EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Ms J Forbes **v** **Single Homelessness Project**

Heard at: London Central **On**: 14 – 16 January and 3 February 2020 (in chambers)

Before: Employment Judge E Burns
Ms O Stennett
Ms S Plummer

Representation

For the Claimant: In person

For the Respondent: Mr Doherty

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is that the claimant's claims of pregnancy discrimination contrary to section 18(2) of the Equality Act 2010 are dismissed.

REASONS

Claims and Issues

1. By a claim form treated as having been received on 11 June 2019, following a period of early conciliation between 8 May 2019 and 17 May 2019, the claimant, Ms Forbes brought complaints of pregnancy and maternity discrimination under the Equality Act 2010 as well as claims for unpaid payments, including unpaid holiday pay.

2. The claimant withdrew one claim for unpaid payments as the sum claimed had been paid. Her other claims for unpaid payments were struck out at a preliminary hearing held on 26 September 2019 on the basis that they were presented out of time. The decision taken at that preliminary hearing was that the claimant should be allowed to proceed with her claims brought under the Equality Act 2010, notwithstanding that they were presented out of time.

3. The remaining issues were clarified at that preliminary hearing. We visited the list of issues at the start of the hearing and again during the course of the hearing and agreed that the questions for the tribunal to consider were as follows:

Pregnancy or maternity discrimination (section 18 Equality Act 2010)

1. Has the respondent subjected the claimant to the following treatment falling within section 39 of the Equality Act 2010, namely:

1.1 The claimant was belittled in front of other staff by Ms Daybicharran. In particular, the claimant alleges that on 22 June 2018, Ms Daybicharran belittled her when she asked another colleague further information in relation to the respondent's risk assessments;

1.2 Ms Daybicharran forced the claimant to work longer hours than she should have. In particular, the claimant alleges that she was forced to work longer hours:

1.2.1 on 22 June 2018, when she was asked to correct client files at 12:50 pm

1.2.2 on 29 June 2018, when she was asked to input information relating to a client at 12:45 pm; and

1.2.3 on 13 July 2018, when she was asked to arrange a meeting with a client at 12:30 pm

1.3 Ms Daybicharran removed the claimant's access to a rest room. The claimant alleges that on 22 June 2018 Ms Daybicharran told her that she could not book a closed office room to rest in;

1.4 The respondent was rude on the phone to the claimant. In particular, the claimant alleges that a member of the respondent's staff, Ms Davies;

1.4.1 was unsympathetic during a telephone call in relation to the claimant's medical appointments on 19 June 2018; and

1.4.2 was rude to her during a telephone call on 25 June 2018 in relation to her pay.

1.5 The respondent pressured the claimant on a weekly basis to change her antenatal appointments;

1.6 The respondent refused to authorise the claimant's annual leave;

1.7 The respondent raised issues of poor performance with the claimant in a meeting on 20 August 2018;

1.8 The respondent was not supportive of the claimant when she raised an informal grievance on 17 August 2018 and 31 August 2018; and

1.9 The respondent did not take into account that the claimant's pregnancy was high risk.

2. If so, did any of the above constitute unfavourable treatment?

3. If so, has the claimant proved primary facts from which the tribunal could properly and fairly conclude that the unfavourable treatment was because of the protected characteristic?

   This involves asking the question was any unfavourable treatment because of the claimant's pregnancy or because of illness suffered by her as a result of her pregnancy under section 18(2) of the Equality Act 2010?

   It is not in dispute that all of the alleged unfavourable treatment took place during the protected period. It is also not in dispute that the claimant sought to exercise the right to take additional maternity leave.

4. If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

Remedy

5. If the claimant succeeds, in whole or part, the tribunal will be concerned with issues of remedy.

6. There may fall to be considered a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for injury to feelings, claims for aggravated damages pursuant to section 12A Employment Tribunals Act 1996, and/or the award of interest.

Hearing

4. The hearing was held over the course of four days. The claimant represented herself. The respondent was represented by counsel. Evidence and submissions on liability were heard over the course of three days. The panel had a fourth day in chambers without the parties present for deliberations.

5. For the claimant, the tribunal heard evidence from the claimant herself. The claimant did not prepare a witness statement. The respondent was happy to proceed on the basis of the details of complaint attached to the ET1 (14) and the agreed list of issues. We noted that there were a number of key documents in the bundle in which the claimant had articulated her concerns to her employer and ensured we referred to these. They included:

- An email of 27 June 2018 sent to Ms Davies (86-87)
- An email of 25 July 2018 sent to Ms Daybicharran (168 - 169)
- An email and attachment of 30 July 2018 sent to Mr Campbell (170 - 173)
- An email and attachment of 3 August 2018 sent to Mr Campbell (196 – 202)
- An email and attachment sent to Mr Rosenthal on 17 August 2018 (237 – 240)
- An email and attachment sent to Mr Rosenthal and Mr Campbell on 31 August 2018 (248 – 250)
- An email from the claimant's trade union representative sent to Mr Rosenthal on 1 October 2018 (296 -298)

6. The claimant also called Kelly Henry, as a witness. Ms Henry is a Parent Engagement Officer. She was supporting the claimant through her pregnancy as part of her role and happened to be present at the claimant's home at the time of one of the incidents about which the claimant complains.

7. The claimant submitted a short witness statement from her partner. He did not attend the tribunal hearing. His evidence did not assist the tribunal in relation to any of the factual matters we had to consider.

8. For the respondent we heard evidence from:

- Howard Rosenthal, Director of HR and Organisational Development
- Finlay Campbell, Services Manager
- Ms Aruni Daybicharran, Senior Justice Link Worker and claimant's line manager

9. The respondent submitted a witness statement for Vesna Davies, former HR Adviser. She was unable to be called as a witness as she has the respondent and is currently travelling and can not be contacted. We did not give any weight to this statement.

10. There was a trial bundle of documents of 329 pages.

11. We admitted into evidence some additional documents from the respondent with the claimant's agreement. We read the evidence in the bundle to which we were referred. We refer below to the page numbers of key documents that we relied upon when reaching our decision.

12. We explained the reasons for the case management decisions carefully as we went along, including our commitment to ensuring that the claimant was not legally disadvantaged because she was a litigant in person. The claimant also alerted us to the fact that she was currently signed off work for a virus/ severe backpain and work-related stress. We offered her the opportunity to take extra breaks if needed, but she didn't need to do this.

13. One such case management decision concerned whether or not exclude Ms Aruni Daybicharran from the tribunal room while the claimant was

being cross examined. The claimant asked the tribunal to consider this at the start of the second day, on the basis that she felt Ms Daybicharran "*would continuously grunt or huff*" during her cross examination which she found intimidating. The panel had not observed any inappropriate behaviour from Ms Daybicharran. We therefore decided not to exclude her, but asked her to be mindful of how she was reacting while the claimant gave her evidence, indicated that we would be watchful for any inappropriate behaviour and asked the claimant to tell us if she felt intimidated at any time. The claimant was happy to proceed on this basis and did not raise the matter again.

Findings of Fact

14. Our findings of fact are set out below. Where we have had to reach a conclusion in relation to disputed facts, we have made our findings on the balance of probabilities. Not all our findings of fact are set out in this section. We have made further relevant findings of fact which are set in the section where each of the allegations is considered in more detail. We have adopted this structure to avoid too much unnecessary repetition.

Background

15. The respondent is a London-wide registered charity working to prevent homelessness and help vulnerable and socially excluded people to transform their lives.

16. The claimant commenced employment with Providence Row Housing Association (PRHA) on 11 August 2014. She was employed as a Link Worker. The claimant's employment transferred to the respondent on 29 May 2018 and she continues to be employed by the respondent. The transfer was pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) following the award of the contract for the Justice Link Service to the respondent's Islington Floating Support Team in 2018. This meant relocating to a new office called the Ivories.

17. The claimant has been line-managed by Ms Daybicharran, Senior Justice Link Worker throughout her employment. Ms Daybicharran also transferred from PRHA to the respondent on 29 May 2018. The senior manager at the respondent in charge of the area in which the claimant was employed following the transfer was Finlay Campbell, Services Manager. Ms Daybicharran did not report directly to Mr Campbell, but to a manager that in turn reported to him.

18. The claimant's normal working hours were 21 hours per week. She worked three days a week on Monday, Tuesday and Friday. At the respondent, the core hours were between 10 am to 5 pm. When working a 7.5 hour day, the claimant was entitled to take a 30 minute break for lunch.

19. Prior to the transfer, the claimant was absent from work due to a viral infection from 1 March 2018 to 11 May 2018. During that period, on 17 April 2017, the claimant discovered she was pregnant. The claimant

telephoned Ms Daybicharran at some point in April and informed her that she was pregnant.

Return to Work Meeting – 11 May 2018

20. The claimant's fit note from her GP identified that she was suffering from anaemia in pregnancy causing fatigue and weakness with nausea.

21. Following a recommendation from her GP and a return to work meeting held on her first day back, 11 May 2018, the respondent agreed that the claimant should have a phased return to work and work reduced hours from 9:30 am until 1 pm. It was also agreed that she should use her annual leave entitlement to cover the remaining hours so that she could be paid in full.

22. Other matters were also noted and agreed at the return to work meeting, as documented in the agreed note of the meeting (60 -61). These were:

- the claimant should not undertake any lone working, but would meet clients in the office
- the claimant was unable to walk for more than 20 minutes or to walk upstairs.
- the claimant would be able to take breaks from her desk if she felt discomfort or needed fresh air
- the claimant would be able to use the fan

23. There was also a discussion about the claimant's ante-natal appointments, the detail of which is considered further below.

