



EMPLOYMENT TRIBUNALS

Claimant: Mrs. F Jobson

Respondents: London Borough of Hounslow

Heard at: London South Hearing Centre

On 13/14/15 June 2022 and in chambers 12 July 2022.

Before: Employment Judge McLaren

Members: Mr. J Hutchings

Ms. T Williams

Representation

Claimant: In Person

Respondent: Mr. S Thakerar, Counsel

JUDGMENT

The unanimous decision of the tribunal is that: -

1. The principal reason for the termination of the Agency engagement: was poor performance. The respondent did not contravene s 18 of the Equality Act 1996. The claim does not succeed.
2. The respondent did discriminate against the claimant on 29 May 2020, informing the Claimant that she would be unlikely to be offered the role if another candidate was available to work. This was because of her pregnancy. The respondent did contravene s 18 of the Equality Act 1996. The claim succeeds.
3. The respondent did not discriminate against the claimant
 - a) On 2 June 2020
 - b) On 4 June 2020
 - c) The move to Duty rota not entailing training
 - d) On 6 June 2020, informing the Claimant of an intention to carry out a risk assessment

e) **By carrying out a risk assessment on 20 June 2020.**

**The respondent did not contravene s 18 of the Equality Act 1996.
The claims do not succeed.**

REASONS

Background

1. We heard evidence from the claimant on her own account. The witnesses for the respondent were Khyati Shah, Business Support officer, Fatimah Fache-Kabir, Deputy Team manager, Christine Fairchild, People Business Partner and Cassandra Thomas, Team Manager. We were provided with a bundle of 253 pages which was then expanded with the addition of some further documents as set out below.
2. In reaching our decision we took account of all the pages in the bundle to which we were referred, the witness evidence, and the parties' helpful submissions.

Documents

3. There had been a dispute between the parties as to which documents should be included in the bundle. The respondent withdrew its objections on the first morning and the additional emails referred to in the claimant's statement were provided to the panel. There appeared to be no good reason why the respondent had initially objected to the documents the claimant referred to in her witness statement. We agreed that they were relevant.
4. The respondent had also objected to the inclusion of a recording made by the claimant of a team meeting for which she said she was the minute taker. The objection was on the basis that the parties had not been aware that it was recorded and there was a suggestion that it contained confidential data. There was no objection that the recording was inaccurate, simply about the circumstances of its recording and on the basis of its relevance we agreed to listen to it. Having done so we consider that a transcript could have been made of the relevant part with any personal identifying data removed and that solution would have allowed the claimant certainty that the document would be before the tribunal. In the absence of any transcript we concluded the evidence was relevant and allowed its inclusion.
5. At the start of the second day the respondent produced two additional documents, a copy of the risk assessment that had been completed and a page of financial data. We agreed their inclusion. Both of these documents were clearly relevant, and the respondent could have produced these during disclosure. That would have allowed the claimant an opportunity to

properly prepare to question the witnesses on these and for them to be put to her in cross examination.

6. During the course of the hearing the respondent's witnesses also referred to other additional documents and systems which they told us they had reviewed overnight having heard the claimant's evidence during the hearing. None of these were provided. Two of the witnesses offered additional oral evidence to support their position, but did not provide additional witness statements so that the claimant had notice of these facts.
7. It was also apparent that both parties had been using a bundle with different page numbers from that used in the final hearing at the time the witness statements were prepared. The references to page numbers in all the witness statements were incorrect. The claimant continued to use this mis numbered bundle at the final hearing, as it appeared that was what she had been given, and this also caused some confusion and delay.
8. None of these circumstances made it easy for an unrepresented claimant to present her case. The misalignment between document numbers in the witness statements was challenging for all parties. Having considered the matter, while we find that the respondent's management of disclosure and production of the bundle caused difficulties for the claimant which could easily have been avoided, they were not sufficient to prejudice her ability to present her case. Despite these problems, this was a fair hearing.

Issues

9. The issues in this matter were agreed at a preliminary hearing on 8 December 2021. The respondent said it had not received any copy of the note from this hearing and we noted that the issues list in the bundle was not exactly the same. We also note that the respondent's representative was present at the time of the preliminary hearing and the tribunal records do not show any enquiry being made as to why the preliminary hearing summary had not been sent to them.
10. We advised the respondent of the differences and the claimant clarified she had not intended to introduce a claim for harassment under s26 EQA. We agreed, with that clarification, to use the list as determined by the Employment Judge on 8 December 2021 and discussed with the parties at the preliminary hearing.
11. These then are the agreed issues.
 1. What was the principal reason for the termination of the Agency engagement:
 - A. Because of the Claimant's pregnancy; or
 - B. Poor performance; or
 - C. Costs/budgetary issues.

The Respondent alleges it was poor performance. The claimant asserts she was discriminated against on the grounds of her pregnancy.

2. Did the respondent treat the claimant unfavourably as follows :

- a) On 29 May 2020, allegedly informing the Claimant that she would be unsuccessful if she applied for the permanent role. The Respondent denies this assertion
- b) Did the Claimant suffer a detriment? Yes the Claimant asserts that the claimant discriminated against her on the grounds of her pregnancy contrary to s18 of the Equality Act 2010: (i) in the remarks made by Ms Thomas to her on the 29th May 2020; (ii) by placing her in a highly pressurised role with no training; (iii) in her termination on 19 June 2020 and failure to give her a written reason for termination
- c) On 2 June 2020, the Respondent's Cassandra Thomas allegedly threatening to terminate the Claimant's contract as she was upset and disappointed because of disclosure of the Claimant's pregnancy? The Respondent denies this assertion.
- d) Did the Claimant suffer a detriment? Yes the Claimant asserts Mrs Thomas remarks were unlawful harassment contrary to s26 of the Equality Act 2010.
- e) On 4 June 2020, the Claimant being moved to Team Duty role as from 5 June 2020. The Respondent asserts that the move was due to health and safety issues and for the Claimant to avoid face to face contact, particularly in light of the COVID-19 pandemic.
- f) Did the Claimant suffer a detriment?
- g) Yes, the respondent did not take into consideration all the options available to "protect" the claimant. The Claimant was not given an option with regards to this decision. This approach was more favourable and convenient to the respondent rather than the Claimant.
- h) The move to Duty rota did not allegedly entail training. The Respondent denies this assertion.
- i) Did the Claimant suffer a detriment?
- j) Yes, the Claimant asserts no training was provided. Staff raised many complaints/ issues voiced in the team meetings & recorded by the Claimant on one occasion regarding the operation of the Duty. A manual was finally produced by Ijas in the following weeks.
- k) On 6 June 2020, informing the Claimant of an intention to carry out a risk assessment due to risks to the Respondent and the Claimant The Respondent asserts that the risk assessment was in

accordance with its statutory obligations and manage any potential risks for a pregnant employee.

