EMPLOYMENT TRIBUNALS

Claimant: Mrs J Walker
First Respondent: South Tees Hospital NHS Foundation Trust
Second Respondent: Lauren Walker

HELD AT: North East region; by video **ON:** 8, 9, 10 and 11 February 2021

BEFORE: Employment Judge Aspden
Mr P Chapman
Miss B Kirby

REPRESENTATION:

Claimant: Ms Firth, counsel
First and Second Respondents: Miss Nowell, counsel

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Claims and issues

1. The claimant complains that:
   1.1. the first respondent subjected her detriments contrary to section 47B of the Employment Rights Act 1996 as outlined below;
   1.2. the first respondent and the second respondent (an employee of the first respondent, for whose actions it is vicariously liable) subjected her to pregnancy discrimination contrary to section 39 (read with section 18) of the Equality Act 2010 as outlined below.

Detriment Claim (s 47B ERA 1996)

Protected disclosures

2. The claimant alleges she made protected disclosures in emails sent in October and December 2018 and January 2019. The first respondent does not dispute that the alleged emails were sent to it. The respondent's position is as follows:

   2.1. Disclosure 1: the respondent accepts (a) that in October 2018 the claimant raised concerns that she and her colleagues were not clinically trained to carry out (broadly speaking) their new role and that her health and that of her colleagues would be put at risk if they carried out that role and (b) that in doing so she made a qualifying disclosure to her employer. The respondent, therefore, accepts the claimant thereby made a protected disclosure.

   2.2. Disclosure 2: the respondent accepts that (a) on or around 4 and 7 December 2018, the claimant repeated disclosure 1 and referred to surgical bed patients potentially being affected; and (b) the disclosure was, in the reasonable belief of the claimant, made in the public interest. The claimant alleges that (and the for the Tribunal to decide are) whether:

      2.2.1. in the reasonable belief of the claimant the information disclosed tended to show:

         (a) that the first respondent had failed, was failing or was likely to fail to comply with its legal obligation to the claimant and her colleagues to provide a safe system of work and safe workplace; and/or provide its patients with a reasonable standard of care; or

         (b) the health and/or safety of the claimant and/or her colleagues and/or patients had been, was being or was likely to be endangered.

   2.3. Disclosure 3: the first respondent accepts (a) that on 3 January 2019, the claimant told Ms Urwin by email that the expectation of the first respondent that she carry out (broadly speaking) her new role was having a negative effect on her anxiety and mental wellbeing and (b) that in doing so she made a protected disclosure.

Detriments

3. The claimant alleges she was subjected to the following detriments on the ground that she made the protected disclosures referred to above. The issues for the Tribunal are whether the claimant has proved that she was subjected to any of the following and, if so, whether they amounted to detriments.

   3.1. Allegation 1: On 9 September 2019 being told by Ms Urwin that she would be required to provide cover at the Friarage Hospital, which was 22 miles away.

   3.2. Allegation 2: On 9 September 2019 being told by Ms Urwin that unless she was prepared to undertake the PCBM/PFC4 role she would have to remain doing pilot work (repeated at meetings with Ms Urwin on 12, 16 & 19 September 2019).

3.3. Allegation 3: Following the claimant's announcement of her pregnancy on 9 September 2019, Ms Urwin refusing to undertake a risk assessment of the PCBM/PFC4 role.

3.4. At a meeting on 12 September 2019, Ms Urwin:

3.4.1. Allegation 4: Refusing to relent over the requirement for the claimant to perform the planned care (clinical) aspect of the PCBM/PFC4 role despite the claimant being pregnant and suffering morning sickness.

3.4.2. Allegation 5: Telling the claimant that if she was considering returning to work because of weekend pay enhancements that she was considering reducing staffing numbers to deliberately discourage the claimant from returning to the PCBM/PFC4 role.

3.4.3. Allegation 6: Telling the claimant that she was considering referring her to Occupational Health ("OH") to see if all aspects of the PCBM/PFC4 role could be said to be inappropriate for a pregnant employee, and if this was the case, the Claimant would be redeployed.

3.5. Allegation 7: Trying to bribe the claimant to withdraw her request for the PCBM/PFC4 role to be risk assessed.

3.6. Allegation 8: On 16 September 2019, Ms Urwin telling the claimant that the claimant's pregnancy would not change how Ms Urwin proceeded with PCBM/PFC4 role.

3.7. At a meeting on 19 September 2019:

3.7.1. Allegation 9: Ms Dubooni telling the claimant she would look into redeployment.

3.7.2. Allegation 10: Ms Dubooni or Ms Urwin telling the claimant she would have to remain in the pilot scheme.

3.7.3. Allegation 11: Ms Dubooni or Ms Urwin telling the claimant she would have to work her hours over 3 rather 4 days.

3.8. Allegation 12: Delaying in facilitating the claimant'sreturn to work in the PFC4 role following her being certified fit to return from 5 January 2020 until 3 August 2020 when she eventually returned.

4. If the claimant proves she made protected disclosures and was subjected to detriments, it is for the Tribunal to decide whether the detriments were done on the ground that the claimant made a protected disclosure ie whether the claimant's protected disclosures materially (more than trivially) influenced its detrimental treatment of her.

Pregnancy Discrimination (s18 EqA 2010)

5. It is common ground that the claimant's protected period ran from at least 3 September 2019 until 25 October 2019.

6. The claimant alleges the first respondent subjected her to the following unfavourable treatment because of her pregnancy.

   6.1. Allegation 13: From 9 September 2019 when the claimant informed the first respondent of her pregnancy, failure to risk assess the PCBM/PFC4 role.

   6.2. At a meeting on 12 September 2019, Ms Urwin:

      6.2.1. Allegation 14: Refused to relent over the requirement for the claimant to perform the planned care (clinical) aspect of the PCBM/PFC4 role despite the claimant being pregnant and suffering morning sickness.

      6.2.2. Allegation 15: Telling the claimant that she was considering referring her to OH to see if all aspects of the PCFM/PFC4 role could be said to be inappropriate for a pregnant employee, and if this was the case, the Claimant would be redeployed.

      6.2.3. Allegation 16: Trying to bribe the claimant to withdraw her request for the PCBM/PFC4 role to be risk assessed.

   6.3. Allegation 17: On 15 September 2019, Ms Urwin telling the claimant that the claimant's pregnancy would not change how Ms Urwin proceeded with PCBM/PFC4 role.