24. Between 11 May 2018 and mid-July, the claimant attended work, albeit working reduced hours.

TUPE Consultation Process - May 2018

25. During the TUPE consultation process, the claimant informed the respondent that she was pregnant. She had three consultation meetings which were held on 16 May, 21 and 25 May 2018 (86). The claimant met with Mr Campbell, Services Manager and representatives from the respondent's HR team. We note that there was a change in personnel within the HR team shortly after the TUPE transfer was concluded.

26. The claimant explained to Mr Campbell that she was currently completing a phased return that had been agreed by PRHA and requested that it be honoured/protected by the respondent. She explained that she was using her annual leave to ensure that the phased return did not result in her losing her pay and discussed some of the other issues she had agreed with Ms Daybicharran.

27. The claimant submitted subsequent fit notes dated 24 May 2018 (62), 28 June 2018 (90) and 12 July 2018 (162). There is no dispute between the parties that the fit notes state that the claimant had a higher risk

pregnancy, was on medication and under specialist care. The fit notes specifically refer to the risks "*including high blood pressure and risks of pre-eclampsia*". The fit note of 24 May 2018 covered the period from that date to 29 June 2018 and recommended continuing the claimant's reduced working pattern for that period. The same recommendation was made in the fit note of 28 June 2018 for the period up to and including 13 July 2018.

Pregnancy Risk Assessment – 1 June 2018

28. Once the claimant had transferred to the respondent, it took various steps in relation to her pregnancy.

29. On 1 June 2018, the respondent completed a pregnancy risk assessment with the claimant (64 – 68). Various matters were noted in the risk assessment and action points agreed.

30. The matters that are relevant for the purposes of the claim were as follows:

- The claimant would have a DSE assessment of her workplace and seating posture
- the claimant was currently working reduced hours
- she could use the garden if she was feeling fatigued
- the garden was also suggested as a solution if the claimant became too hot, in addition to using the office fan or sitting by a window
- a referral to occupational health was underway
- the claimant was not undertaking lone working and Unit 6 [an office in the Ivories] could be booked out if she needed it to meet with clients

31. The risk assessment was updated on 13 June 2018 (72 – 75). This was done by Mr Campbell in response to an email from the claimant date 12 June 2018 (70) saying that she felt confident lone working around Highbury and Islington in the morning from 9.30 am onwards. The risk assessment was changed to record this.

32. The claimant says that she volunteered to do this following a conversation between her and Ms Daybicharran, when Ms Daybicharran expressed concern about having to carry the claimant's case load as well as her own. Ms Daybicharran accepted that the claimant volunteered to meet clients following a discussion between them about Ms Daybicharran's capacity to cover the claimant's case load. We find that the claimant's decision was voluntary, and she was not put under any pressure to change the arrangement by Ms Daybicharran.

33. As it transpired, the claimant did not in fact meet any clients either in the respondent's office or in the community at any time between 29 May and 23 July 2018. Her case load was reduced to just four clients (compared to a full time link worker who would normally be supporting have 22 clients). Her colleagues covered all meetings with the four clients during this period.

34. The cover email (dated 13 June 2018) from Mr Campbell attaching the updated risk assessment (71) also noted:

"*As you are only working 3.5 hrs a day you are not entitled to a lunch break. If you need to take a short break out of the office can you please inform [Ms Daybicharran] or another manager so we are aware of your whereabouts."*

35. This clarity had become necessary because of confusion about the claimant's entitlement to a lunch break. The claimant was not completing her electronic timesheets correctly. Mr Campbell told us that he thought the claimant knew she wasn't allowed a lunch break from the start. She said that the reason she wasn't completing the electronic timesheets correctly was because she wasn't aware that she couldn't take a lunch break. She thought she could, if she worked on after 1pm. When asked at the hearing if this would have been permitted, Mr Campbell confirmed that it would, but it is not clear this issue was ever resolved between the claimant and the respondent.

36. In addition, an incident had occurred during the first week of June when the claimant had been absent from the office for a period of time. The respondent says the claimant was gone for more than 30 minutes and on her return told them she had walked to McDonalds and back for lunch. The claimant says she was gone for only 20 mins and popped to a local shop. She says she could not have walked there and back to McDonalds due to her health condition. We have not felt it necessary to resolve this specific factual dispute between the parties in order to reach a conclusion on the issues in the case.

Occupational health assessment – 20 June 2018

37. The claimant attended an occupational health assessment on 20 June 2018. The OH report (78 – 79) confirmed that the claimant had elevated blood pressure and anaemia and was 20 weeks pregnant. The report indicated that the claimant was fit to continue in her current role with the current adjustments in place.

38. The report records that the claimant said that she was experiencing difficulties at work with regard to the demands of the role, control over her work and the availability of an office at work to see clients.

39. The report made two specific recommendations:

- There should be a full and frank discussion between the claimant and her line manager with regard to the claimant's perception of the difficulties of the demands of her role and lack of control she believes she has since moving to the new office.

- There should also be a full and frank discussion about use of an office for interviewing clients. The OH adviser noted that she understood that

the office being used by the claimant was often fully booked by colleagues and stated that provision of an alternative office would be helpful.

DSE Assessment – June 2018

40. A DSE assessment was undertaken, and as a result the claimant's monitor was raised, she was provided with a footrest and wrist supports and her chair was set at the correct height (193). She was later provided with an adjustable footstool and book stand for paperwork, although she was not present in work to make use of these additional items.

Claimant's Initial Complaint

41. During the course of the month of June, the claimant became unhappy about how she was being treated by the respondent. Specifically, she was unhappy about:

- the behaviour of her line manager towards her;
- her ability to access and use an office known as Unit 6;
- the behaviour of a member of the HR team, Ms Davies, towards her;
- requests about her ante-natal appointments; and
- her June pay – which was around £400 short.

42. The claimant's unhappiness led to her making a request on 27 June 2018 for a meeting with Mr Campbell and HR with legal representation present (87). Following an exchange of various emails between the claimant and Mr Rosenthal, Director of HR and Organisation Development, a meeting was arranged for 1 August 2018.

43. One of the reasons the meeting took time to arrange was because the claimant, having consulted with her union representative, made a specific request on 6 July 2018 (144) that the meeting should be with Mr Rosenthal and Mr Campbell rather than anyone less senior. Mr Rosenthal was initially reluctant to agree to this, as he thought the meeting should include Ms Daybicharran and Ms Davies. He eventually acceded to the request, however.

44. Other reasons the meeting was delayed was due to the claimant having a short period of sickness absence in the middle of July and the availability of her trade union representative.

Return to Work Meeting – 23 July

45. Following the claimant's short period of sickness absence in mid-July there was a further return to work meeting on 23 July 2018 with her line manager.

46. The claimant's most recent fit note from her GP (12 July 2018) had provided details of how she might gradually increase her hours back to full

time over 3 weeks. It recommended that, notwithstanding that the claimant continued to have a higher risk pregnancy, she was well enough to increase her hours over the following three weeks so that she would be working four hours each day in the first week, five hours a day in the second week and six hours a day in the third week.

47. The increase in hours had been briefly touched upon in a supervision meeting between the claimant and her line manager on 3 July 2018 (99). Her line manager had suggested to her that increasing her hours from 10.5 to 21 hours all at once might adversely impact upon the claimant's health. She had therefore suggested the claimant discuss how best to approach this with her GP. The claimant did this and the GP's recommendation was contained in the fit note of 12 July 2018.

48. Having been unwell, the claimant had not begun to increase her hours. The GP's recommendation therefore formed part of the discussion at the return to work meeting on 23 July 2018. The claimant also brought a letter from her midwife to Ms Daybicharran's attention at the meeting.

49. Ms Daybicharran felt that the contents of the midwife's letter needed to be brought to Mr Campbell's attention and therefore asked Mr Campbell to join them in the meeting. As as result of the discussions at the meeting, which are dealt with in more detail below, the claimant was instructed by Mr Campbell to go home as he did not think it was safe for her to be in work. It transpired that the claimant did not return to work before the start of her maternity leave in October. She was paid in full between 23 July and the start of her maternity leave.

50. The claimant was unhappy about what had occurred at the return to work meeting and followed it up t with a lengthy email dated 25 July 2018 which she sent to Ms Daybicharran (page 168 - 169). Ms Daybicharran shared the email with Mr Campbell who responded on 27 July 2018 saying that he hoped that the matters raised in the email could be resolved at the meeting scheduled for 1 August 2018 (170-171). The claimant replied with some additional information about her concerns on 30 July 2018 (170, 172 – 173) for consideration at the meeting.

1 August Meeting

51. The meeting on 1 August took place as arranged. Present were Mr Campbell, Mr Rosenthal, the claimant and her trade union representative. Mr Rosenthal prepared a brief record of the matters discussed and the agreed action points in the form of an email which he shared with everyone who had been present. This was sent on 6 August 2018 (218 – 219).

52. At the meeting, the claimant said that she was prepared to meet with Ms Daybicharran to discuss the concerns she had about their relationship, providing Mr Campbell was present. It was agreed that she would provide further detail of the concerns so that Mr Campbell could share this with Ms Daybicharran in advance of that further meeting. She did this by email of 3 August 2018 (196). Attached to her email was a 6 page document

providing chronological details of various incidents between May and July 2018 where the claimant felt unhappy with the way she had been treated by Ms Daybicharran (197 – 202).

53. In addition, it was agreed that the claimant would provide further details of concerns about Ms Davies's behaviour towards her and other concerns she had about HR. The claimant sent these to Mr Rosenthal by email on 17 August 2018 (237). Attached to her email was a 3 page document. The document contained the headings HR Communication, Pay, Sick Leave/Pregnancy Issues and Annual Leave (244 – 241). Under the first section the claimant provided a chronological account of her concerns about the way Ms Davies had communicated with her.

