Case Numbers: 1401622/2017
1401623/2017
1401627/2017
1401638/2017
1401640/2017

EMPLOYMENT TRIBUNALS

First claimant: **Ms KM Harris**
Second claimant: **Mr A Halliday**
Third claimant: **Ms E Hayes**
Fourth claimant: **Ms J Lane**
Fifth claimant: **Miss S Tester**

Respondent: **South Western Ambulance Service NHS Foundation Trust.**

Employment Judge Hargrove
Members: Mr C Williams and Mr J Shah.
Sitting at Bristol. Reading day 13th of May. Hearing 14th, 15th, 16th, 20th, 21st, 22nd, 23rd and 24th of May. Deliberations 30th of May 2019.

JUDGMENT

The unanimous judgement of the employment tribunal is as follows: –

(1) The claimants' claims of victimisation contrary to section 27 of the Equality Act are dismissed upon withdrawal by all claimants.
(2) The claimants Harris and Halliday's claims of discrimination arising from disability contrary to section 15 and of a failure to make reasonable adjustments contrary to section 20 of the Equality Act, and of unfair dismissal are well founded.
(3) The claimant Hayes' claims of discrimination arising from disability and of a failure to make reasonable adjustments are well-founded.
(4) The claimants Lane and Tester's claims of indirect discrimination on the grounds of sex contrary to section 19 of the Act are well-founded.
(5) Within 28 days of promulgation of the judgment the parties are to notify the Tribunal whether a remedies hearing is required.

REASONS

1. The five claimants were long serving former ambulance paramedics or ECAs who were all employed by the respondent to work dayshift from

Nailsea ambulance station. Their shift system was SOU 24 (10 hours). They worked a seven day five weekly rotating shift pattern with fixed working days commencing either at 8 am to 6 pm, or late shifts commencing at 10 am to 8 pm, over a four week period, and then one week on relief working usually but not exclusively at Nailsea. The feature common to all five claimants is that their personal circumstances were such that they were particularly suited to and dependent upon dayshift only working. The first claimant, Kim Harris, (KH), an ECA, is a long-term sufferer from serious migraines; the second claimant Andrew Halliday, (AH), has a history of PTSD; the third claimant Emily Hayes(EH), has had depression for many years. These conditions are all admitted by the respondent to constitute disability at the material times. The fourth claimant, Jacqueline Lane (JL), and the fifth claimant, Sarah Tester (ST) had childcare responsibilities and worked part time on 18.75 hours per week.

2. All except JL commenced their appointment with Great Western Ambulance Service at different locations and moved to Nailsea prior to the merger of GWAS with the respondent Trust in 2013. JL always worked at Nailsea. All worked as part of T 24 at Nailsea, which had a total of about 20 ambulance personnel working from there. There were others who worked dayshift who did not have disability or childcare responsibilities. Yet others in T 24 worked a 24 hour shift rota , alternating between 12 noon to midnight and midnight to 12 noon.
3. Between 2015 and 2017 an overall review was carried out into the provision of ambulance services by the respondent Trust. The reasons for, and the objectives of, the review were set out in detail in the witness statement of the respondent's first witness, Ceri Smart (CS). It coincided with the introduction by the Department of Health of standard response times within the ambulance service, entitled the ambulance response program or ARP, in 2016. CS worked with a specialist third-party contractor, Working Time Solutions (WTS) and there was a detailed review of response times and patterns of demand for the ambulance service by ORH. CS made presentations to the respondent Trust's executive directors in June and August 2016. ORH provided a report on the 1st of September 2016 (see pages 284 to 326). The proposals specific for the Nailsea station (within the North Somerset operational management area) and material to the present claims, were that the existing system providing for one specialist paramedic car service, 1x24 hour line, 1x24 hour rapid response car, one day only team and 1:12 PM to midnight team, should be replaced by a 2 line rota providing 2 DCAs operating 24/7. This would result in a demand for fewer ambulance staff overall, but operating 2x24/7 shift patterns. This entailed the removal of the day only shift worked by the claimants. It is the removal of the day only shift and the respondent Trust's proposals to deal with its consequences which form the basis for the claimant's claims of discrimination based on their protected characteristics of disability and sex. The documents to which we were referred during CS's evidence particularly relevant to that which we have to decide were: –
(1) His analysis of contract hours compliance and relief flexibility with

particular reference to the North Somerset area including Nailsea at pages 193 to 201, see especially page 201 where the particular day shifts worked by the claimants are referred to as "SOU 24 (10 hours)", dating from 2015.

(2) His report on A and E service line dated September 2015 with particular comments about shift patterns and areas of concern at paragraph1.1.4 on page 218.

(3) His report on relief working policy of November 2015, and recommendations, with particular regard to the notice to be given of relief working – a minimum of six weeks, but subject to exceptions – at paragraphs 5.5-5.10 on page 221F; and the relief venue restrictions (within 30 mile radius of the base station) at paragraph 5.17 on page 221G.

(4) His report to directors of 8 February 2016, with particular reference to Rota change priorities at pages 228–231.

(5) This led to the formation of a rota review strategic steering group co-chaired by the Executive Director of HR, Emma Wood, and the Director of Operations, Neil Le Chevalier. There was also included in the group representatives of the trade union, Unison, including David Phillips, (DP), Assistant branch secretary of Unison, who attended most of the meetings, and Marie Martin, a Manager of ROC, the Trust's central system of organising the rosters. The terms of reference document, ratified by the executive directors on the 7th of June 2016, are at pages 233A to H. These meetings lead to the Rota Review – Trust Core Principles (A&E operations), an undated document set out at pages 399-403. At paragraph 1.2 on page 400 it states

"To facilitate any changes to rosters they have to follow the long-standing corporate position of: –

(1) All rosters must remain within the available financial envelope.

(2) All rosters must provide resources where demands dictate the need for such resource.

When the above corporate principles have been met then consideration to the final central aim should be where possible

(3)Rosters must be socially acceptable to staff.

There are then 22 core principles set out at page is 401-402, of which numbers 1 to 5 and 22 are particularly relevant. Number 22 reads "Review and ensure all flexible working arrangements are subject to core principles and have a formal unsocial hours sign off". Under the benefit column adjacent to paragraph 22 it reads : "Ensures clarity and impact of flexible working arrangements is maintained and monitored. Allows current arrangements to be reviewed in line with new rotas. Reduces errors in unsocial hours payments. Facilitates new flexible working requests." Although not part of the document, but discussed at the meetings, were answers to FAQs. These are contained at pages 420-428, and included a description of a 4 step process to be followed by the Trust via staff working groups involving the development of draft rotas; the selection of 2 preferred options to be taken to staff to be voted upon and selected by majority vote at stage 3; and final sign off and implementation at stage 4.

It is to be noted that the rota review group did not discuss the later proposed revised shift patterns for Nailsea described above. In particular the staff did not become aware of any proposal to end day shift only working at Nailsea until January 2017.

(6) His report to directors of the 29th of June 2016 with particular reference in paragraph 2 – operational change objectives – at pages 244–245.
(7) An equality impact assessment carried out by CS on the 1st of June 2016 (see pages 257–266).
(8) Around this time the Department of Health issued the directions for new standard response targets, which were later implemented in this Trust in a report entitled ARP 2018 at page 337 onwards.
(9) The OHR (Operating Research in Health) report "Analytical and modelling support" dated the 1st of September 2016 (pages 284 onwards, including the material recommendations for DCA hours for Nailsea at page 309 (which equated to 2 DCAs to be provided over 24/7). There was a comparative analysis of the then current performance under the existing shift patterns at all five stations in North Somerset (including Nailsea) at page 302, the expected performance under the proposed new shift patterns at page 302; and a comparison of the two setting out the expected improvement in the performance parameters in percentage terms. This is heavily relied by the respondent to form the basis of its business reasons for the introduction of the new rosters at Nailsea, which is at the heart of its justification defence.

4. It is not in dispute that the recommendations for a whole series of changes in shift patterns and working practices, including at Nailsea in phase 2, were signed off by the directors on the 6th of December 2016, although, somewhat surprisingly, no document recording that fact is contained within the bundle.
5. A rollout to managers of the Trust took place on the 11th of January 2017. The consultation process with staff and trade unions began on the 17th of January 2017. The second witness to give evidence for the respondent after CS was William Lee, (WL), who after working as a paramedic for the trust since 2010, was appointed acting Operations Manager of the East Division of the Trust and was made substantive in January 2018. East Division consisted of the five ambulance stations at Nailsea, Burnham, Churchill, Weston-super-Mare (WSM) and Shepton Mallet. WL's responsibility was to implement the specified changes within that Division.
6. On the 17th of January 2017 a standard letter was sent to all staff within the division see page 476.The letter is signed by Emma Wood, Executive Director of HR.
" I write to confirm the start of the individual consultation with you about the proposed organisational change resulting from the trust wide wrote a review that commenced in the east/west division on 17th of January 2017. The rota review has been commissioned to ultimately improve your work life balance, by better matching resources to demand. This is necessary following the significant increase in demand over the past two years, which has continued to increase the pressure placed on you and your

colleagues."

The letter went on to notify that there would be four working groups to be attended by nominated staff representatives. It stated that it might be necessary for some staff to relocate to other stations; and, should that be the case, members of staff would be invited to one-to-one meetings with the operations manager to answer a series of questions, which will include your current and potentially to commute.

7. The first working group meeting (WG) for representatives of the East division staff took place on the 19th of January 2017, and EH had been nominated as the representative paramedic for Nailsea. JL had expressed an interest as being a representative, but had not been appointed. The notes of the WG1 meeting are at pages 478 onwards. There were subsequent meetings on 16 of February 2017, page 499, attended by EH and KH as representatives of Nailsea, WG2, at which staff were notified by CS that 2 rota options were to be circulated by CS; 6th of April 2017, page 512, WG3, which was not attended by any representative specifically from Nailsea, and in consequence, a special meeting was arranged for Nailsea on the 21st of April – see page 522. The notes of the meeting are at page 524A- E. This meeting was attended by John Dyer, CS's line manager and Head of Operations East division, Lucy Manning, HR Manager, and Jo Fowles from Unison. Before describing the discussion which took place at that meeting, it is necessary to set out an earlier chronology of events specifically relevant to the Nailsea staff affected by the proposal to end dayshift working only. The rota options had been circulating in late February and a meeting of Nailsea staff had taken place on 10 March. There are no notes of that meeting, but following it a lengthy paper was prepared by the staff and endorsed by Unison (DP) and sent to CS on or around 20 March. This is at pages 504-507. It complained of the proposed reduction in the level of service to be provided from Nailsea, and of more significance to this case, set out what has been described at this hearing as the Weston proposal – see in particular pages 505–506. In summary, the proposal was that 2 dayshifts should be removed from the Weston rota and should be covered by the Nailsea staff on the day shifts there, currently covering the shifts from 8 am to 6 pm and 10 am to 8 pm; and that the Nailsea staff should start their shifts from Nailsea and travel to a standby point near Clevedon, within the Weston area. The Nailsea staff offered some flexibility on their shift times noting that the Weston shifts work currently from 9:30 am to 7:30 pm and 11 am to 9 pm. There was a diagram attached setting out a proposed five week shift pattern. There is evidence from the claimant's side that this proposal was first put at a meeting at Nailsea as early as 2 February, but although there is clear evidence that the meeting did take place, there are no notes of it . In particular the claimant JL asserts that WL and John Dyer attended the meeting, and that WL stated in response to the proposal at that stage "I will not disadvantage my staff at Weston to accommodate you". This remark is denied by WL. The Weston proposal document was sent by JL on the 20th of March - see page 510. CS responded on the 5th of April to JL, the Unison representative Jo Fowles, KH, WL and Mr Dyer, attaching what he described as a partial response which could be left to the working

group meeting scheduled for the 6th of April. The attachment is at pages 508–509, confusingly dated the 27th of March. In particular at page 509 he stated: –

"At this time however, it is not possible to implement the changes you have requested as the Trust must adhere to the core principles that underpin the rota review consultation. This means rotas must be based on the demand profiles provided in (ORH) which will ensure we provide resources where demand dictates the need for that resource, whilst remaining within the financial envelope.

I appreciate any change may be challenging, and there is always a fear of the unknown. However please do remember that ultimately, this work has been commissioned to better match our resources to demand, lower our utilisation rates; increase leave Meal break compliance and attempt to reduce some shift over runs."