- l) Did the claimant suffer a detriment? Yes, the Claimant did not receive a copy of the risk assessment. Minimal feedback was provided, Claimant was not involved in the decision
- m) On 19 June 2020, the Claimant was informed that her contract is to be terminated on the grounds of poor performance;
- n) Did the Claimant suffer a detriment? Yes, the Claimant asserts that the respondent's initial reasons for dismissal was failure to pick up calls from Business Support Workers who had raised a complaint. This was later changed after the Claimant requested a written notice.
- o) Carrying out a risk assessment on 20 June 2020 The Respondent asserts that the risk assessment was in accordance with its statutory obligations and manage any actual and/or potential risks for a pregnant employee.
- p) Did the claimant suffer a detriment? Yes, the Claimant did not receive a copy of the risk assessment. Minimal feedback was provided, Claimant was not involved in the decision

Finding of facts

- 12. The parties agreed that on 6 May 2020 the claimant accepted a fixed term contract with the respondent's mental health and well-being, recovery and placements (WRAP) team from 18 May to 18 August 2020. This was as a locum social worker. She was an agency staff engaged via her agency, Tripod Partners.
- 13. From the respondent's point of view, the relationship was with Adecco. A document page 55 of the bundle, which was the agency management toolkit, explained that the respondent used Adecco as a managed service provider. Adecco had been appointed to manage the process for the provision of temporary staff. Any matters related to agency staff were therefore addressed by the respondent and its management staff to individuals at Adecco.
- 14. The claimant was interviewed for the role by Cassandra Thomas, Team Manager, and Fatima Fachekibir, Deputy Manager. The claimant is an experienced social worker with over 10 years employment in the field, the last five years as a qualified social worker.
- 15. The assignment schedule, at pages 178 – 179, confirms that the claimant was assigned to Hounslow and the document specifies that the notice period for either side to terminate the assignment was one week's notice. The agency management toolkit at page 57 suggests that a courtesy notification of two weeks is encouraged if the placement needs to end prematurely. Ms Thomas' witness statement referred to there being one week's pay in lieu of notice, but in her oral evidence she believed that she had authorised a payment of 2 weeks .This is contrary to the information set

out in the email confirming the ending of the claimant's assignment which refers to one week's notice. The claimant said she had received only one week's notice and we accept her evidence, which is supported by contemporaneous documentary evidence, that she was not given this courtesy.

Job role.

16. Details for this role were at page 238. This was what was described by Ms Thomas as a light version of the job description that was used for locum agency workers. It was this description that the claimant had seen and responded to when applying. The job description that the claimant saw made no reference to duty work at all or to it being an integral part of the role.
17. Ms Thomas told us that she explained to the claimant that duty work was something that all staff did and were expected to do one week in four. The claimant did not agree she had been told this. The respondent did not provide us with the notes of this interview and there were no contemporaneous documents to evidence what was discussed at this meeting. In the absence of any written documentation we prefer the claimant's recollection as to whether duty work was discussed to that of the respondent's witnesses who were present at the interview. On the balance of probabilities we find that any critical parts of a role would be included even in a light job description. The managers have no doubt interviewed many candidates and their memory of when they said what may well be clouded, whereas a candidate is likely to have a clearer recollection as the job specification would be a key part of a decision to take a role.
18. The claimant explained that she understood that duty work was part of a social worker's responsibilities but that this was dealt with in different ways by various local authorities. We find that, while she was aware that duty work would have to be carried out, she was not aware that it would form part of her duties as a locum social worker.
19. The written document set out that the WRAP team focused on, promoting well-being and recovery placing people at the centre of their care, listening to them by tailoring their support to meet their individual needs. The document concluded that a council wide program to promote mobile and flexible working had been implemented and the candidate would be provided with a mobile phone and laptop equipped with telephonic functionality to enable them to work from home and other offices and locations within the borough.
20. Ms Thomas understood that the claimant would work remotely and the claimant understood that this was a wholly home based role. Neither Ms Thomas nor Ms Fache-Kabir considered there was much difference between the use of the term home worker and remote worker .
21. The claimant believed that her role was not going to involve face-to-face contact because, in the circumstances of the pandemic, home visits were not permitted under general government guidelines and all client assessments would be done remotely by phone or by video. The claimant

was pregnant when she took the role and had understandable concerns about the risks that Covid19 might pose to herself and her unborn child. She told us that she had taken the role understanding that it would be home-based and would not involve contact with the general public.

22. Her line manager and Ms Thomas explained that this was not the case. The claimant was employed at a time when there was a great deal of uncertainty about the course of the pandemic. It was accepted that at the relevant time contact with members of the public was limited. However, Ms Thomas and Ms Fache-Kabir explained that the nature of social work means that there can be emergencies which require face-to-face contact. It was therefore possible for a locum social worker to have to attend in person. Where that arose a process had been put in place to carry out an individual risk assessment. Ms Fache-Kabir also confirmed that this was explained to the claimant at the interview.
23. While we accept the evidence of the respondent's witnesses that a locum social worker role did in fact include face-to-face contact, even during the pandemic, we do not accept that this fact was made clear to the claimant. As referred to above there are no notes of the interview. All the witnesses are now recalling events which took place some time ago. The only near contemporaneous document is the claimant's email of 4 June at page 120 in which she states that she applied for the position with the knowledge and understanding that it was a remote working role as part of the Covid 19 response.
24. We find that this reflected her understanding that the role did not include face-to-face contact. We accept that, as a pregnant woman, she would have been conscious of the health risks potentially involved with face-to-face contact during the pandemic. If this had been raised in the interview, on the balance of probabilities we find it likely that she would have recalled this and indeed may not have taken the job, or at the very least might have advised them of her pregnancy at that point. We therefore prefer the claimant's evidence over that of the respondent's witnesses as to what was said at the first meeting. We do so because, as referred to above the only near contemporaneous document reflects the claimant's understanding that this was not a position which involved face-to-face contact. This is a point that was critical to the claimant but not one that would necessarily be front of mind for the respondent's witnesses. We also note that the respondent's witnesses did not see much difference between homeworking and remote working and this supports our finding that they are unlikely to have explained the position to the claimant with any clarity.