   6.4. Allegation 18: Around 16 September 2019, the second respondent – for whom the first respondent accepts it is vicariously liable – accessing the claimant's confidential records.

7. The issues for the Tribunal to decide are whether the claimant was subjected to unfavourable treatment as alleged and, if so, whether she was subjected to that treatment because of her pregnancy (or illness suffered by her as a result of that pregnancy).

Relevant legal framework

8. The Employment Rights Act 1996 gives workers the right not to be subjected to detriment for making what are commonly referred to as whistleblowing disclosures. The right is set out at section 47B, which says this:

   47B Protected disclosures.

9. A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

10. (1A) A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—(a) by another worker of W's employer in the course of that other worker's employment, or (b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

    (1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

    (1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

    (1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—
    (a) from doing that thing, or
    (b) from doing anything of that description.

Meaning of ‘protected disclosure’

11. In order for a whistleblowing disclosure to be considered as a protected disclosure, three requirements need to be satisfied (ERA 1996 s 43A). Firstly, there needs to be a 'disclosure' within the meaning of the Act. Secondly, that disclosure must be a 'qualifying disclosure', and thirdly it must be made by the worker in a manner that accords with the scheme set out at ERA 1996 ss 43C–43H.

12. In this regard, the following provisions of the 1996 Act are relevant:

    “43A Meaning of “protected disclosure”.
    In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

    43B Disclosures qualifying for protection.
    (1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
    (a) that a criminal offence has been committed, is being committed or is likely to be committed,
    (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
    (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
    (d) that the health or safety of any individual has been, is being or is likely to be endangered,
    (e) that the environment has been, is being or is likely to be damaged, or
    (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

13. As to what amounts to a “disclosure of information”, the Court of Appeal held in Kilraine v Wandsworth London Borough Council [2018] ICR 1850, that in order for a statement to be a qualifying disclosure for the purposes of section 43B(1), it must have a sufficient factual content and specificity capable of tending to show one of the matters listed in paragraphs (a)–(f) of that subsection; the concept of “information” is capable of covering statements which might also be characterised as allegations, although not every statement involving an allegation would constitute “information” and amount to a “qualifying disclosure” within section 43B(1).

14. The claimant in this case relies on s43B(1)(b) and (d). In the context of section 43B(1)(b), the EAT has held that the term 'likely' requires more than a possibility or a risk that the employer might fail to comply with a relevant legal obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable or more probable than not that the employer will fail to comply with the relevant legal obligation: Kraus v Penna plc [2004] IRLR 260, EAT.

15. The Court of Appeal had held that, in the context of s43B(1)(a), provided the whistleblower’s belief that a criminal offence has been committed, is being committed or is likely to be committed is objectively reasonable, neither (1) the fact that the belief turns out to be wrong — nor (2) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to criminal offence — is sufficient of itself to render the belief unreasonable and thus deprive the whistleblower of the protection of the statute: Babula v Waltham Forest College [2007] EWCA Civ 174, [2007] IRLR 346. The same must be true of a belief that a person has failed, is failing or is likely to fail to comply with any legal obligation or that the health or safety of any individual has been, is being or is likely to be endangered under s43B(1)(b) and (d) respectively.

16. The words “in the public interest” in s 43B(1) were considered by the Court of Appeal in Chesterton Global Ltd v Nurmohamed [2017] IRLR 837. The leading judgment of Underhill LJ made it clear that the question for the tribunal is whether the worker believed, at the time he or she was making it, that the disclosure was in the public interest and whether, if so, that belief was reasonable. The judgment also held that, while the worker must have a genuine and reasonable belief that a disclosure is in the public interest, this does not have to be his or her predominant motivation in making it.

17. In order to qualify for protection, the disclosure must be to an appropriate person.

18. The effect of section 43C is that any qualifying disclosure made to the employer will be a protected disclosure.

Detriment

19. In order to bring a claim under section 47B, the worker must have been subjected to a detriment by an act or a deliberate failure to act.

20. The concept of detriment is very broad and must be judged from the view-point of the worker. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment. The concept is well established in discrimination law and the Court of Appeal in Jesudason v Alder Hay Children's NHS Foundation Trust [2020] EWCA Civ 73, [2020] ICR 1226 confirmed that it has the same meaning in whistle-blowing cases.

21. A detriment exists if a reasonable worker (in the position of the Claimant) would or might take the view that the treatment accorded to him or her had, in all the circumstances, been to his or her detriment: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337. As May LJ put it in De Souza v Automobile Association [1986] ICR 514, 522G, the tribunal must find that, by reason of the act or acts complained of, a reasonable worker would or might take the view that he or she had thereby been disadvantaged in the circumstances in which he had thereafter to work.

Reason for detrimental treatment

22. Section 47B requires that the act, or deliberate failure to act, is "on the ground that" the worker has made the protected disclosure. That requires the Tribunal to ask itself why the alleged discriminator acted as they did: what, consciously or unconsciously, was their reason?

23. In Manchester NHS Trust v Fecitt [2011] EWCA 1190; [2012] ICR 372, the Court of Appeal held that the test for detriments is whether “the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle-blower."

24. The burden of showing the reason is on the employer: section ERA 1996 s 48(2). If the Tribunal rejects the employer’s explanation for the detrimental treatment under consideration, it may draw an adverse inference and find liability but is not legally bound to do so: see Serco Ltd v Dahou [2015] IRLR 30, EAT and [2017] IRLR 81, CA. In the Court of Appeal, Laws LJ said: “As regards dismissal cases, this court has held (Kuzel, paragraph 59) that an employer's failure to show what the reason for the dismissal was does not entail the conclusion that the reason was as asserted by the employee. As a proposition of logic, this applies no less to detriment cases. Simler J did not hold that it would never follow from a respondent's failure to show his reasons that the employee's case was right.”

Equality Act

25. It is unlawful for an employer to discriminate against an employee in the way it affords him or her access, or by not affording him or her access, to opportunities for transfer or for receiving any other benefit facility or service, by dismissing him or her or by subjecting him or her to any other detriment: section 39(2) of the Equality Act 2010.

26. Section 18 of the Equality Act 2010 provides that it is discrimination to treat an employee unfavourably because of a pregnancy of hers.

Evidence and facts

27. We heard evidence from the claimant. For the first respondent we heard evidence from Ms Urwin, who was the claimant's line manager at the time of the bulk of the events in question and from Ms Dubooni who was in HR. We also heard evidence from the second respondent. In addition, we took into account the documents to which we were referred in a bundle of documents prepared for this hearing.