In fact, there was no opportunity to discuss the matter further on 6 April because no one was available to attend from Nailsea. Hence the further meeting on 21 April. CS did not attend that meeting. JD did attend that meeting and at the outset he stated: –

"Message from directors and Ken (Wenman, the CEO) is that plan will not change therefore changes proposed for Nailsea will not be altered".

There is a revealing exchange introduced by the claimant ST at pages 524b in which the claimant KH participated. She had indicated that, following her one-to-one meeting she had received a letter stating that she was to work at Nailsea, but that she could not work days and nights. She enquired why her circumstances were being ignored. Mr Dyer is recorded as responding:

"Not being ignored, if you have a health/discrimination reason, then it will be dealt with separately. If you choose not to work nights, then that is a different matter. You will need to complete a flexible working request. We will share WSM rotor as discussed last night; complete FWR; Occupational Health."

KH. I go back to what I said 25 minutes ago – how is this consultation when we don't know about FWR?

WL. But you work flexible working at the moment?

KH. But I don't know I had to do this as part of this process. Our team is made up of people with medical or childcare issues.

WL. And that is being addressed via 0H and FW. There is no team solution for you, so we need to look for individual circumstances. We will not be terminating anyone's contract as part of this process."

There is a further passage later in the meeting as follows: –

"Q – what happens if ultimately I can't work what you want and I can't get flexible working?

Lucy Manning (HR manager): no one will be dismissed as a result, but ultimately you may need to decide if you can continue with your employment.…"

Later:-

ST we did offer some compromises. Why were they rejected?

JD – they were compromises that could not be accommodated.

JO Fowles – we discussed this with Ken Wenman (CEO) and Neil Le

Chevalier yesterday, for a long time, and your compromises were rejected".
John Dyer emailed the Nailsea staff specifically on 26 April see page 528. The final working group meeting (4) took place on the 27th of April, the notes of which are at page 530. It is unclear whether KH attended since she had written to WL following the last meeting on the 21st of April, on the 25th of April, complaining of the rejection of the Nailsea proposal, and of the detrimental impact the changes would have on the group. She indicated that as a Representative of T24 she felt that coming to the meeting would not be a worth while endeavour.

8. There were separate 1:1 meetings between the claimants and WL; and exchanges of emails, from the beginning of February 2017 onwards. Also various applications were made for flexible working, and, eventually , references for occupational health reports. The claimants raised individual grievances, the outcomes of which were appealed at various stages. The new 2 x 24 hour shift pattern was scheduled to start on the 3rd of July 2017. Various proposals were made to accommodate shift patterns on an individual basis for the claimants at Nailsea. These will be considered upon an individual basis for each claimant later in these reasons, but we first describe the events surrounding a collective grievance submitted by them and others on the 16th of May 2017. This document is at page 549 onwards. The claimants had not voted on the 2 options for rotas for Nailsea involving the 2x24 patterns. The claimants described the importance of their existing shift patterns and repeated the Weston proposal. The collective grievance hearing did not take place until the 27th of June 2017. It was shared on behalf of the respondent trust by Sarah Thompson (ST), then the Trust's Head of safeguarding and deputy Director of Nursing, who left the trust in December 2017. The notes of the grievance hearing are at pages 569-579 and the claimants were represented by DP and KH. Amongst the points raised by KH she stated at page 569 that at the trust predecessor, GWAS, there was recognition for the need for support for a group of people who are not able to do nights, had childcare issues, medical issues, and welfare issues. In addition, DP at page 575, raised the issue about what Lucy Manning was alleged to have said at the meeting on the 21st of April. ST provided a detailed outcome letter on the 3rd of July see page 585 - 591. In particular at page 588 she asserted that the Trust had acted reasonably in considering the flexible working arrangements of team 24 in line with the wider Trust. She continued:
"To conclude this element of your grievance, the panel believes that although the Trust have not considered T24 as a collective, this approach is in line with the core principles that underpin the the rota review consultation and individual circumstances have been considered with reasonable adjustments made for staff to accommodate health conditions as well as childcare needs.".
At page 589 she described the bespoke five week relief rota put forward by WL. At page 590 she specifically responded to the Weston proposal, citing reasons given by WL and CS for refusing it.

" The panel also spoke to WL regarding your initial request during the rota review that the days/late shift to be taken out of the Weston rota and to create a separate rota for team 24. WL confirmed that this was not considered as it was felt that this would not be reasonable for staff at Weston who would be required to work on nightshift rotas that would be detrimental to the work life balance."
She stated that the panel had also spoken to CS:
"CS confirmed that there is no longer the demand for a days and late rota in Nailsea and therefore would not be able to facilitate a team solution for T 24 days and late shifts. CS confirmed that to create a team solution for staff who did not have an existing health concern would set a precedent that the Trust would be unable to sustain. CS confirmed that creating a days late rota for all staff on T 24 would have a financial and operational impact on the Trust which could prove detrimental to patients as the Trust would not have resources in line with the demand data."
On the 7th of July KH submitted a collective grievance appeal - see page 592 onwards. The appeal was originally listed before the head of HR projects on the 3rd of August but there was an objection and she stood down. The appeal was eventually heard on the 15th of September 2017 see page 607. The appeal panel rejected the appeal and gave more detailed reasons for rejecting the Weston proposal in the letter of the 2nd of October 2017, in particular at pages 623–624. This is of some significance to the outcome of the case. The notes of the hearing at page 607 onwards indicate that KH read from a statement. That statement is at pages 614– 616, and at page 616 at paragraph 4 under the heading of "no team solution" it set out the crux of the argument in favour of the Weston proposal, to which the panel responded in 3 bullet points at page 624. Counsel's specific submissions about the Weston proposal are to be found at paragraphs 75-86 from Mr Canning; and paragraphs 51-53 from Mr Allen.

9. That concludes an overview of the events surrounding the implementation of the new rota system at Nailsea. We now turn to the circumstances of the individual claimants, and set out the specific issues we have to decide in relation to each.

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10. **Kim Harris (KH)**

10.1 she started work from GW for GWAS as an ECA in 2009. She had developed serious migraines following the birth of her third child in 1997. She worked relief shifts day and night latterly at WSM until 2010 when she claims she applied to work part time because she had two younger children and the work was causing an increase in migraines. She then moved to Nailsea and joined T 24 working the dayshift 8 am to 6 pm or 10 am to 8 pm on 18.7 hours per week (two shifts per week of 10 hours

with a 45 minute break). No documents recording this change have been disclosed, but we accept that it occurred as described.

10.2 The claimant's first knowledge of specific changes came by way of the standard letters of the 17th and 24th of January (the latter inviting her to a 1:1 at page 655). We accept that in the case of all the claimants the primary purpose was to identify potential base changes.

10.3 The claimant had her first 1:1 meeting with WL on the 20th of February 2017 (pages 656–658). In the course of it the claimant identified that she could not work nights and wished to register her migraine as a disability; that she needed to be back home (in Weston) by 9:30 pm to take her medication in order to be in bed by 10 pm; and consented to an occupational health referral. The children no longer had an impact on her flexible working needs. She expressed a wish to stay at Nailsea, but complained about the proposed shift changes having a detrimental effect upon her.

10.4 Since the respondent had decided to consult on the new rota changes before considering any requests for flexible working, she felt unable to vote upon the two options for shifts she could not work, about which she emailed a complaint to WL on the 2nd of May 2017 page 666. This was also the date upon which WL notified her that she had been allocated a .5 line on the Nailsea rotor to include night working.

10.5 The claimant was not referred to occupational health until the 11th of April 2017, at which time she received an appointment on the 15th of May 2017 and by which time of the rota option at Nailsea had been voted on by staff generally, but not by this claimant. In the meantime, on the 3rd of May she had lodged her individual grievance – pages 669–672. On the 22nd of May Emma Wood sent out a standard email indicating the result of the vote and notifying staff with an arrangement under the flexible working policy that they would have to make a new application – see page 677. Technically this did not assist KH, because she would need an adjustment to take into account her disability, not her childcare needs, but the Trust had not yet acknowledged disability.

10.6 The OH report is at page 675. It confirms that she had a neurological condition with recurrent symptoms for which she had been referred to a specialist, and had regular treatment; and that for the last seven years she had been restricted from night duties. Should she be exposed to nightshift working it would have a detrimental affect upon her condition as a result of reduced sleep and interruption in the circadian rhythm. He recommended a restriction from Night duties for the foreseeable future, although she was fit to continue attending work.
The referral did not ask what hours she was fit to attend work.

10.7 The claimant emailed WL complaining of her treatment on the 26th of May which resulted in her being invited to a second 1:1 meeting on the 2nd of June. There is a summary of that meeting contained in an email from HR on the same day – see page 683. The email states: –
" Unable to work past 8 pm or start before 8 am due to medication regime, reluctant to work more than 10 hours. Would be flexible to start before 8 am but 6 am would be too early. Take three lots of tablets and administer injections. Condition is well managed. Weston shift 9.30 to

19.30 is currently available. Ideal would've been to take a shift outside of the rota at Weston or Nailsea. Relief rota is felt unacceptable – just because it is relief– Unable to determine what station, what time I would be working two years in the future. Advised could offer relief with parameters such as understanding particular days and hours. "

10.8. The next event occurred on the 26th of June when WL wrote to the claimant setting out the arrangements for the implementation of the new rotas from the 3rd of July 2017. The letter acknowledged receipt of a collective, and her individual, grievance, which was listed for 3 July 2017. The letter indicated that there would be no continuation of T 24 past the 2nd of July. Acknowledging that her grievance had not yet been heard, WL indicated an interim arrangement for a period of three months until the 15th of September 2017.

"You will work 18.75 hours per week relief (fixed days as per the attached rota as a medical adjustment) based at Nailsea/Weston/Churchill/Burnham and availability 7 am to 8 pm. Please note this three month extension does not mean the interim arrangement will continue on a permanent basis. Rather this decision has been made to provide you with additional time to ensure a revised flexible working application is approved."

10.9. The claimant's grievance was heard on the 3rd of July by Paul Burkett – Wendes (PBW, who gave evidence for the respondent). The notes of the hearing begin at page 692 and the outcome letter, dated 3rd of July, but received on or about 12th of July, rejected the grievance.

"I have considered the Trust's duty to provide reasonable adjustments and reviewed the bespoke relief rota that has been created for you. I have concluded this rota suitably accommodates your reasonable adjustments required and provides a fixed relief pattern of days and nightshifts only."

He confirmed the relief shift patterns set out in WL's letter cited above.The days of that pattern over a five week period are contained at page 781, but the footnote indicates that the shifts were to be worked over 12 hours, not her existing 10 hour shifts.

10.10 An internal email sent by WL to HR dated 10th July page 701 stated "There is no reason I am aware of that she cannot work 12 hours and again the same premises will need to apply ref shift availability – Nailsea/Weston/Churchill/Burnham."

The claimant summarises at paragraph 17 of her witness statement the difficulties that then arose.

10.11 The claimant submitted an individual grievance appeal on 12th of July– See page 704 and in particular the first paragraph in which she identified some of the difficulties. There is a record of a conversation between the claimant and control concerning difficulties which arose at the start of a shift she was due to attend at Weston on 14th of July at page 706.