The structure of the Department

25. Ms Thomas explained that she engaged a mixture of employed and agency staff. While it was hard to recall exactly, she believed that the team consisted of between 20 and 24 staff. It was a mixture of qualified social workers and unqualified social workers and administration staff.
26. A document was produced by the respondent which showed the spend on agency staff from May 2020 to December 2021. This shows a decrease

in agency staff costs from May 2020 with a big decline by September of that year, but agency staff costs ramping up again from around August 2021.

27. Ms Thomas gave evidence which was not disputed and we therefore accept, that she was being put under financial pressure by her manager. Despite the fact that the workload of her team was growing and there was more need than ever for their services during the pandemic, she had been told that she had to cut staff costs. She had been unable to fill vacant roles and had also been told that she had to reduce agency spend.
28. Ms Thomas recalled that the discussions were happening around the start of the new financial year in April 2020 and were ongoing. Despite this, Ms Thomas engaged both the claimant and another individual, Rita, as agency workers in May 2020.

Induction

29. It was agreed that on the first day of her assignment the claimant attended the respondent's business address and collected a laptop and a telephone. It was also agreed that the first two weeks of the assignment were the induction process and the claimant was not assigned any social work during this period. The claimant said that this induction consisted entirely of undertaking online courses and certificates of all those that she completed were within the bundle at pages 219 to 234.
30. The bundle also contained an induction best practice guide for managers at pages 95 to 106. It did not contain any copies signed by the claimant. Ms Thomas gave evidence that the claimant would have had a meeting with her line manager and been taken through all the matters set out as recommendations for the first day, which included her job role. She also gave evidence that the claimant would have had access to all policies and procedures, including the grievance procedure, and that her line manager would have given the claimant a brief overview. The claimant said this did not happen.
31. Ms Fache-Kabir was taken to the documentation at pages 95- 106 in the bundle that Ms Thomas had referred to, and confirmed that she had not used this. Ms Thomas' evidence was not accurate and reflected what she thought should happen, not what did happen. This supports our view that the recollection of what was covered at interview is a recollection of what should have been covered and does not reflect the reality. Ms Fache-Kabir explained that she had her own version of the checklist which she went through with the claimant, but although she told us this, no copy was provided. She confirmed that the claimant had not signed any such document.
32. We find that the induction process merely included Ms Fache-Kabir telling the claimant how to log onto the system, but not taking her through expressly where things such as the grievance policy were, or telling her that she was expected to read all of the respondent's policies. We found that the claimant was not, therefore, directed towards the grievance policy and was not aware that she was expected to have read all the respondents policies. From her perspective, the induction consisted of the online courses which

she successfully completed. Where the claimant was criticised by the respondent for not raising grievances we find such criticism unjustified. No one had told the claimant how to do this.

The vacant permanent role

33. It was common ground that on 29 May 2020 the claimant informed her manager that she was five months pregnant. This was not news that the claimant had shared previously. The notification happened on a call that was initiated by her line manager, Miss Fachekibir, in order to find out how the claimant was settling into her team.
34. There had been a team meeting at which Ms Thomas had explained that a permanent social work post in the team was due to be advertised, and that all internal and agency staff were encouraged to apply. Following this, in this catch up Ms Fache-Kabir discussed the vacancy with the claimant.
35. The accounts between the claimant and her line manager then differ. The claimant's evidence is that she told her line manager she did intend to apply, but was mindful that she would shortly be going on maternity leave. The claimant's recollection is that in response she was told she was unlikely to be offered the role if another candidate was available to work.
36. The line manager's evidence is that during the catch up the claimant said that she felt encouraged to apply and that the announcement was directed to her. It was explained that this was not the case, but nonetheless she was encouraged to apply. The claimant then replied that her situation was different and she would not be able to apply. When asked for the reasons for this statement she then informed her line manager she was expecting a baby in October 2020. The claimant said that she had not informed the respondent about her pregnancy at the interview in case it went against her because she had a previous negative experience from another employer.
37. The line manager's evidence is that she explained that being pregnant could not be an obstacle to the claimant applying for the role if she wanted to do so and she encouraged her to apply for the permanent social work post.
38. We prefer the evidence of the claimant to that of Ms Fache-Kabir as to what was said in the conversation. On the balance of probabilities it is more likely that the claimant has an accurate recall of what was a very important conversation for her, but was more a matter of routine for her line manager. We accept the claimant's evidence that she had thought of applying but was discouraged from doing so by this comment. We reach this view as to the claimant's intention to apply as, even on her line manager's account, she had been excited about this opportunity and believed the discussion about the vacancy arising in the team meeting had been directed at her.

Conversation with Ms Thomas on 2 June 2020

39. On 1 June, having been informed of the claimant's pregnancy, Ms Thomas advised the line manager that she would seek further advice and

would contact the claimant. Ms Thomas then emailed an individual at Adecco, the third party used by the respondent to manage agency workers. This email, which is at page 122, stated that Ms Thomas had heard that on 29 May the claimant had revealed she was five months pregnant to her direct line manager. The email said that the reason for her disclosure at this point (and not earlier) is that she did not want pregnancy to impede her chance of employment. It concluded "*the issue for "us" is that of risk as there is a requirement for face-to-face contact and community visits once we resume normal activities*". Ms Thomas asked for a phone call to discuss this.

