for copies of the CV's. These were provided by the second Respondent. This resulted in an email from Dr Melanie Hiorns, Divisional Director for MDTS, who stated P1538:

> "Dear Both, Whilst I completely know you are all anxious to get a good colleague it unfortunately isn't the case that this a democratic group 'vote'. The CVs are confidential to the applicant and the panel and shouldn't go further than that. Its too late now but please don't tell me you've done this, and please don't discuss or pass them on. They are not public information, HR would take a fairly strong line on this and there could be all sorts of trouble."

74. It appears that members of the Department considered it was appropriate to have a group discussion about who would be recruited. Dr Hiorns was determined to put a stop to this. We do not accept that the second Respondent sought to exclude the Claimant from the recruitment process.

75. There was a requirement for the candidate to have sub-speciality training in neuroradiology "or equivalent". The Claimant was concerned about the use of the term "or equivalent". If the term was included Dr Jan would be able to apply; if not, she could not, as she did not have such speciality training. We consider that a part of the Claimant's reluctance to have the term "or equivalent" included was a concern on her part that second Respondent might

be planning to transfer part of her epilepsy speciality to Dr Jan. This was a result of what he had said in his emails in August 2014. She was determined that this should not happen. This, in part, also explains why the Claimant passed on to Dr Mankad negative comments that had been made by former colleagues about Dr Jan. This was not going to be the basis of a good working relationship between the Claimant and Dr Jan. The Claimant's fear of Dr Jan taking some of the epilepsy work was increased by the fact that she had herself obtained it during Dr Saunders maternity leave, and it had not been returned to Dr Saunders.

76. The Claimant returned from maternity leave on 8 October 2014. Because of the email exchange on 27 and 28 August 2014, she was understandably concerned that the second Respondent was seeking to take work away from her because he thought that she would not be able to continue with her full workload on return from maternity leave. The second Respondent, was oblivious to these concerns. In these proceedings, he has demonstrated his inability to see how his actions affect others.

77. The Claimant states that the second Respondent stated, when asked how things had been while the Claimant was away on maternity leave, "it was good with the three of us" and "it was good when you weren't here". The Claimant does not have a contemporaneous record of the exact words used. We accept the evidence of the second Respondent that he said that things had been good while the Claimant was away, by which he meant that the department had not fallen apart and had functioned properly. While a more subtle person might have made it clear the Claimant had been missed and was welcome back, we do not consider that the second Respondent was seeking to imply that had been better *because* the Claimant was absent. While he thought she would have to reduce her workload as a new mother he had no concern about her capability. He thought highly of her skills.

78. The Claimant attended a neurology meeting on 8 October 2014. The second Respondent discussed some scans. The Claimant had not been involved in reporting the scans. When questioned by the Claimant the second Respondent was somewhat abrupt and reluctant to put the scans up for viewing. He eventually agreed to do so, and the Claimant provided her diagnosis. A colleague Dr Robinson said to the Claimant words to the effect "nothing seems to have changed then". We consider that this was no more than a reference to the second Respondent's occasionally brusque manner with all consultants. We do not accept that the second Respondent was, on this occasion, treating the Claimant any differently than he would other consultants, including male consultants.

79. The Claimant states that on 9 October 2014 she noticed when looking at the notice board that her job plan still did not include her as lead for the Epi 2 meeting. That part of the draft sent her in August 2014 had not been changed. As the Claimant was looking at the notice board the second Respondent walked past. There was a discussion about the Epi 2 meeting. The second Respondent stated it had been going better while the Claimant was away. However, again, we do not consider that the second Respondent was saying it was better because the Claimant had been away. While we accept that the

second Respondent thought that the Claimant would have to reduce her workload on returning from maternity leave he had no complaint about her performance and had no reason to suggest that the meeting would run better in her absence. The Claimant interpreted the comment as a criticism because she was understandably nervous on her return that there had been a change in the second Respondent's perception of her, although we consider this was only in respect of her ability to cover her full workload, rather than capability.

80. On either 8 or 9 October 2014, the Claimant went to the reporting room for the first session since her return. She saw a free workstation and was about to start working when Dr Jan arrived and told her that there was a new seating plan and that she should be working at a different workstation. Dr Jan was not impolite. The Claimant was annoyed and said that she would work where she wanted to in a brusque manner. This was an unfortunate initial interaction. We do not accept that there was an attempt to side-line the Claimant by reason of the workstation that was allocated to her.

81. On 13 October 2014, the Claimant sent an email, P433 stating:

> "This is just to confirm I will be taking all of the epilepsy meetings including the ESM, a continuation of my role prior to leaving for maternity leave, and as discussed with Kling on Thursday."

82. The second Respondent agreed that the Claimant would continue to lead on all the epilepsy MDT meetings.

83. There is a text exchange on 21 October 2014, P1511, that demonstrates that the Claimant and the second Respondent were still communicating to arrange a meeting for lunch.

84. Towards the end of October, or early November 2014, the Claimant, the second Respondent and Dr Mankad met for a coffee at the Institute of Child Health. The Claimant raised her concerns about her return from maternity leave, including her concern that there was an attempt to take the epilepsy lead from her. This came as a surprise to the second Respondent, who did not realise that there was a problem. We consider it is more likely than not that he did say words to affect he didn't want the Claimant to be another Dawn. This chimes with the comment that he had made in his email of 28 August 2014. It was after this meeting that he became more confrontational with the Claimant.

85. The Claimant alleges that towards the end of October 2014 the second Respondent said in respect of one of the candidates for the new neuroradiology consultant post, Steffi Thust, "We don't want Steffi because she'll have childcare issues". On balance of probabilities we do not accept that this comment was made. The second Respondent had written an extremely positive reference for Dr Thust and was very positive about her joining the Department, considering her to be the star candidate. It would be inconsistent with this for him to save that they did not want Dr Thust.

86. The Claimant also alleges that Dr Mankad said on a number of occasions "we don't want another woman". On balance, do not accept that these comments were made. Dr Mankad has children and his wife is a consultant at the first Respondent who returned to work after having children. We accept his evidence that he is positive about her so doing and does not hold the views that it is alleged that he expressed. We do not accept that the rather vague evidence of the Claimant establishes that the second Respondent said on a number of occasions that are not specified that "women are not the same after they have children".

87. At the time that Dr Thust was appointed there was a plan for a fifth neuroradiology consultant to be appointed. The second Respondent considered it would assist his argument for the appointment were Dr Thust to portray herself as being junior and for her to emphasise the extent to which she would require supervision. The second Respondent met with Dr Thust and suggested that she should so portray herself in a meeting with management. This, understandably, made her extremely uncomfortable. She decided to withdraw from the role as she had a good chance of appointment to a role at Queen's Square where she had been a locum consultant. No doubt, she was motivated in giving up what she had described as her dream job by the second Respondent's strange, and inappropriate, request that she should tell management that she viewed herself as junior. However, we do not consider that this arose from her gender or the fact that she has children, but from the fact that he wanted the role to be portrayed as junior in support of his arguments for a fifth consultant.