10.12. In week commencing 7th of August 2017 the claimant was notified that she was required to work 2×12 hour shifts. WL was off that week and when she arrived at work the claimant contacted Mr Newton who was standing in for WL. He gave permission for her to leave at 5 pm. The claimant emailed WL about this on the 7th of August – see page 711. The next day she contacted Newton again

but was told that he had spoken to WL who had said that there was no reason why she could not work 12 hours and nothing in the OH report to back it up. At 5 pm she notified control that she would be leaving. According to her she was warned that she was not allowed to leave. She subsequently had a migraine. She describes these events in more detail in paragraph 20 of her witness statement. The claimant went to her GP and submitted sick notes to the Trust on 16th of August and 30th of August which cited migraine and stated "suggest continue 10 hour day time working schedule", and " Max 10 hour day". These are at pages 713 and 714. The claimant was at that time not at work. On 4th of September WL emailed the claimant referring to the GP notes and asking for her consent to a further occupational health referral. The claimant agreed to the further occupational health referral, but referred to the GP note and the earlier referral which had approved continued working under "current arrangements", which she interpreted as referring to her then current 10 hour shifts. WL responded on the 5th of September advising that the GP note did not go into detail. The occupational health referral was made on the 6th of September see pages 723–726, specifically referring to the GP note that she should only work 10 hour shifts. It was at that time that the claimant was off work with a back injury and was due to return on the 17th of September. On the 15th of September she emailed WL at 11.21 noting that her shifts for the following week included 2 x 12 hour shifts and that requesting that, as her GP and current Occupational health reports recommended 10 hours, he adjust her shifts. She sent a more detailed email timed at 21.53 complaining of his failure to respond and referring to her past history of working a shift pattern of 10 hours day over a period of seven years. She indicated that after her last 12 hour attempted shift and the trouble it had caused she would not subject yourself to it again and would not be at work the next day. WL responded in a detailed email dated the 19th of September at page 735. He indicated that he had been on rest days over the weekend. He referred to the most recent OH report which he asserted
"does not appear to be any specific recommendation that you cannot work 12 hour shifts".
He then stated that he was committed to supporting her with reasonable adjustments as appropriate, upon receipt of the next OH report.
"In the interim I can confirm that we are now in receipt of your GP fit note which recommends that you are restricted to 10 hour shift only……With this in mind I can confirm that, as an interim arrangement only, we will restrict you to 10 hour shifts. However, due to the very limited number of 10 hour shifts available within the constraints of your start and finish times, this will be planned on the relief working basis as per the relief policy. We will also need to extend your availability to a 21:00 hours finish time (which you have previously advised you would be happy to trial working provided it was a 10 hour shift only) as this will open up a further 2 hour shifts that you could potentially work at Weston." WL also notified ROC.
10.13 On the 27th of September 2017 she submitted a letter of resignation setting out recent events as constituting a last straw. The tribunal will refer to the contents of this letter in more detail in stating our conclusions. See pages 743–744. The letter gave one month's notice which expired on the 27th of October 2017. In the meantime the claimant's grievance appeal hearing took place on the 3rd of October with Mr McCauley as chair – the respondent relied upon a witness

statement from him, he being medically unfit to attend the tribunal. The notes of the appeal hearing, which are relevant only insofar as they may throw light upon the reasons for resignation, are at pages 751-756, and the outcome letter is at page 756-758, dated the 17th of October.

10.14. The issues identified and agreed between the parties representatives at the preliminary hearing on the 7th of May 2019, and still remaining in respect of this claimant and of the claimant Mr Halliday are as follows: –

(1) **UNFAIR DISMISSAL.**

Has the respondent committed a repudiatory breach of contract? The contractual terms which the claimants alleged have been breached by the respondent are (i) the implied term that an employer will not act in a way which is calculated or likely to destroy or seriously damage the trust and confidence between employer and employee; and (ii)Unlawful discriminatory conduct.

Did each claimant accept the alleged breach and resign from the respondent's employment because of this breach? The respondent does not accept that there was any repudiatory breach of contract, but does not assert a positive case that either claimant resigned for any other reason.

Did either claimant delay too long in accepting the alleged breach?

If either claimant's resignation can be construed to be a dismissal by the respondent, was it nonetheless fair and reasonable in all the circumstances of the case?

Can the respondent prove that if it had adopted a fair procedure then either claimant would have been fairly dismissed in any event, and if so to what extent and when?

(2)**Section 15 Equality Act: Discrimination arising from disability**

The allegation of unfavourable treatment as "something arising in consequence of the claimants disability" falling within section 39 of the Equality Act is the withdrawal of protected working patterns and placing each claimant on a relief role, such that the claimant was unable to work the 24 hour rota because of the specified disability. No comparator is needed.

Does either claimant prove that the respondent treated him/her as set out above?

Did the respondent treat other claimant as aforesaid because of the "something arising" in consequence of the disability? The respondent disputes that there was less favourable treatment, because although the respondent accepts that there may have been a link between the disability in question and the ability to carry out a 24-hour rota, this was accommodated by the respondent in its new rota arrangements.

In any event the respondent asserts that its actions were justified as a proportionate means of achieving a legitimate aim pursuant to section 15(1)(a) of the Act.

(3)**Reasonable adjustments: sections 20 and 21 of the Act**

Did the respondent apply the following provision criteria and/or practice (the provision) generally, namely requiring each claimant to work late shifts and/or nightshifts?

Did the application of any such provision put either claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are

not disabled in that because of the disability relied upon that claimant was less able to complete the duties required?
Did the respondent take such steps as with reasonable to avoid the disadvantage? The burden of proof does not lie on the claimants, however it is helpful to know the adjustment asserted as reasonably required and it is identified as being the requirement to work a fixed and predictable pattern of day working.

10.15. Mr Canning's submissions for KH are at paragraphs 36-41. Mr Allen's for the respondent are at paragraphs 54-67.

11.
Andrew Halliday (AH).
11.1 He had started working as an Ambulance driver in 1983 and qualified as a paramedic in 1996. He developed PTSD in 1991 after an incident at a Bristol ambulance station, and was diagnosed in that year. Since that time, up to 2011 he had had three major periods of time off work with his condition. In that year changes were made to his working pattern, whereby he was required to work a shift rota which involved four week shifts with different start and finish times. After that a major episode of PTSD was triggered and he was off work for approximately 10 weeks during which he was referred to occupational health. At the start of the hearing there was little evidence of his past medical history and of any adjustments which had been made. Very late in the hearing the claimant disclosed an occupational health report prepared for GWAS dated the 16th of December 2010. This refer to musculoskeletal problems in addition to psychological distress. There was a recommendation that the claimant should not regularly work long shifts throughout night hours. A further report dated 20th of March 2011 referred to a report from a Dr Taylor dated the 4th of March 2011. That report was disclosed to the tribunal by the claimant at the end of the hearing. The combined effect of these reports was to recommend a phased return to work, recognising that the levels of stress and anxiety he was then experiencing were " as a direct result of significant significant changes to his previously stable working patterns and shifts". These reports were clearly in the possession of GWAS although the present Trust may not have gained possession of them following the merger in 2013. The Trust was, however in possession of a later OH report of 11 July 2016, which alludes to his psychological and musculoskeletal problems. The claimant claims, and we have no reason to doubt, that as a result of these earlier reports he was moved to Nailsea to join T 24 and worked from sometime in 2011 on the dayshift rotas with minimal periods of work through sickness.
11.2 Having received the standard letters of the 17th and 24th of January 2017, the claimant attended a one-to-one meeting with WL on the 13th of March 2017- see pages 813-816. At that time he notified WL of his PTSD stated that he wanted to stay at Nailsea but could not work night shifts due to his condition; and that he had never slept well during the day and had moved to Nailsea for day rotas which had worked well since. He indicated a willingness to work 12 hour days. it was noted that a further meeting was required post rota design to discuss flexible working/reasonable adjustments.

11.3 The next relevant communication that the claimant had was in an email from John Dyer, Head of operations dated the 31st of March 2017. The letter indicated that in order to ensure that he was fully supported and necessary reasonable adjustments considered, the operations manager would arrange to meet in due course and may refer him to occupational health. His base station was to remain at Nailsea but he was notified that he had not been allocated a line on the new 24/7 rotas due to his health condition. The claimant had some concerns about the contents of this letter because it referred to a meeting to discuss the claimant's position which Mr WL had on the 10th of March, three days before the 1:1 meeting with WL.
11.4 On 7th of April 2017 this claimant put forward a proposal that he could do a job share with a colleague who was a trainee paramedic. He did this because he saw it as an opportunity to obtain a regular shift line for himself; and that nightshifts could be covered by the job share. See pages 820–821. On the 16th of April he emailed John Dyer notifying him that he would be prepared to increase his hours to 12 hour shifts in order to remain working dayshift Nailsea. He received a response on the 1st of May. See page 821. This indicated that the trainee was not yet registered, but that the first proposal was a potential option. The letter also acknowledged the claimant's offer to increase his hours.
11.5 Also at the start of May he received an email inviting him to vote on his shift preference for the new 24/7 shift pattern, but he declined to participate for the same reasons as KH.
11.6 On 8th of May 2017 he raised a grievance against the respondent's actions in removing him from his shift line. See page 825–828. He referred to his disability and the connected reasons for being placed at Nailsea on dayshift following occupational health advice. A fully fit person had been removed from the Nailsea rota and transferred to Weston. He accused the Trust of failing to make reasonable adjustments, of discriminating against him by not including him in the new 24/7 rota, and threatening to place him on a permanent relief rota with various starting times working out of different stations. On the 15th of May WL wrote to the claimant arranging a meeting on the 2nd of June "to discuss your flexible working application". There was then an exchange of emails but it appears that the meeting never took place.
11.7 On 26th of June he received notification for the first time from WL that he was to be placed on the predictive relief rota (PRR)
"I have subsequently sought executive director approval to agree the below interim arrangement for a period of three months, until the 15th of September 2017… You will work 18.7 hours per week relief (fixed days as per the attached rota as a medical adjustment) based at Nailsea/Weston/Churchill and availability 6 am to 8 pm."see page866.
The claimant responded on the 28th of June at page 837, stating that he was very disappointed and accusing the trust of bullying a member of staff covered by the Equality Act. In particular he stated that it had been agreed that it was not practicable for him to travel to Weston; that his grievance was still outstanding and that in the meantime he would continue to attend work on the T 24 rota, reporting for duty on 8 July.
11.8 In fact, although he was due to start his first shift on the 8th of July on the PRR, he claims that stress and anxiety caused a trigger in his PTSD, and he was signed off work from that date until 31 October 2017.

11.9. While off on the sick he attended a grievance meeting with Sarah Jenkins, (SJ), who gave evidence for the respondent, on the 31st of July 2017. In the course of the meeting he explained why he needed a fixed and predictable working pattern and that this had been granted to him previously originally as a reasonable adjustment which was being removed; and that he was being treated unfavourably because he was being put on a working pattern which he was unable to work. See pages 871-888. He received a grievance outcome letter from SJ on the 3rd of August 2017. This claimed that the claimant had confirmed that the reasonable adjustments required were to be restricted restricted from both nightshifts and RRV work and that "you were able to work 12 hour shifts, but within the parameters of 6 am to 8 pm". The letter referred to a more recent occupational health report of the 14th of July 2016 confirming the restriction from night duties and RV work. This document is in fact dated the 11th of July and is at page 806 of the bundle. Somewhat confusingly it refers not only to his psychological condition but also musculoskeletal problems. As to the former, it indicated that he was fit to carry out paramedic duties provided he continue to be restricted from nightshifts and car(RRV) duties.SJ claimed that placing him on PRR, with a permanent relief rota was a reasonable adjustment and rejected the grievance.

11.10. AH appealed the grievance decision on the 10th of August 2017 in an email at pages 891-892.He referred to the fact that he would have no fixed start times; that he would need extra travelling time to travel to the relief stations; and that under the Trust's Relief Working policy, the shifts could be altered at short notice. His grievance appeal was heard on the 3 October 2017 by MM – see notes at pages 908–911. The grievance appeal outcome was notified on the 17th of October 2017 see pages 912–915. The appeal was rejected. In summary, the panel noted the claimant' requested resolution of working only from Nailsea between 6 am and 8 pm with no nights or RRV working.

"The panel were unable to approve or support this request, because of the rigidity and lack of flexibility it allows. The panel also found that there had been a significant amount of support and that reasonable adjustments have been offered.… We believe the fixed term relief rota remains a good option for you…".

11.11. The claimant eventually returned to work on the 31st of October on a phased return. The claimant then submitted a flexible working request on the 15th of November 2017 requesting, on a trial basis for three months, to work at Nailsea only commencing on 6:30 am or 7 am shifts. See pages 923-924. The application was put in writing to the flexible working group panel on the 15th of November 2017 at pages 925 to 927. However, it was not supported by WL.

"The OM/HR are concerned about the operational impact of this proposal as a half line of nightshifts would be left uncovered. It would then fall to relief within the team and the wider relief pool to cover these nights (unless a willing line share clinician was found). Whilst keen to support Andy and ensure reasonable adjustments are put in place, it is a concern that this arrangement could place an increased burden of night working on other staff and have a negative operational impact. This could be seen in terms of increased dropped shifts due to limited relief capacity."

11.12. On the 22nd of November the claimant submitted a resignation letter setting out his reasons in detail – see pages 934–935. This crossed with a letter

of the same date from WL referring to the fact that the claimant had been offered shifts at an alternative station, which the claimant had refused. On the 23rd of November 2017 WL circulated the Nailsea team with opportunity for a line share for a clinician to work a permanent night shift.
In fact the Trust's flexible working panel met on the 28th of November and the claimant's application was approved for a period of three months subject to the claimant or the operations manager finding a suitable job share who would work the other half of the rota line. This was notified by the flexible working panel in a letter dated the 15th of December 2017. The claimant's notice period expired on the 22nd of January 2018. In the interim period the it is understood that the claimant worked as a third man on a DCA.
11.13 This claimant's case is summarised in paragraphs 45.7 to 49 of his counsel, Mr Canning's closing written submissions. Mr Allen's submissions are at paragraph 68-81.

