EMPLOYMENT TRIBUNALS

Claimant: Ms B Washington

Respondents: (1) Swindon Borough Council
(2) Governing Body of EOTAS

Heard at: Bristol (via CPV) **On:** 19th September and 6th November 2023

Before: Employment Judge David Hughes

REPRESENTATION:

Claimant: Mr Gloag (counsel)
Respondent: Ms Gyane (counsel)

RESERVED JUDGMENT

1. The complaint of unauthorised deductions from wages is not well-founded, and is dismissed.

REASONS

Who everyone is

1. The Claimant is a teacher by profession. It is not in dispute that she was employed by the 1st Respondent from 19.04.2021 to 13.03.2023. She has type 1 diabetes, and was 16 weeks pregnant when her employment commenced.

2. The Claimant was employed to teach at EOTAS. EOTAS stands for Education Other Than At School. It is or was an institution for the education of pupils not in a mainstream school. At the time that concerns this claim, it operated at 3 different sites.

3. Evan James was the 3rd Respondent. He is the 1st Respondent's School Business Manager at EOTAS. The claim against him was withdrawn on the first day of the hearing.

What the claim is about

4. The Claimant's ET1 was received on 10.02.2022. She initially brought a variety of claims. The "particulars of claim" accompanying her Claim Form extended to some 291 paragraphs, over 38 pages. Claims for harassment on grounds of disability and sex were subject to a deposit order made by EJ Self on 04.04.2023. Claims for a detriment pursuant to s44 of the Employment Rights Act 1996 ("ERA") were struck out on the same date.

5. The harassment claims were struck out on 26.05.2023, by Employment Judge Self, the Claimant having failed to pay the deposit.

6. The remaining claim is for unlawful deduction of wages.

7. On 20.07.2023, the case came before EJ Brady for a case management hearing. The Case Management Order includes the following list of issues:

Employment status

1.1 Was the claimant an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

1.2 Was the claimant an employee of the respondent within the meaning of section 83 of the Equality Act 2010?

1.3 Was the claimant a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

Unauthorised deductions

2.1 Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

[Alternative]

2.2 Were the wages paid to the claimant on [date] less than the wages s/he should have been paid?

2.3 Was any deduction required or authorised by statute?

2.4 Was any deduction required or authorised by a written term of the contract?

2.5 Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?

2.6 Did the claimant agree in writing to the deduction before it was made?

2.7 How much is the claimant owed?

8. The case came before me for hearing on 19.09.2023. It was not possible to conclude the hearing on that date, so it was adjourned, part heard, to 06.11.2023.

9. At the hearing on 19.09.2023, I discussed EJ Brady's list of issues with the parties. The Claimant had been unrepresented at the CMH, but was represented by Mr Gloag of counsel before me.

10. That the Claimant was an employee of the 1st Respondent was not in issue. The 2nd Respondent's status was not resolved, and it was not controversial that issue 1.3 did not take matters further. The claims against Mr James were withdrawn, and I issued a judgment dismissing them on withdrawal.

11. Before the adjourned hearing, the parties prepared a list of agreed and disputed facts, and factual issues for me to resolve. These are as follows:

Agreed Facts

a. *It is agreed that the Claimant was on sick leave from 18 May 2021 to 17 September 2021 (her maternity leave began by operation of law on 18 September, with the first working day of maternity leave being 20 September 2021).*

b. *It is agreed that the Claimant was on maternity leave from 18 September 2021 to 1 October 2021, with her first working day following maternity leave due to be 4 October 2021.*

c. *It is agreed that the Claimant did not carry out any work for the Respondent during the period 4 October 2021 and 23 February 2023.*

d. *It is agreed that the Claimant's sick pay entitlement was 100 working days at full pay followed by 100 working days at half pay. The Claimant avers that only sick leave covered by a medical certificate falls within the entitlement for occupational sick pay under Section 3.2 of the Respondents' Attendance Management Policy.*

e. It is agreed that the Claimant was on sick leave from 24 February 2023 until her dismissal on 13 March 2023.

Disputed Facts

1. The Parties dispute whether the Claimant was on sick leave from 4 October 2021 until 23 February 2023.

2. The Parties dispute that the Claimant suffered unauthorised deductions from wages between 4 October 2021 until 23 February 2023.

The factual questions to determine the Claim

3. Was the Claimant on a period of sickness absence between 4 October 2021 and 23 February 2023?

4. If the Claimant was not off sick for the period 4 October 2021 to 23 February 2023:

a. Was the Claimant available for work during this period? This includes an assessment as to:
i. whether (or the extent to which) the Claimant was ready, willing and able to work as required as a teacher, and/or
ii. whether the Claimant's actions amounted to a refusal to work.

b. Was the Claimant's absence authorised during this period?

5. If the Claimant was available for work or on authorised absence during the period 4 October 2021 and 23 February 2023:

a. Was she entitled to wages?
b. If so, from what date and in what amount?
c. Has there been deduction(s) made to the Claimant's wages?
d. Was the deduction(s) authorised?

12. I am grateful to the parties' representatives for the labour they put into elaborating that list. I am satisfied that it does not constitute a substantive departure from the list of issues prepared at the CMH, but rather constitutes a helpful refinement and re-statement of the issues between the parties.

13. The parties also prepared a helpful chronology. It is largely agreed, save for matters that the Respondents contend are not relevant.

<u>The hearing</u>

14. The hearing was originally listed to last 1 day, on 19.09.2023. It became apparent that that was going to be insufficient to conclude the case, and it was adjourned part-heard to 06.11.2023.

15. The Claimant, who had hitherto been unrepresented, instructed Mr Gloag of counsel to appear for her, I understand shortly before the hearing. Ms Gyane of counsel appeared for the Respondent, who had been represented by different counsel at earlier hearings. Both counsel gave me real assistance. At the end of the first day, I made orders with a view to better defining the scope of the dispute, and that was possible with counsel's assistance. I wish to record my gratitude to them.

16. A bundle of 343 pages had been prepared for the hearing. However, a further bundle of missing documents, consisting of 58 pages, was sent to the Tribunal at the September hearing (although these did not find their way to me at that time), and a further 92 page pdf bundle of Occupational Health related material was sent to the Tribunal for the adjourned hearing.