28. Important elements of this case were dependent on evidence based on people's recollection of events that happened some time ago. In assessing that evidence we bear in mind the guidance given in the case of Gestmin SGPS -v- Credit Suisse (UK) Ltd [2013] EWHC 3560. In that case Mr Justice Leggatt observed that is well established, through a century of psychological research, that human memories are fallible. They are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable, and believe our memories to be more faithful than they are. In the Gestmin case, Mr Justice Leggatt described how memories are fluid and changeable: they are constantly re-written. Furthermore, external information can intrude into a witness' memory as can their own thoughts and beliefs. This means that people can sometimes recall things as memories which did not actually happen at all. In addition, the process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially parties or those with ties of loyalty to parties. It was said in that case: 'Above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.' In light of those matters, inferences drawn from the documentary evidence and known or probable facts tend to be a more reliable guide to what happened than witnesses' recollections as to what was said in conversations and meetings. It is worth observing from the outset that simply because we did not accept one or other witness' version of events in relation to a particular issue did not necessarily mean we considered that witness to be dishonest.

29. The claimant was employed as a Patient Flow Coordinator at the first respondent Trust and until summer 2018 she was employed at Band 3. There are other PFCs employed at Band 3 and some at Band 4.

30. In summer of 2018 there was a reorganisation of this element of the respondent's organisation. As part of that process there were changes made to the PFC role and it was upgraded to Band 4 across the board. There was a consultation process. The claimant was given the opportunity to apply for the PFC Band 4, which she did, and she was appointed. The changes to the role included taking on some additional responsibilities.

31. One of the changes made to the claimant's role as part of this reorganisation and upgrading was that she, as with the other PFCs, would be expected to work not only at James Cook Hospital in Middlesbrough but also at the Friarage Hospital in

Northallerton, some 20 miles away from where the claimant lived. That was a matter of concern to the claimant because she does not drive and it is difficult to get public transport for that journey. The claimant raised that as a concern. Other members of staff also raised concerns about various issues and as a consequence some adjustments were made and Ms Urwin agreed that the PFCs would essentially take turns working in Northallerton and that the claimant would be rostered last so that in practice it was going to be 18 months to two years before she would be expected to work in Northallerton. It was hoped that in the meantime there would be implemented a system whereby the work could be done electronically and therefore it would never come to pass that the claimant would have to work in Northallerton, and Ms Urwin explained that to the claimant.

32. One of the additional responsibilities for those in the PFC role involved what was referred to in these proceedings as "carrying" of "holding" the "bleep" whilst doing work in planned care. Previously that task had been carried out by somebody in a Band 6 clinical role. That role had been removed from the structure and the responsibilities attached to that role distributed amongst others in the remaining roles in the structure.

33. The "bleep" is a pager: a piece of equipment on which messages can be sent. Those messages were essentially a message for the recipient to telephone a particular number. So, if somebody wanted to communicate with a PFC they would send a message asking the PFC to ring a phone number and the PFC would then be expected to call that number.

34. In the PFC role, therefore, the claimant's responsibilities included "holding the bleep". That meant she was expected to respond to these "bleeps" by phoning a telephone number when a "bleep" came in. She was expected to receive whatever information or question was asked by the person at the other end. There were different types of calls. Some of them, but not all, required somebody to make a clinical decision.

35. The respondent's case, and Ms Urwin's evidence throughout, was that it was never the claimant's role, following the reorganisation, to make any decisions of a clinical nature herself. Ms Urwin said that was never the expectation of the claimant or any of the other PFCs, but rather her responsibility was to pass on the message or the information or the question to somebody appropriately qualified to make the relevant clinical decision.

36. The claimant believed, however, that she was still required to exercise some clinical judgment of some sort and that she did not possess the knowledge or skills to do that. The claimant raised concerns about this matter in emails that we were referred to. Some of those emails were relied upon as alleged protected disclosures, and the respondent accepted the first and last of those emails were protected disclosures. The respondent does not accept that the emails sent on 4 and 7 December were qualifying disclosures. We have not had to resolve the issue of whether or not they were, for reasons which will become apparent.

37. In response to the concerns raised by the claimant, arrangements were put in place by Ms Urwin so that somebody in a Band 5 role would be present on the

same shift as the claimant when she was rostered to work in planned care to support her. In addition, an Occupational Health referral was made, as the claimant had been saying how stressful she found it. The Occupational Health clinician recommended that the aspect of the planned care role which the claimant was unhappy with be reviewed by a clinician, essentially to see if it was appropriate; in essence what was being suggested was a form of risk-assessment.

38. On receipt of that report Ms Urwin took advice on that recommendation from those senior to her, and having taken advice she decided that it was unnecessary for any risk assessment to take place. That was because clinicians had been involved in the creation and approval of the new structure and decisions as to the roles within the structure and where responsibilities would sit within those roles. That being the case Ms Urwin felt it was unnecessary to review whether it was appropriate for the bleep to be carried out by PFCs because, effectively, clinicians had already determined that it was by approving the structure and the roles within it.

39. The claimant was, however, insistent that she would not carry out the planned care element of the role that involved holding the bleep. Meanwhile Ms Urwin was insistent that that was part of the role and the claimant would not be given special dispensation from that part of the role. There were a number of reasons for Ms Urwin's stance, including that it would reduce flexibility, there had been a degree of unrest amongst some members of the PFC team because the claimant was not carrying out the full duties but others were, and ultimately that there had already been an assessment of where the previous Band 6 duties would sit, and that was considered one of the duties of the claimant's job. The role had gone through a process within the Trust and part of that involved job evaluation and assessing the contents of the role, and based on that a determination had been made as to which band the role sat at. That had all been done with the responsibilities of the role, one of which was the responsibility that the claimant did not want to accept.

40. The claimant and Ms Urwin had by this point reached an impasse. The relationship had been friendly; however it is clear from texts sent in March 2018 that the claimant was less favourably disposed towards Ms Urwin at this point. It is clear from those texts that the claimant felt she had been let down and that her integrity was being questioned. However, the text messages in response do not betray any animosity on the part of Ms Urwin.

41. Because the claimant was not prepared to carry out the PFC role in full, she was placed on a redeployment register and she was ultimately offered a role that was described in these proceedings as "the pilot role". Ms Dubooni was involved in the process at this stage and so from this stage had some knowledge of the claimant's concerns about carrying out the PFC role in full.