54. The section entitled Annual Leave raised a query about the claimant's entitlement to annual leave. The claimant said she believed she had transferred with 124 hours accrued entitlement to annual leave. She noted that on 28 June 2018, Ms Davies had informed her that she had 120 hours of leave remaining. However at the end of July, the position had changed and Ms Davies had informed her that she had only had 85 hours (not 120) at the point of transfer. Having used 80.5 hours since the transfer, this meant the claimant now had only 4.5 hours of holiday remaining. The claimant believed that her entitlement should have been 39 hours.

55. Mr Rosenthal replied to the claimant's email of 17 August explaining that he would be away on leave until 3 September 2018 and so would try and respond by 14 September 2018 (236).

Meeting on 20 August 2018

56. As agreed, a meeting was arranged between Mr Campbell, Ms Daybicharran and the claimant to discuss the concerns in her email of 3 August 2018. The meeting was originally scheduled for 15 August 2018, but was moved to 20 August 2018 as the claimant had a hospital appointment.

57. The concerns raised by the claimant were discussed at the meeting. There was also a discussion about her performance. This is one of the claimant's complaints and is considered in more detail below. In addition, there was a discussion about whether it was feasible for the claimant to return to work.

58. Between 1 August and 20 August 2018, Mr Campbell had formed the view that the respondent would not be able to provide a suitable working environment for the claimant at the Ivories. This led to him proposing two options to the claimant at the meeting. The first of these was to return to work, but to relocate for the rest of her pregnancy to the respondent's head office. Alternatively, the claimant could choose to take special paid leave (i.e. not using up her annual leave entitlement) pending the start of her maternity leave. Mr Campbell summarised the discussion that had taken place and set out the options in an email to the claimant which he sent to her the following day (241).

59. Following the meeting, the claimant was admitted to hospital for monitoring. Despite being in hospital, she acknowledged Mr Campbell's email on 23 August 2018 (page 242) to explain that she was not in a position to respond because she was in hospital. She expressed the view that the hospital visit was caused by the "*challenging behaviour and unprofessional manner*" of her line manager in the meeting, which had led to her becoming stressed and experiencing high blood pressure.

60. The claimant subsequently emailed Mr Campbell (copying in Mr Rosenthal and her trade union representative) on 31 August 2018 (248) to say that she had decided to accept the offer to take paid leave. She said that she believed that the option to work at head office was not suitable for health reasons and added: "*Due to the respondent not being able to make the adjustments at the Ivories, I feel that it is best that I do not return to work and continue with full pay leave."*

61. The claimant also said that dealing with work emails about this matter was too stressful for her and she had been advised not to focus on work emails until her child was born. She noted that her HR complaint was still outstanding and in addition attached a detailed document setting out her concerns under the headings: Head Office, Early Leave, Annual Leave, Maternity Leave, Work Performance and Pay (248 – 251).

62. In the section headed Head Office, she thanked the respondent for offering her extra paid travelling time to enable her to work from the Head Office, but declined this option on the basis that she struggled with travelling long distances (249).

63. In the section headed Early Leave, the claimant objected to the respondent's proposal that she start her maternity leave four weeks before her expected week of childbirth ("EWC") commencing on 7 November 2018. She noted that she had originally wanted to start her maternity leave on 24 October 2018 (two weeks before her EWC) rather than 10 October 2018 (four weeks before her EWC) (249).

64. In the section headed Annual Leave, the claimant reiterated her view that she was entitled to 39.5 hours annual leave and asked that she be able to take this holiday from 24 October 2018 and start her maternity leave on 6 November 2018 (249).

65. In the section headed Work Performance, the claimant complained that Mr Campbell had raised issues with her performance at PRHA during the meeting held on 20 August 2018 and in the summary email he had sent subsequently. She explained, in some detail, why she felt unhappy about this and said that she "*would like to know and see any records about [her] work performance at PRHA as this was never bought to [her] attention*." (149)

Responses

66. Mr Campbell provided a response to some of the issues contained in the claimant's note dated 31 August 2018 by email of 7 September 2018 (253

- 257). He covered the areas relating to Head Office and Work Performance. He confirmed that HR would respond to the remaining areas. Mr Campbell attached supervision notes for the claimant dating back to 1 July 2017 as she had requested (258 – 280).

67. Mr Rosenthal provided a response to concerns that the claimant had raised on 20 September 2018 (281 – 295). This covered the concerns raised on 17 August together with the concerns raised under the headings: Early Leave, Annual Leave, Maternity Leave and Pay in the document she had sent on 31 August 2018. Following him providing his response, further queries were raised by the claimant's trade union representative on 1 October 2018 (296 – 298). Mr Rosenthal responded to these on 11 October 2018 (302 – 309).

68. In the meantime, the claimant's baby was born prematurely by emergency caesarean section on 9 October 2018.

69. The respondent treated the claimant as having commenced her maternity leave on 7 October 2018 and wrote to her on 2 November 2018 to confirm this (313-314).

70. One of the outstanding concerns raised by the claimant related to her annual leave entitlement. This is considered in more detail below as it is one of the specific complaints the tribunal is required to consider. The respondent did not respond finally on the annual leave issue until 25 July 2019.

71. The claimant's maternity leave has now finished. The claimant initially returned to work at the end of her maternity leave for around two weeks. She is currently absent from work due to sickness.

The Law

72. Section 18 of the Equality Act 2010 contains provisions protecting women from discrimination because of pregnancy.

73. Section 18(2) states that a person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably because of the pregnancy or because of an illness suffered by her as a result of it. It is not disputed that all of the alleged unfavourable treatment in this case took place during the protected period.

74. The analysis the tribunal must undertake is in the following stages:

(a) we must first ask ourselves what actually happened

(b) we must then ask ourselves if the treatment found constitutes unfavourable treatment;

(c) finally, we must ask ourselves, was it because of the claimant's pregnancy/pregnancy related illness.

75. The meaning of treating someone "unfavourably" as a concept is broadly analogous to the concepts of detriment found elsewhere in the Equality Act 2010.There is no need for a comparator. The test for unfavourable treatment was formulated in the case of *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11 where it was said that it arises where a reasonable worker would or might take the view that they had, as a result of the treatment complained of, been disadvantaged in the circumstances in which they had to work.

76. In considering whether unfavourable treatment is because of pregnancy / pregnancy related illness we must consider whether the fact that the claimant was pregnant had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

77. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination.

78. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd* v *Wong [2005] EWCA Civ 142; [2005] IRLR 258* and we have followed those as well as the direction of the court of appeal in the *Madarassy* case. The recent decision of the Court of Appeal in *Efobi v Royal Mail Group Ltd* [2019] ICR 750 confirms the guidance in these cases applies under the Equality Act 2010.

79. It is not enough to show that the claimant has been treated differently or unfavourably and is pregnant. There must be some evidential basis on which we can infer that the claimant's pregnancy / pregnancy related illness is the cause of the unfavourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.

80. If the claimant does not prove any primary facts, the claim fails at stage one. If, however, the claimant succeeds at stage one, the burden of proof shifts to the respondent.

81. At the second stage, discrimination is presumed to have occurred, unless the respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the claimant's pregnancy/pregnancy related illness. The respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory. Again, we can consider

numerous factors when testing the reason put forward by the respondent for the treatment.

Specific Complaints

Issue 1.1 - Ms Aruni Daybicharran's Behaviour on 22 June 2018

82. The first specific complaint we have considered is the claimant's allegation that she was belittled by Ms Daybicharran in front of other staff on 22 June 2018.

83. The claimant included this complaint in the document she sent to Mr Campbell on 3 August 2018. In that document, under the heading 22 June 2018, she said:

"*The Islington Link Team was giving an hour Risk Assessments/Support Planning training. [Ms Daybicharran] and Helen already knew 70% of this due to working full-time. During this training which we all felt was quite detailed we all took notes. I asked Matt if he could give me SHP break down but Ms Daybicharran intervene and said that I didn't need a breakdown as I've [been] taking notes. I didn't agree with this as [Ms Daybicharran is] aware [of] how I work but she undermined me by saying I didn't need the extra paperwork. Matt did give me the SHP breakdown either though [Ms Daybicharran] said I didn't need it." (199)*

84. Ms Daybicharran recalled the training event, but says it was on 29 June 2018. Her evidence was that at the end of the session, the trainer asked the team how they felt about the training and all present said that the training had been good including the claimant. He then told them he would send a step-by-step guide to each of them. She denies saying anything that belittled the claimant.

85. The only relevant contemporaneous documentary evidence is found in the supervision note on 3 July (97) which says:

"Inform [the respondent's client management system] training was delivered by Matthew on the 29.6.17

[The claimant] said that this was really good and she made her own notes whilst Matt went through the steps. Matt has emailed the team with reiteration of the Inform training including steps in writing."

86. The note does not record the claimant raising a concern about the way her line manager spoke to her after the training. The claimant admitted that she had not mentioned her concern at the supervision session.

87. Faced with two accounts of the discussion, we prefer the claimant's recollection. We think it likely that she has more accurately remembered it as she felt upset by what Ms Daybicharran said to her, although she has got the date wrong and discussion in fact took place on 29 June 2018.

88. The evidence before us was that the relationship between Ms Daybicharran and the claimant had become strained well before the claimant became pregnant.

89. This had arisen in the summer of 2017 when they were both employed at PRHA. The claimant had been concerned about some of her line manager's behaviour and had complained about her line manager shouting at her in a one-to-one meeting. Shortly afterwards, her line manager believed that she had caught the claimant lying about her whereabouts.