17. This latter documentation was given to Mr Gloag shortly before the adjourned hearing. Very properly, he did not feel that he could talk to the Claimant about it, as she was in the middle of being cross-examined when the hearing was adjourned.

18. At the outset of the adjourned hearing, I canvassed how to proceed with counsel, who both suggested that the Claimant's cross-examination continue, and the question of disclosure be considered after that.

19. We set out on that course, but the Claimant repeatedly referred to documentation that wasn't in the bundle in her answers. It became clear that it was necessary to consider whether she should be permitted to rely upon the new documentation before she answered further questions. This, in turn, meant allowing the parties time to consider the documentation, and allowing Mr Gloag to take instructions on it. I rose for 1 hour to allow this.

20. When the hearing resumed, Mr Gloag explained that the 92 page document was a response to a Subject Access Request from the Claimant, made on 16.09.2023 and received on 01.11.2023. It had been sent to him shortly before midnight on 02.22.2023.

21. Mr Gloag was able to identify only 7 documents in the 92 pages on which he sought to rely. Those pages were as follows:

    (a) A question put to Medigold (OH providers) @ page 5 of the pdf;
    (b) A suggestion that the Claimant be suspended from work on full pay, contained in clinical consultation notes @ p8 of the pdf;
    (c) Parts of the consultation notes @ p9 of the pdf, dealing with covid recommendations for persons in the third trimester of pregnancy;
    (d) A reference to the Claimant not having been sent photographs, on p24 of the pdf;
    (e) An email dated 21.07.2021 from Medigold to the Claimant @ p42 of the pdf;
    (f) A paragraph from an email from Medigold to the Claimant dated 05.02.2022, @ p58 of the pdf, and;
    (g) An email from the Claimant to Medigold @ p75 of the pdf.

22. I did not allow the Claimant to rely on this material. There was some confusion as to why it was obtained when it was. Mr Gloag said that the subject access request was made on 16.09.2023, in response to the bundle for this hearing having been received by the Claimant on 14.09.2023. But there was discussion of it having been mentioned on 25.08.2023, which was not satisfactorily clarified before me.

23. One unfortunate feature of this case is that no order was made for disclosure, and I was told that disclosure had therefore taken place on a somewhat piecemeal basis. However, there had been disclosure, which had allowed the preparation of a bundle. To allow the Claimant to rely on this new material – some of which consisted of emails that she would have had in her possession – would have required the Respondent to be able to answer it. Insofar as the emails were concerned, the Claimant had not thought them of sufficient

importance to seek to have them in the main bundle. I did not consider that it would be fair or proportionate to allow her to rely on them at this late stage.

24. Insofar as OH notes were concerned, it seems to me that what is important is the OH report, not the notes that may be taken to allow a professional to prepare such a report. I therefore did not allow the Claimant to rely on the notes.

25. Concerning the 58 page pdf;

(a) The first item on which the Claimant sought to rely was an email from June 2021. To whom it was sent, and by whom, were not clear, having been redacted. This email concerned a time period before that with which I was concerned, and it did not seem to me that this email would assist me to decide any issue. Indeed, Mr Gloag was at a loss to identify why it might be of assistance;

(b) (i) Pp3 to 34 were the 1st Respondent's complete policy on managing employee health, wellbeing and attendance policy. The Claimant sought to rely on paragraph 4.1.3 of this document, which reads:

If the employee whose sickness certificate has expired or they have been certified fit by their GP to return to work but their manager either believes they are not fit to return, then Statutory Sick Pay can not be paid and the employee will be put back onto normal salary hours, equivalent to their normal working hours or agreed phased return. Each case will be treated independently and permission will be sought from the employee to contact their Doctor in order to discuss the best possible solution for the employee. Until such time as a decision is made regarding their fitness to work following a GP or Occupational Health assessment normal salary will remain in payment. This period will not count as recorded sickness absence.

(ii) Mr Gloag contended that this provision was important, because the 1st Respondent was saying that it had complied with its policies. He contended that the first sentence covered exactly the Claimant's situation.

(iii) The Respondent contended that the first it had heard of any attempt to rely on this provision was in the written submissions I had ordered be prepared. It had not featured in the Claimant's cross-examination of Mr James on policy.

(iv) I declined to allow the Claimant to rely on this document. The Claimant's position – as Mr Gloag clarified to me – was that it was important because it deals with the position where a sickness certificate has expired or employee has been certified as fit to work. But the Claimant's position ignored the entirety of the 1st sentence, which refers not only to certification, but the fact that an employee's manager believes them not fit to return to work. That was not the case here. I also noted the Respondent's point that Claimant's case had not been formulated with reliance on this provision hitherto. Mr James had not been cross examined on it. The relevance of this provision was doubtful, and I was not persuaded that it would be fair or proportionate to allow the Claimant to rely on a paragraph that has not featured in her case until very recently.

(c) The Claimant sought to rely on pp27,29, 31 & 32. These are appendices to the policy. P27 is a blank sickness absence self-certification form, p29 a checklist of points to cover in monitoring meetings, p31 a blank risk assessment action plan, and p32 a blank record of reasonable adjustments. It was difficult to see how blank documents of this sort could assist me in resolving any issue, and I declined to allow the Claimant to rely on them;

(d) The Claimant sought to rely on pp35-38, which dealt with pensions. I said that I would consider this if I had to consider quantum;

(e) Pp43-45 consisted of job screen health assessment results, from March 2021. This was some time before the issues I had to consider, and I did not see how it would assist me in resolving the issues;

(f) The Claimant sought to rely on a photograph on p58. The Respondent consented to this, and I allowed it.

26. That time had to be taken for the parties to consider this material, and then for me to hear and resolve arguments about it, was regrettable.

27. In the event, I was able to hear the evidence and submissions at the adjourned hearing. Having been advised that the Claimant – who had to leave the adjourned hearing before I could deliver a decision – was likely to want written reasons for my decision, I reserved my decision on liability.

The Claimant's contract of employment

28. Both parties referred to terms on which the Claimant was employed. The Claimant referred to the School Teachers' Pay and Conditions Document 2020, which was included in the bundle. In particular, she referred to parts a) and b) of para 51.2, which she cited as follows:

a. 51.2. A teacher employed full-time must be available for work for 195 days, of which:
a) 190 days must be days on which the teacher may be required to teach pupils and perform other duties; and
b) 5 days must be days on which the teacher may only be required to perform other duties; and those 195 days must be specified by the employer or, if the employer so directs, by the headteacher.'