40. Ms Thomas told us that in this call on 2 June she was advised that a risk assessment should be carried out. Having had a conversation with an individual from Adecco, Ms Thomas also had a telephone conversation with Christine Fairchild who also advised that a risk assessment be undertaken. Ms Fairchild confirmed that the risk assessment to which she was referring was a specific maternity risk assessment. She confirmed that the risk assessment carried out was a generic risk assessment and not the one that she had recommended. Ms Fairchild's advice was confirmed in writing in an email dated 4 June at page 117.
41. Ms Fairchild's advice was that, subject to the assessment, Ms Thomas might need to consider whether any adjustments were required to the claimant's role to prevent a risk both to the claimant and her baby's health and safety. It was explained that the respondent was not obliged to make these changes, but it was good practice to try and do so. The advice also identified that if it was not reasonable to make the required changes, then the respondent would need to notify the agency that the assignment would need to end. Ms Fairchild gave her advice understanding that the claimant was engaged via an agency and was not an employee of the respondent. Further, at the time of the advice the claimant had not completed 12 weeks with the respondent.
42. Ms Thomas accepted that by 2 June, and without carrying out the recommended risk assessment, she had decided that she had to move the claimant from her position as a locum social worker and assign her to duty work only. She explained that she was very mindful of the risks to the claimant and her unborn child. At this time she recalled there had been press coverage on a pregnant nurse who had died from covid. She told us that she felt she had to protect the claimant and her unborn child by making sure she was in a role that could not have public contact. She did not want to lose the claimant's services because the team were very busy and therefore this was the only solution.
43. Having reached this conclusion Ms Thomas then made telephone contact with the claimant on 2 June. In this telephone conversation Ms Thomas says that she reassured the claimant that the decision not to disclose her pregnancy in case it went against her was not something she needed to have been concerned about. Ms Thomas said that she communicated the advice she had received and discussed the claimant's role and concerns about her safety in relation to the client group. Ms Thomas agreed that there were two options put to the claimant. Either she could transfer to the duty role, or her assignment would have to be

terminated. It was Ms Thomas's evidence that the claimant agreed the move to duty work.

44. The claimant's recollection was that in this conversation Ms Thomas informed her that by not disclosing her pregnancy the claimant was putting herself at risk and her colleagues under increased pressure. In evidence before us, Ms Thomas denied making any such statement. The claimant believed from these remarks that Ms Thomas was both upset and disappointed at her pregnancy, although she accepts Ms Thomas did not use those words. The claimant says the call ended abruptly after Ms Thomas told her that a risk assessment would need to be completed and if the risks were too high the contract would be terminated.
45. The claimant sent Ms Thomas an email on 4 June, which is at page 120 of the bundle. This was a follow-up from the telephone call. It is in this email that the claimant says she applied for the role because it was a remote one. This email does not object to being moved to duty work and we accept Ms Thomas's evidence that at the time the claimant had agreed to make this move.
46. The claimant understood that a risk assessment needed to be completed and did not object to this at the time. The claimant also understood that if there were too many risks her role would be terminated. The email specifically states that she understood Ms Thomas was upset and disappointed about her non disclosure as she mentioned several times that she put her and her colleagues under pressure due to the pregnancy.
47. Ms Thomas responded also on 4 June, page 119 of the bundle, refuting this. Her reply states that she was in no way upset or disappointed but had simply asked a question about why the claimant had not made a disclosure of her pregnancy prior to the start date. Her email says that she made a statement of fact about the current resource needs of the team and the potential impact on the team given the disclosure. The email also records that she did express her concerns of risks to the claimant's personal safety given their client group. The email confirms that the claimant would be offered a risk assessment in due course. The email responds in part to the claimant's comment about the role being a remote one, but does not make any comment that the role had been explained as involving face to face contact. Again, this lack of response supports our view that this aspect of the role was not mentioned at interview.
48. We find that Ms Thomas did tell the claimant that not disclosing her pregnancy until late had put her at risk, and that the claimant had put Ms Thomas and her colleagues under pressure because of her pregnancy. We make this finding because, although Ms Thomas in evidence before us denied this, we prefer the evidence of the email written at the time to recollection of events given some two years later. We also conclude that it was reasonable for the claimant to believe Ms Thomas was upset and disappointed at the disclosure of her pregnancy. We find that she did make these comments because she was upset and disappointed.
49. Ms Thomas accepts that she did talk about terminating the assignment as an option. We find that she did therefore tell the claimant that if the risks

were too high the contract would be terminated, as this was broadly in line with the advice Ms Thomas had received from Ms Fairchild. We find that even though we have concluded that Ms Thomas was upset and disappointed, in making this statement about the potential ending of the assignment she was echoing the advice she had received. She was setting out the two possibilities which existed and was not therefore making the statement because of any personal feelings about the disclosure of the claimant's pregnancy. The statement was not made as a threat but as an appropriate disclosure of one of the two possibilities. Ms Thomas chose to continue the claimant's assignment and to transfer her so as to retain her services for the respondent when she could have made a decision that it was not appropriate for the respondent to do so and could have terminated the assignment instead.

The risk assessment

50. Ms Fairchild confirmed that she had sent a link to a risk assessment and she told us that she had intended to send the expectant mother risk assessment, but Ms Fache-Kabir used a more generic risk assessment document. The claimant accepted she had been told that a risk assessment was to be completed but she was not consulted about this nor was she ever shown the final risk assessment.
51. Ms Fache-Kabir and Ms Thomas are both clear that the decision to move the claimant to the duty role was taken prior to completion of the risk assessment. The risk assessment assessed the duty role, not the locum social worker role. Ms Fache-Kabir said that there was intended to be a meeting with the claimant on 5 June to discuss the risk assessment but this was moved to 9 June. Ms Fache-Kabir said that this meeting took place over teams and that she shared her screen and therefore showed the claimant the risk assessment document and that they completed it together. The claimant says this did not happen. The respondent has produced no evidence of this teams meeting and the risk assessment document, which was provided only during this hearing and not disclosed previously, shows only some items on the first page having been completed. The risk assessment matrix for example is blank. Had it been discussed as suggested, we would have expected more of it to have been completed.
52. We prefer the claimant's evidence on this point. We find that she did not see this form, although we also find that there was a conversation that took place with her on that day about risks generally and she was told that the outcome of the risk assessment was low. Ms Fache-Kabir explained that she then spoke to her line manager, Ms Thomas, about it and Ms Thomas advised her to send the risk assessment to the respondent's health and safety department. There is no suggestion that the claimant was made aware this was happening and we find that she was not.
53. The risk assessment was then shared by Ms Fache-Kabir with the respondent's health and safety officer on 12 June 2020. The cover email explained that they had an agency expectant mother in the team and they had made an adjustment by placing her on permanent duty work. It attached the risk assessment form. It was said that this had been agreed with the claimant.