42. The claimant initially very much enjoyed the "pilot role" that she took on, as is evident from the messages she sent to Ms Urwin at the time. It is apparent from those messages that she felt more favourably disposed towards Ms Urwin at this stage. However, the problem with the pilot role from the claimant's perspective

was it did not involve weekend work. In the PFC role the claimant had been able to work weekends, which meant she received pay enhancements. The lack of weekend work meant the loss of enhancements for the claimant, which meant her pay was lower by a significant amount.

43. When the claimant took that role there was a possibility under discussion that some changes would be made which would lead to the work becoming a seven day role, giving the claimant the opportunity to work weekends and earn enhancements again. However, that did not come to fruition and by August at the latest a decision had been made that the role would not be moving to seven day working.

44. In this month the claimant texted Ms Urwin saying she was "knackered" because she was having to work four days a week to make up her earnings. She asked Ms Urwin for advice and they met a couple of days later. We observe that the claimant had recently texted Ms Urwin saying what a good manager she thought she was. It is clear that she still valued Ms Urwin's advice, notwithstanding how she may have felt a few months earlier. Following that conversation, the claimant applied for a role in maternity on reception.

45. In early September 2019 the claimant found out she was pregnant. At that particular point she did not know whether she had got the job in maternity.

46. Between 9 and 16 September 2019 the claimant had conversations with Ms Urwin. The claimant and Ms Urwin give different accounts of what was discussed on those dates. There is however some common ground. In one of those conversations, although it is disputed which one, the claimant told Ms Urwin she was pregnant. There was at some point a discussion about the claimant returning to the PFC role, and at some point during the course of this conversation the claimant became aware that she had not got the maternity job. Other matters on which there is agreement is that Ms Urwin told the claimant that if she returned to the PFC role she would have to carry out the whole of the role, including the planned care element, in other words carrying the bleep. It is also common ground that at some point Ms Urwin said she would arrange for the claimant to have someone from Band 5 working alongside her, described as "shadowing" by the claimant, who could assist the claimant. There was also a discussion about risk assessment after Ms Urwin was made aware that the claimant was pregnant, and it is common ground that Ms Urwin said she would risk assess the whole of the PFC role and that the claimant said she did not think the whole role needed to be risk assessed, only the planned care element. It is common ground there was a discussion about what would happen if advice from Occupational Health was that the claimant was unable to carry out the PFC role while pregnant, and in that context Ms Urwin referred to redeployment. It is also common ground that Ms Urwin mentioned the possibility that weekend work might be reduced for the PFC role due to changes that were under discussion.

47. The claimant alleges that on the day she told Ms Urwin about her pregnancy Ms Urwin told her that if she wanted to go back to the PFC that she would have to work from the Friarage in Northallerton. Ms Urwin denied she said anything of the sort.

48. We were referred to emails sent by the claimant to her union representative around this time. It is curious that there are no replies from the union representative to those emails. The claimant explained this by saying, as we understand it, that these were not really communications to which she was expecting a response: they were effectively diary entries- in other words a means for her to keep a record of what was happening and what was being said. It is clear from the first of those emails (12 September) that the claimant was taking advice from her union. She had told her union representative that she had been liaising with locally that the regional representative she had spoken to "felt strongly that there is sufficient wrongdoing to put together a strong case". It is clear that by that stage the claimant was talking about there being a case, and it is evident to us that the purpose of these emails was a way of her essentially collecting evidence. With that in mind, we consider that those emails are bound to be self-serving to a degree. The claimant is likely to have included things that supported her perception of events and not those that do not support it. It is not an objective account. We also bear in mind that the claimant's perception is likely to have been affected by biases: we are all affected by biases in the way we conduct ourselves. The claimant believed Ms Urwin wanted to prevent her returning to her substantive role: that is clear from the tone of the emails. We bear in mind that it is possible that what Ms Urwin said or did was interpreted by the claimant as being done with that aim, with possible alternative explanations being readily discounted. We see for example in the first of those emails the claimant says, "the sheer fact that she has vocalised weekend working is to be reduced is just another way of stopping me coming back. She knows the lack of enhancements in the pilot has been my reason not to carry on". That demonstrates the mindset of the claimant at the time, her perception. She had formed a belief that Ms Urwin found her difficult and did not want her in her job. There is the very real possibility, therefore, that whatever Ms Urwin did was being interpreted by the claimant through that prism. The claimant also believed that Ms Urwin's refusal to exempt her from carrying the bleep was unreasonable and had been unreasonable many months ago.

49. We also bear in mind that, by the same token, Ms Urwin's recall could equally be subject to biases, including an unwillingness to acknowledge is she reacted inappropriately or that her reaction may not have been as sympathetic as she might like to think she would react.

50. What we do note from these emails is that the claimant made no mention of Ms Urwin insisting on work at the Friarage. If Ms Urwin had said that, given that the claimant was, effectively, gathering evidence and making a diary entry with a view to compiling a case, it is highly likely that there would have been a reference to that in these emails, even if it was just to say that Ms Urwin had relented on that as the claimant did with the reference to the risk assessment, but there is no reference and we infer from that that it was not said. In that regard, therefore, we prefer Ms Urwin's evidence rather than Mrs Walker's. Our conclusion that the claimant's evidence on this issue is not reliable causes us to question the reliability of her perception and her recall generally as to these events, and on the whole where there is a conflict we prefer the evidence of Ms Urwin as to what was said in these conversations to that of the claimant.

51. We find that the following happened.

    51.1. The claimant and Ms Urwin had a conversation on 9 September about the maternity role. The claimant wanted to know if she had got the job. The claimant knew she was pregnant and a move from the pilot role to a different role, potentially better paid, was more important than ever now that the claimant was pregnant.

    51.2. Ms Urwin agreed to see what she could find out, as evidenced by text messages.

    51.3. There is no reference to pregnancy in those texts, which is a little surprising if the claimant had told Ms Urwin she was pregnant by that point. It is also a little surprising that the claimant's tone was so friendly if Ms Urwin had reacted as the claimant claims. For reasons explained, where there is a conflict on these issues, we prefer the evidence of Ms Urwin. We find the claimant did not tell Ms Urwin she was pregnant on that particular day. It is more likely she told her the following day.