29. The Respondent referred to the contract of employment itself, which was included in the bundle. In part 2 of it, next to the word "*school*", it reads:

EOTAS
However, if it becomes necessary and is reasonable, then following & subject to consultation with you &/or your representative, the Council may need to change your place of work to that of another Council establishment on either a temporary or permanent basis.

30. The contract incorporates the Conditions of Service for Schoolteachers in England & Wales (the Burgundy Book), in clause 11 of the contract.

31. Clauses 14 and 15 of the contract provide as follows:

14. Sickness or Injury
Full details of the sickness scheme terms and conditions are available from the School Administrative Office, Headteacher or Human Resources.

15. Other paid Leave
Details are in the Leave of Absence Policy, which are available from the school office, Headteacher or Schools HR Team.

32. It was common ground that the Claimant's sick pay entitlement was to 100 working days at full pay, followed by 100 working days at half pay.

The facts

33. The Claimant made a statement in the case. However, rather than simply tell her story in an easily intelligible chronological manner, at points in her statement she engaged in argument. She adopted paragraphs from her particulars of claim. I have already commented on the length of that document, and the Claimant had heard Employment Judge Livesey comment, in a Case Management Order of 26.10.2022, that this was a prolix and discursive document. It is regrettable that she did not opt simply to tell her story in a clear manner. The Claimant's prolixity is, in large part, why these reasons are so much longer than might be expected in a claim for unlawful deduction of wages.

34. I make my factual findings on the balance of probabilities. I have attempted to confine my factual findings to those that are necessary for me to resolve the dispute between the parties. In this case there is a real risk of being diverted away from those facts which I do need to resolve. It is a risk that I not confident I have always avoided.

35. On 17.05.2021, the Claimant says that she was prevented from leaving her workplace 30 minutes early, to attend a medical appointment. The reasons for this are not germane to the issues I have to determine. The Claimant supplied the 1st Respondent with a fit note dated that same date, covering the period to 28.05.2021. I understand that much of this period was, in fact, the half-term break.

36. It is not in dispute that the Claimant requested that adjustments be made, to enable her to work on site. On 21.05.2021, Mr James emailed the Claimant to say that he had listed Risk Assessment areas about which the Claimant had asked for detail. The email has the Claimant wanting:

    a) Breaks – Mr James said that the Claimant could have a break when there was another adult in the class room. If she was the only adult, she could call to ask for cover, or a walkie-talkie could be facilitated so that she could request cover;

    b) Cannula changes – a room had been identified, which was not used for anything else. It could be kept locked when the Claimant needed it for cannulas changes. Mr James indicated that he had photographs of the room;

    c) Workstation set-up – Mr James indicated that he had completed the DSE checklist, there were remaining questions which needed the Claimant to be on-site, to assess her specifically with the equipment. He added that he had arranged for a different chair to be brought into the class for her;

    d) Student hazard – The Claimant was reminded that EOTAS's students are ones unable to attend 'normal' – the word used in the document - education. There were risk assessments for them on the 'drive' – by which I understand a computer drive.

37. Mr James concluded his email saying that, based on risk assessments, the 1st Respondent felt that it had made adjustments that mitigated risks, and the only further assessment needed required the Claimant to attend at her workplace. He asked her to let him know when she would be in, so that could be completed.

38. On 24.05.2021, the Claimant made a grievance, pursuant to the 1st Respondent's grievance procedure. Her grievance read as follows:

    …
    I joined EOTAS Swindon on 19th April on a permanent contract, having informed them of my pregnancy and completed their pre-employment OH

checks on 23rd March. This report recommended a new & expectant mothers risk assessment, and the workstation / display screen equipment assessment be completed. On 21st April 2021, Evan James conducted my individual risk assessment. I only received it on 18th May because my GP issued a FitNote. Prior to that, I emailed requests for it on 26th April, 11th May, 12th May, and had asked for it verbally in multiple conversations. There are proposals for me to be given additional breaks, but this has yet to be actioned.

On 10th May 2021, I was emailed by Juliette Baldwin to say that I would be observed on 11th May 2021 in Period 4. I replied immediately, to let her know that I had booked the day off to attend two hospital appointments. The lesson observation was moved to Wednesday 12th May Period 2. The trains were chaotic, so I arrived at work 5 minutes after the students. I did not write a plan, but had a productive lesson supporting the students with the work they should have done in my absence but claimed not to have been given nor taught.

My main concerns are that I have no break between 8:40 and 11:50; my room is nominally the quiet room, and I am on lunch duty there with a colleague until 12:20, I then teach until 2:30. Although I nominally have a TA, I am generally in my class alone and cannot go to the loo. I have a Type 1 Diabetes, which is covered by the Disability Discrimination Act and am 20 weeks pregnant. A clean space was only identified last week for me to be able to change cannulas if this proves necessary, and there is no opportunity in the day for me to do so anyway even in an emergency.

My healthcare team and I are unhappy with this situation. My TA is on long-term sick and I am covering for the Head of English who is also on long-term sick. I have never met the Head of Department, but towards the end of the day on 19th April, Chris Mawdsley told me that the Head of Department should never have been appointed because she was off for 6 months every year. This statement worried me, not so much because of concerns about professionalism, but because of the probability that if the comment were true and the Head of Department had not been dismissed through attendance management and was even promoted, there was probably significant disability discrimination in that statement. I do know that parents and students have a genuine affection for the Head of Department.

Monday 17th May 2021 was a day of emergencies, with one student kicking a door off its hinges, my risk assessment makes no reference to the risks posed by student behaviour. There was a cluster of incidents involving students in the afternoon. I called to notify the office that I had no TA and only one student at 1:50pm and remind them that I needed to leave at 2pm to attend my appointment with the part of the multidisciplinary team as part of my antenatal care, having notified them of the appointment on 10th May, Chris Wakefield told me that the school had emergencies. I was not able to leave until 2:35pm because I had no TA for afternoon registration and had not been able to use the loo since 12:20. This comment ignored my legal obligation to look after my own and thus my baby's Health and Safety and dismissed my humanity. It demonstrated to me that my employer is unaware of their legal obligations to protect the health, safety and wellbeing of its staff. It also raises questions about

whether there is sufficient provision for student wellbeing with such low staffing levels that the safety of pregnant and disabled workers has to be sacrificed.