54. The response was that while risks relating to work in the community/with clients face-to-face are currently not applicable due to the prolonged requirement to work from home, staff members, particularly expectant mothers, needed to complete the online agile work training and DSE assessment. The claimant had not done this and was therefore sent invites to complete these two parts of the online training.
55. It was put to Ms Thomas that the response from the health and safety department suggested that there was in fact no face-to-face client work so that there was no requirement to move the claimant from her role. She explained that she believed this was a generic response from health and safety. Adult social care continued to include face-to-face contact although that involved a risk assessment process and the provision of PPE. We accept Ms Thomas's evidence on the point that even during the pandemic face-to-face work did continue.
56. Ms Fache-Kabir said that because the DSE assessment was not completed by the claimant before her assignment ended, she could not complete the risk assessment form and it was not therefore shared with the claimant. We accept her evidence that she considered this document to be an ongoing work in progress which had not been concluded by 19 June.
57. We find that while the claimant was aware that some risk assessment process was going on, this was not an expectant mother assessment but an assessment of the duty locum work taking into account the claimant's pregnancy. We also find that the claimant was not involved in the completion of this document in any meaningful way and we accept her criticism that it was not a transparent process. We find this was because Ms Fache-Kabir was following what she believed to be the correct process and was sharing it with other colleagues for advice before it was completed.

The transfer to duty work and training

58. Ms Thomas and Ms Fache-Kabir confirmed that they had a conversation about the claimant's pregnancy and what they believed was the risk to her of face-to-face work and they took immediate steps to remove the claimant from what they perceived to be risk. The claimant had finished her induction training and was due to start work on 1 June. It was their evidence that this meant she could be seeing clients in their own homes almost immediately. Indeed, Ms Fache-Kabir gave evidence that the claimant had been involved in one notetaking meeting and the intention was that this individual would then be assigned to the claimant which could have involved her having face-to-face contact with that individual. We accept her evidence on this point. As line manager she was in a position to be aware of what work would be assigned to the claimant at the end of her induction. This would not be as visible to the claimant. We therefore accept that there was a risk the claimant could be expected to have face-to-face contact almost immediately after her induction period had ended.
59. They felt therefore they had to act quickly to avoid this situation and therefore Ms Thomas told the claimant on 2 June (in the conversation and email chain dealt with above) that she was being moved from her role as a locum social worker to being assigned permanently as the duty social

worker. In doing so she was part of a team of four, one being a manager and the others being staff who were undertaking duty one week in four as part of the normal workload. The claimant was moved to this role when Ms Thomas understood from the advice she had received that she could have ended the claimant's assignment as an option but she chose not to do this.

60. While the claimant now complains that the move to duty work was a detriment to her and was related to her pregnancy, at the time the claimant made no objections. While we find that the claimant had not been made aware of the respondent's grievance policy and there is no expectation that she needed to raise a grievance to register discontent, we note that the email of 4 June does not raise any objection about this transfer. It raises complaints about other matters but not this point. Based on the near contemporaneous evidence, we therefore accept Ms Thomas' evidence on this point that at the time the claimant agreed the transfer and did not see this as a negative. The claimant had been moved from a role which potentially created health and safety risks to both herself and her unborn child, to a role carrying out social work based at home which removed all of those risks. This was what she had wanted to achieve, and thought she had, when she applied for the locum role.
61. The claimant gave no evidence that the job was worse in some way than being a locum social worker. There is no evidence of increasing hours, complexity of tasks or work pressure. The claimant's objection to the transfer appears to be because of the ultimate outcome, rather than because of the nature of the work itself. We find that at the time, the claimant did not consider that a transfer from locum social worker to duty officer amounted to a detriment and there is no evidence that it was such. We therefore find that the job terms were no less favourable as a duty officer than as a locum social worker and there is no legitimate grievance that could arise because of this move, only to the outcome.
62. The claimant says that she started duty work on 5 June which was intended to be a day "shadowing", starting to work in the team from 8 June. It was agreed that she was to shadow an individual named Bernie. The claimant says this did not happen because Bernie was out for most of that day. This supports our finding that social workers were doing face-to-face visits.
63. Ms Thomas gave evidence that this was not the case because the respondent had no record which showed that a risk assessment had been completed for a home visit, which would have been the case had this happened. This evidence was given by Ms Thomas for the first time in cross examination and it was clear that she had researched the point having heard the claimant's evidence, but the respondent did not produce any evidence showing that the individual was in the office, such as activity from teams emails that were sent on that day et cetera. We prefer the claimant's account on this point and find that she was not given an effective shadowing opportunity before being required to undertake duty work.
64. The evidence on the need for training was disputed. Ms Fache-Kabir considered the claimant to be an experienced social worker who should be able to deal with the duty work with support from herself and other team

members on the day. She had arranged for the claimant to start the duty work on 8 June when she herself was also assigned as the manager to that task for the week. Ms Thomas explained that at about this time the duty trays of two teams had been merged and it was being dealt with as one.

65. We listened to a recording of part of a team meeting that took place on 9 June and it was evident that a number of individuals who were working on the duty team were unclear as to the guidance they had been given about when matters had to be logged. We find that there was some lack of clarity about procedures within this team. While this was dismissed by the respondent's witnesses as a small number of people, these criticisms and concerns were nonetheless raised. We were also taken to page 131 which were minutes of the recorded meeting. This asks Duty workers to update their Jabba status to "Duty" to enable the team to identify them and it identifies issues with the mailbox and the duty tray. This suggests not all were showing their availability for calls. We were taken to page 156, a text exchange, in which on 26 June a colleague identifies some issues they have with the work and comments "they realise training is necessary now"
66. At the end of the claimant's first week on duty tasks on 12 June Ms Thomas sent an email to the duty team. Ms Thomas explained that part of the context of this email was the financial pressure. She wanted to try to find a way to gather more data about how her team's services were used so that she could demonstrate her need for more staff. She explained that this led to a change in her instructions to the team about the duty system and she now required everything to be logged as a case. We find, therefore that as Ms Thomas has said, procedures within the duty team were changed at around the time the claimant started in that team.
67. In Ms Thomas email of 12 June 2020 she set out a number of items that needed to be addressed. This included significant referrals not being actioned for several days, Merlin and safeguarding referrals not being prioritised and not archiving actioned/screened emails.
68. At the time the claimant did not raise any issues that she had not been properly trained and did not know how to use the system, but in her evidence she described the duty work as chaotic with a lack of clarity as to exactly what had to be completed and logged.
69. We also find that there was some lack of clarity about processes within this team and we prefer the documentary evidence of the minutes and Ms Thomas's email to the oral evidence given by the respondent's witnesses that this was not the case. We conclude therefore that there was either no or insufficient training given to the claimant on how to do duty work.
70. It was argued by the respondent that as an experienced social worker the claimant should know how to do the duty work but we find that knowledge of the system is not an intrinsic social worker skill. Some training needs to be given on the respondent's expectations of how quickly work has to be done and how detailed the notes have to be. If there is an expectation of throughput, that should also be shared with all involved in the work. We find that this was not done. We find that some part of the

complaints about the claimant's performance could have been addressed had there been sufficient training.