    51.4. When Ms Urwin mentioned the possibility of weekend work disappearing from the PFC role, or at least being reduced, that was true in that it was under consideration that that might happen. We accept the reason Ms Urwin mentioned that was because she knew the claimant wanted to return to the PFC role because it was better paid than the pilot role, significantly so from the claimant's perspective. We do not accept it was said as a means of dissuading the claimant from returning to the PFC role. Had Ms Urwin not mentioned that, and had it come to pass that weekend work disappeared, the claimant would have been extremely unhappy if she found out Ms Urwin knew that that was a possibility when she was making this decision about her future employment.

    51.5. Ms Urwin did not say that the claimant would have to work at the Friarage and then subsequently relent, as the claimant alleges.

52. We find that Ms Urwin did not refuse to do a risk assessment when the claimant told her she was pregnant. We say that notwithstanding that the claimant referred in the email to her union representative (effectively a note to herself) that the claimant refers to Ms Urwin having relented on the risk assessment issue: that could as easily have been a reference to Ms Urwin’s earlier decision not to risk assess the planned care element of the role, some six months earlier or more than that, when Occupational Health had made a recommendation. Apart from the fact that we find Ms Urwin’s evidence to be more reliable, in any event, it would have been surprising for Ms Urwin to have performed a volte-face within one or two days to say that she would not do a risk assessment then to say that she would do a risk assessment.

53. Ms Urwin told the claimant that planned care would still be part of the role if the claimant returned to the PFC role, but she also said that she would arrange a risk assessment and in the meantime the claimant could have a Band 5 supporting her. We accept Ms Urwin’s evidence that she intended the claimant to be able to use the Band 5 as it suited her, in other words to carry the bleep if needs be.

54. The claimant suggested to Ms Urwin that only the planned care element of the role needed risk-assessing. However, Ms Urwin said she would risk assess the whole role. We accept that the reason for that was that the claimant was pregnant and high risk given her age in her early forties, and Ms Urwin maintained that position when she learned that the claimant was pregnant with twins, which of course made the pregnancy even higher risk.

55. There was a discussion between Ms Urwin and the claimant about redeployment as a consequence of a risk assessment. We find that that was triggered by questions asked by the claimant: the claimant asked what would happen if Occupational Health said that the role was not suitable. In that context, the possibility of redeployment was identified by Ms Urwin as one of the possibilities to be explored.

56. We reject the allegation that Ms Urwin tried to bribe the claimant in any way. She did say that the claimant could come back with support from a Band 5 but we reject the suggestion that that was conditional upon Mr Urwin dropping the risk assessment request. We prefer Ms Urwin's evidence on that matter.

57. There was then a meeting on 19 September between the claimant, her union representative, Ms Urwin and Ms Dubooni. Around about this time an Occupational Health referral was sent in. It is common ground that at this point the claimant was still working in the pilot role, but it is clear the claimant found working four days a week extremely tiring , as she had told Ms Urwin, and clearly that was not going to improve with her now being pregnant.

58. At the 19 September meeting the claimant said again, as evidenced by Ms Dubooni's notes from this meeting, that she wanted to return to the PFC role but again insisted she did not want to hold the bleep. The evidence of both the claimant and Ms Urwin was that the claimant asked to be able to do three long days rather than four short days per week. We accept there was a discussion about that because, on the face of it, that would be an unusual request for somebody who is pregnant. We find that it was agreed that Ms Dubooni would look into that.

59. Ms Dubooni subsequently told the claimant her hours in the pilot role would be changed to three long days rather than four short. The claimant says that was a detriment because, when she asked to do three long days rather than three short days she was talking about the PFC role only. We accept on this matter that the claimant did not make it clear that she was talking only about the PFC role, that she gave the impression that the request to work three long days was not confined to the PFC role and that it was Ms Dubooni's understanding that the claimant wanted to change her hours in the pilot role.

60. Ms Dubooni also said she would look into redeployment for the claimant. We find, taking into account in particular Ms Dubooni's contemporaneous notes, that what she said was that she would look into redeployment for the claimant "if the claimant wished that or if they were advised". We infer she meant advised by Occupational Health as a consequence of the referral.

61. The claimant alleges that Ms Dubooni or Ms Urwin said she had to return to the pilot role. We do not accept that was said. The contemporaneous notes show there were a number of things discussed: only one of them was the pilot role. There was a discussion about return to the PFC role with support, and Ms Urwin's evidence was that the claimant turned that down. We accept that evidence because the notes indicate that that was discussed, and the claimant was adamant that she was not going to do the role if it involved, as she perceived it, holding the bleep. With regard to the pilot role, the notes show that Ms Urwin agreed to talk again to the claimant's then line manager in the pilot role about the potential for seven day working. We find that the claimant was not told that she had to remain in the pilot pending the Occupational Health report. Various options were discussed, including redeployment if that is what the claimant wanted, or returning to the PFC role with Band 5 support, but having to carry out the full range of duties.

62. Very sadly, the claimant had a miscarriage. She consequently took a period of sick leave.

63. In the meantime, the claimant was told that somebody had accessed her information on the patient database on 16 September. That was the day the claimant had told her colleagues that she was expecting twins. It transpired that that person who had accessed the database was the second respondent, Ms Walker. The claimant was told this. She found that extremely upsetting. Ms Walker and the claimant had been friends but the claimant believed that Ms Walker had reacted with scepticism when the claimant told her she was pregnant.

64. Ms Walker had accessed the patient database. She had gone to the index of patient names, searched for the claimant, and clicked on the claimant's name, which took her to the page that we have seen in the bundle. That page did not contain any medical information in the sense of details of any appointments. It would have been possible for Ms Walker to view appointment details on there on a different screen but she did not do that.

65. Ms Walker said in evidence that the reason she accessed the database was to get the claimant's address because she wanted to send her flowers to congratulate her on her pregnancy. However in a subsequent disciplinary procedure, although she initially said she wanted to send flowers because the claimant was pregnant to congratulate her, she then said she wanted to send flowers as a condolence because she had heard that the claimant had lost the babies. That casts some doubt on the second respondent's motivations. We know that she did not actually send any flowers. We also know that she knew where the claimant lived but not her postcode. We will come back to that later.

66. The claimant was off sick for a period. Then in January she sent a fit note saying she may be fit to return to work with amended duties. The fit note referred to the claimant being unable to return to the department and with the people who had been implicated in the problems she had had. By this stage Ms Urwin was not the claimant's line manager and had not been for a number of weeks. Matters relating to the claimant's return were dealt with by Ms Dubooni. The claimant in

this case is critical of Ms Dubooni for not facilitating her return to work sooner. She eventually returned in the summer.