88. Dr Mankad states that by January relations between the Claimant and second Respondent deteriorated to the extent that he recalls the second Respondent saying to the Claimant "I feel bullied by you in the multidisciplinary meetings". We consider that after the meeting at the Institute of Child Health the second Respondent realised that the Claimant was unhappy about his actions just before and on her return from maternity leave and that there was increasing tension between them, including in the multidisciplinary meetings. We consider his suggestion that he was being bullied was an example of complaint being met by counter-complaint. At about this time, he suggested that the Claimant takeover the neurosurgery MDT. We do not see this as an example of the second Respondent seeking to provide Claimant with additional opportunities: it was a passive-aggressive approach; if you don't like how I'm leading the meetings do it yourself.

89. On 19 January 2015, in the context that a new consultant was shortly to join the Department, the second Respondent sent an email to the Claimant and Dr Mankad asking for them to have a think about which MDTs they might wish to give up to the fourth appointee, P1045. In her response, the Claimant referred to 2 MDT meeting she might be prepared to give up and referred to having a heavy MDT load. She conducted considerably more MDTs than the other members of the team put together. The second Respondent replied offering to take back the neurosurgical meeting, which perhaps he now regretted giving up, and suggested that he could undertake one of the epilepsy meetings as a temporary measure. We accept that this was no more than a suggestion; and

do not consider that this was an example of him trying to take away the epilepsy lead or meetings from the Claimant.

90. On 21 January 2015, the Claimant sent an email to the second Respondent and to Dr Mankad suggesting that there should be a discrepancy meeting and a journal club, P1030. We do not accept that the second Respondent or Dr Mankad were extremely reluctant to take part in these initiatives, although there may have been some tension at meetings as a result of the ongoing breakdown in relations between the second Respondent and the Claimant.

91. The Claimant met with Dr Hiorns on 26 January and 9 February 2015. The Claimant explained that she was concerned about the attitude of the second Respondent since her return from maternity leave. An informal mediation was arranged that took place in mid-February 2015. The Claimant explained her concerns. The second Respondent was incapable of accepting that he had done anything wrong. In his evidence to us he suggested that he came away from the meeting with the belief that when the Claimant had said he was not listening to her she really meant that she disagreed with his opinion. In other words, he was listening but she was wrong. He repeatedly brought up an allegation that the Claimant had been rude to Dr Jan during the discussion about the work station on the day, or day after, her return from maternity leave. While the Claimant accepted that she was brusque; it was not so significant an issue as to require being repeatedly brought up at this meeting. We consider that this was another example of the second Respondent meeting any complaint against him with a counter-complaint which was to become an element of the deteriorating relationship between him and the Claimant.

92. On 7 April 2015, the second Respondent sent an email about an MDT audit. The second Respondent referred to a meeting conducted by the Claimant and stated:

> "Surprised to see the record that Rox's Neurosurgery meeting recorded as having 'no teaching element'. It was one of the most educational of our meetings when I used to take it."

93. Initially during oral evidence, we thought that this appeared to be no more than the second Respondent suggesting that there was an error in the audit in suggesting that there was no teaching element in the Claimant's meeting. The second Respondent agreed that this was the correct interpretation of the email. However, in his cross examination, we were taken to his witness statement where, at paragraph 49, it is made clear that he was unfavourably comparing the Claimant's meetings to his. It was a subtle attempt at undermining her and was a component of the increasing breakdown in their relationship.

94. In April 2015, Felice D'Arco was shortly to join the department as a locum. While he was still in his previous post in Toronto Dr Mankad sent an email to him welcoming him and stating that he had mentioned to the second Respondent that Dr D'Arco wished to attend the ESNR conference in September, P1573. The second Respondent had a first come first served approach. He sent an email to Dr D'Arco stating "I have provisionally put you

down for ESNR with Kish". The Claimant who was copied in complained that she had already expressed an interest, although not by email. Her approach was that any request must be in writing and that therefore Dr D'Arco had not made a valid request as the only reference to him wishing to go to the conference was in an email from Dr Mankad, rather than Dr D'Arco. We do not consider that there is anything in that complaint. We do not accept there was any attempt to block the Claimant attending the conference. In fact, before Dr D'Arco joined the Department the Claimant change the rota to show herself as away for the period of the conference. She should not have done so and the second Respondent was understandably annoyed.

95. In response to her email the second Respondent suggested it might be good idea to agree a new system when Dr D'Arco joined. He went on to state, P1569:

> "IN CONFIDENCE -I think you should know that Kish was not happy when he recent found out along the grapevine that you had decided not to go to ESMRN, because he was keen himself and felt that you had effectively blocked him from going."

96. This was reference to an occasion on which the Claimant had booked to attend a conference but subsequently had decided to attend a conference at the first Respondent "Power Politics and Persuasion". Dr Mankad had been unhappy about this and had felt that it had prevented him from attending the ESMRN conference himself. There was a text exchange between him and the Claimant shortly after the second Respondent's email in which Dr Mankad suggested he had not been unhappy. This was because he was embarrassed by the position in which he been put by the second Respondent bringing the matter up with the Claimant. This relatively minor matter was another example of the deteriorating relationship which led the second Respondent to seek to stir up discord between the Claimant and Dr Mankad. It was another example of a criticism being met with counter-criticism.

97. There are a number of allegations of the second Respondent being dismissive of the Claimant during neurology meetings. Generally, these are not supported by others who attended the meetings. That being said, we are prepared to accept that there was a coldness between the second Respondent and the Claimant at the meetings and that the second Respondent, who could be dismissive of anyone, was rather more dismissive of the Claimant's ideas than he had been previously. We accept that this was subtle but that for example in April or May he was dismissive of the Claimant's comments about a scan until another consultant, Dr Jones, agreed with her. This was aspect of the deterioration in the relationship between them.

98. The Claimant alleges that from approximately April or May 2015 the second Respondent started monitoring and reporting on her movements and absences. This included an email about the Claimant leaving the hospital so that her son could be vaccinated on 15 May 2015. We agreed that the was monitoring of the Claimant and that it was a component of the increasingly poor working relationship. It was an attempt by the second Respondent to undermine the Claimant. Although there were genuine concerns about the

Claimant's whereabouts from time to time a significant component of the second Respondent's decision to start reporting on them was his deteriorating relationship with the Claimant.

99. On 18 May 2015, the second Respondent sent an email to Andrew Gerard, Administration Manager, P1578, stating:

> "Two coincidences today, which might mean you may have to take some action sooner than expected.
>
> Sorry about this: ….
>
> 2. We saw her unexpectedly at lunch today!
> On the rota, she put herself as being away on Study Leave. She told Kish & me that she her study leave booking did not materialise so she decided to take her son for his vaccinations.
>
> Clearly this cannot be left recorded on the master rota as Study Leave. I would normally have changed this to annual leave. Can I leave it for you to decide?"