12.**Emily Hayes (EH)**
12.1 EH commenced employment with the ambulance service in 2002 and qualified as a registered paramedic in November 2011, at which time she worked a day/night 12 hour shift rota in Bristol. The claimant has a long-standing history of depression, admitted as a disability; and dry eyes affecting night working, which is not admitted as a disability. The depression diagnosis was confirmed in an occupational health report of the 14th of December 2015 at page 966. The claimant had applied to work part time in 2012 and transferred to Churchill station. She worked there day and night on 12 hour shifts. As a matter of practice she had Mondays off to attend group therapy sessions for her depression. She found the nightshift caused her lack of sleep and affected her mental health. She put in a transfer request to Nailsea with its day only rota. The claimant was then granted a transfer as from August 2016 and work days only shift excluding Mondays. The latter condition was originally not granted (See FW letter of the 15th of February 2016 at page 966), but she made a further application in October 2016 – see page 968 – which was granted on the 13th January 2017 in a letter at page 971 which referred to and was expressed to be subject to the ongoing rota review.
12.2 The claimant subsequently became a Staff representative for Nailsea in the WG meetings.
12.3 she had her 1:1 consultation with WL on the 2nd of February 2017, the notes of which are at page 972. See also 972A – C in which she stated: "Between a rock and a hard place as doesn't want to do nights and doesn't want to go back to Bristol (did nine years there). Nailsea is closest to home in North Somerset. Doesn't want to move to Weston (and no guarantee there will be a day late rota). But she doesn't want to work nights." At page 972C it is recorded: "Doesn't sleep well during the day hence not wanting to do Nights. Nights also have an impact on mental health." The claimant was later to claim (in an email on the 29th of June at page 1020 that WL said " don't worry we'll sort something out".
12.4 On the 31st of March 2017 the claimant was notified by email that there would be a day and night 12 hour shift length rota at Nailsea. She raised a grievance on the 16th of May 2017 at page 981. She referred to the 1:1 meeting on the 2nd of February and repeated that nights exacerbated her mental health, and that she had moved to Nailsea to avoid them. Receipt of the grievance was

acknowledged on the 18th of May 2017.
12.5 On the 24th of May she emailed WL at page 985 complaining of stress at the prospect of returning to night shifts.
12.6 On the 3 June 2017 she was given her new rotas on the GRS system which she printed off on the 9th of June. See pages 1070–1072. This indicated some nightshift working for her. The claimant was not at work for the next 10 to 14 days. On the 29th of June she emailed WL stating that going back onto nightshift would affect her health and well-being, and notifying him of a GP appointment on the following Monday. She referred to her outstanding grievance and asked for a reasonable alternative from the 3rd of July. On the 30th of June she emailed WL page 1022 specifically identifying a nightshift allotted to her in week commencing the 6th of July. In a significant response from WL on 30th of June at page 1032, he stated
"I appreciate the concerns you raise… However at this time there is no confirmation as to any health conditions you have, that may impact on night working. I also understand that you previously worked at 24/7 day/night rota prior to moving to Nailsea. With regard to the outstanding grievance I understand that this will be heard next week but can confirm that team 24 will not exist beyond the 2nd of July 2017 and as such the shifts will not be available. In the interim my expectation is that you will attend for your contracted shifts on the Nailsea 24/7 rota".
12.7. The claimant obtained a GP letter on the 3rd of July which she handed in on the 4th of July this states: –
"The above lady suffers from dry eyes. She has been seen at the eye hospital for this and uses drops daily. She has noticed that this condition worsened when she worked nights. Working nights has affected her sleep. There is not only affects her eyes but also her mental health. She has taken medication for this since her 20s. As I'm sure you are aware lack of sleep can adversely affect someone's mental health. Please can you take this into consideration when issuing this lady her rota as it would be beneficial that she did not work nights?". See page 1030A.
12.8 On the 4th of July, at the time that she handed in the GP letter, she emailed Mr Newton copying in WL asking for a reference to occupational health. She also stated that if the Trust was not willing to accommodate her not working shifts nightshifts, she would work them under protest. She claims that on the same day she rang Mr Newton about the GP letter and he launched into a verbal assault on her. In the course of that telephone conversation he asked her to do another flexible working application for permanent relief. On the 6th of July Mr Newton emailed the claimant at pages 1050–1051 stating that he was happy to authorise an amendment to EH shifts to days only as an interim measure whilst occupational health support was sought. This was also copied to Marie Martin who organised the rotas. The arrangement was that if she was allotted a night shift on the rota, it would be converted to a day shift.There is an internal exchange of emails from Marie Martin to WL and MrNewton on the 6th of July 2017 at pages 1048-1049, attaching a rota with night shifts to be converted to dayshifts and raising some problems in respect of it.
12.9. Produced by the respondent during the tribunal hearing and attached to the claimant's witness statement, is a schedule showing the claimant's pattern of shifts from the 3rd of July onwards, and the times actually worked by the claimant. The claimant has various complaints about these shifts including the

circumstance that her job share partner covering her Monday shifts, allowing her to go to therapy sessions, Mr Pimm, had resigned just prior to the 3rd of July; and that her new shift patterns included a preponderance of weekend shifts. In paragraphs 17 to 20 of her witness statement she raises general complaints about the way she was treated in this period. She attended her grievance hearing on the 31st of July 2017 the notes of which are at pages 1092–1096. At that meeting she was asked what her choice would be the shifts and what would be your compromise. She responded:

"Days/nights Nailsea, days/lates – Weston. Weston is too far but doesn't want to work nights but do not want Bristol although closer to home."

It was indicated by DP on her behalf at the meeting: "Equality is about reasonable adjustments within the law. Recommendations should be achievable… Emily doesn't want to work on the predicted relief shifts if detrimental to her.'

The outcome letter dated the 2nd of August stated at page 1098: –

"I have considered the Trust's duty to provide reasonable adjustments based on the current medical information provided by your GP. If the occupational health referral recommends your continued restriction from nightshifts, then my recommendation is that you were placed on the PRR which I believe would accommodate your reasonable adjustments required. Should the occupational health referral recommend you are able to work nights you should request a new flexible working request and discuss this with WL. I have considered all the information available along with the principles of the rota review, and the Trust's priority to accommodate your reasonable adjustments to ensure we are able to provide care to our patients. I have concluded that your reasonable adjustments can be accommodated within the fixed relief rota and therefore your grievance was not upheld."

12.10. An occupational health report was obtained on the 7th of August - see pages 1099 to 1101. It indicated that it was likely that the claimant was covered by the provisions of the Equality Act. In answer to the question: Is the reason for ill-health permanent, fluctuating, progressive or resolvable? The answer is:

" As management are aware EH has underlying health conditions which should be seen as permanent, they do however manifest with fluctuating symptoms which are generally well-managed within her current working pattern. These have been well documented in the letter to you from her GP dated the 3rd of July 2017.… There does appear to be an exacerbating correlation between her health presentation and her role or working environment, specifically her working pattern as outlined in the GP letter. In answer to a general question asking for an outline of any recommendations or adjustments, the response is:

- ongoing support of flexible working agreement already in place which protects Monday for ongoing therapy.
- in line with the working time regulations, EH's medical practitioner has advised you as her employer that she is suffering from a health problem considered to be connected with night work, and has requested that she be withdrawn from night working. This is an opinion I support on a permanent basis, and is in keeping with the legislation.
- there is evidence from her working pattern over the last 12 months that not working past 22:00 hours (overruns excepted) has enabled good

management of her underlying health conditions and has enabled her to sustain a presence in the workplace. As such it is my opinion that this is the preferable working pattern and should be maintained.It is possible that she may be able to work slightly later (but I would not advocate working beyond 23:00 hours) but would advocate that if this be adopted it be trialled on a three-month basis which will provide evidence of its impact on both her eye and mental well-being, her working pattern should revert to early finishes if shown to be detrimental.

- I understand that predicted relief has been suggested; however this would not guarantee working times and may include working at stations some distance away from home which may compromise her sleep pattern, quantity and quality and be default impact on her mental well-being.
- in summary her mental health condition would be best supported by a regular working pattern".

12.11. The claimant attended the flexible working meeting on the 11th of August. See page 1107. In short, she indicated that she would agree to work to 23.00 for a trial period. She expressed concerns about predicted relief:
"Other staff have short notice shift changes and not having enough hours. That instability will exacerbate my anxiety".
At the end of the note the issue of alternative roles was raised by the claimant and it was indicated that there was a role available as a clinical supervisor in Bristol. These matters were outlined in WL's confirmation letter dated the 18th of August 2017 at pages 1114–1115.
12.12. The claimant was off work from the 6th of September 2017 with a shoulder injury until the 30th of September 2017.
12.13. The claimant attended a stage three grievance appeal hearing on the 3rd of October 2017 chaired by Mr McCauley, the notes of which are on page 1128-1133. In summary, in the course of it the claimant said that she wanted to work dayshift only at Nailsea, and that she could work up to 12 hour shifts, but only up to 8 pm. The latter conflicted with the occupational health report to the effect that she could work up to 10 pm, and that up to 11 pm could be trialled. The grievance outcome was given to the claimant by letter dated the 17th of October 2017 at pages 1139–1141. In a summary at page 1141 it states:
" To summarise, you expressed a wish to remain at Nailsea with the provisions of an assigned locker and to be able to work with a restricted group of colleagues to enable a sense of belonging and prevent you from driving long distances, you also advised you could work 10 or 12 hour shifts but not after 20:00 hours. When reviewing this consideration the panel consulted with the ROC to understand the implications of this request. I can confirm that this request cannot be accommodated due to its rigidity. During the meeting you also mentioned considering an RRV line or working within the Hub, but as yet neither have been progressed by yourself.
In concluding my response I can confirm the points of your appeal are not upheld, nor can we agree to your proposed resolution. I encourage you to engage with your operations manager WL so he could continue to support you during this time."
12.13 Events following the grievance appeal hearing, and indeed from the

temporary arrangement made by Mr Newton on the 6th of July, demonstrated that the respondent was having great difficulty placing the claimant into a days only relief rota within the restrictions that the claimant required – working days only, not Mondays only at Nailsea, up to and not beyond 8 pm. It is to be noted that the claimant was in effect not on the PRR intended for the others from 6 July, but was on relief only. This was a special arrangement for her, intended to be temporary pending the further OH report. On the 15th of November there was a flexible working meeting with WL. See pages 1164–1165 at which the claimant made the following request:

" Due to health reasons I wish to stay on my interim flexible working arrangement but with some adjustments. My current arrangements are, no nights; no Mondays. The adjustments are: – on the 20 week rota – on the two consecutive Mondays that are planned to work, these are substituted for predicted relief days on the following Wednesday and Tuesday respectively. When rostered to work nights these are substituted for day shifts. The shifts can be planned for Nailsea and Churchill only. This would also be applicable to the aforementioned predicted Relief days. Positives: may allow my health concerns to get better. Negatives for the trust: adverse impact on our ROC planning. "

This claimant claimed in her witness statement that the act of inviting the claimant to a flexible working application was in itself bullying.

12.14. The claimant was off work for a substantial period of time with a shoulder injury from September 2017. In December a phased return was being discussed. On the 13th of December WL wrote to the claimant notifying her that her latest application for flexible working had been turned down by FWG. "This is due to the proposed pattern being too restrictive. The FWG further documented that the dropped shift would have a negative impact in the wider sector."

12.15. The claimant subsequently pursued an application for redeployment in the Hub job. There is evidence that she was assisted in that application. She commenced in a permanent role on the 12th of March 2018. The claimant subsequently resigned from the Trust on the 21st of September 2018 and is pursuing a separate ET claim which is stayed.