67. With regard to these matters, we find that Ms Dubooni initially thought the claimant did not want to return to work in the PFC role because Ms Dubooni was aware the claimant had had concerns about that role previously and had entered a redeployment process. By this time the role had changed, although we accept Ms Dubooni did not know that when the claimant was first looking to come back to work. Ms Dubooni also thought the claimant did not want to return to work in the PFC role because it was clear that the claimant did not want to work with the second respondent (who was by then undergoing a disciplinary process). The claimant had made that clear. Ms Dubooni raised the issue of redeployment. The claimant challenged that; she asked why they were looking at redeployment. Ms Dubooni explained why. There was an exchange of emails with Ms Dubooni saying that it was fine if the claimant did not want redeployment. But the claimant still made it clear she did not want to return with the second respondent in situ. We accept that the claimant was not clear at that point about what she wanted to do and that Ms Dubooni was unaware, initially, that the claimant might want to return to her substantive PFC post, but what she did know was that the claimant did not want to return with the second respondent there.

68. Ms Dubooni felt also that an Occupational Health referral would be appropriate given the claimant had been off work for a while. There was then some to-ing and fro-ing between the claimant and Ms Dubooni whilst the wording of the referral to Occupational Health was discussed. It took some time for the wording to be agreed because the claimant was not happy with the wording proposed by Ms Dubooni. We accept that Ms Dubooni felt that the wording was appropriate: she was trying to be factual and felt that the claimant would have an opportunity to say anything else she wished to to the Occupational Health consultant at the consultation. All of these things contributed to time passing before the Occupational Health referral was made. By the time a referral was made, the Coronavirus pandemic resulted in Occupational Health becoming extremely busy which led to a delay in the Occupational Health report being returned. The Occupational Health report initially went to the claimant because, as is her right and understandably, she wanted to see it before it was seen by any managers or HR. All of those factors contributed to time passing before the claimant returned to work. The claimant did return to the PFC role after the Occupational Health report was received.

Conclusions

Protected disclosure detriments: s47B

69. We deal first with the complaints that the first respondent subjected the claimant to detriments on grounds that she made protected disclosures.

70. The respondent accepts that the first and last of the emails we have referred to contained protected disclosures. There is a dispute as to whether the December emails contained qualifying disclosures. We have not had to resolve that issue for the reasons which follow.

Allegation 1: On 9 September 2019 being told by Ms Urwin that she would be required to provide cover at the Friarage Hospital, which was 22 miles away.

71. The claimant alleges that on 9 September she was told by Ms Urwin that she would be required to provide cover at the Friarage Hospital, which was 22 miles away. We have found that Ms Urwin did not, in fact, say that either on 9 September or on any of the days that followed.

72. We have not found that the claimant was subjected to the detriment alleged. Therefore, this complaint is not made out.

Allegation 2: On 9 September 2019 being told by Ms Urwin that unless she was prepared to undertake the PCBM/PFC4 role she would have to remain doing pilot work (repeated at meetings with Ms Urwin on 12, 16 & 19 September 2019).

73. The claimant alleges that on 9 September Ms Urwin told her that unless she was prepared to undertake the PFC 4 role she would have to remain doing pilot work and that that was repeated in meetings.

74. We do not accept that what happened was precisely as alleged, in that there were other options open to the claimant, including redeployment to a different role. We do accept, however, that Ms Urwin said that if the claimant wanted to return to the PFC role she would have to do the whole of the role, including the element the claimant did not want to do.

75. We find that even if it could be said to be detrimental to require the claimant to do her job, and we doubt it can be, that requirement was nothing to do with the emails the claimant sent in October and December 2018 and January 2019 that are alleged to constitute, and in some instances accepted as constituting, protected disclosures.

76. Ms Urwin, we find, required the claimant to carry out this element of her job because it was part of her role. The claimant had refused to do it in the past but it was still part of her job. Ms Urwin said the claimant would have to do this part of her job because it was a requirement of the role that the claimant had refused to do in the past.

77. The claimant's refusal to perform this aspect of her role does not itself constitute the making of a protected disclosure, even if the concerns that led her to send the emails in October and December 2018 and January 2019 were the same concerns that led her to refuse to do this part of the job. The refusal to do the job is separate from the making of the disclosures.

78. We find that there is no proper basis for us to conclude that the fact that the claimant made disclosures in itself had any material influence on Ms Urwin's conduct in insisting the claimant do the job: quite clearly she was insisting the claimant do this element of the role because it was part of the job the claimant was employed to do.

79. It follows that this complaint fails.

Allegation 3: Following the claimant's announcement of her pregnancy on 9 September 2019, Ms Urwin refusing to undertake a risk assessment of the PCBM/PFC4 role.

80. The allegation that Ms Urwin refused to undertake a risk assessment of the PFC 4 role is not made on the facts. We have found that there was no refusal. Ms Urwin said she would carry out a risk assessment.

Allegation 4: Refusing to relent over the requirement for the claimant to perform the planned care (clinical) aspect of the PCBM/PFC4 role despite the claimant being pregnant and suffering morning sickness.

81. We have already dealt with this in connection with allegation 2 above. The refusal to relent was nothing to do with protected disclosures: it was because it was the claimant's job to do that element of the role.

82. This complaint is not made out.

Allegation 5: Telling the claimant that if she was considering returning to work because of weekend pay enhancements that she was considering reducing staffing numbers to deliberately discourage the claimant from returning to the PCBM/PFC4 role.

83. We have found as a fact that Ms Urwin did say that it was possible that staffing numbers, or weekend work, would be reduced. We have found that that was not to discourage the claimant from returning to her role as alleged.

84. In any event we find that Ms Urwin's statement was not detrimental to the claimant. No reasonable person in the claimant's position could reasonably consider that they were being disadvantaged by being given a clear picture of the possible changes to the role. We have found that it was the truth and that this was under consideration.

85. The claimant was not told in order to deter her, it was to ensure she had the full picture when making decisions about her future employment, and it was relevant because the claimant wanted to work weekend work.

86. In any event, even if we had accepted (which we do not) that Ms Urwin might have been attempting to deter the claimant from coming back to the PFC 4 role, we would not infer that that was because of the emails that were sent containing protected disclosures. Far more likely is that it would have been because of the claimant's refusal to do the job, and as we have already said that is not the same as making protected disclosures.