90. We were provided with a supervision note dating back to 31 July 2017 (260) which recorded both of these events. In relation to the first event, the note records that the relationship had become strained, but having aired this and as a result of Ms Daybicharran apologising, the claimant did not want to take her complaint any further. In relation to the second event, the claimant denied that she had lied to Ms Daybicharran about her whereabouts. She said that her client had lied instead, but acknowledged the way it appeared to Ms Daybicharran. The note indicates that Ms Daybicharran did not intend to take the matter further, but that she felt it was appropriate to document the event.

91. The claimant felt that in response to complaining about Ms Daybicharran, Ms Daybicharran had begun to micro-manage her. We were provided with two supervision notes for the claimant recording performance targets which the claimant was required to meet by 26 February 2018 (269 – 272) and 30 March 2018 (273 – 280). The notes suggest some ongoing concerns about the claimant's time management and meeting deadlines. Specially there is a note dating back to February 2018 at PRHA (280) that "[*the claimant] should provide [Ms Daybicharran] with morning and afternoon updates to clarify the 'hours' spent on tasks. This way we will be able to identify time management.*"

92. We also note that the claimant felt that her learning style was different to other employees and that it took her longer to learn how to do new things and use new IT systems.

93. We find that the claimant's sensitivity to the comment made by Ms Daybicharran was connected with their strained relationship and because she felt Ms Daybicharran was being critical of her learning style when she made the comment.

Conclusion

The comment made by Ms Daybicharran strikes us as having the character of being a normal everyday exchange. We have however decide that it is not necessary for us to make a finding whether or not it was reasonable for the claimant to feel belittled by the comment.

94. This is because we satisfied, that even if the comment was pointed or barbed and Ms Daybicharran knew or intended it to belittle the claimant,

Ms Daybicharran did not make the comment because the claimant was pregnant nor was the claimant upset by it because of her pregnancy.

95. As noted above, we conclude that the claimant's sensitivity to the comment was related to her strained relationship with Ms Daybicharran. The claimant felt that by making the comment Ms Daybicharran was being critical of her learning style.

96. We therefore do not uphold this allegation.

Issue 1.2 - Ms Daybicharran forced the claimant to work longer hours

97. The claimant's second specific complaint is that Ms Daybicharran forced her to work longer hours than she should have. In particular, the claimant alleges that she was forced to work longer hours:

- on 22 June 2018, when she was asked to correct client files at 12:50 pm
- on 29 June 2018, when she was asked to input information relating to a client at 12:45 pm; and
- on 13 July 2018, when she was asked to arrange a meeting with a client at 12:30 pm.

The claimant was not sure that she had remembered the dates accurately.

98. The claimant says that on 22 June and 29 June, she was due to finish her working day at 1 pm. She says the tasks that she was asked to do took her longer than 10 and 15 minutes and she therefore ended up working after 1 pm. On 13 July 2018, she says she had an ante-natal appointment and was meant to leave well before 1 pm.

99. In the complaint document the claimant created on 3 August 2018, she refers to two occasions when she says Ms Daybicharran asked her to work late. The first is said to be on 22 June 2019, following the training course referred to above. The claimant says that following the training session, Ms Daybicharran wanted to catch up with her and that they met between 12:10 and 12:55. She says:

"[Ms *Daybicharran] said before I leave make sure I put all the correct information in on Inform without showing me, but I did not challenge her and put in info and left at 1:25, 25 min later than I was suppose to….[Ms Daybicharran] is aware of all my health issues which may affect my work and that I struggle in the afternoon why I leave at 1pm but she requested that this work needed to be done.* (200)"

100. The second complaint in the document of 3 August 2018 is about 13 July 2018. The claimant states:

"I informed you about my 2.5 hours at work as I struggled to do so many things in such a short time and was unable to do my task as planned. I was due to leave at 12 pm for an ante-natal appointment, but was asked to do several task from [Ms Daybicharran] and at 11:55 I was asked to get a client's address and plan a journey for a Monday home visit which I did and left at 12:20 making me late for my appointment." (201).

101. This complaint had also been included in the email sent by the claimant to Ms Daybicharran on 25 July 2018. She says (in the context of worrying about having enough time to complete her work):

"*On Friday 13 my plan was to start a risk assessment whilst on duty. I arrived at 9:40 and you asked me about letters being attached. After speaking with you and logging on it was 10am and you advised me about ticking a box why you couldn't see the document so again if full training was given I would have known. I made the change and went through 22 emails and responded to 3 emails which were detailed about work and spoke to Finlay. Bearing in mind I'm on duty and got up from my seat ore than 12 times to make sure all fellow colleagues are safe. It was 12;05 and still didn't manage to do my risk assessment and I was due to leave and you asked me to get information about VB which I did and I left at 12:20 making me late for my appointment. That's just a small example of me trying to work in 2.5 hours and not having enough time to even eat." (169)*

102. In her evidence to the tribunal, Ms Daybicharran could recall reminding the claimant that she needed to complete a data entry that was outstanding on the Inform system. She confirmed this was after the training session and that she had asked her to do it that day. She said that all that was outstanding was a National Insurance number for one client, which she thought would take the claimnt only a few minutes to input. She therefore did not see any difficulty with the claimant completing this task before 1 pm. She added that the claimant did not object to her request.

103. The respondent had set a deadline of 29 June 2018 for updating its Inform system so that it contained all of the details of the clients that it had inherited as a result of the TUPE transfer. The respondent uses the information in Inform to produce important quarterly reports which are provided to the organisation that commissions services from the respondent and funds it. A record of this deadline is contained in the supervision document dated 3 July 2019 *(97).* It records that the claimant had missed the deadline for one of her clients due to a missing NI number and that Ms Daybicharran asked her to ensure she updated the record that day. The claimant did not raise a concern about being asked to work outside her hours at the supervision meeting.

104. Ms Daybicharran was unable to recall any other specific incidences when she had asked the claimant to undertake work close to her leaving time. She said that if she had asked the claimant to undertake any tasks towards the end of her working day, the tasks would have been very quick ones that could be completed in minutes. She also said that if the claimant had been concerned about any such tasks, she would have expected her

to explain that she didn't think she would be able to complete the task in the time allowed and Ms Daybicharran would have done it herself or asked another colleague.

105. As noted above, the respondent operates core working hours between 10 am and 5 pm. The culture in the organisation is not to be too strict about arrival and departure times. Because of the nature of the work they do, there can often be a need for employees to show a degree of flexibility. This is particularly true when clients have an urgent need for support.

Conclusion

106. We find that Ms Daybicharran did ask the claimant to do some work at times that were close to her leaving time. We accept Ms Daybicharran's evidence that she only asked the claimant to do things that she (Ms Daybicharran) believed could have been completed very quickly and did not envisage this would cause the claimant would have to work beyond her agreed. She did not force the claimant to stay and work later at any point and had the claimant objected, would have allowed her to leave.

107. Bearing in mind the context in which the respondent works, we conclude there is no evidence that the claimant was treated unfavourably by being forced to work longer hours than medically recommended.

108. We therefore do not uphold this allegation.

Issue 1.3 - Ms Daybicharran removed the claimant's access to a rest room on 22 June 2018

109. When the claimant met with Ms Daybicharran on 11 May 2018, for her return to work meeting, they had agreed that the claimant should not undertake any lone working (60 – 61). To avoid her having to meet clients in the community, the respondent agreed that she should have client meetings in the office. At the time, the claimant was based in PRHA where there was plenty of closed office space and so this did not present any logistical difficulties.

110. When the claimant met with Mr Campbell, during the TUPE consultation meetings, she asked about how the respondent could fulfil this agreement in the Ivories. Mr Campbell reassured her that although the Ivories was open plan, there were two closed offices, a room called Unit 6 and his own office, that the claimant would be able to use. There was also a garden area with seats that was available to staff.

111. When Mr Campbell conducted the claimant's pregnancy risk assessment on 1 June 2018, he noted the availability of Unit 6 and the garden area. With reference to the garden area, this is suggested as an area that the claimant could use if she was feeling fatigued. The note about Unit 6 says:

"Unit 6 to be booked out if need[ed] to meet with clients." (67)

112. Mr Campbell's evidence was that although not set out in the risk assessment document, he also informed the claimant that she could use either his office or Unit 6 as a rest room, if they were free and available. In fact, he us he told her that unless he was in a meeting, she could use his room even if he was using it. All she had to do was to ask and he would vacate the room.

113. The claimant did not challenge this evidence and there is a note contained in the supervision record from 3 July 2018 which confirms the claimant was told this. The note says

"[*the claimant] knows she is able to use [Mr Campbell's] office or Unit 6 for 'quiet time' when needed. [Ms Daybicharran] reiterated that Unit 6 is for everyone to access and therefore be mindful when booking for herself"* (96).

114. The respondent operated a booking system for Unit 6 using Outlook. This was necessary as the room was available to be used by all 30 staff based at the Ivories. It was because the claimant was concerned about her ability to access Unit 6 that she had raised this issue at her Occupational Health appointment on 20 June 2018 (see paragraph 39 above).

115. At around this time, Mr Campbell showed the claimant how to book Unit 6 using Outlook. As she was booking the room in advance of having arranged any client meetings, he suggested she book a block of time which could be adjusted accordingly once she had finalised arrangements with her client.

116. The claimant, believing that she was following Mr Campbell's instructions, made a number of block bookings of Unit 6 for the months of August and September. She explained to the tribunal that while she was working reduced hours she wasn't meeting with clients. However, she envisaged increasing her hours during the summer and would then have regular meetings with clients for which she would need Unit 6. She wanted to book it in advance to ensure it was available.