I arrived at Paddington and got into a taxi and was still 15 minutes late for my appointment. My consultant reiterated the team's concerns. My GP issued the FitNote, which led to me being sent the risk assessment, albeit with insufficient mitigations.

I received several emails on Tuesday 18th May which added to my stress levels by telling me that I must set cover if I am off sick and signed off. I suspect that is why so many people are on longterm sick. I am also confident that with so many people on sick leave, and all the unused planning from the Head of Department, that there is no more need for me to plan anything else. Nobody has apologised for preventing me from attending my appointment punctually yesterday, nor has there been any offer to cover the taxi fare.

I spend an absolute fortune on travel to and from work, and I do not mind because I am in a transition between London and the Southwest. I mention this because I do not want anyone to question my commitment to my job. I have no idea how it will be possible for me to return to work, which will have to be shortly after delivery because I do not qualify for maternity leave and have breaks to express, and go to the loo, and change cannulae in an emergency. It would be better to address all of this properly now, rather than in a few months.

On Friday 22nd May, I explained why I was aggrieved to you, Ms Sutton and you sent me the contact details of Mr Kemp and Ms Jefferies. I believe that Ms Jefferies called me on 07584151316 at 14:07 that same day. We had a 17-minute conversation, during which, Ms Jefferies asked me whether I understood that the students at EOTAS Swindon had complex needs which meant that they were unable to cope with mainstream school and exhibited challenging behaviour. I explained that I had spent over £3000 on the NASENCO and had applied for the job because I wanted to work with students with additional needs, but that this did not mean that I was waiving my right under Article 8 to Family Life, nor did it mean that my employer could transfer their legal obligations for my health and safety to the students. My interlocutor conceded.

Later that afternoon, I spoke to Ms Anderson, and I agreed to do some research into the various risk assessments that might facilitate better risk mitigation than the individual risk assessments for the students. This conversation was long and productive, but I believe we need to address my concerns as a formal grievance to establish a viable work-plan.

I would appreciate the following remedies:

1. A detailed conversation with a Health and Safety Rep from my Trade Union and Ms Anderson about the comprehensive risk assessment to protect me from harm or further distress.
2. A review of the Equalities and Health and Safety Training provided to all staff.

3. An apology for the events of Monday 17th May and reimbursement of my £18.04 taxi-fare and the £9.94 for the marked papers I returned to Riverside without so much as a "thank you".
4. To be able to return to work safely.

I look forward to hearing from you at your earliest convenience on the content of my grievance; and request that you acknowldge receipt by return.

39. The Claimant's grievance was acknowledged by Lindsey Hull, the EOTAS headteacher. Her email said that Mr James had been appointed to seek clarification of the concerns and issues raised, and it apologised for any distress that may have been caused. It said that the matter would be taken forward as a matter of urgency, so that the Claimant could return to work as quickly as safely as possible. It offered support, and attached the grievance policy.

40. The Claimant replied a short time later. She said that her understanding of the ACAS code was that her grievance should be investigated by someone with no previous involvement. She did not think that Mr James should conduct the investigation.

41. Ms Hull responded that same day. She explained that she understood Mr James to have been trying to resolve some of the issues, and said he would be key to checking any health & safety issues and HR risk assessments for staff. She said that Riverside was a temporary placement, and touched upon another teacher who was shortly to start a phased return to work. She proposed a meeting to go through each point the Claimant had raised, and discuss what the Claimant felt needed to be in place.

42. The following day, the Claimant replied. Her email read:

I am pursuing a formal grievance because my health and that of my baby are not things I can afford to be casual about. The legal breaches that led to this situation are so serious that I would feel considerably more confident of a prompt and satisfactory resolution if everyone followed the ACAS guidance. Please take legal advise on the implications of breaching the ACAS code before the investigation even begins.

As you are aware, the health and safety concerns that I am having to bring not only to your attention, but insist resolved are well above my pay scale. The imbalanced distribution of risk and reward is stressful, but I have no choice. I'm

sure that it is reasonable for you to insist on breaching the ACAS code? How would this look in a Tribunal?

On a more immediate and practical that: with today being 26th of May & half-term beginning on 28th May, this cannot be resolved by seventh June. It would be prudent for me to be suspended on H&S grounds until after the hearing and sufficient time to complete the remedial work, assuming that it is possible to reduce the risks of me being at work to a level no higher than me being at home. If it were possible, why had not been done already?

Why was I observed with so little notice?

I have asked about anyone else's return to work or anything else, so I am unsure what you are trying to convey.

Best wishes

Belinda

43. Ms Hull responded later that day. She said that Sarah Zasada would be appointed to support a formal investigation, supported by Nicki Jackson. She told the Claimant that, whilst the investigation was going on, she could work from home until the risk assessment had been carried out, observing that the risk assessment was not part of the grievance, and needed to take place as soon as possible. Regarding working from home, she advised that online tuition was run for students, and that equipment could be provided if required.

44. There was a further exchange of emails starting on 07.06.2021. At 07:57 a.m., Ms Hull wrote to the Claimant in the following terms:

Good Morning Belinda,

I hope you had a nice half term.

The work instructions are below, Juliette and Kate can review at the end of the week. If you have any questions, your points of contact are Juliette Baldwin for curriculum and Kate Hooper Hudson for English and Reading. They are both happy to TEAMs meet if you need guidance with this. I have copied them into this email.

You will receive an invite to log on to Fernbrook briefing each day and any other virtual events, meetings or trainings. This will keep you in the loop and give the opportunity after briefing to check in with Sarah Z or Kate HH.

Work tasks:

1. The route map for English to be moved onto the same template as has been used for the route map for Mathematics. The route map is completed but the layout is very dry.
G:\CURRICULUM\Curriculum 2020\Curriculum Route Maps
2. Review the schemes of learning that have been delivered Terms 1 - 5. Provide
feedback and suggested amendments (all curriculum areas will be doing this during Term 6)
G:\CURRICULUM\Curriculum 2020\Schemes of Learning
3. KS3 scheme of learning - ensure that all units are there and completed.
Working with Kate and Caroline on the reading scheme of learning and resources ready for September.
Thank you
Lindsey

45. The Claimant replied at 10:35hrs. She wrote:

Dear Lindsey,

Thank you for your email. I had a lovely half-term and hope you did too.