The claimant's performance

71. Ms Fache-Kabir explained that incoming calls are taken by team business support officers from all internal and external callers. They are then transferred to duty staff who are expected to receive incoming calls and respond as appropriate to the matter at hand. It was the line manager's evidence that when staff are taking breaks, whether these were short or long, there was an obligation to inform the senior colleagues on duty and the business support officers so that they would know who was able to answer the call in their absence. When she was transferred to duty, the claimant was appointed as the designated duty call receiver. Calls would therefore be routed to her as the first touch point if the system showed that she was available.
72. The claimant was taken to a document at page 110 which was a job description within the adult safeguarding social care and health team. This document specified that a social worker protected the rights and promoted the interests of Hounslow residents and their carers to ensure they are kept safe. The job description also contained a number of key performance indicators which included ensuring timely and robust review of cases and ensuring the timely and appropriate closure of cases. The claimant had not seen this job description before the litigation started. We find that it had not been drawn to her attention and she was not aware of its contents.
73. Ms Fache-Kabir said that she became concerned about the claimant's performance on the second day, that is 9 June. This arose because of resident MH whose details are at pages 195. This individual was vulnerable and the case had been allocated to the claimant at about 9:30 AM on 8 June. The case notes show that the claimant took action on this case at 16.59 and there was no answer when she called the resident. Ms Fache-Kabir therefore undertook a late urgent task of making a food bank referral for this individual.
74. In her evidence, Ms Fache-Kabir raised this with the claimant on 10 June and explained to the claimant what she had to do and shared with her a sample of another colleague's work to aid and improve her efficiency. This was not presented as poor performance to the claimant and we find that the claimant was unaware that there was an issue.
75. Ms Fache-Kabir said that during that week in which she was managing the duty team she found the claimant's throughput to be very slow compared to others. As part of the litigation the respondent had prepared tables of comparative performance for the two weeks in which the claimant was on the duty roster. It was explained that this data came from the respondent's performance management system. It was not available at the time and did not form part of Ms Fache-Kabir's thought processes but she confirmed that she could see for herself at the time that the claimant was not making many case notes compared to others and therefore formed the view that the claimant's throughput was slow.

76. Ms Fache-Kabir gave evidence that she was also aware that it was not only the case of MH that was not dealt with appropriately. She was aware of three others, resident HD, resident DP and resident PG in which the claimant did not act promptly. In the case of resident HD, the referral was allocated on 9 June but there was no follow-up until 11 June and the case was not completed until 15 June, that is one week later. The claimant was allocated the case of resident DP in the morning of 10 June but did not take action until just after half past four that day. Ms Fache-Kabir had to complete the case screening and document the outcome of the case. She expected this to be done by the claimant. Resident PG was allocated on 9 June but Ms Fache-Kabir felt that she had to intervene as nothing was happening on it.
77. As a result of these concerns Ms Fache-Kabir, during her informal supervision meeting on 12 June, raised this with Ms Thomas. At that point Ms Fache-Kabir wanted to end the claimant's assignment, but Ms Thomas indicated the claimant should be given more time. Ms Fache-Kabir did not go back and tell the claimant this. Other than the conversation she said took place on the 10th, the claimant was not made aware that there were any performance concerns.
78. Another manager took their turn on the duty work the following week. She was not available to give evidence as she has left the respondent's employment. We did hear evidence from Mrs Shah, a business support officer for the mental health team. She explained that on 18 June she received a call from a client who was extremely disturbed and therefore she called the claimant a few times but there was no answer. As she could get no answer she then called the duty team manager to take the call. Mrs Shah's evidence was that the claimant appeared to be available on the system and had not told her that she was not. Her witness statement suggested that there was a lack of response from the claimant from the outset of her working with the duty team, but in evidence Mrs Shah confirmed that the issue with the claimant was on one day only. Mrs Shah did complain about this to the duty manager. Mrs Shah was unaware that the claimant was pregnant. Ms Thomas in her witness statement understood that Mrs Shah had complained of several incidents, but it appears that these were all on the one day related to this particular client. This accords with the evidence provided by the claimant in the bundle of her online conversation with the other duty officer who confirmed that the claimant was always responsive.
79. Ms Thomas told us that on that day, the 18th, the duty team manager made her aware of this call. Ms Thomas then asked Ms Fache-Kabir to join the meeting with her and the duty team manager and they discussed the claimant's performance. Ms Thomas' evidence was that not answering a call from a vulnerable adult was unacceptable. Ms Thomas considered this and the other concerns about the claimant's performance as reported by Ms Fache-Kabir and therefore decided to end the claimant's assignment with one week's pay in lieu of notice. At that point it would appear that her decision was based on complaints made to her about the claimant's performance.