100. We consider that this is an example of the second Respondent monitoring the Claimant and that he was seeking to make trouble for her. This again was a component of the breakdown in the relationship that had its origin in the email exchanges in August 2014 shortly before the Claimant's return to work from maternity leave.

101. On 20 May 2015, it is suggested that Anna Jebb, General Manager, recorded the Claimant leaving 4pm. The evidence did not suggest that the second Respondent was involved in this incident.

102. In or about July 2015 after Dr D'Arco had joined the team during a discussion the second Respondent said that he was using higher-order thinking than the Claimant. It was not put to the Claimant in cross-examination that this was untrue although it is fair to say that the incident was only very briefly dealt with the second Respondent who denied the comment. On balance, we accept the comment was made and that it was another example of the subtle undermining of the Claimant by the second Respondent that resulted from the breakdown in their working relationship.

103. There is a text exchange between the second Respondent in the Claimant on 5 August 2015 about the possibility of meeting for lunch. It was suggested that this demonstrated that they continued to meet as they had done before. We consider that this was the exception rather than the rule and that as a result of the breakdown in working relation the Claimant and the second Respondent met significantly less frequently than they had done before.

104. In August 2015, the Claimant had a query about a scan that was being produced for an independent expert via a firm of solicitors. The expert was ambiguous in his request stating:

> "Please note that the imaging does not need to be reported by yourself and I would be grateful if you could send the imaging to me for me to report; however it would be appropriate for you to document the event with a "Report - for routine clinical purposes" and I would appreciate sight of your report - and I assume you would charge an appropriate fee."

105. As a result of the ambiguity the Claimant sent an email to the Administrator, Beatrice Ankama, on 12 August 2015, asking her to check whether it should be billed as a private clinical radiology report. She copied in the second Respondent. In a series of emails the second Respondent became increasingly adamant that there was no requirement for a report, that the solicitor should not be asked whether there was such a requirement and that the administrator should not be involved in the process. At 1153 on 13 August 2015 the second Respondent sent an email to the Claimant, Beatrice Ankama with Dr Mankad and Dr D'Arco copied in stating, P1585:

> "The arrangement *is*clear from the outset
>
> There is no ambiguity in the correspondence between the solicitors and Andy:
>
> My comment on reading between the lines with just to help you to understand.
>
> It is not fair on Beatrice to ask her to approach the solicitor when the communication has been between are Departmental Head of Service and the solicitors. If you feel strongly, you might like to contact the solicitors yourself …"

106. This was a direct and rude admonishment of the Claimant in front of the team and the administrator. The second Respondent had no managerial role in respect of the Claimant at the time, although he was the longest serving member of the Department. The Claimant was understandably upset she walked into the reporting room and slammed down a textbook on the table and said that the second Respondent should learn to write emails properly. The second Respondent did not think that he had done anything wrong and believed that the Claimant had fallen short of the standards of conduct that should be expected of a university educated professional.

107. On 17 August 2015, the second Respondent sent an email to Ms Jebb in respect of the incident stating:

> Dear Anna,
>
> An (arguably minor) incident occurred with Rox last Thursday, centred on an email exchange which started off between her and Beatrice (see attached).
>
> After her final response to me on that exchange, effectively warning me not to interfere with her affairs, she came into the Neuroreporting room

where I was working with one of the registrars; slammed a textbook on the desktop and said to me that I should, 'learn how to write emails properly', turned around and walked off. The registrar and I looked at each other and were bewildered.

You know from the previous mediation exercise that I had previous requested her to cease her bullying behaviour towards me. At that time, the request was only made verbally *and* witnessed by Kish. …

We have met up as a team today and the matter was not discussed, although the atmosphere remains slightly frosty.

Conscious of some wise advice I received from a mentor in the past, 'you get what you tolerate'; I am wondering whether I should let this pass or put a response to her (in writing this time) to 'cease and desist'?

Your thoughts and advice would be much appreciated"

108. Ms Jebb responded with some wise words:

"I have read the trail. I don't have the initial letter from the solicitors which is quoted in it. From the excerpts which you have inserted into the trail, from my perspective I can see why Rox was clarifying as they say they don't want it reported but at the same time talk about some form of local (Gosh) report and there Is an acknowledgement that there might be a fee for this report which I am assuming is not the normal full report.

Probably not great for you both to have had this exchange by email in front of the admin team either. You have both got cross but I can see that Rox might have got a bit exasperated as she was only trying to clarify something.

I don't interpret this as Rox trying to assure a private payment here if that was your concern. In any case, if this was a motivation you effectively made this transparent with your first exchange and probably should have left it there.

I think you probably need to speak to her and clear the air/apologise for the misunderstanding."

109. Ms Jebb's suggestion that the second Respondent might apologise fell on stony ground. Far from apologise, the second Respondent from this point onwards only spoke to the Claimant when he had to.

110. The Claimant next alleges that the Claimant sought to exclude her from recruitment to a new neuroradiology post in September 2015. By that stage management and human resources were trying to minimise the involvement of members of the team in the recruitment exercise as it was felt that they had inappropriately sought to review private CVs previously and to reach a group decision prior to interview. We do not accept that the second Respondent was seeking to keep the Claimant out of the exercise at the time.

111. In October 2015, there was a requirement to find a person to chair a meeting of the UK Childhood Inflammatory Disorders meeting. This was a meeting that the Claimant had not previously attended. Dr Mankad believed that there was no one from the team that would be able to chair the meeting. He therefore asked an external consultant chair it. We do not accept that there was any attempt to exclude the Claimant from the meeting.

112. In October 2015, the second Respondent arranged a meeting with Dr Young to discuss the possibility of funding for a paediatric neuroradiology fellowship post. This was an initial meeting and we accept that the second Respondent would not generally involve members of the team in such an initial meeting. We do not accept that the Claimant was improperly excluded from this meeting.

113. The Claimant alleges that in October 2015 she was told by D'Arco that Dr Mankad had told him that she was the problem one and that they needed to get rid of her. That allegation was not put to Dr Mankad. During the internal investigation Dr D'Arco denied that the comment was made. Dr D'Arco had generally good relations with the Claimant and we do not consider it is likely that he would have passed on any such comment to the Claimant. On balance, we do not accept that it was made.

114. The Claimant alleges that in a neurology meeting in October or November 2015 the second Respondent only agreed with her assessment when Dr Carney, a registrar, agreed. We accept that this occurred and was an example of the increasingly poor relationship between the second Respondent and the Claimant.

115. On 25 November 2015, there were email exchanges between Dr Mankad and Valentius Clark, Medical HR Operational Manager, about visa requirements for candidates for a possible paediatric neuro-imaging fellowship. The Claimant was copied into the emails we do not consider that she was excluded from this process at this stage or, as separately alleged, in December/January 2016.