Emailing me work instructions after I have called in sick because I have no safe way of working is problematic.

I do not know how to access G-drive remotely.

Please advise.

Best wishes

Belinda

46. Ms Hull responded at 11:12hrs, saying:

Good Morning Belinda,

I was under the impression your FIT note was to not be in work until RA has been
resolved. I had emailed at the end of last term regarding you being able to work from home and that we would let you know what this was when we returned after half term.

Apologies if this has changed and Emma has received a new FIT note.

The work instructions you now have, I shall leave you to liaise with the Juliette, Kate and Emma in regards you being able to complete this when you are fir[1] to do so.

Emma can assist in directing you to our IT support in terms of logging in remotely or this can be addressed through a TEAMs meeting as suggested.

I'm sure work could also be sent by email for you to complete and then return.

Thank you

Lindsey

47. The following afternoon, the Claimant emailed Ms Hull, Juliette Baldwin and Emma Preedy. She wrote:

Dear Lindsey, Julie and Emma,

Please find my FitNote attached.

Please can you arrange me to speak to whomever I need to in order to access G-Drive remotely.

This FitNote should allow us to either arrange safe working in person, or remotely. I am even more relieved that I am not on site now that you have at least one Covid case.

Kind regards

Belinda Washington

48. Looking at those emails, the Claimant was unhappy about having been sent an email about work when she had called in sick and there was, she says, no safe way of her working. But Ms Hull's understanding of the position – that working from home would not be a problem – seems to me to be correct, and any lack of safety that she felt on-site would, I think self-evidently, not be present if she worked from home. Yet her reaction was to push back against the suggestion of working from home. It seems to me to be probable, and I find, that the Claimant had already decided that her employment did not suit her, and that she did not, in fact, wish or intend to return to it. That may be related to the

[1] I have attempted to leave all direct quotations with the original spelling and punctuation.

lengthy and expensive commute, to which she had referred in her first grievance.

49. Later that day, the Claimant emailed Ms Preedy and Ms Hull, copying others in. She said that she would not be logging in on days when she had to attend appointments. She asked which briefing the following day she was to attend, and if she had an invitation. She also said that she felt more comfortable not having Teams meetings with SLT – I take that to be the Senior Leadership Team – until her grievances were addressed, but said she was perfectly happy to respond to emails.

50. The following morning, the Claimant emailed Ms Preedy and Ms Hull, others again copied in, saying that she was not in the Riverside briefing, even though it was the only one to which she had been invited, because she had been told the previous day not to attend. She had no invitation to any other briefing. She continued;

This is unnecessarily stressful and unhealthy. I have no idea how you expect me to attend anything virtually without the link. Perhaps the mitigations are still inappropriate, if they don't address achievable tasks and stress. I have replied to you all because this is work & HR related.

Best wishes

Belinda

51. Ms Preedy emailed the Claimant at 09:06hrs, saying:

Good morning Belinda,
Please do accept my apologies for this morning. The briefing link had been sent to you daily and unfortunately that member of staff is not in the office today and this has been missed. As mentioned yesterday we are having some IT difficulties with changing of groups due to our own IT key support being on annual leave.
I have added the link below in this email and I will also add it to your diary is a daily occurrence.

52. Ms Preedy emailed the Claimant at 10:45 that same day, in the following terms:

Good Morning Belinda,

Can I clarify, How long are your appointments, all day? My understanding is they would only require a half day and the rest of the day would be working from home? You can request a whole day leave, but only half a day would be granted as paid leave.

As an employee, there is an expectation to attend operational weekly line meetings. Meeting with Juliette and Kate is to discuss work instructions and would be an opportunity to discuss any other issues or ideas you may have for your role. This is part of the ethos of EOTAS to ensure better communication and dialogue with staff and link to our values and SDP. This I can also send through.

The line meeting is unrelated to the grievance process, the risk assessment and mitigation process. When this has been completed, the expectation would be for you to return to work while the grievance process is completed. We are also seeking advice on you being able to attend work on a Friday afternoon when students have left the building. This will Keep you connected with the staff team and attend staff training.

I will send through EOTAS polices for you to continue to familiarise yourself and completed your induction.

I would also like to set up an Occupational Health Referral for you, please provide your consent for me to put this through and they will be in touch.

I have also attached out Care First leaflet for you to have a look at please see log in details below.
…

53. The following day, 10.06.2021, the Claimant made a second grievance. She wrote as follows:

Ref: Grievance (Maternity and Disability Discrimination (s15 EqA, s18 EqA, s20 EqA, s21 EqA, s47C EqA 2010, s55 Employment Relations Act 1996)

In accordance with Swindon Borough Council's Grievance procedure and the provisions of the ACAS Code of Practice on Grievance and Disciplinary Procedures issued under Section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992, I am writing to advise you that I would like to raise a formal grievance, my Grievance is as follows.

At 10:45am on Wednesday 9th June 2021, Emma Preedy (HR Officer at EOTAS Swindon) sent me an email complaining about me booking the full day off for antenatal appointments, based on her opinion, as a non-medically qualified person. She explained that in future, I would only be paid for half a day off to attend an appointment, even though she has:

1. my address and the address of the hospital where I receive my care.

2. knowledge that I have Type 1 Diabetes.

3. access to google which would have supplied her with the NICE guidance for pregnancies with type 1 diabetes. https://www.guidelines.co.uk/diabetes/nice-diabetes-in-pregnancyguideline/ 252595.article

Ms Preedy copied in many more people than was necessary, if her stated intention was, as stated in the opening line of her email, to "clarify the length of my appointments". This has led me to feel that everyone who was included in that email has been having rather unpleasant conversations about me and my antenatal appointments. The thought of attending any further meetings with them or having to work with them in the future fills me with dread.

I am deeply stressed and distressed by the prospect of my pay being withheld because, despite my clear explanations of why my antenatal appointments take so long, and the NICE guidance underpinning that, I am having to explain my rights as a disabled person to people who have already decided that withholding my pay is appropriate. I am not begging EOTAS, nor Swindon Borough Council for money; I am having to insist on the legislation being followed.