Ending the Assignment

80. Ms Fache-Kabir and the duty line manager were tasked with informing the claimant of this decision. They telephoned the claimant at around 12 PM on 19 June and she was told that her contract was terminated due to poor performance and that a business support officer was complaining that she was not answering the phone. The claimant requested examples of poor performance and the times of not answering calls but this was not provided. The claimant therefore had no opportunity to put her side of the case and she was never asked for any explanation. The claimant did not offer any reasons why she might have been unable to answer the telephone.
81. Following the meeting the claimant sent an email requesting written reasons for the termination of her contract. Ms Thomas responded to this and written reasons for the ending of the assignment were given on the same day. Those reasons were that the claimant's contract had been terminated early due to cost pressures and overspent team budgets. The email stated "*in the background of this are complaints...and poor standard of work..phone calls not being picked up and poor through put.*"
82. In her evidence before us Ms Thomas reiterated that costs were a motive. She was under pressure to cut costs. She explained that as the claimant had the shortest service she was selected rather than another locum who had started just before the claimant.
83. Ms Thomas was the decision-maker who instructed others to carry out that decision. The reasons for the claimant's dismissal are therefore her reasons and not those of either Ms Fache-Kabir or the other duty line manager. While it was put by the respondent's counsel that the cost pressures were the background to this matter, the document written at the time has financial reasons as the first reason.
84. We accept that the trigger for dismissing the claimant was her performance. Had costs been the sole motive the claimant could have been let go and not transferred to duty work. We find that Ms Thomas decided not to spend her budget on retaining the claimant once she concluded her standard of work was insufficient. Performance was the main reason for the ending of the assignment. The pregnancy was not a factor.

Relevant Law

Discrimination

85. S.18 provides that an employer (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 — S.18(2)(a), or because of illness suffered by her as a result of it — S.18(2)(b).
86. The 'protected period', in relation to a woman's pregnancy, starts when the pregnancy begins and, if she has the right to ordinary and additional maternity leave, ends either at the end of additional maternity leave or when she returns to work, if earlier — S.18(6)(a).

87. When there is an allegation of pregnancy or maternity discrimination, what is important is the existence of a causal connection between the treatment and the pregnancy. The reason for the unfavourable treatment must be “because of” pregnancy or maternity; it is not sufficient for pregnancy or maternity to simply be part of the background context. There must be a causal link.
88. S 41 EQA provides that
- (1) A principal must not discriminate against a contract worker—
 - (a) as to the terms on which the principal allows the worker to do the work;
 - (b) by not allowing the worker to do, or to continue to do, the work;
 - (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;
 - (d) by subjecting the worker to any other detriment.

Detriment

89. “detriment” is not defined in the Equality Act but has been reviewed through case law. In *Ministry of Defence v Jeremiah* 1980 ICR 13, CA, the Court of Appeal took a broad view of the words ‘any other detriment’ to mean ‘putting under a disadvantage’. In *De Souza v Automobile Association* 1986 ICR 514, CA, the Court said the question is to be considered ‘from the point of view of the victim. A detriment ‘exists if a reasonable worker would or might take the view that [the action of the employer] was in all the circumstances to his detriment’ Accordingly, there is no need to establish that the employer’s actions had consequences in terms of the employee’s contract of employment in order to show detriment.
90. Nonetheless, a sense of grievance which is not justified will not be sufficient to constitute a detriment. The individual must have some reasonable sense of grievance.

Burden of proof in discrimination

91. Igen v Wong Ltd [2005] EWCA Civ 142, [2005] ICR 931, CA, remains the leading case in this area. There, the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place. Only if such facts have been made out to the tribunal’s satisfaction (i.e., on the balance of probabilities) is the second stage engaged, whereby the burden then ‘shifts’ to the respondent to prove — again on the balance of probabilities — that the treatment in question was ‘in no sense whatsoever’ on the protected ground. There must still be a causal link between the treatment and the protected characteristic.

92. The Supreme Court in Royal Mail Group v Efobi, considering s136(2) of the Equality Act confirmed that at the first stage of the two-stage test, all the evidence should be considered, not only evidence from the claimant.
93. The bare facts of a difference in treatment and a difference in status only indicate a possibility of discrimination, they are not 'without more' sufficient material from which a Tribunal can conclude that there has been discrimination, Madarassy v Nomura International [2007] IRLR246 CA.

Conclusion

94. We have then considered the findings of fact as we have made them and the applicable law as we have set it out above. We have therefore considered whether the claimant has proved facts from which the tribunal could infer that discrimination has taken place. There must be more than an action which occurs while the claimant is pregnant. There must be something more from which the tribunal can conclude that there may have been discrimination. There needs to be a causal link between the pregnancy and the action and that action must be unfavourable and, as the claimant is an agency worker, amount to detriment for her. Our conclusions are set out below, adopting the issues list as a framework.

1. What was the principal reason for the termination of the Agency engagement?

95. The claimant's reason for believing the dismissal was because of her pregnancy was the timing of the decision and what she believed was the change in reasons. As we have set out, it is not sufficient for a claimant simply to say I am pregnant and this happened. In order to meet the burden of proof there has to be "something more". In this case we have found that there was a lack of training, which could have excused any performance issues, and we have found that the letter for dismissal changed the reasons given to the claimant. We are satisfied that the claimant has proved facts from which an inference of discrimination could be drawn.
96. We have then gone on to consider whether the dismissal was causally connected to the pregnancy. We have found that the claimant was initially told she was dismissed for performance, and yet Ms Thomas' letter confirming the reasons sets out cost as a factor. We have been troubled by the fact that the respondent did appear to change its reason and have found that the claimant was told that the primary reason was cost, which did not appear to be in the decision-maker's mind at the time she discussed it with Ms Fache-Kabir.
97. We have found that, despite her confusing letter, the decision maker understood there to be significant performance problems and that for her, not answering a call which left a vulnerable adult without assistance was insupportable. We found that the decision maker concluded that the cost of the claimant was not justifiable in light of her performance.
98. While we have sympathy with the claimant's concern that her pregnancy was the causal route of her assignment being ended because of the chronology of events, the lack of discussion with her about her performance and what appeared to be evolving reasons for the decision, we have nonetheless concluded that pregnancy was not the reason for this. We

are satisfied that concern about performance was a genuine one in Ms Thomas' mind and it was the reason for the dismissal and it was not because of the claimant's pregnancy. Ms Thomas had rejected 2 prior opportunities to end the assignment and only did so when she became concerned about the treatment of a vulnerable service user. The pregnancy is the background fact that starts the chain of events, but the ending of the assignment is not because of the pregnancy. This claim of discrimination does not succeed.