117. Ms Daybicharran accepts that she raised the issue of booking Unit 6 with the claimant towards the end of June. She said that her line manager had asked her why the claimant had block booked Unit 6 out. She was concerned about the block booking because it prevented other staff from being able to use Unit 6 for client meetings.

118. Ms Daybicharran sent an email to the claimant on 27th of June 2018 saying the following

"*Just to be mindful when booking unit 6 as this is shared with the whole team. When you are booking time, make sure you input the names of the clients you have booked in. I am not sure if these booked times are for you with clients or just you? If it's just you please only book it for no more than an hour. If it's because you need quiet time as I know the office can get noisy, you can use [Mr Campbell's] office.*

Can you please amend the future booked times you have already done." (89)

119. The claimant replied to Ms Daybicharran's email of 27 June on 29 June 2018 (sent at 10:18) saying

"Hope all is well. As discussed with Mr Campbell he advised me [to] book Unit 6 as soon as I can see availability in advance just in case I need to see a client as it gets booked up. I can also cancel if I do not need Unit 6 but also [assured] me that I can use Unit 6 also for quiet time and if it is not available I can use his office if he is not in due to other colleagues going in and out of his office." (89)

120. According to the document that the claimant prepared and sent to Mr Campbell on 3 August 2018, Ms Daybicharran raised the claimant's use of the meeting room with her in a discussion said to have taken place after the training event on 29 June 2019. The discussion was presumably triggered by the email exchange. The claimant's account of the discussion is as follows:

"*After this hour training at 12:10 Ms AS wanted a quick catch up with me about my health/clients/workload and appointments. Ms AA asked why I booked the meeting room from 9:30 am to 1:00 pm as it was brought to her attention from Michelle. I explained to her why it was booked for so long due to the room never being available. Ms Daybicharran said that Michelle explained to her that I cannot book the room for long periods of time and if I do book the room it shouldn't be longer than an hour and I must input the clients name as I didn't put no name.*

I went on to explain why no name was not in and also asked about using the room to rest/feeling unwell/working in quiet. Ms Daybicharran said she doesn't get why I need the room and can't work in the office as other colleagues need the room I cannot just use the room for my needs and Michelle agreed with this decision. I did explain my health needs and it does state on my fit note, Risk Assessment and pregnancy policy about having access to a rest room but Ms Daybicharran still said that I do not need the room and the office was well fitted to my needs." (199)

121. Ms Daybicharran denies telling the claimant that she ever told her that she did not need the room / could not use the room or that she could not see why the office environment was not adequate for her. We accept her evidence on this point. It is consistent with what she wrote in her email to the claimant and in the supervision note of 3 July 2018.

122. The claimant met with Mr Campbell on 6 July and discussed the room with him. She emailed Ms Daybicharran on 9 July to update her on the meeting. The claimant noted in her email:

"*Meeting Room: when booking the meeting room in advance I must book the room and put 'Janine and client' once I get hold of my client add the*

name who I'll be seeing. If the room is free whilst I'm in I can also use the room for quiet time/unwell and share with other colleagues if needed." (151)

123. In light of the claimant's ongoing concerns about the availability of Unit 6, she asked her GP to cover this in her next medical certificate. Her GP advised in her fit note dated 12 July 2018 that she "*would benefit from being able to visit resting room as required*" (162). She also asked her midwife to address the issue. The undated letter she provided from her midwife to the respondent on 23 July 2018 said

"*I am concerned about her work environment as she needs access to a quiet space, as promised in her Return to Work Risk Assessment. She should have a comfortable workstation and access to a rest space when needed, to prevent her leaving work for a long commute home when feeling unwell*." (165)

124. The issue of a rest room was discussed in detail at the meeting held on 1 August 2018. The meeting generated several ideas as to how the situation could be improved, which were included in an updated pregnancy risk assessment dated 6 August 2018 (228). Between 1 August and 20 August however, the respondent reflected on these ideas and formed the view that even with these adaptions, it would not be in a position to satisfactorily meet the claimant's needs.

125. By this time, the need was for a room where the claimant could meet clients and take regular rest breaks with her legs elevated. She also needed access to the room on an ad hoc basis for whenever she became unwell. It was impossible for the respondent to meet this requirement when balanced against the needs of other staff to use Unit 6.

126. This is the main factor that led to the respondent reaching its decision that it could not accommodate the claimant's needs at the Ivories. This led to it offering her, on 20 August 2018, the option of either temporarily relocating to its head office or take paid leave.

127. The respondent set the option of working in head office out in its email of 21 August 2018 to the claimant saying:

"*We can facilitate your return to work by offering you a quiet room to work in at our head office. We will also allow you extra travelling time within your working hours to and from work as we recognise this journey will add some time to your commute. You would continue to be line managed by Ms Daybicharran who would meet with you at HO." (241)*

128. We find that, had the claimant accepted the offer, the respondent would have provided a rest room in accordance with her needs. We make no criticism, however, of the claimant's decision not to accept the offer because of the additional travelling involved.

Conclusion

129. It was very difficult for the respondent to provide the claimant with a quiet closed office room. The respondent's offices were open plan. There were only two closed office rooms, Unit 6 and Mr Campbell's office. Around 30 staff needed to be able to access Unit 6 from time to time.

130. Initially the primary reason the claimant needed to access a quiet closed office was in order to meet clients. However, as her pregnancy developed, she began to have an increased need of the room to rest. By the 23 July 2018, she also needed access to a room on an ad hoc basis as and when she felt unwell.

131. The respondent did everything it could to try and ensure the claimant's needs were met, but understandably, could not provide Unit 6 to the claimant on a dedicated basis. We find that in addition to offering her the use of Unit 6, Mr Campbell also told the claimant that she could use his office when she she needed, unless he was conducting a meeting it in. He was prepared to vacate the room for her use if required.

132. The claimant, as advised by Mr Campbell tried pre-booking Unit 6, but in view of the amount of time she needed it, this generated some concerns among other members of staff. Our finding, set out in paragraph 121 above, is that although Ms Daybicharran discussed the claimant's use of Unit 6 with her, most probably on 29 June 2018, she did not deny her access to the room. Ms Daybicharran simply tried to convey to her that other staff also needed to use the room and asked the claimant to be mindful of this when booking it.

133. The claimant continued to have access to Unit 6 after the conversation with Ms Daybicharran. She also sought clarity on how she could book it from Mr Campbell. We find that she was given slightly mixed and contradictory messages about this, but this stemmed from the difficulty the respondent faced in trying to meet the claimant's needs when balanced against the needs of its other staff.

134. Ultimately the respondent decided that the only way it could meet the claimant's need for a room was to temporarily relocate her to head office. Sensitive to the fact that this option may present fresh challenges for the claimant, it also offered her the option of paid leave.

135. Our conclusion is that the respondent did not treat the claimant unfavourably in relation to providing her access to a rest, but instead did everything it possibly could to provide her with such access.

136. We therefore do not uphold this allegation.

Issue 1.5 - R pressured the claimant on a weekly basis to change her antenatal appointments

137. The claimant claims that she was asked on numerous occasions to change her antenatal appointments. She says the requests came from Ms Daybicharran, Mr Campbell and HR.

138. Section 2.1 of the respondent's maternity leave policy states:

"*All pregnant staff are entitled to paid time off during working hours to receive antenatal care. Proof of appointment should be shown and reasonable notice of such antenatal appointments to the Line Manager"* (103)

139. Our finding is that there were several discussions with the claimant about her ante-natal appointments. Not all of the discussions concerned whether the claimant could change the appointments. Some of them were concerned only with the claimant's ability to provide evidence of the appointments in the form of a letter or appointment card, rather than the date or time of the appointments.

140. In total we find there were three groups of discussions about changing appointments, one in May, one in June and one in July. The respondent asked the claimant seven times if she could change her appointments.

141. The problem with the evidence of appointments arose because the claimant was receiving notice of her appointments via text messages. She had explained this to Ms Daybicharran quite early and had shown the text messages. The claimant felt that Ms Daybicharran was happy with this by way of proof. She believed that Ms Davies in HR was putting pressure on Ms Daybicharran and Mr Campbell to keep asking her to provide evidence unnecessarily.

142. The claimant asked at the hospital about getting written evidence of her appointments on at least two occasions. She did not, however, follow the advice Mr Campbell gave her and simply screen shot the text messages from her phone and give these to HR which would have resolved the problem.

143. With regard to the requests to change the appointments, the first time this was discussed with the claimant was at the return to work meeting held on 11 May 2018 (60 – 61). The claimant advised Ms Daybicharran of the details of various antenatal appointments she would need to attend. One such appointment was her 5 month scan which was due on 18 June 2018.

144. The claimant agreed that she would keep Ms Daybicharran updated with the details of future appointments and would try to arrange appointments on her days off if possible. The claimant was at a relatively early stage in her pregnancy and was not yet used to the appointment system that operated. She did not envisage that it would be difficult to arrange her appointments outside working hours or that asking to do so would cause her any concern.

145. On 11 June 2018, Ms Daybicharran emailed the claimant and asked her to enter details of her ante-natal appointments in her, Ms Daybicharran's, calendar. The email was a reply to an email from the claimant of 4 June 2018 providing details of the forthcoming dates of her appointments (69).

146. Ms Daybicharran said in her email:

"*Also, just to ask, is there scope to have ante natal appointments on your days off or from 2 pm such as the one on the 18th June?*

Please provide your appointment letter"

147. We note that although Ms Daybicharran asked if it was possible to have antenatal appointments on non-working days, she did not ask the claimant to change any of her existing appointments. This was the second request made to the claimant to change her appointments.