116. On 27 November 2015, Dr Mankad contacted Linda Russell-Whittaker an administrator asking where the Claimant was. We accept that he did this solely because he was concerned about the Claimant's whereabouts. We do not consider that this was an element of the monitoring of the Claimant.

117. On 2 December 2015, the second Claimant sent an email to Dr Derek Roebuck, Head of Clinical Service for Radiology, in which he stated, P1617:

> "Many thanks for a very reassuring chat today and giving me a chance to 'off load'.
>
> I am becoming aware of and developing concerns about some recent erratic behaviour from Rox. …

> After you left, I found another case of spelling error… And missed observation… In the course of this afternoon's reporting. Covered up by me and with no clinical consequences…
>
> I'm mentioning this to you because I have a concern that Rox may be unravelling and I want to avoid being blamed for this…"

118. We consider that in referring to "unravelling" in this email the second Respondent was referring back to his suggestion in the email of 28 August 2014 that if the Claimant sought to maintain her full workload it could affect her "sanity". This was a further example of the second Respondent raising criticism of a colleague's performance when he was in conflict with her. As in the case of Dr Saunders, this included criticisms about minor spelling errors. It is also notable that he raised an alleged "error" in reporting but did not mentioned the matter to the Claimant to give her an opportunity to explain or learn from any error that she might have made. The email was phrased in a way that suggested that, but for the Second Respondent's intervention, there could have been clinical consequences; although in his oral evidence the second Respondent accepted that there could not have been any. This was an email designed to undermine the Claimant in the eyes of a senior manager.

119. In December and January 2016, the was correspondence about possible visit from a Chilean neuroradiologist who had an interest in epilepsy. While we do not consider the matter of great significance. We do accept that prior to the breakdown in relations the second Respondent would at the outset have introduced referred to the Claimant as the lead for epilepsy.

120. The Claimant alleges that Dr Mankad sought to miss portray her in an email exchange with Dr Marios Kaliakatos in January 2016. At 12:17 on 5 January 2016 Dr Mankad sent text message to the Claimant asking whether she could cover a meeting for Dr Kaliakatos. The Claimant replied that she could not as she was off and said that she "didn't know anything about it". In fact, Dr Kaliakatos had sent her an email the previous evening asking her to cover the meeting which she had not seen as she was away. Because Dr Mankad had been told by Dr Kaliakatos that he had asked the Claimant, Dr Mankad replied "he must be imagining". After that text exchange, the Claimant saw the email from Dr Kaliakatos the evening before and replied to him saying that she could not help on that occasion. The Claimant then sent text to Dr Mankad stating "he's just asked me to do it". This was not accurate as Dr Kaliakatos had made the request of the day before. The Claimant did not tell Dr Mankad that she had replied to Dr Kaliakatos. Dr Mankad agreed to cover the meeting in an email in to which he copied the Claimant and stated "Rox, copied in, but she cannot remember discussing this with you…". That was based on his understanding that he had only just asked the Claimant to cover the meeting. We do not accept that Dr Mankad was in any way trying to undermine the Claimant and consider that there is nothing in this complaint.

121. On 15 January 2016, there was an altercation between the Claimant and Dr Mankad in which the Claimant alleges that she had not been kept informed of the discussions with Valentius Clark about the potential fellowship

programme. Dr Mankad stated that the Claimant had been copied in to the email exchanges and had not been excluded. The Claimant accused Dr Mankad of lying. We consider that this is an example of the consequences the breakdown in relations between the second Respondent in the Claimant was having on the Department and the tendency in that department for it to split into factions.

122. On 21 January 2016, the second Respondent sent an email to Dr Roebuck and others asking whether they were aware of the Claimant being away that day as she had not attended that morning. The second Respondent was informed that the Claimant was attending a course. He replied:

> "I presume it was a whole day course that she appears not to have attended this afternoon either."

123. We consider that this was another example of the second Respondent monitoring the Claimant's attendance and reporting on it to senior management.

124. On 21 January 2016, the Claimant suggested a new protocol for a new scanner. The second Respondent suggested that there were protocols in existence for other scanners and that there was "no need to reinvent the wheel". We do not consider that this interaction was of any significance.

125. On 1 February 2016, Professor Chin contacted the second Respondent by email about a project that they had been working on together with the Claimant, P610F. Professor Chin asked the second Respondent how he was getting on with the review of his half of the scans. The second Respondent replied that there had been a problem with the assessment of the scans stating:

> "In essence, I have had much difficulty in communicating and working with Rox in the last year. She has not shared information about this project nor provided me with access to the cases to date, furthermore she almost took a formal grievance out against me last month, but was persuaded against proceeding by senior management here."

126. The second Respondent had not asked the Claimant where the scans were. We consider that he was deliberately seeking to undermine the Claimant. What is more, the reference to her almost taking a grievance was a reference back to a meeting the second Respondent had with Dr Vinod Diwaker, the Medical Director, in January 2016. We have seen no note of that meeting and Dr Diwaker was not called to give evidence. We draw the inference that in that meeting second Respondent was told of the fact that the Claimant had come close to raising a grievance against him and that he knew from this point onward that there was a real possibility of the Claimant raising a complaint about her treatment by him on her return from maternity leave and making and allegation of maternity discrimination.

127. The second Respondent went on to state:

> "I believe much of this is related to some (unjustified) insecurity of her position following return from maternity leave. Certainly, I hope that is the case."

128. The comment speaks for itself. The second Respondent went on further email exchanges with Professor Chin to criticise the Claimant for not telling him where the scans, were despite the fact he had not asked her.

129. In April 2016, Dr Jan joined the team as a consultant. She had very few interactions with the Claimant and their relationship was poor.

130. In April 2016, the Claimant and the second Respondent were in email correspondence about the rota at the Portland Hospital. The Claimant contended that she was doing an unfair share of weekend working. On 26 April 2016 the second Respondent sent an email to Lucy Hall, Imaging Services, Neurophysiology & Audiology Manager, at the Portland Hospital stating:

> "Hi Lucy,
>
> I would value your thoughts as an external observer and stakeholder. My initial views are that this should be something we need to sort out amongst ourselves and offer to you as a cohesive service.
>
> Rox's return from maternity leave seems to have led to a change in her values (understandably), but I would be cautious to avoid attempts at developing a complex set of rota rules which happen to suit one individual at one particular time of her life."

131. The second Respondent contended that the reference to values is merely the value that the Claimant ascribed to particular days the purposes of arranging the rota at the Portland. We do not accept that this is the case. The second Respondent meant what he said; that there had been a change in the Claimant's "values" since returning from maternity leave because in of his opinion that at this "particular time of her life" she could not maintain her full professional duties because she was a new mother and her weekends would be particularly precious to her.

132. The Claimant alleges on 11 May 2016 that the second Respondent sent an email insinuating that she was not at work. The email simply dealt with who to provide cover and there was no insinuation that the Claimant was not at work.

133. The Claimant alleges that from May 2016 Sarah Osho, Service Manager, Radiology, started attending her reporting sessions to monitor her movements. We do not accept that the evidence establishes that that is the case.