2. Did the respondent treat the claimant unfavourably as follows :

- a) *On 29 May 2020, allegedly informing the Claimant that she would be unsuccessful if she applied for the permanent role.*
 - b) *Did the Claimant suffer a detriment? Yes the Claimant asserts that the claimant discriminated against her on the grounds of her pregnancy contrary to s18 of the Equality Act 2010: (i) in the remarks made by Ms Thomas to her on the 29th May 2020; (ii) by placing her in a highly pressurised role with no training; (iii) in her termination on 19 June 2020 and failure to give her a written reason for termination*
99. We have found that on 29 May 2020, Ms Fache-Kabir did tell the Claimant that she would be unsuccessful if she applied for the permanent role. This was directly because of the claimant's pregnancy and we have found that the claimant did suffer a detriment in that she felt unable to apply for a permanent role. The claimant succeeds on this issue.
100. We are satisfied that the lack of training was not because of the claimant's pregnancy. On the claimant's evidence the lack of training was general, nobody on the duty roster had adequate training in the use of the system. This part of the claim does not succeed. The reason for the lack of training is not directed at the claimant and is not because of her pregnancy.
101. We have addressed the reason for termination at issue1. The claimant also complains about a failure to provide her with written reasons for termination. We have made a finding of fact that she was given such a reason. No claim for discrimination can therefore succeed for any such failure as there was none.
- c) *On 2 June 2020, the Respondent's Cassandra Thomas allegedly threatening to terminate the Claimant's contract as she was upset and disappointed because of disclosure of the Claimant's pregnancy? The Respondent denies this assertion.*
 - d) *Did the Claimant suffer a detriment? Yes the Claimant asserts Mrs Thomas remarks were unlawful harassment contrary to s26 of the Equality Act 2010.*
102. We have made a finding of fact that Ms Thomas did not make a threat and the claimant therefore does not succeed on this issue.

- e) *On 4 June 2020, the Claimant being moved to Team Duty role as from 5 June 2020. The Respondent asserts that the move was due to health and safety issues and for the Claimant to avoid face to face contact, particularly in light of the COVID-19 pandemic.*
 - f) *Did the Claimant suffer a detriment?*
 - g) *Yes, the respondent did not take into consideration all the options available to “protect” the claimant. The Claimant was not given an option with regards to this decision. This approach was more favourable and convenient to the respondent rather than the Claimant.*
103. It was an agreed fact that the claimant did move to the duty team role. The claimant seeks to raise an inference of discrimination because she was not given an option about this move. We conclude that this is not sufficient to shift the burden of proof and the claimant is in effect relying on the circumstances of her pregnancy alone.
104. If we are wrong on that, for the sake of completeness, we have nonetheless gone on to consider the position had the burden of proof been shifted. While the reason for the move was triggered by the claimant’s pregnancy, we have found that the respondent moved the claimant in order to prevent her being at risk from face-to-face visits, which would otherwise have been an inevitable part of her role. This was the respondent discharging what it understood to be its health and safety obligation. The claimant accepted the position at the time and in any event, the alternative the respondent had open to it was to terminate the claimant’s assignment. By moving her they continued her engagement and the claimant continued as a social worker with no face to face contact which is what she had wanted to achieve when she took the role. This does not amount to unfavourable treatment or a detriment.
105. The claimant does not succeed on this issue. She has not discharged the burden of proof. In the alternative the reason for the move was to protect her safety. While the safety issue only arose because of her pregnancy, the move was related to safety concerns. In any event there was no detriment in continuing to do social work based at home with no client contact.
- h) *The move to Duty rota did not allegedly entail training. The Respondent denies this assertion.*
 - i) *Did the Claimant suffer a detriment?*
 - j) *Yes, the Claimant asserts no training was provided. Staff raised many complaints/ issues voiced in the team meetings & recorded by the Claimant on one occasion regarding the operation of the Duty. A manual was finally produced by ljas in the following weeks.*
106. The claimant complains that there was no training in her move to the duty rota. While we have made mention of this above it is brought as a separate issue and therefore, we have addressed it as such. We have

found this to be the case and that there was insufficient training. However, we cannot find this is because of the claimant's pregnancy since on her own evidence there was a general lack of training. The claimant cannot succeed on this issue.

k) On 6 June 2020, informing the Claimant of an intention to carry out a risk assessment due to risks to the Respondent and the Claimant The Respondent asserts that the risk assessment was in accordance with its statutory obligations and manage any potential risks for a pregnant employee.

l) Did the claimant suffer a detriment? Yes, the Claimant did not receive a copy of the risk assessment. Minimal feedback was provided, Claimant was not involved in the decision

107. We have found that the claimant was notified that a risk assessment was to be carried out and raised no objections to this process. We have found that the risk assessment document itself was not shared with her, but we have also found that the reason for this was that it was not concluded before her assignment was ended.

108. We also made a finding that the claimant was kept informed of the progress of the risk assessment. We conclude that a document which had not been shared with the claimant because it was not completed before her assignment ended is not a fact from which an inference of discrimination can be raised. If the burden of proof had been discharged, while the risk assessment was put in place because of the claimant's pregnancy, it is undertaken to protect the individual's health and that is the motivation. Further, no detriment arises from the respondent carrying out its obligation to undertake a risk assessment where an individual is pregnant . The claims as they are raised in relation to the risk assessment do not succeed.

m) On 19 June 2020, the Claimant was informed that her contract is to be terminated on the grounds of poor performance;

n) Did the Claimant suffer a detriment? Yes, the Claimant asserts that the respondent's initial reasons for dismissal was failure to pick up calls from Business Support Workers who had raised a complaint. This was later changed after the Claimant requested a written notice.

109. This has been addressed under issue 1. The contract was ended for poor performance .that is not discrimination.

o) Carrying out a risk assessment on 20 June 2020 The Respondent asserts that the risk assessment was in accordance with its statutory obligations and manage any actual and/or potential risks for a pregnant employee.

p) Did the claimant suffer a detriment? Yes, the Claimant did not receive a copy of the risk assessment. Minimal feedback was provided, Claimant was not involved in the decision

110. The complaint is also raised that a risk assessment was carried out on 20 June. This seems to be an incorrect characterisation of the claimant's issue. She confirmed that her complaint was that she had not seen the risk assessment and that she was not involved in it and that minimal feedback was provided. This is addressed above.

111. The claimant succeeds therefore in relation to one complaint only, that is the comment made to her by Ms Fache-Kabir. The matter will therefore need to be listed for a remedy hearing.

Employment Judge McLaren

Date 12/07/22