12.16. This claimant does not pursue a claim of unfair constructive dismissal but only of discrimination arising from disability contrary to section 15, and of a failure to make reasonable adjustments contrary to Sections 20 and 21 of the Act. It is to be noted that the section 15 issue was identified by EJ Roper on the 7th of May 2019 at paragraph 16.2 in almost identical terms as that for Harris and Halliday as set out at paragraph 10.14 above, namely that the something arisIng consequence of the claimant's disability was the withdrawal of protecting working patterns and placing each claimant on a relief role such that the claimant was unable to work the 24-hour rota because of the specified disability. Recognising that as of the 6th of July 2017, this claimant had not been placed on the PRR 24 hour rota, but on her own special relief rota on a temporary basis, Mr Canning made an application to amend to substitute for the words "and placing each claimant on a relief rota", the words "and placing the claimant on the rota which was not permanent, and on which her shifts were changed at short notice". Mr Allen for the respondent strenuously objected. He argued that the application was made far too late, the claimant having finished her evidence and having been cross-examined on the basis of the pleaded case; that this was the third opportunity that the claimant had had properly to plead her case; that the issues

had been agreed by all parties and identified at the case management hearing on the 7th of May; and that if the application had been made at that hearing it would have been refused, as was another application to amend made at that hearing; and that he would have cross examined in a different way if the application had been made and had been granted. He urged that if the application were now allowed, he should either be entitled to a short adjournment in order to prepare and for the claimant to be recalled for further cross-examinination, or her case should be hived off from the present hearing and relisted with her other ET claim. Mr Canning responded that the balance of prejudice lay more heavily upon the claimant if she were denied the application, and that the application, while important to her, did not substantially alter her case, and was not an amendment of a type which amounted to an entirely new factual allegation which changed the basis of the existing claim. We were referred to the President's guidance note on amendments, which in effect follows a series of well-known authorities of the appellate courts from Selkent onwards.
We refused the application and indicated that we would give our reasons later. We do so now. While not excepting all of Mr Allen's arguments, we did accept that if we allowed the amendment, he would be entitled to have the claimant recalled for further cross-examination. However, we accept that the application has been made very late in the day; that the claimant who has been professionally represented throughout, has had ample opportunity to put her case in order; that the application if made before EJ Roper would inevitably have been refused; that it should in any event have been made at the outset of the substantive hearing and not after the claimant's evidence had concluded; that if the application were allowed and further cross-examination took place it would place in jeopardy the conclusion of the evidence and submissions within the time limit already generously allowed in a case which is of some age; that hiving it off would involve another tribunal having to hear the same evidence from the respondent as has been given to this tribunal, and taken over three day; and finally, the claimant still has the unamended claim and the claim for a failure to make reasonable adjustments which covers the same or substantially the same factual matters.
12.17. This claimant's claim of failing to make reasonable adjustments is drafted in slightly different terms from that of Harris and Halliday: The PCP is identified as being the withdrawal of fixed working patterns and putting the claimant on a relief rota.
12.17. The relevant submissions for this claimant are to be found at Mr Canning's at paragraph 54 for the claimant, and Mr Allen's at paragraphs 84–90.

13. **Jacqueline Lane (JL)**
13.1. She started working for the ambulance service in 1993, and qualified as a paramedic in 1996, at which time she was working a full time 12 hour day and night rotor at Nailsea. She had a son born in 2003 and is a single parent. Thereafter, with assistance from her parents, she reduced her hours and originally had a line share with another paramedic until a vacancy became available for two late shifts commencing at 1 am and later Midnight, for 12 hours with a regular crewmate until 2010. Her parents were getting older and she then entered into a job share with AH, reducing her hours to 18.75 per week working days. That remained the position until the consultation process started in January

2017.
13.2. On the 21st of January 2017 she wrote to WL at page 1236 making adverse comments about the proposed changes referring to the Equality Act and raising a query about what was to happen to staff unable to relocate or to manage the changes within the rota.She also raised a query about how representatives had been selected for the WG is having been turned down as a representative by John Dyer on the 10th of January 2017. She also raised the issue with the CEO by email of the 25th of January. He responded on the 27th of January notifying the group of a meeting to take place on the 2nd of February 2017 to discuss further the concerns raised.
13.3. It was at that meeting that the topic of the Weston proposal was first raised and she also alleges that WL made the comment about not disadvantaging staff at Weston to accommodate the Nailsea dayshift group. She says that the proposed shift from Weston could be accommodated at 09. 30 to 19.30 and 11.00 to 21.00.
13.4. She attended her 1:1 meeting with WL on 20th of February 2017 with KH as a notetaker. The notes are at pages 1243–1246. She indicated that she was a single parent of a 13-year-old child and that she had gone on to days in order to be able to look after him without relying upon others. She struggled finishing at 20:00 hours with childcare. WL said this could be discussed at an FW meeting but her cases that he did not tell her at that stage that she could should make an application .
13.5. On 31st of March she was notified by John Dyer in an email of page 1249 that the feedback from the one-to-one meetings have been received and it was confirmed that her base station was to remain Nailsea.
13.6. On 21st of April she attended the special WG meeting, the notes of which are on page 524A. The material points at that meeting have already been described. Following that the claimant submitted an FW application on the 24th of April at pages 1261–1262. She gave her previous flexible working history and details of her single-parent childcare responsibilities which would mean that she could not leave the child overnight. “My main criteria would be no overnight/late shifts and no increase in my current working day.”She also referred to the provision in the flexible working policy to the effect that reviews should take place on an annual basis, which had not been followed.
13.6. On the 11th of May she submitted her formal grievance. See page 1267B-D. At page 1267D she wrote: –
“Although I have not been told directly, it is been suggested that one alternative to the days/nights with rotor would be permanent predicted relief working. Apart from the impracticality of this with childcare because of the randomness of shift times, locations, working pattern et cetera the fact that this was my working practice when I joined the ambulance service means I would consider being put put back onto permanent relief now as a demotion and once again unfair, unreasonable, a failure to provide reasonable adjustments and unlawful sex discrimination.”
To continue with a description of the grievance process, she attended a grievance meeting on the 31st of July and the outcome letter is dated the 4th of August at page 1 301. The meeting had been chaired by SJ. By this stage the claimant had attended a flexible working meeting with WL on the 12 June. The notes of that meeting or page 1272. The claimant was represented by Mr Nelson

of Unison who indicated at the start "I'm going to throw a bit of a curve ball here. I have chatted to Jackie and due to her current personal circumstances (WL acknowledged that he was aware of these), there would appear to be only one shift within the new rota pattern that she could do especially because of travel time and late finishes and it is obviously not realistic to expect that shift to be available every week. For that reason we think the best option is to seek redeployment. WL agreed to support the application. Nelson stated that he would email the claimant the redeployment pro forma that day for her to complete.
On around the 29th of June the claimant received a letter dated the 27th of June from WL see pages 1275–1277 indicating the following interim arrangement to come into effect on the 3rd of July only a few days later: –

> "18.75 hours per week relief
> Liaise with ROC planner regards shifts to fit around personal responsibilities
> 06.00 –20.00 availability
> Working at Nailsea/Weston/Burnham/Churchill.

Please note this is an interim arrangement which I have sought approval from the executive director team and will not continue on a permanent basis. Rather this decision has been made to provide you with additional time to ensure a revised FW application is approved or redeployment arranged… This interim arrangement has only been agreed until 15th of September."
On the 30th of June the claimant emailed a response objecting on the basis that she had not agreed to relief working across a number of sites, and within those time parameters, even on an interim basis. WL responded on the same day claiming that he had put her on relief shifts pending her looking at redeployment options, and referred to the very limited time frame. In consequence, she attempted to arrange shifts, but was told she could owe hours to work back later, or take unpaid leave. It was also suggested she work alone on an RRV.
On 13th of July page 1289 a claimant wrote further to WL referring to the difficulties she was encountering. In particular she referred to the parameters of 6 am and 8 pm.
"The 8 pm finish is very much appreciated, but to start before 8 am at any station would be as complicated for me as finishing after 8 pm because it would mean I needed overnight childcare that sadly is not something I currently have. Once again, if I'd been able to work 12 hour shifts starting any time after 6 am I feel there would've been no need to discuss redeployment…". She mentioned that the trust was running a private ambulance service from Nailsea during days.
WL responded on the 14th of July pointing out that the specific shift times offered between 08.00 and 20.00 meant that there were only two shifts available in North Somerset within the claimant's parameter , the 09.30 to 19.30 at Weston , and 09.30 to 19.30 at Shepton. He indicated a need for her to provide slightly increased availability to ensure that shifts could be planned and suggested 07.00 to 22.00.
It was against this background that the claimant attended her grievance hearing on the 31st of July. SJ stated in her outcome letter:
"To provide you with the necessary support during this temporary period, my recommendation is that you were placed on the PRR that has been developed at Nailsea for a period of three months, working within the parameters of 08.00 to 20.00. This will provide you with stability of day working in the short term until you

have stability to work all the required hours within a PRR".
13.7. The claimant appealed the grievance outcome on the 10th of August at page 1306–1 309. The hearing took place on the 3rd of October before a panel chaired by Mr McCauley and the outcome letter is at page 1364 onwards. Materially the letter stated:
"The panel have listened about the personal difficulties you face with the childcare and the new 24/7 rotors, however the panel believes that these have been fully understood and considered in depth during the grievance stage. You have not presented any additional information with regards to your situation that has not been considered already by the original panel; therefore this part of your appeal is not upheld."
The letter went on to raise the issue of redeployment and offered some suggestions.
13.8. The claimant had been off work with a back injury during this period and was due to return to work. There is a note of a telephone call to the claimant from WL on the 7th of November 2017 at page 1377. There were three options discussed: as to the paramedic job, the claimant said that her parameters were still 08.00 to 20.00, but could be more flexible with finish times. There was only one shift in North Somerset fitting her parameters. The second option was a work trial in the clinical hub, subject to an FW agreement.The third option was for her to seek alternative employment by applying for any advertised vacancies within the Trust.
13.9 It appears the from further email from WL on the 8th of November that at that stage the claimant had agreed to start a work trial in the Hub. There was a delay because she could not start retraining until January 2018 when, having made a further FW application, she started a job share on the 4th of June 2018. She claims that she was forced to take this choice because the trust had not made adjustments to allow her to continue as a paramedic.
13.9. The tribunal will identify the issues outlined on the 7th of May 2019 for this claimant and the other claimant with childcare needs, Ms Tester, after setting out the history of her case. Mr Canning's submissions for JL are to be found at his paragraphs 63-66. Mr Allen's for the Trust are at paragraphs 91-97.

14. **Sarah Tester (ST)**
14.1 As of 2017 the claimant had two children aged five and 11. She had returned to work at Nailsea from maternity leave following the birth of her first child in 2010 working the two day shift hours commencing at 8 am and 10 am to 6 pm and 8 pm, a fixed and predictable pattern which enabled her to arrange childcare. Her second child had medical problems.She had made an application for flexible working on the 23rd of August 2015. Her husband worked full time.
14.2. At her one-to-one with WL on the 27th of January 2017 see pages 1435-1437 she identified the child care needs and also stated that her mother living in WSM needed assistance with mobility and medication, but she was not the registered carer. She stated does not wish to work nights or past 22.00. In answer to the base station question, she identified Nailsea as the first preference "not 24 hours though", and WSM and as the second preference. "Family is reason I work part time, shorter hours and want to avoid late finishes."
14.3. On the 31st of March she received a letter confirming that her base station was to remain Nailsea. By this stage she was aware that there was to be a 24/7

rota shift rotor at Nailsea. She was concerned that those shifts were incompatible with her family life, and about the effect of night working on her mental health.
14.4. On the 7th of April she wrote a letter of concern to WL with particular reference to the proposed 12 hour day on nightshifts. WL responded on the same day. He confirmed that the only rota option said Nailsea were the 24/7 rotas and that they had followed a fair and consistent process with regards to displacement. He confirmed that there would be a meeting arranged in due course for any staff who had concerns. She attended the meeting on the 21st of April. She claims that she and others spoke to John Dyer after the meeting about the Weston proposal and that he indicated that it was a viable solution.
14.5. She made a flexible working application on the 1st of May see pages 1457–1458. This further indicated that she had two boys still at school who required care after school. The oldest was just 12 and two old to be placed with a childminder. The youngest son aged six had medical problems which meant a childminder was not appropriate. There was an after-school club till 4:30 pm. She had worked two shifts a week of 10 hours since 2006. She also helped to care for her mother who now required a wheelchair after spinal surgery, and frequently had to be visited late at night.
14.6. On the 23rd of May 2017 she raised a grievance – see page 1463 stating that she had still not to date received any letter stating what rotas she was supposed to be working. In the body of the grievance at page 1464, having expanded on her caring duties she stated that for her a 06.30 or 07.00 or 07.30 start was not viable as her husband left at 06.15 to go to work. Her husband frequently worked away and all did not return to work until after 6:30 pm. She could not work nightshifts.
14.7 on the 5th of June she emailed WL stating that she had learned that day that she had been placed on the 12 hour day and night rota when she had made it very clear that due to childcare and caring issues she was not able to work 12 hour days and nights. She expressed exasperation.
14.8 She had a meeting with WL and Rachel Bingham from HR on 12 June 2017. See the notes contained in another application to the FW panel on the 12th of June. The application indicated an arrangement whereby she moved from 18.75 I was on a rotor to 18.75 hours on relief based at Weston. There was then an indication of shifts which she could work described as either option one or option two. All of the shifts identified were to start after 8 am, but some ended after 6:30 pm. The claimant does not refer to this document in her witness statement but indicates that she agreed to request a more varied work pattern then she was currently doing but that she would not start before 9:30 am on weekdays but could start at 7 am at weekends. She says that she did not particularly want to work these hours but that WL explained that it was necessary to get what she wanted in terms of a later weekday start. She says that he told her that he would support her request. The application which went to the FWG indicates at page 1475 that's WL supported the request. However, when she received the outcome of the application by letter of the 27th of June 2017, she was notified that the FWG had been unable to agree to the changes due to

- Detrimental effect on ability to meet operational requirements
- Detrimental impact on quality or performance
- Insufficiency of work during the period the member of staff proposes to

work.