148. On or around 15 June 2018, Ms Daybicharran spoke to the claimant and asked her, as a follow up to her earlier email, if it would be possible for the claimant to change her antenatal appointments to days when she didn't work or after 2 pm. There was also a discussion around providing evidence of the appointments. Following the discussion with Ms Daybicharran, Mr Campbell also spoke to the claimant about making appointments on non-working days and evidencing them. We find two additional requests were made of the claimant to consider changing her antenatal appointments on this date.

149. Ms Daybicharran's (and Mr Campbell's) reason for asking the claimant about her appointment times was because the hours that the claimant was working were very limited. They felt that the impact on the claimant's work and therefore the clients she supported would be significant if the claimant was to be absent for several hours to attend ante-natal appointments.

150. The next occasion that the claimant was asked about her ante-natal appointments was on 19 June 2018. The claimant was prompted to telephone Ms Davies on 19 June 2018 because Ms Daybicharran had told her that she (Ms Daybicharran) did not have any issues about her appointments and seeing letters, but this was being pursued by HR. The claimant thought it would be easier to call Ms Davies and explain the position to her directly.

151. There are effectively two different accounts of the telephone call. Ms Davies's account is contained in an email which she sent to the claimant as a follow up later that same day (77). The claimant did not initially reply to the email. However, following a subsequent telephone call with Ms Davies on 26 June (considered further below) she did email Ms Davies back at length on 27 June 2018 (86-87). That email contains the claimant's account of the call.

152. In her initial email, Ms Davies says:

"Thank you for your phone call this morning.

As requested, I am sending you an email to which you can reply with any records regarding your doctor's and antenatal appointment.

As per our maternity policy, we requested a record of the appointments that have been boked so far. You explained that the date and time for your appointments are communicated to you via text messages and the hospital so far is not willing to produce a letter with the bookings that have happened or are upcoming.

We fully understand the importance of your doctors appointments and we advise you to attend everything which has been recommended to you by your doctor.

We will appreciate if you can query with the hospital if you can book appointments outside your working hours where possible and please let me know if you have further difficulty obtaining the appointment record from your doctor. This doesn't have to be a letter it can be a print out with dates and time.

If you have the option to and you feel you can not attend antenatal appointments outside your working hours please talk to your manager.

If I can be of any further assistance don't hesitate to contact me."

153. We note that Ms Davies emphasises that the claimant should attend all medical appointments that have been recommended to her, but does ask her, if it is possible, to see if they can be changed to non-working hours. She had also made the same request on the phone. We have counted these as a further two requests, making a total of six requests at this point in time.

154. In her response on 27 June 2018, the claimant provides a history of the discussions that she has had previously with Ms Daybicharran, Mr Campbell and during the TUPE consultations regarding the various arrangements for her pregnancy and about antenatal appointments. She also says that on 18 June 2018 she asked the receptionist at St Thomas Hospital for a print-out of all her past and future appointments and was told that they do not do letters anymore. She explains that the receptionist also told her that due to her having a high risk pregnancy her appointments could be booked as little as two days before she attends meaning they cannot be changed, and she cannot be sent a letter.

155. The claimant goes on to say:

"I called HR and spoke to you and explained all the above but felt that you was not very understanding about my current health and future appointments. I explained to you more than three times tat my appointments could not be changed, I can not get letters and the concerns

about my unborn child heart but you was very persistent in me changing my appointments as you said that the Complex Need team are concerned about me fulfilling my role i.e. meeting clients which I found very strange as none of my managers have ever brought this to my attention. I told you that you may not be aware that I am not seeing clients at the moment due to my pre-eclampsia and high blood pressure and if I do need to see clients it will be office based which is already an issue as the meeting room is never available. You continue to pressure me about this information so I said I will ask again and let you know.

I then received an email from you asking me again for the above information and could see that you had not listened to anything I had explained to you.

I have asked my doctor and hospital again for this information you requested and was told that this is not possible.

I have found communication /correspondence with you and [the respondent] stressful and pressurising so far, particularly with the recent insistence that I provide letters from health appointments that I have been told are not standard practice anymore and that you suggested that I may not be able to carry out my role" (86 – 87)

156. On 23 July 2018, Ms Daybicharran asked the claimant about her forthcoming antenatal appointments at the return to work meeting held on that day, which Mr Campbell joined. The claimant told Ms Daybicharran that she had six future appointments with her midwife which were all home visits. As they all fell within the claimant's working hours. Ms Daybicharran asked the claimant if it would be possible to change any of them to non-working times. Our finding is that this was the seventh request made of the claimant. Ms Daybicharran says that the claimant told her that she would ask if this was possible.

157. As noted above, Mr Campbell asked the claimant to go home during the meeting and it transpired that she did not subsequently return to work. There were no further requests made regarding changing her appointments as she was not in work after 23 July 2018.

158. On 25 July, the claimant sent a long email to Ms Daybicharran. One of the issues she addressed in it was the requests made to change her antenatal appointments and the impact this was having on her. She said as follows:

"*I have spoken to Mr Campbell about a few things and that's why I get that it's best that I'm signed off but it may help if I'm not constantly told about the business needs. As you said during Monday meeting if my midwife appointment could be changed as it is getting too much now I need to be in the office as there is a lot to do. That alone I feel is it taking my health into account as it is not my fault that this is a high risk pregnancy and these appointments are much more important than commitments to work. I have said when appointments are given it is hard to change and I do feel uncomfortable changing them as my main focus is my health and my*

unborn child. I could change my appointment from Mon to a Thurs but something could have been detected on that Monday but due to the nature of the business I've put my health on hold only to be told something wrong on the Thursday." (169)

159. The claimant's evidence before the tribunal was that she did not ask any of her health care professionals if she could change her appointments. Although she had been willing to explore this in May 2018, as her pregnancy progressed and she was being more closely monitored by a different specialists she formed that view that it would not be possible to change the appointments and also that doing so might present a risk to her pregnancy.

Conclusion

160. Our finding is that the respondent did not pressure the claimant to change her antenatal appointments on a weekly basis as alleged.

161. Given that the claimant was only working 10.5 hours, it was not unreasonable for the respondent to ask the claimant if it was possible to arrange her appointments for non-working days or times. Although we have found that the respondent asked the claimant to find out if it was possible to change her ante-natal appointments on seven seperate occasions, we do not find that it put her under any pressure to get them changed.

162. The claimant repeatedly told the respondent that she would try and find out if it was possible to change her appointments. She led her line manager, Mr Campbell and Ms Davies to believe that she was happy to ask about her health care professionals about changing the appointments. It was therefore not surprising that they repeated their requests politely when her appointments continued to be scheduled during working hours.

163. She told them in mid-June that she thought it would be difficult to change certain appointments for practical reasons and had indeed asked about this at St Thomas' hospital on 18 June 2018. She provided this information to the respondent on 27 June 2018.

164. The claimant did not explain to the respondent until 25 July 2018 that the reason she was reluctant to change the appointments was because she was concerned about her health and that of her unborn child if she rearranged appointments. They did not ask her to change any appointments after she made this clear to them.

165. Although the respondent asked the claimant if it was possible to change the appointments, they did not pressure her to to this. The respondent encouraged the claimant to attend all of her appointments. She did not miss any of her appointments or have to change any of them.

166. We do not uphold this allegation and we concluded that the respondent's requests to the claimant did not constitute unfavourable treatment of her.

Issue 1.4 - Ms Vesna - Rude on the Telephone

167. The claimant has cited two incidents where she claims Ms Davies was rude to her over the phone. The first call was on 19 June 2018 and is described in detail in paragraphs 150 - 155 above.

168. The second call took place on 26 June 2018. The claimant was at home as she was on annual leave. She was being visited by Ms Henry at the time for her fortnightly health check on the progress of her pregnancy.

169. The claimant had not been paid correctly for the month of June. Her pay was short by around £400. The pay issue had arisen was because of confusion around the claimant using her holiday entitlement make up her full hours. As the claimant had not entered her holiday on the respondent's holiday system, the respondent had not taken it into account. The matter was eventually resolved, but it took a little time for the respondent to investigate it and for the claimant to be reimbursed.

170. The claimant was understandably upset to find her pay was short and called HR straight away. She felt that she had provided HR with all relevant information about her working arrangements and use of annual leave to make up her hours during the TUPE consultation meetings. She did not understand how the mistake could have occurred. She requested a call back, but when no-one had called her back, she decide to call the respondent again. The call took place at 4 pm.

171. Following the call, at 18:46 Ms Davies emailed Mr Campbell copying in Mr Rosenthal (80). By this time she had investigated the issue and located the note of the return to work meeting conducted on 11 May 2018 on the claimant's file. She observes in her email that the note envisages the claimant's phased return will end on 24 May 2018 and there is no mention of how the remaining annual leave will be used in the future. She adds that she will contact the claimant the following day to explain how her pay will be adjusted.

172. Ms Davies explains:

> "*This has turned out into quite a complex issue which I would like to discuss with you and [Ms Daybicharran] next week when we have a chance. She called today in distress and wants a meeting next week……She informed me that she has been told that she doesn't need to book annual leave herself using the system so I just want to make sure we are all on the same page.*
>
> *"One more thing, so far I have sent her one email regarding her appointments and she hasn't come back to me in writing, in fact today was the first time she called back since the email [of 19 June 2018]. She informed me that managers have said I need to stop harassing her regarding her appointments."* (80).

173. The claimant's account of this second conversation is set out in her informal grievance (239 – 240). She says Ms Davies constantly talked over

her during the call and was not listening to her. The claimant says that she became very emotional as she felt Ms Davies was being very confrontational and rude. The claimant said that Ms Davies did not seem to be genuinely interested in her concerns even though she was trying to explain them to her. The claimant adds that therefore she ended the call because it was upsetting her and not good for her health.