Allegation 6: Telling the claimant that she was considering referring her to Occupational Health to see if all aspects of the PCBM/PFC4 role could be said

to be inappropriate for a pregnant employee, and if this was the case, the Claimant would be redeployed.

87. We do not find that what was said was what was alleged by the claimant. We do find that Ms Urwin said the whole of the role would be risk assessed: that was because the claimant was pregnant and had been saying for some time that part of the role caused her stress. Not only was the claimant pregnant but she had a high-risk pregnancy. Ms Urwin telling the claimant that her role was going to be risk assessed was not detrimental: it could not reasonably be perceived as a disadvantage by somebody in the claimant's position.

88. In any event, we reject the suggestion that the aim was to deter the claimant from returning to work, and we also reject the suggestion that Ms Urwin said that the claimant would be redeployed if the PFC 4 role could be said to be inappropriate. Ms Urwin did not say that: she answered the claimant's question, as we have said in our findings of fact. The claimant specifically asked what might happen, and that was one of the things that might happen. Ms Urwin was giving an honest answer to a question asked by the claimant. That was not a detriment.

89. In any event, we are satisfied that the claimant's emails dating from October and December the previous year and January of that year had no material influence on Mr Urwin's conduct.

90. Therefore this claim also fails.

Allegation 7: Trying to bribe the claimant to withdraw her request for the PCBM/PFC4 role to be risk assessed.

91. We have rejected the allegation that Ms Urwin tried to bribe the claimant to withdraw her request for the PFC 4 role to be risk assessed. She did not do so.

92. That complaint fails.

Allegation 8: On 16 September 2019, Ms Urwin telling the claimant that the claimant's pregnancy would not change how Ms Urwin proceeded with PCBM/PFC4 role.

93. As we have said in our findings of fact, we have not found that Ms Urwin said what is alleged. She did say the claimant would need to do the whole of the PFC 4 role, in other words all elements of it, if she was to come back to the job. We have already explained why that was not detrimental treatment done on the grounds that the claimant made any protected disclosures.

Allegation 9: Ms Dubooni telling the claimant she would look into redeployment.

94. Ms Dubooni said that she would look into redeployment if that was what the claimant wanted, or if that was what was advised ie by Occupational Health. Our conclusion is that that could not be said to be detrimental. No person in the

claimant's position could reasonably have thought that that would be to her detriment in the context in which the matter was discussed.

95. Even if the claimant perceived the idea of redeployment as detrimental, the fact that it was discussed had nothing to do with any protected disclosures made by the claimant: there is no basis for inferring that Ms Dubooni was materially influenced by what the claimant said in the emails of October and December 2018 and December 2019 when she said she would look into redeployment if that was what the claimant wanted or if OH so advised. Indeed, as explained below, we find that Ms Dubooni did not know what the claimant had said in those emails.

96. This complaint fails.

Allegation 10: Ms Dubooni or Ms Urwin telling the claimant she would have to remain in the pilot scheme.

97. We have rejected the allegation that Ms Dubooni or Ms Urwin told the claimant she would have to remain in the pilot scheme. This was just one option that was being explored with the claimant and Ms Urwin was to look into whether, to make it more agreeable to the claimant, there might be some scope at some point for the hours to change to weekend work.

98. This complaint fails.

Allegation 11: Ms Dubooni or Ms Urwin telling the claimant she would have to work her hours over 3 rather 4 days.

99. It was the claimant who asked to work three longer days rather than four short days. It cannot have been reasonably perceived to be to her detriment when Ms Dubooni arranged for a change in her working arrangements to accommodate that request.

100. If and to the extent that the claimant did perceive it that way, we have found that Ms Dubooni thought that what the claimant wanted was to work three longer days in the role that she was working in at the time, which was the pilot role. So clearly her arranging that was not something that was caused by any protected disclosures made: she thought she was doing what the claimant had asked her to do. In any event, as explained below we find that Ms Dubooni did not have knowledge of the protected disclosures.

Allegation 12: Delaying in facilitating the claimant's return to work in the PFC4 role following her being certified fit to return from 5 January 2020 until 3 August 2020 when she eventually returned.

101. In the findings of fact we have detailed how the delay in the claimant returning to work, if it can properly be called delay, came about. First of all, it is not accurate to describe the delay as being from 5 January because the claimant was on a period of leave after 5 January, and even then she had not been certified fit to return, it was a conditional certification from a GP. To the extent that

the claimant was not returned to work until the summer (August) there were a number of reasons for that as explained in our findings of fact above.

102. We find there was no deliberate delay in returning the claimant to her PFC 4 role. For an omission to constitute detrimental treatment under section 47B of the Employment Rights Act 1996, there must be a deliberate failure to act. We do not accept there was a deliberate failure to act to get the claimant back to work.

103. In any event, having considered the evidence as to whether Ms Dubooni actually knew about the disclosures contained in the emails from October and December 2018 and January 2019 at this time, we find she did not. She knew the claimant did not want to perform part of her job and had been brought in originally to assist with the difficulty that was presented by the fact that the claimant would not do her job. It does not follow from that that she knew about the disclosures and we are not satisfied, on the balance of probabilities, that she did. As she did not know about the protected disclosures, her actions were cannot have been on the grounds of those disclosures.

104. Furthermore, the time that it took the claimant to get back to work is explained by a number of features including the claimant herself not being clear about what she wanted, the claimant not wanting to work with Ms Walker, and the claimant not agreeing the terms of the Occupational Health referral (there is no evidence that Ms Dubooni was being unreasonable about that, they just had a difference of opinion about should go in the Occupational Health referral). There was then a delay in getting the Occupational Health report due to COVID and then the claimant wanted to see the report first, for understandable reasons. Furthermore, we bear in mind that Ms Dubooni had no line management responsibility for the claimant. She was not inconvenienced in any way by the emails the claimant had sent that she says were protected disclosures, and in some respects are accepted were protected disclosures. She was not going to have to manage the claimant in her role; she had no incentive to delay the claimant's return to work. For all those reasons we find that even if there could be said to be any deliberate delay, and we have found that there was not, and even if we had found Ms Dubooni was aware of the content of emails said to contain protected disclosures, we would not have found that it was appropriate to infer that she was materially influenced by anything the claimant said in those emails There is no evidence from which we could appropriately infer that anything Ms Dubooni did or did not do was materially influenced by things said by the claimant in emails over a year previously.