Furthermore the letter indicated that he had advised her that in principle he did not agree to her request. In addition it was claimed in the letter that she had explained that she did not wish to work nightshifts but did not provide any clear reasons why she was unable to work them. In his witness statement at paragraph113, he originally stated that he had advised ST that he could not support her request at the time and he repeated the reasons set out in the letter of the 27th of June. When he went into the witness box at the tribunal, however, he changed his evidence, and asserted that he had supported her request, and that the letter had been sent out in error on the 27th of June, wrongly recording that he had not supported her. That is a most unsatisfactory state of affairs. Whatever the truth of the matter, ST was entitled to feel let down for two reasons. First her application was turned down. Secondly she was led to believe that he would support her application (which in fact he did) and was then informed to the contrary. No apology for the mistake in June 2017 was offered until WL gave evidence in May 2019.

14.9. The claimant was then put on new rotas with two nightshifts on the sixth and seventh of July. She contacted WL to tell him that she could not work those shifts. WL told her that he was standing her down for those shifts which meant that she either lost pay or had to make the time back up at a later date. In his absence on holiday she met Mr Newton on the 4th of July, when a discussion took place about the next three months of rota shifts. Where she was unable to take any for childcare reasons, she had to take annual leave.

14.10. On WL's return the claimant emailed him on the 14th of July – see page 1492 stating that she had visited her GP concerning the difficulties she was facing at work with her shifts and her anxiety around working an entire night shift. She indicated that the children were about to start their holidays and there were no spaces available at childcare providers. In response WL invited her to an FW meeting on the 11th of August. She was by this time working hours on relief only. In further response on the 19th of July at page 1495 WL said that he would restrict her availability to 06.00 to midnight, thereby removing full night shifts. On the 31st of July the claimant attended a grievance hearing, nearly 3 months after she had raised it. She raised a whole series of issues concerning her shift times and the problems she was having with childcare. In particular at page 1516 she stated that WL had told that she needed to ask her husband to have flexible working. She had spoken to her husband "who gave a rude answer but did ask his full-time employers. Aerospace's response was why are SWAFT making this an Aerospace problem when ST was the main carer for the children". The panel's conclusions were notified on the 2nd of August at page 1519. It was concluded that the recent rota restricting her hours of work from 06.00 to midnight was a reasonable adjustment based on the current GP information and that her request to start at 8 am should be raised with WL. On the 1st of August ST had emailed WL at page 1525 in which she stated:

> "With regards to the 07.00 start I have explained to you many times that I cannot start before 08.00 because I have no childcare. I also note that I am showing as working 12 hour shifts, I am 18.75 hours a week, that is not averaged out over a certain period, but a week, therefore 2 x 12 hours shifts are enforced overtime which I am sure you are aware is not legal."

14.11. At the FW hearing on the 11th of August, the claimant was again represented by DP and issues were raised about her childcare difficulties. She raised the possibility of returning to her pre-written review shifts.On the 18th of August WL in his outcome letter indicated "following discussion it was agreed by all parties that you would work as below:

- 0700–2300 on fixed relief days as per previously submitted rota (you advised 08.00 onwards start was preferred where possible)

- To work all shift lengths including 12 hours (you advised 10 hour shifts were preferred where possible)
- To work from Nailsea, Weston, Churchill, Burnham with further option of Almondsbury and Avonmouth (particularly if shorter shifts/later starts can be accommodated). "

This was to be on a temporary basis until the 30th of September pending a grievance appeal.

14.12. At her grievance appeal before Mr McCauley on the 3rd of October the claimant repeated in detail her childcare difficulties. See pages 1557–1560. Her grievance was rejected in a lengthy letter of the 17th of October at page 1569 onwards. In summary, her request to revert to the T 24 rota was rejected on the basis that the fixed day relief rota was the best option available.

14.13. Thereafter there is correspondence in which the claimant raised the issue that she could no longer start at 7am because her husband's employer had only agreed to help out with his start times until the grievance process was completed. WL agreed that her start times could be 8 am weekdays but would remain 7 am at weekends. There was a further application for FW on 13th of December. See page 1587 in which the claimant again raised childcare difficulties. She wanted to work from Weston and was willing to work occasional 12 hour shift. This was not supported by WL and was rejected by the panel.The only concession after that was an agreement that her shifts could start at 8 am.

14.14. In summary therefore, from the 24th of July 2017 the claimant has had removed the original T 24 rota, is working a fixed relief pattern at 6 stations, albeit starting at 8 am, with some 12 hour shifts but with changes at short notice. At paragraph 21 of her witness statement she describes the difficulties that she continues to have with childcare. "These changes have been hugely detrimental to my family life".

14.15. The issues identified for this claimant and JL were: –

"Indirect discrimination contrary to section 19 EQA

Did the respondent apply the following PCP generally, namely removing either claimant from the shift pattern?

Does the application of the PCP put women at a particular disadvantage when compare it with persons who do not have this protected characteristic? It is argued that women generally are disproportionately more likely to be primary carers and therefore more likely to need fixed predictable working patterns.

Did the application of the PCP put each claimant at that disadvantage (and that she was less able to comply with the respondents requirement to work the new ships because of her caring responsibilities)?

The respondent does not accept that either claimant has identified any PCP which puts women generally at a disadvantage nor put her individually at that

disadvantage.
In any event, the respondent asserts that any such action would be justified for the reasons set out in paragraph 134 of its amended respond, which is at page 176, and paragraph 157 which is at page 179 of the agreed trial bundle "in particular the respondent has a legitimate business interest in ensuring that its rotas are rostered to meet current service demands and patient requirements and to ensure that all employee rosters remain within the available financial envelope in accordance with the core principles of the rota review."
The parties' submissions with regard to ST's case are at paragraphs 69-71 in the claimant's case, and paragraphs 98-104 in the Trust's case.

15. **The relevant statutory provisions**
15.1 discrimination arising from Disability.
Section 15 of the Act provides: –
(1) a person (A) discriminates against a disabled person (B) if –
(a) A treats B unfavourably because of something arising in consequence of B's disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
(2) subsection (1) does not apply if a shows that A did not know, and could not reasonably have been expected to know that B had the disability.
15.2 indirect discrimination
Section 19 of the Act provides: –

(1) a person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
(2) (For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if-
(a) A applies, or would apply, it to persons with whom he does not share the characteristic,
(b) It puts, or would put, persons with whom he shares the characteristic at a particular disadvantage when compare it with persons with whom he does not share it,
(c) It puts, or would put, B at that disadvantage, and
(d) A cannot show it to be a proportionate means of achieving a legitimate aim".
This section applies to the protected characteristic of sex.

15.3 Failure to make reasonable adjustments
Section 20 of the Act provides-

(1) Where this Act imposes a duty to make reasonable adjustments on a person this section and Sections 21 and 22 and the applicable schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
(2) The duty comprises the following three requirements.
(3) The first requirement is a requirement, where a PCP of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

Section 21 of the Act provides: –

(1) a failure to comply with the first… Requirement is a failure to comply with the duty to make reasonable adjustments.
(2) A discriminates against a disabled person if he fails to comply with that duty in relation to that person.
Schedule 8 paragraph 20 of the Act provides that: –
(1) A is not subject to a duty to make reasonable adjustments if he does not know, and could not reasonably be expected to know –
(a) …….
(b) ….. that an interested disabled person has a disability and is likely to be placed at the disadvantage.

15.4 comparison by reference to circumstances

Section 23 provides: –
(1) On a comparison of cases for the purposes of section 13 or 19 there must be no material difference between the circumstances relating to each case.

15.5 employees and applicants

Section 39 provides: –
(3) An employer (A) must not discriminate against employee of A's (B) –
(c) by dismissing B;
(d) subjecting B to any other detriment.
(5). A duty to make reasonable adjustments applies to an employer.
(7) … The reference to dismissing B includes a reference to the termination of B's employment –
(a)….
(b) by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct to terminate the employment without notice.
This provision corresponds with section 95(1)(c) of Employment Rights Act which defines constructive dismissal as
"The employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employers's conduct."

There has to be a sufficiently serious breach of contract on the part of the employer such that the employee is entitled to treat himself as dismissed and resign. The breach of contract relied upon by the relevant claimants in this case is the breach of the implied term of trust and confidence: those claimants are required to prove on the balance of probabilities that the respondent has, without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence. The tribunal has to look at the conduct as a whole and determine whether its effect, judged reasonably and sensibly, is such that they can and cannot be expected to put up with it. See **Woods v WM Car (Peterborough) Ltd** 1981 ICR page 666. In a section 15 dismissal claim the conduct said to be repudiatory must have been materially influenced by an act or acts of unjustified unfavourable treatment

arising from something to do with disability, on the part of employer or, in the case of a Section 19 indirect discrimination claim, similar acts said to constitute indirect sex discrimination.The claimant must in any case resign in part at least due to that conduct, and must not have affirmed the continuation of the contract before resigning, unless there has been a further act constituting a final straw.

15.6 Burden of proof.

Section 136 provides:-

(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 the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

This entails a two stage process whereby at the first stage the claimant has to adduce facts, either from his or her own evidence or that of other witnesses, for example by cross-examination of the respondent's witnesses, or from other evidence including documentary evidence, facts from which the tribunal could reasonably conclude that the treatment of the claimant was because of or related to a protected characteristic, or that that there was a failure to make a reasonable adjustment. The burden then shifts to the employer to establish that its treatment of the claimant had nothing to do with the protected characteristic, or that there was no failure to make a reasonable adjustment . See **Madarassy v Nomura International 2007 ICR page867.** The Tribunal applied in this connection the 12 paragraph guidance in **Igen v Wong.**

15.7 public sector equality duty

Section 149 of the Act in particular subsection (1) one sets out that a public authority must, in the exercise of its functions, have due regard to the need to-

(a) eliminate discrimination… and any other conduct that is prohibited by or under this Act;

(b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) Foster good relations between person who share a relevant protected characteristic and persons who do not share it.

We are reminded that section 156 does not confer a cause of action In private law in respect of a failure of performance.

15.8. The tribunal will refer to other authorities to which we have been referred on the above statutory provisions in stating our conclusions.