134. The Claimant contends that in June 2016 Dr D'Arco again told her that she was the problem one and that they needed to get rid of her. The reason set out above we do not accept that such comment was made.

135. On 13 June 2016, there was a team meeting. The second Respondent questioned whether it was "healthy" for one person to do all the epilepsy meetings. The second Respondent contended by this he was referring to the health of the Department. By this stage the Claimant was becoming unwell and had had some absence. In the light of the second Respondent's comments about the effect that maintaining her full workload might have on her "sanity" we consider that this was a comment directed at the Claimant and was not merely a reference to the health of the team. During the meeting Dr Roebuck made reference to succession planning when the epilepsy MDTs had been raised as an issue. He did this only because the Claimant had by far the largest number of MDT meetings and it was important that the first Respondent consider what would happen if she did not stay in the Department. We do not consider that was in any way related to the Claimant's maternity leave.

136. On 15 June 2016, there was a neurology meeting. On one of the scans suggested two possible conditions MOG or NMOSD. The Claimant contends that the second Respondent was rude and had failed to share her research that he had done in respect of MOG. In fact, the correct diagnosis was NMOSD. The research was not relevant to that diagnosis. By this stage relations between the Claimant and the second Respondent had almost entirely broken down and we consider that they were both extremely frosty with each other. We also consider that that continued at the neurology meeting on 22 June 2016. That was the last that the Claimant attended as a result of the breakdown of her relationship with the second Respondent which caused her to feel unwell if she attended the meetings. Shortly thereafter, the Claimant also stopped attending the reporting room. This was a consequence of the breakdown in the relationship.

137. The Claimant stopped providing paediatric neuroradiology services at the Portland Hospital in July 2016. That is a matter that it is agreed we should not deal with at this hearing.

138. On 21 July 2016, the second Respondent sent an email stating that an out of office response had been received from the Claimant and that "none of us have seen her today and she has not attend any of her reporting sessions all day", he concluded "also, let me know if you would like me to continue informing [you] of these absences, or if you would prefer I did not do so." We consider that this is a further example of monitoring. The second Respondent was informing senior management in order to criticise the Claimant, not merely to try and find out where she was. However, we accept that thereafter the Claimant was quite regularly absent in circumstances where managers had allowed her to work elsewhere without informing the team that this was the case. This caused understandable tension when she did not attend when the team thought that she would.

139. On 19 August 2016, the Claimant submitted a grievance complaining about her treatment during and on her return from maternity leave. This is accepted to be a protected act.

140. On the same day, the Claimant submitted a Data Subject Access Request to the first Respondent. In it the Claimant requested the provision of personal data relating to matters including her maternity leave, her job plan on return from maternity leave and identified the second Respondent as an individual who might have processed such data. It is not admitted to be a protected act. The request made it clear that the Claimant was considering bringing a complaint about her treatment on return from maternity leave.

141. The Claimant submitted a grievance to HCA in respect of the Portland on 22 August 2016. This is admitted to be a protected act although we were not taken to a copy of the grievance. The Claimant also made a Data Subject Access Request to HCA which is not admitted to be a protected act. We were not shown the request.

142. On 7 September 2016, the Data Subject Access Request to the first Respondent, was forwarded to the second Respondent. From this, we consider he must have appreciated that a complaint of maternity discrimination was likely to come from the Claimant.

143. On 8 September 2016, the Claimant attended a grievance meeting with Dr Jane Valente, Divisional Director.

144. On 14 October 2016, the Claimant was passing the reporting room when she overheard Dr Jan discussing an issue with a scan with Dr Roebuck. Although the scan was one that the Claimant had reported, we do not consider that Dr Jan was trying to undermine the Claimant.

145. On 3 October 2016, the Claimant commenced ACAS early conciliation. This is accepted to be a protected act.

146. The first Respondent decided to appoint an external investigator in respect of the Claimant's grievance. The Claimant attended a meeting with Poppy Jenkins, an external HR consultant on 17 October 2016. The issues that the Claimant raised at that meeting are accepted to have given rise to a protected act.

147. On 21 October 2016, there was an occasion when Dr D'Arco felt that the Claimant had failed to help him with a complex case. It may well be that she was a little unhelpful but at the time she was becoming increasingly unwell and finding it difficult to be part of the team.

148. On 26 October 2016 the second Respondent, Dr Mankad, Dr D'Arco and submitted a letter stating that they wished to raise the rapidly deteriorating and deplorable working conditions in the neuroradiology department. They contended that interpersonal relationships between them and the Claimant been on a progressive decline over a year. They referred to their grievances being that the Claimant had declined to assist a colleague, declined to work as a team in sharing MDTM work, failing to inform the team about unplanned leave, there was an increase in unplanned absenteeism, she was being difficult about cross cover for MDTM's, being verbally aggressive and had put

forth a corrupt allegation and was guilty of unprofessional conduct in front the trainee by slamming a book down.

149. On 28 October 2016, the ACAS early conciliation notification was sent to the second Respondent. This is contended to be a further protected act. This is contested by the first Respondent.

150. On 4 November 2016, it was noted that the Claimant had not attended an afternoon session. On 9 November 2016, she did not chair one of her epilepsy meetings. The Claimant was to have increasing absences from the first Respondent. Arrangements were put in place where she could work at alternative locations, but the team were not informed about this. This created a great deal of tension.

151. On 19 November 2016, there is an incident when the Claimant was asked to review a scan by Dr Carney. The Claimant did not believe that it was an urgent matter. As set out above, she was finding it increasingly difficult to act as a member of the team. We accept, however, that Dr Mankad and Dr D'Darco did genuinely think that the matter was urgent and that the Claimant should have assisted. They were overheard discussing their concerns. The concerns were genuine and we do not accept that they maligned the Claimant.

152. On 28 November 2016, there was an exchange of emails between Dr Valente and Ellen Mossman, Assistant HR Director, in which the letter sent by the team on 26 October 2016 was referred to as a counter grievance. Management were aware that the Claimant and raised a grievance. The fact that they referred to the letter as a counter grievance does not necessarily show that it was written in response to the Claimant's grievance. We shall return to this issue in our analysis.

153. On 2 December 2016, the Claimant submitted her first Claim Form to the Employment Tribunal. It is accepted that this was a protected act.

154. On 9 December 2016, a meeting with held with the Claimant (accompanied by Helen Cross a workplace colleague), Ms Mossman and Dr Valente. The Claimant was told of the complaint raised by her colleagues and that her grievance had been put on hold. She was not told by whom the decision had been taken. Dr Valente was not able to tell the tribunal who made the decision; although the documents suggest that Ali Mohammed, HR Director is likely to have been the decision maker or, at least, involved in the decision. He was not called to give evidence. Mediation was suggested as a way forward with a proposed method being set out in the letter of 9 December 2016.