105. This complaint fails.

106. In conclusion, the claimant’s complaints that the first respondent contravened section 47B of the Employment Rights Act 1996 by subjecting her to detriments on the ground that she made a protected disclosure are not well founded and are dismissed.

Pregnancy discrimination

107. The pregnancy discrimination allegations overlap to a considerable extent with the whistleblowing detriment claims.

Allegation 13: From 9 September 2019 when the claimant informed the first respondent of her pregnancy, failure to risk assess the PCBM/PFC4 role.

108. We reject the allegation that Ms Urwin failed to risk assess the PFC 4 role – she did not fail to risk assess it, she agreed to do it.

109. This complaint, therefore, fails.

Allegation 14: Refused to relent over the requirement for the claimant to perform the planned care (clinical) aspect of the PCBM/PFC4 role despite the claimant being pregnant and suffering morning sickness.

110. Ms Urwin's 'refusal to relent', as the claimant puts it, over the requirement for the claimant to perform the planned care aspect of the role had nothing to do with pregnancy. It was part of her role. It was part of the role before the claimant had become pregnant and moved to a different position as part of a redeployment exercise. Ms Urwin's position had always been that it was part of the claimant's role. There was no change occasioned by the pregnancy.

111. Ms Urwin told the claimant that a risk assessment would be carried out and that the claimant would have support during her pregnancy, pending the Occupational Health referral, if she wanted to do the PFC role.

112. The way Ms Urwin treated the claimant was not unfavourable.

113. We reject this complaint.

Allegation 15: Telling the claimant that she was considering referring her to OH to see if all aspects of the PCFM/PFC4 role could be said to be inappropriate for a pregnant employee, and if this was the case, the Claimant would be redeployed.

114. With regard to the complaint that the claimant was told that all aspects of the PFC 4 role would be risk assessed, that was clearly not unfavourable treatment, for reasons already explained.

115. Furthermore, as we have said above, the claimant was not told that she would be redeployed if the PFC 4 role was said to be inappropriate. Ms Urwin just said in response to a question from the claimant that that was something that may happen. Again, that was not unfavourable treatment: it was simply a response to the question asked by the claimant.

116. Allegation 16: Trying to bribe the claimant to withdraw her request for the PCBM/PFC4 role to be risk assessed.

117. The allegation of attempted bribery is not made out as already explained.

Allegation 17: On 15 September 2019, Ms Urwin telling the claimant that the claimant's pregnancy would not change how Ms Urwin proceeded with PCBM/PFC4 role.

118. The allegation that Ms Urwin told the claimant that her pregnancy would not change how she proceeded with the PFC 4 role is not made out, although as explained above Ms Urwin did say that the claimant would still have to do the planned care element of the PFC role if she returned to that position. That, in itself, was not unfavourable treatment. It had been Ms Urwin's position from long before the claimant's pregnancy that the claimant should carry out the planned care element of the role as others were doing. This was not a requirement imposed because of the claimant's pregnancy. Furthermore, Ms Urwin agreed to risk assess the role in light of the claimant's pregnancy by obtaining an OH report considering any risks there might be to the claimant in light of her pregnancy and, in the meantime, offered the claimant support while carrying out the role in the meantime. The approach taken by Ms Urwin did not constitute unfavourable treatment because of the claimant's pregnancy.

119. This complaint, therefore, fails.

Allegation 18: Around 16 September 2019, the second respondent accessing the claimant's confidential records.

120. We have found that on 16 September the second respondent accessed the claimant's confidential records.

121. Ms Nowell submits that the second respondent's motivation needs to be taken into account. However, Ms Walker's motivation, whatever it was, was not known to the claimant at the time. In any event the claimant did not believe what Ms Walker said about her motivation when the claimant did find out.

122. This was a confidential patient database. Every patient is entitled to expect that those with access to the database will respect their confidentiality and will not access that data unless it is necessary for a reason connected with their treatment. Accessing somebody's confidential data in that way was unfavourable, on any assessment. It makes no difference if the second respondent's motivation was to do something nice for the claimant, we find, because the database was and remained confidential. We say that even though the second respondent did not actually access the claimant's medical records: she still accessed the database improperly. We find that, whatever motivated her to do so, the second respondent accessing the records was unfavourable to the claimant.

123. The second respondent accessed the claimant's records because of the claimant's pregnancy. Therefore, we find that there was unfavourable treatment because of the claimant's pregnancy, and that was discriminatory.

124. Although it was not known to the claimant at the time and the claimant did not believe what Ms Walker later said about her motivation, we have considered what her motivation was. Ms Walker's evidence was that she wanted to send flowers

to the claimant and looked at the database to get the address. The claimant thinks there was something else going on, that she had another motivation. Looking at the evidence in the round we can see that the fact that Ms Walker did not access the claimant's medical records but only looked at the address page, or did not access the page that showed the claimant's medical appointments but only looked at the address page, supports Ms Walker's claim that she was just wanting the address to send flowers. We also accept that the claimant and second respondent were on friendly terms, or at least had been, and so it is plausible that the second respondent might want to send flowers. However, the fact remains that Ms Walker did not in fact send the claimant any flowers. She did not drop off any flowers at the claimant's home or send them to work. She says she thought better of looking at the database and then did not take a note of the address, but it is curious that she did not then find another way of sending the claimant flowers if that had been her intention. She also changed her reason during the disciplinary procedure as to why she accessed the database, saying it was because she wanted to send flowers because the claimant was pregnant and then saying she wanted to send flowers as a matter of condolences when she heard about the loss of the pregnancy. We accept that Ms Walker may have been confused at that point and that in itself would not tend to suggest to us that her motivations were not as she said. Looking at the evidence in the round we find that her motivation was something other than to get an address to send flowers to the claimant. We are not persuaded by the claimant's suggestion that she was trying to find the claimant's address to give to other colleagues who could access another database and find out further information about the claimant's records: that seems contrived to us. However, we think it more likely than not that there was some motivation other than a desire to send flowers for Ms Walker accessing that database. That said, it does not affect our conclusion that, whatever her motivation, even if she had wanted to send flowers, that that was unfavourable treatment related to pregnancy.

125. The claimant's complaint that the first and second respondents discriminated against her in contravention of the Equality Act 2010 by accessing the claimant's confidential records on or around 16 September 2019 is well founded.

126. The claimant's other complaints that the first respondent discriminated against her in contravention of the Equality Act 2010 in 2019 and 2020 are not well founded and are dismissed.

Employment Judge Aspden

Date 14 June 2021