This is even more farcical because I had a follow-up endocrinology appointment on Monday 17th May and was prevented from leaving. I have not requested any leave requests for any antenatal appointments since Thursday 27th May, when it was confirmed that I would be working remotely after half-term. Consequently, my leave requests have had to presume that I needed to consider whether I could get to Swindon and then to my appointment. The only thing I could possibly have done was attend the morning briefing on 8th June, had I had the link, which was only sent that afternoon. I was replying to work-related emails on that day.

I would appreciate the following remedies:

1. Clarification of whether I will be paid for the full day to allow me to attend multidisciplinary antenatal appointments, and how this is affected by whether I am working from home where my working hours are not prescribed in the same way.

2. An urgent review of the Equalities and Health and Safety Training provided to all staff.

3. Disciplinary Action to be taken against Ms Preedy and anyone who encouraged her to send such an email, if they have had the training Swindon Borough Council deems appropriate and sufficient.

4. An apology.

5. A re-evaluation as to whether it is viable for me to continue working for Swindon Borough Council / EOTAS Swindon given this email and the events of 17th May.

I look forward to hearing from you at your earliest convenience on the content of my grievance; and request that you acknowledge receipt by return.

Yours Sincerely,

Belinda Washington

54. The Claimant's characterisation of Ms Preedy's email was unfair. She did not "complain" about the Claimant booking a full day off for an appointment. She asked how long the appointment was. That does not strike me as an unfair or unreasonable question. Regarding the travel time, Ms Preedy raised the question of whether, on the other half of the day of the appointment, the Claimant would work from home – she did not suggest that the Claimant travel to Swindon for that half day. If the Claimant genuinely needed more than half a day to attend an appointment, she could have calmly and professionally explained the position. She did not do so.

55. I do not accept that this grievance was made in good faith. I find that the Claimant wanted to render it unlikely that she would have to return to work. I find that her request that Ms Preedy be disciplined was made so as to create conflict, and I am not satisfied that her protestations of distress in the grievance were genuine.

56. That same day, a grievance meeting took place via Teams. I am reluctant to extend reasons that already extend considerably beyond what might be considered usual in a claim of this sort by setting out the minutes of the meeting in their entirety, but it is appropriate to quote some of the minutes. The purpose of the meeting was identified as being:

- *For Belinda to explain her grievance and importantly to propose solutions on what she believes would satisfactorily address her grievance.*

- *Nicki will take some notes of this meeting so that we can capture the proposed solutions. These notes will not be verbatim and will form part of the outcomeletter.*
- *Questions can be asked by both parties during this initial meeting and we arehoping to come to an agreement on next steps today.*
- *Understand that this is a difficult time, so if there is a need to take breaks during this initial meeting, we can do so*.

57. The minutes record that the Claimant only received an individual risk assessment on 18.05.2021, despite Mr James having conducted it on 21.04.2021. She said this was because her GP had issued a FitNote. She was unhappy that proposals to give her additional breaks had not yet been actioned.

58. The Claimant went into detail. Her main concerns were that she had no break between 08:40hrs and 11:50hrs, that her room was nominally the quiet room, that she was on lunch duty there with a colleague until 12:20hrs, following which she taught until 14:30hrs.

59. The Claimant was also unhappy that she was generally alone in her class (and thus unable to leave to use the toilet), despite nominally having a teaching assistant, and that a clean space to change her cannula (should she need to do so) had only been identified the previous week. She said there was no opportunity to change cannulas anyway, presumably referring to being alone in class.

60. The Claimant is minuted as expressing a more general concern about how she had been treated since joining the school, feeling that her welfare had not been taken into consideration. She said that her TA was on long-term sick leave, and that she herself was covering for the Head of English, who was also on long-term sick.

61. The minute of the discussion of remedies I will set out in full:

I would appreciate the following remedies:
1. A detailed conversation with a Health and Safety Rep from my Trade Union and Ms Anderson about the comprehensive risk assessment to protect me from harm or further distress - covered as above. A meeting was set up but will be re-arranged to accommodate both TU reps and with a 5 working day notice

period. A meeting had already taken place - this would be one to discuss the risk assessments[2].
2. A review of the Equalities and Health and Safety Training provided to all staff - need to define all staff (just EOTAS) - the Head is happy to accommodate this. SZ to provide detail in the outcome letter on what the training involves.
3. An apology for the events of Monday 17th May and reimbursement of my £18.04 taxifare and the £9.94 for the marked papers I returned to Riverside without so much as a "thank you"- this will be accommodated. SZ to confirm when this will be paid to Belinda in the outcome letter.
4. To be able to return to work safely. The above needs to be accommodated before Belinda can consider return to work - this includes risk assessments in place for her welfare. Also no contact concerning work is to be made until this has been sorted.
Belinda confirmed that she is also a Unite member and Alan Tomala is happy to look at the risk assessments. Risk is heightened due to disability and pregnancy[3].
Apology - feels that she is only person that sees that this is wrong. Angela Anderson understands what exactly the issue is. Would like others to appreciate this. Belinda has not worked a full calendar month from when this has started. The hope of starting with a new employer is being crushed.

Peter added:
Remedies - wants a statement of what needs to be put into place for her entitlements to be met. Needs the reassurance that they are maintained and in place.
Risk Assessment conducted in April by Evan - which Belinda only received a month after that. Reasons for it being late - not operated to or not in place at all – presume reason for the delay.
Observations usually have 5 working days' notice - this is the process. Belinda did not receive feedback on that observation for some time. Belinda had to chase and it was clear that measures were not in place. Need a safe clean place to change cannula. Ongoing conversations - inadequate cover for TA - needs to be addressed.
Hospital appointment - any reputation of this could result in Belinda or unborn child be injured.
Apology and possible recompense.
Request for colleagues not to contact Belinda until this has been resolved.

62. The Claimant's second grievance was not discussed, as Ms Zasada did not have a copy of it and it was not known if she would be conducting the investigation.

[2] The text in red is as per the minute.
[3] Text in bold as per the minute.

63. On 16.06.2021, Ms Zasada wrote to the Claimant with the outcome of the initial grievance meeting. She noted that the Claimant's fit note said that she could work with adjustments. In order to put those adjustments in place, the Respondent would need to communicate with the Claimant, therefore the Respondent could not commit to there being no contact regarding her employment.