174. When consider the claimant's grievance, Mr Rosenthal investigated if anyone internal had overheard the calls, but no-one was able to recall being present. He says the following in his grievance response (289)

"I appreciate that you found your two conversations with [Ms Davies] upsetting and difficult and found her to be lacking in sensitivity and I am sorry that this is the case, [Ms Davies] had told me that on her part, she also found the conversations difficult and says that she was trying to address the various issues you raised, regarding sickness absence and and maternity on the first call and then incorrect lay and annual leave recording additional in the second call, and that she tried hard to understand and respond to the issues on the spot. [Ms Davies] said that on the first occasion she believed the policy guidance regarding evidence of appointments she tried to give was appropriate, but you did not accept it and this contributed to you feeling upset.

From your account of the second conversation, it seems that the two of you were trying to resolve a pay problem which took in wide ranging discussion of (i) information provided as part of the TUPE transfer regarding a phased return to work (ii) local team timesheet recording (iii) organisational issues annual leave boking systems and that your conversation then turned to unresolved issues form your first conversation. I feel that in part this second phone call became difficult in part due to these various overlapping issues."

175. Mr Rosenthal recommends the claimant and Mr Davies meet to acknowledge the difficult conversations they had and make commitments to how they should communicate with each other in the future. He notes that he has reminded Ms Davies and all staff in the HR team, of the importance of discussing issues calmly and respectfully with all staff and they discussed strategies to use where it appears that conversations are getting heated or distressing to either party (290).

176. Unbeknownst to Mr Rosenthal, a third party had overhead the call between Ms Davies and the claimant on 26 June 2019. This was Ms Henry who appeared as a witness for the claimant at the tribunal hearing. Ms Henry told us that the claimant was very anxious before she spoke to Ms Davies. She also said that the call was hard to watch as the claimant was getting very distressed and upset. Ms Henry confirmed that she was able to hear the entire call because it was on speaker phone. Although she had no knowledge of the respondent's policies or procedures, she formed the view that Ms Davies behaved unprofessionally and disrespectfully.

177. We found Ms Henry's evidence particularly persuasive because she was genuinely impartial and only visiting the claimant in a professional capacity.

Conclusion

178. We find that Ms Davies's focus on giving the claimant information about the respondent's policy on ante-natal appointments in the first call and in relation to pay and holidays in the second call, did result in her failing to show the level of empathy the claimant expected from her when telling her about her high risk pregnancy. Our finding is that Ms Davies approached the calls in a manner which was too businesslike in the circumstances and that she failed to adapt her approach to take account of the level of distress being experienced by the claimant.

179. This was unfavourable treatment of the claimant by the respondent.

180. There is no evidence to suggest, however, that the unfavourable treatment was because of the claimant's pregnancy. We found that the most likely explanation for Ms Davies's approach to the calls was because the calls were by their nature difficult, due to the claimant being frustrated and distressed and because Ms Davies was a junior member of staff who lacked experience of dealing with the claimant.

181. The calls were not difficult because the claimant was pregnant nor did Ms Davies speak to the claimant in the way she did because the claimant was pregnant.

182. We therefore do not uphold this allegation.

Issue 1.7 - R raised issues of poor performance in a meeting on 20 August 2018

183. The respondent accepts that it held a meeting with the claimant on 20 August 2018 at which there was a discussion about her poor performance. This included a discussion of matters dating back to before the transfer had taken place.

184. As noted above, the meeting was arranged between Mr Campbell, Ms Daybicharran and the claimant to discuss the concerns in the claimant's email of 3 August 2018 (196 – 202). These concerns focussed on the claimant's perception of her treatment by her work colleagues, and primarily by Ms Daybicharran, since she had informed her that she was pregnant.

185. The claimant's expectation was that the meeting was an informal grievance meeting to discuss those concerns. She was very surprised when Mr Campbell and Ms Daybicharran said they had concerns about her own performance. The claimant said in her evidence to the tribunal that had she realised her own performance would be discussed, she would not have attended the meeting alone, but would have chosen to be accompanied by a trade union representative.

186. No note of the meeting was created. Mr Campbell summarised some of the discussion that had taken place in an email which he sent to the claimant on 21 August 2018. It says the followng in relation to the performance issues:

"*After going through all the concerns you raised in your email we agreed the following;*

On your return to work you will identify all the areas you feel you will need further training in to ensure you can carry out your role to the standards required.

Any discussions between yourself and [Ms Daybicharran] regarding the completion of tasks and deadlines will be followed up by an email to ensure what has been discussed and agreed is clear to both parties.

You will be more proactive in asking for support from the management team and colleagues if you feel you are struggling with your workload or unsure of how to complete certain tasks/meet deadlines.

If you feel that during any discussions with [Ms Daybicharran] you feel that she is not being empathetic or supportive or if you feel she is speaking to you in a manner or tone that is not appropriate you will address this with her at the time. If you feel this cannot be resolved, you will then bring any issues to my attention.

….

As discussed, both myself and [Ms Daybicharran] have concerns around your performance in some areas of your role, which had previously been discussed with you before moving over to [the respondent] from [PRHA].

Due to your ongoing health issues and the tupe process these have not been raised with you during your time with [the respondent]. It was explained to you that on your return to work, [Ms Daybicharran] will be discussing these concerns with you and looking at how you may need to be supported to ensure you are meeting the core competencies and standards expected of you." (241)

187. In her response to the email from Mr Campbell sent on 23 August 2018, the claimant says:

"*On Monday I was not happy with [Ms Daybicharran's] challenging behaviour and unprofessional manner and this is what I was avoiding were not did not bring this to your attention earlier. I had a hospital appointment after leaving the ivories on Monday and due to being stressed and upset about Monday meeting my blood pressure was really high and I have now been admitted to hospital since Monday." (242)*

188. A further complaint by her is included in the document she sent to Mr Campbell and Mr Rosenthal on 31 August 2018 (249) where she says:

"*The last meeting and in your email summary you brought to my attention work performance issues at PRHA. I found this very threatening towards me as [the respondent] were unable to monitor my performance due to my health. I would like to know and see any records about my work performance at PRHA as this was never bought my intention. I have informed you and HR about issues with [Ms Daybicharran] at PRAH where I was being bullied by her which I put a complaint in and our work relationship broke down because of this even though she admitted her behaviour towards me was wrong. Because of this complaint against [Ms A.D.] she took offence and started to make it uncomfortable at work for me by micro managing and not following my complaint outcome which was for me to set myself task so that PRHA could support me with my workload.*

PRHA did not have any issues with my performance, which I am aware of as they were supportive due to a physical illness and [Ms A.D.] behaviour towards me. If there was any issues PRHA would have been unable to monitor me due to work issues with Ms A.D. and an ongoing illness."

189. In Mr Campbell's written response (255 – 256), he apologises that the claimant felt threatened by the conversation around her performance, and says that "*this was an issue that did need to be discussed in our meeting*."

He adds:

"It is not correct to say that your performance could not be monitored due to your health needs. Despite these and the reduced hours, [the respondent was] able to monitor your performance during your time with the service and it was necessary that these concerns were brought to your attention. Discussions around your performance were previously raised with you in supervision on 3 July 2018 and a list of actions and deadlines were agreed. Concerns were also raised with you in an email sent on 13/07/2018 and in several informal conversations during your time at the Ivories.

Concerns around your performance were discussed with you while you were at PRHA and it is the correct procedure to have these concerns brought to the attention of [the respondent] once you became an employee [of the respondent]."

190. A number of deadlines were discussed with the claimant at the supervision meeting held on 3 July 2018. In addition, the claimant's work output and relationship with Ms Daybicharran had been briefly discussed between her and Mr Campbell on 6 July 2018. In the claimant's email to Ms Daybicharran on 9 July, following her meeting with Mr Campbell, she notes:

"*Always prioritise my work load i.e. Risk Assessments, Support Plan, Actions. If I struggle with any work always update you."*

191. An email from Ms Daybicharran to the claimant sent on 13 July 2018 also makes reference to her needing to "*please make use of your hours and be proactive in your approach to work commitments*" and asks her to prioritise inputting a risk assessment for one of her clients on the respondent's Inform system in order to meet the deadline of 31 July 2018 for this (163).

192. Mr Campbell acknowledges that there was a good deal of tension between Ms Daybicharran and the claimant during the meeting held on 20 August 2018, but he disagrees that Ms Daybicharran's behaviour was challenging or unprofessional. He says that if Ms Daybicharran had behaved in an unprofessional or aggressive manner he would have stepped in and addressed this. He notes that the claimant did not say that she was unhappy with Ms Daybicharran's behaviour during the meeting, which she accepted under cross examination. We accept the evidence of Mr Campbell that Ms Daybicharran did not behave in an unprofessional way in the meeting.

193. Mr Campbell explained in his evidence why the respondent raised the performance concerns with the claimant. In his mind, the meeting was always intended to be a discussion about how the claimant and Ms Daybicharran could work together better. That included discussion of how the claimant felt she was not being supported by Ms Daybicharran, but also how the claimant could meet her objectives and to ensure the service was running as effectively as possible for the benefit of its clients.

194. Part of the way that Ms Daybicharran and the respondent had supported the claimant was by reducing her workload and ensuing she did not have to meet clients. Ms Daybicharran felt that the claimant ought to have been able to complete her work in the time she had available. It was frustrating for her and Mr Campbell that the claimant was raising concerns about not being able to manage the workload she had been assigned. For example, the claimant had missed the key deadline of ensuring all of her of client's information had been updated onto the respondent's system by 29 June 2019.