155. From 16 December to 31 January 2017 the Claimant was signed off sick.

156. On 3 January 2017, the Claimant sent an email to Dr Valente stating that she felt it was very important that the first Respondent acknowledged what had happened to her and properly addressed the issues she had raised. She suggested this could only be done by rigorous investigation into the grievance and therefore she felt that mediation was not acceptable at that stage,

although she would be prepared to consider mediation once the grievance was concluded, P740.

157. On 9 January 2017, Solicitors instructed by the Claimant sent an email to the second Respondent informing him that a Claim Form had been served as it had been suggested by the first Respondent that it had not been received. The solicitors attached a copy of the Claim Form, P778a.

158. On 10 January 2017 Dr Valente met with the second Respondent who, during the course of the meeting, said that he had photographic evidence that the Claimant had been working at Queen's Square while rostered at the Respondent. In fact, she had been working there as part of the arrangements agreed with management to separate her from the team. The second Respondent told us that the photographs had been left anonymously on his desk. He thought it was possibly by some more junior doctors who were aware of the breakdown in relations among senior staff. This is an indication of just how bad the situation had become.

159. On 11 January 2017, the second Respondent sent an email to himself that demonstrates that he had read the Claim Form, P781. He stated:

> "I find it hurtful and obscene to witness selected episodes of professional life in the last two years distorted to create an impression of sexual or maternity discrimination. These claims are false and vexatious and I will vigorously defend against them and expose them for what they are. …
>
> As a professional, she was not treated any differently from any other colleague. On the contrary, she was in receipt of greater support and compromise because she was a primary carer"

160. On 11 January 2017, the Claimant attended a meeting with Dr Valente and Alison Hall, Deputy Director of HR and Organisational Development, who said it was incorrect to consider that the letter of complaint from the other team members was a counter-grievance. She reiterated this position in an email of 26 January 2017 stating that "the decision to pause the investigation was taken by HR. It is not possible to say by whom and exactly when." She stated that it was not considered appropriate to show the Claimant the letter from her colleagues as they were seeking clarification of the issues.

161. On 2 February 2017, Dr Valente and Sarah James, Divisional Director JM Barrie Division, met with the second Respondent, Dr Mankad, and Dr Jan. In that meeting the team were told that if they were to proceed with their grievance they would have to provide full particulars. We accept that the general tenor of the meeting was an attempt to persuade them to withdraw the complaint.

162. On 7 February 2017, Mr Jenkins sent an email to the Claimant informing her that the grievance investigation would recommence, P827.

163. On 10 February 2017 Dr D'Arco sent an email to Dr Valente informing her that the group decision was to provide further details for the investigation, P835.

They had rejected the heavy hint that they should withdraw the complaint. A far more detailed complaint was submitted by the team on 13 February 2017; now including 22 detailed allegations, P837. They stated that they wished it to be treated as a grievance.

164. On 17 February 2017, the Claimant submitted her second Claim Form. This is accepted to be a protected act.

165. On 2 March 2017, the Claimant was given a summary of the allegations against her.

166. The Claimant went off sick on 7 March 2017 remained signed off until 3 April 2017.

167. The Claimant submitted a second grievance on 4 May 2017 complaining about the way in which her first grievance had been treated. This is accepted to be a protected act

168. On 17 May 2017, the Claimant was sent a copy of the grievance submitted by her colleagues and they were sent a copy of hers.

169. On 20 June 2017, the Claimant was invited to a grievance meeting and provided with a copy of the investigation report produced by Ms Jenkins. Mr Jenkins did not accept many of the detailed allegations made by the Claimant. However, in respect of the email of 28 August 2014 she found, P1318:

> "142. KC's email dated 28 August 2014 could reasonably be expected to have caused offence to RG. He offers unsolicited advice on her career options. Whilst KC is a senior Consultant, he is not KC's line manager Or mentor. RG was returning to work on a full-time contract (as she had worked prior to going off on maternity leave) so she would not be working less hours and therefore, a suggestion to having to reduce her commitments could be viewed as offensive. The references to 'life priorities' and 'time for personal and family life' could be interpreted by RG as unwanted interference in her personal life. As this email is sent to RG just prior to her return from maternity leave after having her first child, it is understandable that she found it inappropriate.
>
> 143. Further, I find that the reference to RG having to account for her SPA time could be interpreted as an oblique way of telling RG that she was previously double counting her time (a disciplinary offence) and that this was no longer possible. In interview, KC gave this fact that people were unable to undertake SPA time off site as the reason he thought RG wouldn't be able to continue with the level of contractual commitments she had prior to going off on maternity leave. I find this to be an inappropriate comment for KC to make in the circumstances.
>
> 144. In conclusion, I find that RG had cause to believe that the comments made by KC in his email may have been linked to her period off on maternity leave."

170. She also referred to the email of 26 April 2016, P1345:

> 134. My concern is, however, is the email that KC sent to Lucy Hall from the Portland, suggesting that RG's values have changed. Despite KC's protestations to the contrary, I find that a normal interpretation of this comment, when coupled with the reference to RG returning from maternity leave and the use of 'understandably' in brackets afterwards, is that KC is suggesting that RG may be less committed to working flexibly and/or filling the requirements of the rota, due to having recently had a child. Even if KC did not intend the email to have this impact, it could have called into question RG's professionalism in Lucy Hall's mind. This may have fed into Lucy Hall's decision to terminate the contract. In order to determine this definitively, I would have to interview Lucy Hall and this is currently outside of the scope of the investigation.

171. She included as part of her conclusion, P1328:

> "**Allegation 6:** RG alleges that she has been subject to discriminatory, derogatory and inappropriate conduct, in the main from KC. A detailed analysis of the evidence and findings specific to each allegation are set out above. For the majority of the allegations, I have not seen sufficient evidence of discriminatory, derogatory or inappropriate conduct. However, I do find that KC's email dated 28 August 2014 could reasonably be expected to have caused offence to RG. He offers unsolicited advice on her career options. Whilst KC is a senior Consultant, he is not KC's line manager or mentor. The references to 'life priorities' and 'time for personal and family life' could be interpreted by RG as unwanted interference in her personal life. As this email is sent to RG just prior to her return from maternity leave after having her first child, it is understandable that she found it inappropriate. This is compounded by a subsequent email from KC to the manager at the Portland Hospital where he refers to RG's 'values' as having changed."

172. On 4 July 2017 the Claimant attended a grievance meeting with Ms James. On 7 July 2017 the Claimant sent a summary of her key points. P1114:

> "Dear Sarah
>
> Please find my summary points below as we discussed.
>
> 1. I had good working relations with KC before I went on maternity leave. This all changed prior to my return from maternity leave. PJ has found that the 'revise priorities' email sent to me by KC on 28.8.14 after changing my job plan was offensive, inappropriate and related to my return from maternity leave.
>
> 2. The first email set the tone for my subsequent treatment and the repeated events raised in my grievance. These events have had a cumulative effect on me and have had a significant impact on my health.