64. Ms Zasada said that a detailed conversation about the risk assessment had been scheduled for 11.06.2021, and would be re-arranged. She said that Equality and Health and Safety training were provided to all staff. She explained that an apology for an incident on 17.05.2021 had already been sent on 25.05.2021, which the Claimant had dismissed. The Claimant would be refunded a taxi fare she had incurred on 17.05.2021, even though the expectation was that she would not have used a taxi.

65. A Health & Safety meeting took place on 25.06.2021. It was identified that the best place for the Claimant wo work was Oakfield, a building near to Riverside. A room had been identified for the Claimant to change her cannula, which was not used (and would not be used) for any other purpose. The Claimant wanted details, photographs, height, location, and expressed that any windows would need to be covered. Mr James in turn explained that there were no windows, but the Claimant was told that she would be sent photographs.

66. Regarding the timetable, the Claimant was told that this was more flexible at Oakfield, and that staff would sit down with the Claimant to construct the timetable. The Claimant objected to Kate being involved in this. The Claimant asked if her timetable could be changed to avoid rush hour – she was commuting from London – but was told that that would need to be part of the business needs and service needs, and there may be limited scope for this unless someone could cover.

67. The meeting note records the Claimant as confirming that she hated her job, that the thought of going back to it filled her with dread, and that there was no

trust. She expressed concern that the Oakfield students may present a greater risk than those at Riverside.

68. I think it probable that the Claimant had developed a strong dislike of her job, and I find that as a fact.

69. The Claimant said that she presumed that she had been suspended on health & safety grounds. It was noted that the Claimant could come into work, not in a classroom setting, to understand the workplace. The Claimant said that her feeling comfortable was more to do with the adults than the children, and that she needed an occupational health referral.

70. The note concludes with:

Next steps:
Nicki to check OH referral status.
Stress Risk assessment to be completed
Risk assessments to be forwarded to Belinda

71. A formal response to the grievance meeting was sent on 05.07.2021. It noted that the fit note from the Claimant's GP indicated that she was able to work with adjustments, including working from home. As she had been referred for an occupational health report, it was not possible to address this until the report was received. The apology the Claimant had requested had already been given, albeit not accepted. The following action were identified:

- *Nicki will push the Occupational Health to be completed as soon as possible.*
- *Approval was given verbally by Belinda. (Belinda also to forward confirmation of original referral to Nicki to see why it was delayed).* ***This action was taken during and just after the Health & Safety Meeting.***
- *Angela to send Stress Risk Assessment form to be completed by Belinda –Send to Belinda and Pete for completion as soon as possible. Arrange meet for early next week to go through. This will then be forwarded to Evan for review and actions.*
- *Evan to get dimensions and photograph of room to be used by Belinda.*
- *Evan to update any areas of the Risk Assessments that were noted, and reissue to all*

72. Although the Claimant complained in her evidence that she was not sent the photographs, in cross-examination she admitted that she did not chase them. Her reason for this, so she said, was because she understood that these and other matters raised had to go through Occupational Health first. I do not accept this. It has all the flavour of an excuse. There was no reason why the Claimant could not have sent an email politely chasing anything she considered outstanding.

73. On 08.07.2021, Mr James emailed the Claimant, to say that her fit note had ran until 27.06.201, and asking what the position was. He noted that she had been offered to work from home, and that she was not suspended on H&S grounds.

74. The Claimant replied that same day. She said that she had not received the minutes of the meeting on 10.06.2021, and there was a dispute about whether she was "*…suspended on maternity H&S grounds*". She said that it was "…*clearly agreed that she was not to receive any further work-related communications about anything other than resolving the H&S issues and the grievances".* She went on to say:

I did not and do not want to be signed off completely, because the matters in question can, and should be resolved and I remain keen to see that happen.

That the agreement was made, is substantiated by AO tasks and SBC emailing Peter rather than me. How that agreement differs from a suspension is unclear, and that is a distinct paradigm from the FitNote anyway because working from home would have worked other than for the reasons I explained in the chronology please be so kind as to confirm that you have received the chronology from Peter. If you have not received it, I will resend it.
…

75. On 15.07.2021, the Claimant appealed the outcome of her first grievance. She set out her grounds as follows:

1. Section 4.6 of the EOTAS Swindon Grievance policy does not list pregnancy and maternity as a protected characteristic, in direct contravention of the 2010 Equality Act.

2. Section 4.6 makes no provision for reasonable adjustments for physical disabilities / chronic medical conditions which are covered under "Disability" under the 2010 Equality Act.

3. I submitted my formal grievance in accordance with Section 5 of the EOTAS Swindon Grievance Policy, having allowed a week for the contents of my grievance to be addressed informally.

4. My grievance letter contained most of the information the investigation meeting would have required under Section 5.1 of the EOTAS Swindon Grievance Policy. As both Sarah Sazada and Nicki Jackson stated that they were making notes, and this should have been a formal meeting, I should have received minutes of this meeting, in accordance with Section 4.5 of the EOTAS Swindon Grievance Policy. I have submitted Subject Access Requests for the data held, especially those notes. EOTAS Swindon has not acknowledged the request, and Swindon Borough Council has asserted that the data in question is held by EOTAS Swindon. I should receive that data by 21st July 2021.

5. Section 5.3 of the EOTAS Swindon Grievance Policy states that I should receive an outcome.

6. Section 8.6 of the EOTAS Swindon Grievance Policy states that the outcome should be "upheld" or "not upheld", but "partially upheld" is an option used by many organisations.

7. The initial proposal that Evan James, who had not made the reasonable adjustments, investigate my grievance breached Section 35 of the ACAS code.

8. Regarding the lesson observation, I had not received the feedback until the morning of the grievance meeting, so my grievance letter could not state an outcome. Neither Ms Jackson nor Ms Sazada asked me what I would like to have happen during the meeting, as they could have done under Section 5.1 of the EOTAS Swindon Grievance Policy. It is indicative of routine breaches of my terms and conditions of employment. It cannot have been urgent enough to breach the School Teachers Pay and Conditions Document, otherwise I would have received the feedback promptly. It is not reasonable to expect me to work well if my employer has not discharged their Health and safety obligations towards me. I would like an apology and assurances that this will not happen again.