195. Ms Daybicharran's view was that some of the claimant's difficulties were symptomatic of a long standing issue of missing deadlines and time management, rather than connected with her pregnancy. In order to try and explain this, she referred to the issues that had arisen at PRHA. As noted above, we were provided with two supervision forms in which there are notes suggesting some ongoing concerns about the claimant's time management and meeting deadlines.

196. We find that the respondent's intention was not to actually revisit previous objectives which the claimant had not met dating back to her employment at PRHA. It's intention in talking about the issues at PRHA was to highlight that the nature of the concerns were longstanding and had not arisen purely because of the claimant's pregnancy or the transfer to the respondent. We note that there was no plan to immediately put the

claimant on a performance improvement plan or take formal action against her on return from her maternity leave.

197. The way in which the respondent referred back to the previous performance discussions was unfortunately very clumsy. Although the email from Mr Campbell to the claimant, sent after the meeting on 21 August 2018 was in the main very well written and supportive, the last two paragraphs created the impression that there was a long standing specific issue arising from PRHA that was to be carried forward, rather than a general concern. This caused the claimant unnecessary distress at a time when she was very vulnerable.

Conclusion

198. We judge that it was appropriate for the respondent to discuss the claimant's performance at this meeting. It was a natural and important part of the relationship between Ms Daybicharran and the claimant and needed to be aired. We do not find that it was aired in an aggressive or inappropriate way.

199. Although we consider this respondent's behaviour is worthy of criticism on this point, we do not find that behaviour constituted unfavourable treatment. Although the claimant was upset by the focus on her performance she did not suffer any real disadvantage of substance as a result.

200. Further, the reason the respondent behaved in this way was not because the claimant was pregnant. The reason the respondent behaved as it did was because it had genuine concerns about the claimant's performance which it felt it needed to raise with her to ensure that all sides had a clear understanding of each other's concerns. Similarly, we do not find that the respondent raised the concerns in order to retaliate against the claimant for raising concerns about Ms Daybicharran.

201. We therefore do not uphold this allegation.

Issue 1.6 - R refused to authorise the claimant's annual leave

202. The claimant was unhappy with the respondent's proposal that her maternity leave would commence on 10 October 2018, four weeks before her expected week of childbirth. The claimant had originally wanted her maternity leave to commence on 24 October 2018 and requested that she be allowed to stick to her planned date. The respondent refused this request.

203. In addition, the claimant believed she had 39.5 hours of accrued annual leave. The claimant requested that she be permitted to take leave, using these hours, from 24 October 2018 and start her maternity leave on 6 November 2018. The respondent believed that the claimant only had around 4.5 hours leave.

204. The respondent's position was that it was bound by law to treat the claimant as having commenced her maternity leave on 7 October 2018. This was explained to the claimant in the response to her informal grievance. This decision was not influenced by the amount of available accrued holiday which the respondent believed the claimant had (293).

205. Mr Rosenthal wrote to the claimant to confirm that she had been correct in believing she had nearly 40 hours annual leave outstanding in July 2019. He offered her the option of payment in lieu or using the holiday.

Conclusion

206. The reason the claimant wanted to start her maternity leave later and take her accrued holiday before it, because she wanted to delay moving onto statutory maternity pay until 6 November 2018. There was a clear financial advantage to her in cash flow terms of doing this.

207. The reason why the respondent refused the claimant's request was because of the operation of regulation 6(1)(b) of the Maternity and Parental Leave etc Regulations 1999 which provides for maternity leave to begin four weeks before the expected week of childbirth where the employee "*is absent from work wholly or partly because of pregnancy*".

208. This provision causes the start of maternity leave to be triggered automatically where an employee is absent from work wholly or partly because of pregnancy. The employer does not have any discretion and has to apply the section.

209. The claimant argued at the time that this provision should not have been applied to her because the reason she was absent from work was not due to a pregnancy related absence, but because the respondent was refusing to put in place adjustments that would enable her to work in the Ivories.

210. We cannot accept this argument. In our judgment, the provision does apply, and the respondent was correct to apply it. There was therefore no unfavourable treatment by the respondent of the claimant because of her pregnancy.

211. If we are wrong, we note that regulation 6(2) of the same regulations provides for maternity leave to begin automatically, if it has not already started, when childbirth occurs. The claimant had her baby on 9 October 2018. If the respondent had authorised the claimant's annual leave request, she would not have been able to take the leave as her maternity leave would have started on 10 October 2018.

212. We further note that the respondent did eventually resolve the issue of the outstanding leave to the claimant's satisfaction. She was credited with the correct amount of accrued leave before returning from her maternity leave.

213. We therefore do not uphold this allegation.

Issue 1.8 - Not supportive of C when she raised an informal grievance on 17 August 2018 and 31 August 2018

214. The claimant clarified the basis of this allegation during the course of the hearing. She confirmed that she accepted that Mr Rosenthal had considered most of the issues raised in her grievance in a great deal of detail. The aspect of his approach which she felt was unsupportive concerned the position on holiday pay.

215. Mr Rosenthal accepted that he did not address the issue of the claimant's entitlement to holiday pay in his grievance response. The reason was because it was taking him time to investigate the issue. It necessitated him engaging in fairly lengthy correspondence with PRHA about the claimant's annual leave records and their approach to annual leave. Mr Rosenthal provided copies of this correspondence as evidence of his position. We accept he is being genuine about this.

216. Mr Rosenthal meant for the claimant to be told the good news that she did have nearly 40 hours accrued holiday in the letter she was sent confirming various details about her maternity leave. The respondent's letter to the claimant was dated 2 November 2018 and confirms that the respondent treated the claimant's maternity leave as having begun on 7 October 2018 and made no mention of the holiday issue (313 – 314). Mr Rosenthal says he instructed a member of his team to do this, but it was done. He took full responsibility for this mistake when giving his evidence.

217. The fact that the holiday position had not been communicated to the claimant came to light in July 2019. Mr Rosenthal immediately contacted the claimant to explain what had happened and apologise. He offered to arrange a payment to her within 3 days if she wanted to take a period of annual leave retrospectively for a period in July.

218. We find that the reason the respondent did not have the correct information about the claimant's holiday was due to administrative glitches arising from the TUPE transfer. This was likely exacerbated by the change in personnel in the respondent's HR team.

219. In addition, we find that the outcome Mr Rosenthal's investigation was not communicated to the claimant until July 2019 because of a genuine error. When it came to light Mr Rosenthal acted promptly to try and resolve the issue in the best way possible for the claimant.

Conclusion

220. In light of our factual findings above, we do not uphold this allegation as we judge that there was no unfavourable treatment of the claimant.

221. There was a delay in communicating with the clamant about her leave entitlement, but it was a genuine error. As soon as Mr Rosenthal discovered it, he acted promptly to try and resolve the issue in the best way possible for the claimant. She did not lose her entitlement to the holiday.

222. As noted above, the respondent's decision not to allow the claimant to delay the start of her maternity leave was not influenced by the amount of accrued leave she had and therefore the delay in resolving the holiday issue had no bearing on the start date of her maternity leave.

Issue 1.9 - R did not take into account that C's pregnancy was high risk

223. We have set out above everything that the respondent did to try and support the claimant during her pregnancy. We find, as a matter of fact, this included the following positive steps:

- The respondent carried out a Pregnancy risk assessment in consulation with the claimant – undertaken on 1 June 2018 and reviewed and updated on 13 June 2018 and 6 August 2018. The respondent put into place the measures identified in the Pregnancy Risk Assessment to the best of its ability

- The respondent referred the claimant to OH in order to understand her medical condition. There would have been a further appointment had the claimant decided not to accept the offer to take paid leave

- There was a DSE assessment and provision of additional equipment

- The respondent agreed to the claimant working reduced hours and ensured that her workload was reduced accordingly. We find that her workload was manageable in the circumstances. There was no pressure put on her to work longer hours

- The respondent ensured that the claimant did not undertake loan working

- The claimant was allowed to take breaks when she needed

- The respondent encouraged the claimant to go to all her medical appointments

- The respondent did its best, in light of the lack of availability of office rooms at the Ivories, to meet the claimant's need for a quiet space to meet clients, rest and use when she felt unwell. In the end, it reached the conclusion that this problem was insurmountable and so offered the claimant the option of taking paid leave (based on her full rather than reduced working hours) or relocating to head office with extra paid travel time or being paid in full not to attend work.

224. We have also found that some of the respondent's behaviour was less positive. Ms Davies did not manage her two telephone calls with the claimant very well and it is undisputed that the respondent made a mistake with her June pay that she found very distressing. There was also confusion around her entitlement to leave and she was unhappy with the discussion around her performance on 20 August. There is no evidence that any of these matters arose because the claimant was pregnant.

Conclusion

225. Based on our factual findings set out above, our judgment is that the respondent did take into account that the claimant's pregnancy was high risk. We judge that it did everything it could to support her, bearing in mind the difficulties the work environment presented.

226. We do not therefore find in favour of the claimant in relation to this allegation.

Overall Conclusion

227. Having considered each allegation separately, we have also stepped back to the consider the position overall. We have found minimal evidence of unfavourable treatment of the claimant by the respondent. However, we have nevertheless considered whether that minimal unfavourable treatment might, when viewed cumulatively as a whole, amount to pregnancy discrimination.

228. In our judgment, the claimant has failed to prove any primary facts from which we could properly and fairly conclude that any unfavourable treatment was because of her pregnancy and therefore her claim fails on this basis too.

Employment Judge E Burns
7 February 2020

Sent to the parties on:

18/02/2020

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For the Tribunals Office