3. PJ has also found that the email from KC to Lucy Hall at Portland Hospital in April 2016 discussing a 'change in values' relating to me being a working mother was offensive and inappropriate. This email came after I asked for a more equal division of weekend working because of its impact on me as a working mother; in response KC threatened to revise the existing professional services agreement which he then followed through on with the help of LH and KM. ….

To highlight this there is a need to consider why the relationship between me and Kling deteriorated and when - it is clear this happened just before my return from maternity leave. Before that we had a good working relationship, though we did challenge each other professionally this was taken well and we both encouraged it. The only thing that happened was my pregnancy and return from maternity leave."

173. On 19 July 2007, the grievance outcome was sent to the Claimant. In respect of the two key emails Ms James found as follows, P1149 (with emphasis added):

"I have carefully considered all of the allegations under this heading. There is no doubt in my mind that **the email exchange that you had with Dr Chong between 27th and 28th August 2014 was a pivotal incident**. It is my view that this **could potentially have been the catalyst that began the breakdown in your relationship** both with Dr Chong and then subsequently with other members of your team. **I believe that Dr Chong did not intend to cause offence or undermine you.** His evidence to Poppy which I accept, as I have seen no contradictory evidence, suggests that he sent the email in order to raise the issue of your working time. More specifically, he wanted to raise the issue of you doing SPA on-site. I make no comment on whether or not you were doing SPA on-site, just that I accept that was the reason for his email. However, the fact remains that the content of this e-mail was inappropriate. **I can see how you would have been offended by the words in the email and I understand how and why you would draw a conclusion of discriminatory behaviour.** I believe that the email referred to was unfortunate and caused you offence irrespective of the fact that **I do not believe that it was intended to**.

I think it important to point out here that I have taken into consideration the contextual factors you have referred to, for instance, the turnover of consultants and Dawn Saunders' evidence in addition to the evidence you provided at the hearing and the evidence you provided on the 7th July 2017.

I have concluded that there is no evidence to support a conclusion of discriminatory conduct toward you in relation to the August 2014 email or the other sub-allegations detailed under this allegation. In coming to this conclusion, I have relied on the findings in Poppy's report, the evidence at the hearing and the additional evidence you supplied on the 7th July 2017 where that is relevant to your grievance

174. She stated in relation to the 26 April 2016 email:

> "**I understand that an email from Dr Chong to Lucy Hall suggesting that your values had changed would be perceived by you as offensive and related to your maternity leave**. I think it is important to point out that the arrangements you and other consultants had or have with the Portland and the communications around this are not within the remit or control of the Trust. I do not believe that Dr Chong was acting within the course of his employment with Trust at this point. The evidence suggests that it was Lucy Hall of the HCA's decision to end the Portland contract. You may believe that the email and other actions by Or Chong led to the ending of your contract with the Portland. **However, I cannot make a Judgment about that as an outcome as it relates to your private practice** and is outside the remit of the Trust grievance process.

175. She went on to say:

> "Overall I do not uphold your grievance. **I believe that there has been an entire breakdown in relationships within the team but that that breakdown has been fuelled by misconceptions and misunderstandings on both sides** to such a point where you now feel unsafe in the working environment. I believe that there has been a failure to address these issues at an early stage so the tensions have been allowed to fester to such a degree as to result in this grievance process and you reporting a detriment to your health."

176. Despite the Claimant having emphasised that it was key to her grievance to consider why that had been a breakdown in the working relationship Miss James failed to do so. Miss James found it extremely hard under cross-examination to support the conclusions that she had raised in respect of the two key emails of 28 August 2014 and 26 April 2016 and accepted that they did appear to relate to the Claimant's maternity and that with that perspective could affect her conclusion in respect of other matters that were raised in the grievance.

177. The collective grievance was dismissed save for four items. The team are still seeking to appeal this decision.

178. The Claimant appealed against the grievance outcome. The appeal was dismissed. It is not subject of a complaint in these proceedings.

Conclusions

179. The key issues in this case were whether the second Respondent's email of 28 August 2014 demonstrated that he held stereotypical views about the Claimant's ability to continue her full job duties on her return from maternity leave, whether this resulted in the admitted breakdown in relationships between the Claimant and second Respondent (and latterly the team) and whether the grievance finding that the email was not discriminatory was an act of victimisation.

180. We have sought to see the wood as well as the trees. As in many cases of this nature, there has been a plethora of incidents that are said to be individual acts of discrimination. They might better be looked at as elements of the breakdown in the relationship between the Claimant and the second Respondent. We took an overview of the entirety of the evidence before reaching our findings of fact. We have tried to make out decision easier to follow by including our analysis of why people acted as they did in our findings of fact, where appropriate. The findings of fact and analysis reflect the conclusions we reached after having considered the totality of the evidence. These conclusion need to be read together with our detailed findings of fact.

181. As a result of our findings of fact a number of the specific allegations of discrimination have fallen away; as we have either held that the event did not occur as the Claimant alleged; and/or have accepted that there is an entirely innocent explanation. In these conclusions, we set out the allegations we have determined in the Claimant's favour and the type of discrimination established.

182. Our central finding is that, while the second Respondent had a high opinion of the Claimant's ability, not affected by her gender, he considered that on return from maternity leave she must necessarily need to reduce her job duties because she was a new mother. While new parents may wish to change their work patterns; and we would not criticise an employer for discussing this possibility; the second Respondent did not merely think it was possible that the Claimant would wish to change her working pattern, he considered, whatever the Claimant might think, she would have to give up some of her responsibilities. He thought the Claimant was trying to do too much work as a new mother; in circumstances similar to Dr Saunders; and that it would not be possible for her to do so effectively. He did not hold similar views about men, such as Dr Mankad, returning from paternity leave. It was an assumption he formed because the Claimant is a woman. He simply was not prepared to accept her determination to return to the totality of her job.

183. We consider that the second Respondent's email of 28 August 2014, referred to in paragraph 51 to 63, had the effect of violating the Claimant's dignity and created a hostile working environment because the second Respondent stated that the Claimant would have to seriously rethink her life priorities and suggested that she might go down the same path as Dr Saunders; i.e. that she would take on too much work, would not be able cope as a working mother, would end up being subject to criticism of her performance and go off sick. The email included stereotypical assumptions that the Claimant must change her working pattern to make time for family and personal life, that she would have to give up some of her duties and not resent doing so and that, if she failed to do so, she would risk her "sanity". The comments were related to the Claimant's gender in that they involved stereotypical assumptions about her as a working mother that the second Respondent did not make in the case of men returning from paternity leave. This violated the Claimant's dignity and created a hostile working environment. That was the perception of the Claimant; and it was reasonable for the conduct to have that effect. We consider that the sending of the email constituted an act of harassment.