17. **Conclusions.**

17.1 It is appropriate to start with the issue which is common to all of the

claimants; namely whether the circumstances of the removal of the SOU 24 day shifts from the claimants and of its replacement on an individual basis constituted in the cases of KH, AH and EH a detriment contrary to section 15 discrimination arising from something to do with disability and/or a failure to make a reasonable adjustment contrary to section 21, and 39(2)(d) of EQA; and in the cases of JL and ST, indirect sex discrimination contrary to section 19 and 39 (2.) It is conceded that the Trust removed the shift patterns which were favourable to the claimants but not that those amounted to a PCP. It is further conceded that KH,AH and EH were treated unfavourably in the removal of their preferred working patterns, but not that the placing of KH and AH on the PRR constituted unfavourable treatment for the purposes of section 15 or a failure to make reasonable adjustments. In the case of EH, she was not placed on the PRR, but on permanent relief shifts.
It is not asserted by the claimants or conceded by the respondent that the removal of the preferred working patterns was in itself a detriment because of something arising from disability.
It is denied by the Trust that either JL or ST suffered group or individual disadvantage on the grounds of sex in relation to a PCP.
We start by reminding ourselves what constitutes a detriment for the purposes of section 39(2)©. We apply the Shamoon test 2003 ICR page 37 – House of Lords. A detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his/her disadvantage, but an unjustified sense of grievance is not a detriment.
If it is then established that the claimants KH, AH and EH were subjected to a detriment arising from something to do with disability, we would then have to decide whether that treatment was justified as pursuing a legitimate aim, or a failure to make a reasonable adjustment. The same justification issue would arise in the case of JL and ST if we were satisfied that they suffered the relevant group and individual disadvantage in relation to a PCP.
It is conceded by the claimants that the Trust had a legitimate aim in seeking to implement a new roster system to meet the increased demands on the ambulance service within the existing financial envelope and within the core principles (which were agreed by the joint steering group).
There is an initial dispute about the priority which the Trust accorded to the identification of the new rosters throughout the Trust stations before considering flexible working applications.The supposed rationale for this was that the Trust (CS's evidence) considered that the proportion of ambulance personnel on flexible working arrangements – somewhere between 20 and 25% – would hinder the application of the proposed beneficial effects of the shift changes. We recognised that this was a highly complex process involving the consideration of well over 2000 staff, but we have concerns about the consequences of that fundamental decision on the claimant group. First, there is substantial evidence that the respondent did not consider at the planning stage what the potential adverse affects would likely to be on the groups who were entitled to special treatment and protection because of their protected status under the EQA. The Report to the Directors on 29 June 2017 refers to "consistent rota design to prevent inherent unfairness and equalise impact on all staff". This ignores the priority status to which people with disabilities may be entitled under EQA. There was no attempt to identify at the pre-implementation stage the numbers and identities

of those with protected status, amongst those with flexible working arrangements, many of whom would not have had protected status. Secondly, we were concerned that the equality impact statement prepared by CS did not fulfil its primary purpose, which was to identify the potential impact upon those with protected status. The nearest that the statement came to consideration of relevant matters is at page 263: "There will be a potential for an initial negative staff impact, due to staff being asked to adjust their working hours, however it is anticipated that the long-term change will be positive". Of more significance is page 265 which begins. "In order to demonstrate compliance with the EQA 2010" in which there is an instruction to "click to go to useful links" immediately above a set of bullet points under the heading "when considering the potential impact on those which share protected characteristic".There are then a series of boxes in which the protected characteristics are identified and columns which included: does this group currently use /access the service? What impact will that be on each group with from the proposal?, the number of people affected and the impact score. None of these boxes have been filled in and indeed at the bottom of page 266 the following has been entered: – "This change process should have no impact on any of the above groups, as access to the services un changed, the impact is on the staff themselves and the positive aspects of better aligned staffing to the demand. The numbers of each group accessing the service varies from week to week and many aspects are not currently collected ." This demonstrates that that the DIS concentrated upon the impact of the changes upon the service to patients and not on the staff.

We reguard the respondent's failure to comply with its section 149 duty as being in itself serious, and as having serious consequences for the claimants. We reject the respondent's argument that the provisions in section 149 are designed to deal only with the service to the public of a public body and not to the employees. We referred in particular to paragraphs 18.23-18.25 of the Code of Practice of 2011. Furthermore, we regard the listing of the Core principles as not properly recognising or prioritising the needs of those with protected status. See the contents of paragraph 1.2 on page 400. There are later references to flexible working arrangements, but that hardly suffices since it did not concentrate upon those with protected status. We agree with the claimants' submission that the priority given to designing a system which met its organisational objectives and then trying to fit its disadvantaged employees around it, had the effect of giving very limited options to the latter, which had the knock on effects demonstrated by the claimant's cases. In addition, the respondent adopted the policy or practice of inviting the claimants to make new applications for flexible working when they already had FW arrangements in place, some for a considerable time. The respondent was in breach of its own policy in failing to follow the recommendations for annual reviews. There is also the fact there were notable delays in arranging OH reports.

17.2. Fundamental to our conclusions is the way in which the Weston proposal was rejected. We accept that it was first raised at a meeting on 2 February 2017. We have accepted the claimants' evidence that WL's initial response was to comment that he would not disadvantage his Weston staff. The Union supported proposal, although detailed by 20 March, and clearly a basis for further discussion, was given short shrift by Mr Dyer on 5 April. At the meeting of 21 April, which was not attended by CS, Mr Dyer said that the compromises could

not be accommodated. The matter was not, or not properly discussed at subsequent working group meetings. What happened during the collective grievance process is detailed at the end of paragraph 8 above. The first panel appears to have accepted CS rejection without digging any deeper. The appeal panel also rejected the claimants' detailed argument for the Weston proposal. They rejected the claims that there was a high absenteeism rate at Weston on day shifts, and accepted the Weston managers' apparent view that the proposal would lead to an imbalance in the rota at Weston, which would in consequence have to be reviewed. Before stating our further view about the Weston proposal, we set out the tests we applied in respect of the section 15 claim and the justification defence, and the application of PCPs, and for failure to make reasonable adjustments.

17.3 **Justification.**

First we referred to the EHRC Code of practice on Employment of 2011. Under the heading "when can a PCP be objectively justified? The following passage is relevant: –

"4.25. If the person applying a PCP can show that it is "a proportionate means of achieving a legitimate aim", then it will not amount to indirect discrimination. This is often known as the objective justification test. The test applies to other areas of discrimination law for example,… Discrimination arising from disability.

4.26. If challenged in the ET, it is for the employer to justify the PCP. So it is up to the employer to produce evidence to support their assertion that it is justified. Generalisations will not be sufficient to provide justification. It is not necessary for that justification to have been fully set out at the time the PCP was applied. If challenged, the employer can set out the justification to the ET.

4.27. The question whether the PCP is a proportionate means of achieving a legitimate aim should be approached in two stages: –

- Is the aim of the PCP legal and non-discriminatory, and one that represents the real objective consideration?
- If the aim is legitimate, is the means of achieving it proportionate – that is, appropriate and necessary in all the circumstances?

4.28. The concept of legitimate aim is taken from EU law and relevant decisions of the CJEU…. However it is not defined by the Act. The aim of the PCP should be legal, should not be discrimination in itself, and must represent a real, objective consideration…

4.29. Although reasonable business needs and economic efficiency may be legitimate aims, an employer solely aiming to reduce costs cannot be expected to satisfy the test. For example, the employer cannot simply argue that to discriminate is cheaper than avoiding discrimination.

4.30. Even if the aim is a legitimate one, the means of achieving it must be proportionate. Deciding whether the means used to achieve the legitimate aim are proportionate involves a balancing exercise. An ET may wish to conduct a proper evaluation of the discriminatory effect of the PCP as against the employer's reasons for applying it, taking into account all the relevant facts.

4.31…. EU law views treatment as proportionate if it is an "appropriate and necessary" means of achieving a legitimate aim. But necessary does not mean that the PCP is the only possible way of achieving the legitimate aim; it is

sufficient that the same aim could not be achieved by less discriminatory means. 4.32. The greater financial cost of using a less discriminatory approach cannot, of itself, provide a justification for applying a particular PCP. Cost can only be taken into account as part of the employer's justification for the PCP if there are other good reasons for adopting it."

We were also referred by the parties to: –

Bilka-Kaufhaus 1987 ICR page 110

- The means must correspond to a real need on behalf of the undertaking;
- Are proportionate with a view to achieving the objective in question;
- Are necessary to that end.

Hampson v Department of Education and Science 1989 ICR page 179 Court of Appeal: "justification involves striking and objective balance between the discriminatory affect of the condition and the reasonable needs of the party applying it".

Cobb v Secretary of State for Employment and another 1989 ICR page 506: "Where the claimant put forward non-discriminatory alternatives for achieving the same objective, the ET is entitled to decide that the alternative ought reasonably to have been adopted".

Dziedzieck v Future Electric UKEAT/0270/11 (application of the burden of proof in indirect discrimination).

Chief Constable of West Midlands Police v Blackburn 2008 ICR page 505 (Paying police officers, predominantly male, extra for working a 24 hour shift pattern including nightshifts but not to female police officers less able to work night shifts, was justified as pursuing a legitimate objective, and did not require the payment of similar amounts to the women as if they had worked the night shifts as a less discriminatory process).

The tribunal also considered the Supreme Court judgement In **Chief Constable of West Yorkshire police v Homer** 2012 ICR page 704: – in order to be proportionate an indirectly discriminatory PCP had to be both an appropriate means of achieving a legitimate aim and reasonably necessary.

As to the step-by-step approach to section 15, we referred to **Secretary of State for Justice v Dunn** EAT0234/16:

There must be shown to be

- Unfavourable treatment
- Something arising in consequence of the claimant's disability
- The unfavourable treatment must be because of the something
- The alleged discriminator cannot show that the treatment is a proportionate means of achieving a legitimate aim.

Pnaiser v NHS England 2016 I RL our page 178: – the "something" need not be the main or sole reason for the unfavourable treatment.

City of York Council v Grosset 2018 ICR page 1492:– while knowledge of disability is a necessary element of liability under section 15, knowledge of the link between the disability and the less favourable treatment is not necessary.

Ali v Torossian and others (t/a Bedford Hill family practice) EAT0029/18 is an indicator that a failure to consider a lesser measure (in this case a return to part-time working rather than dismissal) that could have achieved the employer's legitimate aim may mean that the ET fails to take a relevant factor into account in the proportionality exercise.

17.4. **Failure to make reasonable adjustments.**
The tribunal refers to particular paragraphs in the Code of Practice at Paragraph 6.28 which contains examples of some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take. These include :

- Whether taking any particular steps would be effective in preventing the substantial disadvantage;
- The practicability of the step;
- The financial and other costs of making the adjustment and the extent of any disruption caused;
- The extent of the employers financial or other resources;
- The availability to the employer of financial or other assistance to help make an adjustment… And
- The type and size of the employer.

6.29. Ultimately the issue of the reasonableness of any step unemployment may have to take is on objective one and will depend on the circumstances of the case.
6.30. The Act does not permit an employer to justify a failure to comply with the duty to make a reasonable adjustment. However, an employer will only breach such a duty if the adjustment in question is one which it is reasonable for the employer to have to make. So, where the duty applies, it is the question of reasonableness which alone determines whether the adjustment has to be made."
There is a lengthy list of examples of steps that it might be reasonable for employers to have to take in paragraph 6.33. Examples include altering the disabled workers hours of work and assigning the disabled worker to a different place of work.
17.5. We now turn to the issue whether the rejection of the Weston proposal was itself a failure to make a reasonable adjustment and/or an act of discrimination arising from disability which was unjustified , looked out against a background that the respondent's case is that it reasonably reasonably complied with the section 21 duty in respect of each of the disabled claimants, and that the imposition of the 2×24 hour rotor system was justified. There may be more than one way in which an employer can seek to comply with section 21 duty, but as noted above, the Employment Tribunal is entitled to select which one ought reasonably to have been adopted; and to find that another is not a reasonable adjustment.
This required us to consider in detail the respondent's case that the Weston proposal was contrary to the core principles and that they were justified in rejecting it. It would not deliver the service improvement sought; it would have an adverse impact on the Weston staff; and it would place resources – an ambulance – in the wrong place at the end of the shift.
It is to be noted that there is no evidence that the respondent did the necessary weighing up of its legitimate aim as against the discriminatory effect of refusing the proposal at the time, although we accept that the respondent did intend to consider flexible working applications at a later stage; and it is still possible to establish a justification defence at a later date than when the original decision was taken – for example at a tribunal hearing. There is no evidence in the letter

from CS at pages 508 to 509 that he has in mind that there was a live EQA duty. The same applies to JD's email of of the 27th of April at page 528. The fact that the Trust had decided to arrange a vote on, and to establish the new rotas before considering FW requests had a particular adverse effect upon the Nailsea claimants because the Weston shift pattern would already have been established, and would have had to have been recast to implement the Weston proposal. That was not, however, a good ground for rejecting the Weston proposal.

The respondent relies upon the performance figures at pages 302 onwards in the OHR report of the 1st of September 2016 as demonstrating the expected improvements in performance from the roster changes, but the figures cover the whole of the North Somerset region consisting of five stations. There was no attempt made after the Weston proposal was made to contact OHR to establish the extent to which the proposal would have adversely affected these performance figures, if at all. We consider it likely that it would have made very little difference.

It was by no means clear on the evidence that the reservation of day shifts at Weston for Nailsea staff would have increased the prevalence of nightshift working for Weston staff. This was conceded by CS in cross-examination. It was explained in mathematical terms in Mr Canning's closing submissions at page 85.1.

There is also the perplexing fact that the respondent (on whom the burden of proof lay) has not called any Weston manager or member of staff to establish that the proposal would have been unpopular with existing staff. It is noted however that the claimants have not called confirmatory evidence to establish their case, put at the collective grievance appeal, that the day shifts were unpopular at Weston, and that there was a higher rate of absenteeism. It would have been a simple matter of the respondent to have obtained written confirmation of the result of any enquiry at the time; and a simple matter to call the evidence before the tribunal. Its absence is in our view significant and we are entitled to draw inferences from it, namely that the Weston staff as a whole were not adverse to the proposal.

It is accepted that the proposal entailed dayshift staff commencing at Nailsea and travelling into the Weston area to a waiting point to commence taking calls. There might be delay, but only for the first call. The distance in travelling time between Nailsea and Weston, we were told was 30 minutes with traffic on the M5. Again, no OHR report has been obtained to demonstrate the extent of any adverse performance resulting from this aspect.

Insofar as there may have been any adverse affect upon the performance it is to be weighed against the disadvantage to the claimants arising from the removal of the dayshift only roster and the rejection of the proposal. We consider next how the rejection impacted upon individual claimants; and whether the responsdent can succeed in establishing the defence in respect of the proposals it put into effect on and after 3 July. We note however that the Weston proposal was rejected at an early stage and that the claimants continued to challenge it throughout the grievance process up to the end of September 2017. We accepted the claimants were willing to discuss the proposal flexibly after the 20th of March, but the last opportunity for discussion was at the meeting on the 21st of April when the respondent's rejection was made clear, and that position never

changed.

17.6.**KH conclusions**.

She had a fundamental difficulty with working nightshifts because of her migraines and needed to be home by 9:30 pm to take her medication. The respondent knew this from the 20th of February 1:1. The claimant was referred to OH but did not have an appointment until mid May, by which time the vote had taken place. The claimant was initially placed on a .5 rota including nightshifts. She did not have a flexible working meeting until the 2nd of June. The occupational health reports'reference to "current arrangements" were to be interpreted as 10 hour shifts between 8 am and 8 pm. Despite this the claimant was put on a rota of 12 hour relief shifts outside these parameters. We accept her health suffered. Despite her GP letters in August her working hours continued to be outside the 8 am to 8 pm parameter. She resigned on the 27th of September. Her resignation letter sets out these reasons in detail even if it also includes reference to no regular crew-mate and other work circumstances not arising from something to do with her disability.

We conclude that there was a PCP applied to her that she no longer work the dayshift rota, which put her at a substantial disadvantage compared to someone who did not have her disability. The replacement or adjustment meant that she continued to work outside the parameters of the occupational health and GP advice which caused an aggravation of her condition. This was not a reasonable adjustment. The Weston proposal would have suited her. So far as the section 15 claim is concerned, the 4 stage test in Dunn is made out. The justification fails. The claimant was entitled to resign in response both to a breach of the implied term and it was materially influenced by matters constituting a breach of section 15. Accordingly her claims of discrimination arising from something to arising from disability, of failure to make reasonable adjustments, and unfair dismissal are made out.

17.7.**A H – see paragraph 11 for details.**

His PTSD meant that he could not work nightshifts; and needed a fixed working pattern. These were something arising in consequence of disability Ther was long-standing medical evidence to support this which ought to have been known to the respondent. At least the respondent did have the occupational health report of 14 July 2016. At that time the claimant's working patterns on dayshift at Nailsea were working. The claimant notified WL of these requirements at the 1:1 on the 13th of March 2017. He also said that he needed to work from Nailsea. Significantly, no further occupational health reference was made in his case. The claimant was not initially placed on the rota line as he could not work nights. His attempts to find a job share were unsuccessful. He offered to increase his working hours from 10 to 12. On the 26th of June 2017, only nine days before the removal of the dayshift only roster, he was placed on a relief rota (PRR), to be worked from three stations with availability between 6 am and 8 pm. He complained and was off sick with PTSD from the 8th of July 2017 until the end of October 2017.This was a demonstration that the threatened shift change was not a reasonable adjustment. The claimant's grievances were rejected on the basis that the PRR remained a good option. The claimant's FW request to continue to work from Nailsea working dayshift commencing at 6:30 or 7 am on a trial basis was not supported by WL. Paradoxically it was granted by the FWP on the 28th of November, but only on terms that a job share be found, which was unlikely. The

claimant had resigned on the 22nd of November, no doubt reasonably expecting that in light of the fact WL was not supporting it, it would be refused. Coincidentally, or not, WL advertised a job share on the 23rd of November.
For reasons similar to those relating to AH, we conclude that the pattern of PRR shifts was not a reasonable adjustment for the claimant. It clearly put him at a substantial disadvantage compare to someone not disabled. It was unfavourable treatment. The something arising from disability was the inability to work night or late shift, or patterns of 12 hour shifts commencing at 6:30 or 7 am at different stations. It did not meet the requirement for fixed shift patterns. The threat and application of PRR shifts made the claimant ill. It was not a reasonable adjustment. It failed the section 15 justification test. The claimant was entitled to resign as a result. The outcome of the FW application came too late. It did not cure the earlier repudiatory conduct. See **Bournemouth University** v **Buckland**.2010 ICR page 908 Court of Appeal.
17.8.**EH – see paragraph 12 above for details.**
EH's long-standing history of depression was known to the respondent and its predecessor. She had had a days only shift at Nailsea from August 2016 to which was added no Monday working in a flexible working application granted in January 2017. She notified WL at the 1:1 on the 2nd of February that she did not want to work nightshifts because of the disturbance and her sleep patterns and the effect upon her mental health. WL did not accept the causal connection at that stage but did not refer her to occupational health. Having been notified that she would be on a day/night shift rota on the 31st of March 2017, she raised a grievance. On the 3rd of June she received her new rotas, coming into effect on the 3rd of July, which included nightshift working. At the end of June she raised complaints to which WL responded that there was no confirmation as to her health condition. The claimant then obtained a GP letter on the 3rd of July and it was only at that stage that an occupational health referral was made. A new problem arose at this stage because her job share covering her for Mondays for therapy had resigned. The claimant attended her grievance meeting. Her request was for days only shifts at Nailsea. It was rejected on the basis that if the occupational health report recommended no nightshift she could make an application for flexible working. The occupational health report of the 7th of August is set out in detail at paragraph 12.10. This supported the diagnosis of depression and gave detailed recommendations which included for her not working beyond 10 pm, with the possibility of a trial up to 11 pm and a regular working pattern.We accepted the evidence shows that the respondent had great difficulty scheduling rotas for her at Nailsea subject to these conditions. When rostered on nightshifts these were converted to dayshifts . She was on relief only shifts. She made a flexible working application which was turned down. The claimant was later assisted in redeployment to the clinical hub.
She does not claim constructive dismissal from her paramedic role.
Our conclusions can be summarised as follows: – the failure to accept the Weston proposal resulted in the removal of day shifts and the introduction of a relief pattern which included nightshifts at a time when the respondent refused to accept the claimant's statement of the requirements of her condition at her 1:1. It did not immediately refer her to OH. It did not accept a connection between her night working and depression and did not obtain an occupational health report until the 7th of August, after receipt of the GP report. We conclude that when

further adjustments were made the claimant's restrictions, particularly for working only at Nailsea and working only day shifts, and not Mondays when no job share was available, made it very difficult to roster her within the ambit of a 2x24 shift pattern. However this was a consequence of the earlier rejection of the Weston the proposal. The claimant at least there was a chance that the claimant could have worked the dayshift element of the Weston proposal. The restrictions which she required at Nailsea from July onwards made it very difficult for the respondent to offer a permanent reasonable adjustment.
In her case we accept that the threat of rostering her on nightshifts on 3 June with effect from 3 July did constitute unfavourable treatment arising from something related to her disability. It was not justified. The section 15 claim and the failure to make reasonable adjustments in respect of the Weston proposal is made out in her case, but we consider that there is only a 50% chance that the Weston proposal would have worked in her case because of her restrictions, including a ban on Monday working.
17.9 **JL and ST See paragraphs 13 and 14.**
The similarity of the factual and legal issues mean that these two claims can be considered together. The fundamental issue relevant to both claimants is whether they can establish a PCP which is discriminatory on grounds of their sex. The PCP identified is the removal from the protected dayshift 10 hour pattern at Nailsea. The claimant's case is that women are disproportionately more likely to be primary carers than men. This is disputed by the respondent. It is a fact that the claimants have not produced any statistical evidence to back up this proposition either for society as a whole, or for the respondent, despite the issue being specifically raised during EJ Roper's case management hearing on the 7th of May 2019. The respondent has not been asked to produce a gender breakdown of the ambulance staff, but it seems to be accepted that the respondent has a significant (more than minor) number of female staff within the group. The respondent contends that the pool of 20 to 24 staff is too small a pool to measure appropriately disproportionate effect. The burden of proof does not lie on the respondent. Accordingly the parties have relied upon legal submissions in particular as to the circumstances where the employment tribunal may be entitled to take judicial notice of such discrimination. It is not always necessary to carry out a formal comparative exercise using statistical evidence. Mr Allen suggests that past authorities where Judicial notice has been taken that women are primary carers may not reflect current reality. The first case we considered was **London Underground v Edwards** 1999 ICR page 494. This case concerned a single mother who worked as a train operator and who was in consequence not able to fit in her childcare responsibilities around her new working hours when a new rota system was introduced by her employer. (In this case it is to be noted that JL is a single mother; and that ST is married with a full-time working husband and two children who were aged five and 11 in 2017).
At paragraph 24 in the judgement of Potter LJ in the Court of Appeal he stated: "An industrial tribunal does not sit in blinkers. Its members are selected in order to have a degree of knowledge and expertise in the industrial field generally. The high preponderance of single mothers having care of a child is a matter of common knowledge".

The next case to which we were referred is a passage from **West Midlands**

Police v Blackburn 2008 ICR page 505 per Elias J, : –
"26. It may be that it was strictly unnecessary to scrutinise the statistics in the detailed and conscientious way in which this tribunal did, and that disparate impact might have been established simply from the fact that at least in the current climate, conferring a benefit on those working throughout the night will disadvantage women, and has disadvantage the claimants, by virtue of the fact that they have childcare responsibilities. There is some support for that in the approach of the court of appeal in London Underground Limited v Edwards".The Respondent refers to **Sinclair, Roche and Temperley** 2004 I RLR p.763 and in particular at paragraph 44.1 in the judgement of Burton J:
"It appears to be common ground that the tribunal was not entitled to conclude that it was "not disputed that by and large women have the greater responsibility for childcare in our society and that as a consequence a considerably larger proportion of women than men are unable to commit themselves to full-time working", Certainly if this was intended to be a relevant finding as to the issue with regard to men and women solicitors or men and women working in high-powered and highly paid jobs in the City".
The last phrase in that quotation and our view sets the context. The case concerned solicitor claimants who were highly likely to have access to financial resources to implement private childcare arrangements. The same could not be applied to ordinary working parents, or, in particular a single parent, who did not have access to such financial resources, such as these claimants.
Finally Mr Allen referred to a Scottish case**, Hacking and Patterson v Wilson** EATS0054/09 where it was commented that, ' it was not inevitable that women would be disproportionately adversely affected by a refusal to grant flexible working. Society has changed dramatically; many women now return to full-time work after childbirth and more men take on childcare'.
We are prepared to take judicial notice that both female single parents and married women in general are substantially more likely to be the primary carers of their children (and probably more likely to be primary carers for elderly and infirm parents).As an interesting sideline arising from ST's grievance hearing of the 31st of July, described in paragraph 14.10 above, was the stereotypical assumption, which we believe does reflect reality, made by her husband's employer, Aerospace , that the mother would be the primary carer for their children.
Having regard to this finding it was inevitable that these claimants were put at a disadvantage by the removal of the fixed pattern dayshift at Nailsea.
In the factual findings at paragraph 13 in the case of JL, and at paragraph 14 in the case of ST, we set out in considerable detail the difficulties which these claimants had fitting in their childcare responsibilities around the extra shift hours, early starts and late finishes being required of them over and above the hours that they had previously worked under SOU 24 (10 hours, 8 am to 6 pm, or 10 am to 8 pm). ST was able to work around the latter hours with the assistance of breakfast clubs during school term times, and in the evenings, by her partner's return from work. The Weston shifts would have been capable, even if slightly altered, of a similar work around, but the inflexibility of the respondent's new shift system at Nailsea rendered that impossible, or at least much more difficult . As a result of the imposition of the new working patterns albeit with some adjustments, each of them had to abandon their frontline paramedic careers and went to work

in the Hub.
These claimants were both in the circumstances subjected to detriments amounting to indirect sex discrimination which was unjustified.

Employment Judge Hargrove
Date 6 June 2019