184. The second Respondent sought to remove one of the Claimant's epilepsy meetings; Epi 2, as set out at paragraphs 39 to 65. There were three factors at play: the unequal distribution of MDT meetings; the plan to recruit an additional consultant and the second Respondent's stereotypical assumption that the Claimant must reduce her work load because she was a mother returning to work. We find that when the second Respondent proposed that the Claimant no longer conduct the Epi 2 MDT meeting a significant reason for the suggestion was the stereotypical assumptions that the second Respondent made about the Claimant's ability to undertake full range of her duties on return from maternity leave. This was because of the Claimant's sex. The second Respondent did not hold similar views about the abilities to continue with their full roles of men returning from paternity leave. It was an act of direct sex discrimination.

185. We accept that at the end of October or beginning of November 2014 the second Respondent said to the Claimant words to the effect "you're just another Dawn", as set out at paragraph 84. This was because of his stereotypical assumptions about the Claimant returning from maternity leave and his concern that, like he felt had been the case with Dr Saunders, she would not be able to maintain her full range of job duties on her return from maternity leave. That had the effect of violating her dignity and creating an intimidating and hostile working environment. Because of its implicit stereotypical assumption that the Claimant could not maintain her full duties, it was related to her sex. That was the Claimant's perception. It was reasonable for the conduct to have that effect. We consider it was an act of harassment.

186. We consider that the second Respondent did not change his opinion that the Claimant as a working mother could not maintain her full job duties. He considered it was foolish of her to think any different. That was a key component to the breakdown in their working relationship. It is a discriminatory attitude that continued so that the detrimental treatment that occurred during that breakdown in working relationship was, in significant part, because of the Claimant's gender and so was direct sex discrimination. This analysis applies to the following:

186.1 In mid-February 2015 the second Respondent repeatedly referred in the informal mediation to the allegation that the Claimant was rude to Dr Jan; See paragraph 91 above.

186.2 On 7 April 2015 the second Respondent sent an email to Melanie Hiorns suggesting there was a lack of a teaching element in the Claimants MDTs; see paragraph 92.

186.3 The second Respondent was dismissive of the Claimant's views at a neurology meetings

186.4 The second Respondent starting to monitor the Claimant's movements and absences and in April and May 2015; see paragraphs 97 and 98. An example is the email about the Claimant leaving the hospital so that her son could be vaccinated on 15 May 2015; paragraph 98.

186.5 The dispute in August 2015 about correspondence with a solicitor which resulted in the second Respondent no longer speaking to the Claimant: paragraph 104-109.

186.6 The second Respondent's attitude to the Claimant in the neurology meeting in October or November 2015; when the second Respondent would only accept the Claimant's assessment when Dr Carney agreed: paragraph 114.

187. We consider that the email the second Respondent sent to Dr Roebuck on 2 December 2015 suggesting that the Claimant was unravelling was an act of sex discrimination at it involved his stereotypical assumption that if she maintained her full workload on her return from that at maternity leave she would not be able to cope, would risk her "sanity" and find herself in the same position as Dr Saunders: paragraph 117.

188. The same analysis applies to the email exchange on 1 February 2016 with Professor Chin in which the Claimant suggested a change in the Claimant's attitude on her return from maternity leave: paragraphs 125 to 128.

189. We consider that the following were aspects of the breakdown of the relationship that resulted from the second Respondent's stereotypical assumptions about the Claimant's ability to fulfil her full duties on return from maternity leave, and so constitute direct sex discrimination:

189.1 The second Respondent questioning whether it was healthy for one person to do all epilepsy meetings on 13 June 2016; paragraph 135

189.2 The second Respondent not properly communicating with the Claimant at a neurology meeting on 15 June 2016; paragraph 136

189.3 The second Respondent sending an email on 21 July 2016 questioning where the Claimant was; paragraph 138

190. We accept that the Claimant's grievance of 19 August 2016 and Data Subject Access Request of 19 August 2016 were protected acts.

191. We do not accept that the first or second Respondent had knowledge of the grievance or Data Subject Access Request made to HCA. They are not relevant protected acts.

192. Although at the Claimant raised concerns about discrimination in the meeting with Poppy Jenkins we do not consider it resulted in any of the treatment about which she complains.

193. We accept that the ACAS notification constituted a protected act and that it was communicated to the second Respondent.

194. We accept that the first ET1 was a protected act.

195. When the original complaint letter was sent by the Claimant's colleagues on 26 October 2016 (paragraph 148) the second Respondent had not yet seen the Claimant's grievance or ET1. However, we find that he had been aware for some time of the likelihood that the Claimant would bring a complaint against him about her return from maternity leave. He referred to the possibility of a grievance in his email correspondence with Professor Chin. We consider he was well aware that the Claimant's complaint was about her return to work form maternity leave and was of sex discrimination. We consider that the second Respondent was the leading force behind the letter of complaint. This was because he believed that the Claimant was likely to allege that he had been guilty of sex discrimination. We consider it was an act of victimisation.

196. We consider that when, on 13 February 2017 (paragraph 163), the second Respondent and his colleagues stated that they wanted their complaints to be treated as a formal grievance the second Respondent knew about the first claim and that it included allegations of discrimination. We consider that was a significant factor in him, as the main proponent, continuing and expanding the grievance. We hold that was a further act of victimisation.

197. We accept that the submission of the second ET1 was a protected act as was the second grievance.

198. We consider that the outcome of the grievance was an act of victimisation. Ms Jenkins was determined to avoid a find of finding of discrimination. Despite finding that the email of 17 August 2014 was improper she refused to make a finding in respect of the obvious discriminatory meaning. She avoided making any findings about the obviously discriminatory comments made in the email of 26 April 2016 by holding that it fell outside the scope of the grievance, as it involved communication with the Portland Hospital. There was no reason why a communication with the Portland Hospital might not be evidence that could indicate whether the second Respondent had acted in a discriminatory manner towards the Claimant. We consider that there is a clear inference that she did this was to avoid a finding of discrimination because of the two claims the Claimant had commenced in the Employment Tribunal claiming sex discrimination. The dismissal of the grievance was an act of victimisation. We consider that had Ms James accepted the inferences that should be drawn from the email of 17 August 2014 and 26 April 2016 this would, as she accepted in cross-examination, have affected her approach to the grievance as a whole. That that does not mean that she would have found all matters in the Claimant's favour. However, we consider, on balance of probabilities, she would have upheld those elements of the grievance that we have upheld in our decision.

199. We consider that these constitute continuing acts so that the claim is brought within time. The second Respondent has continued throughout the period to view the Claimant unfavourably because she will not accept his stereotypical assumptions that she will not be able to cope with the full range of her job duties on return from maternity leave. The Respondent was determined to reject her genuine grievance.

200. If any of the claims were out of time we would consider it appropriate to extend the time limit taking account of the fact that the Claimant has sought reasonably to resolve matters internally. The Respondent has not been significantly prejudiced by the delay as the key maters were documented at the time. Justice requires that the Claimant's full claim be heard and determined.

Employment Judge Tayler
Correction Dated 22 March 2018