9. I am an English Teacher, I understand and discharge my professional obligations to 'demonstrate an understanding of and take responsibility for promoting high standards of literacy, articulacy and the correct use of standard English, whatever the teacher's specialist subject'. I am therefore, less than happy that my employer proffers a sentence fragment in the passive voice in lieu of an apology accepting responsibility for my consultant having to stay at work late to see me after my appointment time, after I had to rush out of work 30- minutes late because no cover was provided so that I could have left on time. As you know, my contract of employment is not with the students, but with EOTAS Swindon and Swindon Borough Council. We know the students, we

have risk assessments on them, the student actions of the 17th May were foreseen and the duty to mitigate those risks rests with my employer, as does the liability. I merely requested an apology and reimbursement for my out-of-pocket expenses, not payment for the time I was made to stay at work for, in breach of Section 55 of the 1996 Employment Act. I received, 'my apologies to you for any distress that may have been caused'.

76. The Claimant's objection to usage of the passive voice strikes me as characteristic of an approach that seeks to identify every possible source of potential grievance, however trivial, and to sour the possible future working relationship between the Claimant and her then-colleagues.

77. Also on 15.07.2021, the Claimant supplied a fit note, covering the period to 23.07.2021. It observed that the Claimant:

Could be fit for work dependent on outcome of Occupational Health report
Also awaiting mitigation of risks identified in Risk assessment

78. An occupational health report from Medigold Health was received on 19.07.2021. The report deemed the Claimant to be unfit for work at that time, the primary reason being due to anxiety and elevated stress levels. It was thought unlikely that her stress levels would reduce enough to enable her to work from home before the summer break.

79. The OH report did say that, if work-based problems could be resolved, and subject to the Claimant's psychological and physical health, it might be possible for her to return to working from home before the start of her maternity leave.

80. The report said that there were no adjustments or support measures which could facilitate a return to work at that point in time. However, it suggested that when the Claimant felt able to engage with management and HR, working from home prior to her maternity leave might be possible.

81. A meeting to consider the Claimant's second grievance was held on 22.07.2021. The copy of the minutes that I have in the bundle before me is annotated, including in text in green and red, and it is not easy to decipher whether the annotations were all made when the Claimant appeared, or

whether any may be later comment. What is clear is the recommendation part of the minute, which reads as follows:

Recommendations
The initial email from EP does not contain information that the subsequent emails from BW refer to or allude to and do not support the grievance. Based on the above, I do not find that the areas of the grievance are founded.
Remedies requested
1. *Leave of absence forms need to show the time and date for leaving work and returning to work required. Based on this, any time outside of that should relate to working on site or at home. This would result in correctly paid leave.*
2. *A review of the Equalities and Health and Safety training has taken place at EOTAS.*
3. *This report cannot recommend disciplinary sanctions. That is up to the Chair of the Hearing following the findings.*
4. *I do not think that the email that EP has anything within it that should require an apology from EP*
5. *The viability of continuation for BW to continue to work for EOTAS cannot be part of this grievance outcome. However, I feel reading the response that was made by BW in the 3 emails to the initial email from EP and the assumptions and accusations within that show that the relationship between BW and EOTAS has broken down*.

82. It seems to me that the final observation above was probably correct, at least insofar as the Claimant's view of things is concerned.

83. On 22.07.2021, the Claimant appealed the outcome of her second grievance. Her appeal letter read as follows:

Dear Mr Byford,
Please accept this letter as confirmation of my intention to appeal the results of my grievance.

I have annotated Mr James' Grievance Report.

I have also attached the emails relating to the discussions around the procedures for the grievance hearing I copied these emails to myself in accordance with Article 6, Section 4, Part (d) of GDPR and Section 27, Part 2 (d) of the 2010 Equality Act. It is also interesting that EOTAS sought to resume protected discussions with my former trade union representative on 13th July 2021 and Mr James alleged that I had breached GDPR in an email sent after that meeting on 14th July 2021. Both of these follow my emails with payroll services between 5th and 6th July 2021 about HMRC and the Student Loans Company, because of the anomalies with my payslips and the Student Loans

Deductions, which probably are not isolated to me. It is also remarkable that my Subject Access Request was acknowledged on 20th July 2021 and an extension was sought, the day after the other appeal was signed for, and the day after I should have received the data.

This grievance process has not remotely adhered to the ACAS Code, nor Section 5.1 and the first 3 points of Section 5.2 of EOTAS Swindon's Grievance Policy as the outcome was written before the hearing, rendering the superfluous.

My grievance is not upheld, despite what very closely resembles an admission to breaching Sections 19 and 23 of the 2010 Equality Act.

Having apparently admitted to breaching Sections 19 and 23 of the 2010 Equality Act, Mr James states that no further review of EOTAS Swindon's Equalities training is necessary. This is the second grievance related to discrimination and was brought within a month of the first, this decision should be reviewed.

As his report demonstrates, the questions regarding Section 55 of the Employment Relations Act could have been answered on or before 10th June, but was not, causing me foreseeable distress.

May I humbly suggest 6th or 8th September 2021 as possible dates for you to hear this appeal?

Yours sincerely

Belinda Washington

84. In August 2021, there was an email exchange in which the Claimant expressed unhappiness and how certain documents were sent to her. In the course of that exchange, in an email dated 18.08.2021, the Claimant queried why she was off sick in the school holidays in the absence of a fit note. On 06.09.2021, Mr James emailed the Claimant, explaining that any absence with a fit note was coded on the payslip as sick leave.

85. In August/September 2021, there was an email exchange about working arrangements in the new term. On 30.08.2021, Mr James emailed the Claimant. He suggested a meeting on 06.09.2021:

The main aim would be to achieve the following -

Having reviewed the latest government advice on Covid and the new school term and with regard to your specific circumstances, that is your late stage in pregnancy and your diabetes making you at a greater risk of severe illness from coronavirus, the risk to you and your unborn child would be too high if you were in the school buildings with other staff and students. It is therefore best if you work from home from the start of the new term until you begin your maternity leave. This will be with Oakfield students and will include online support and lessons

86. In an email of 01.09.2021, the Claimant complained about not having had 5 working days' notice of the proposed meeting on 06.09.2021, and also commented that the OH report's recommendations were;

…umabiguous: that I am suspended indefinitely on H&S grounds, you are proposing a discussion about my return to work.

87. The Claimant went on to complain that the previous H&S meeting had arguably be held in bad faith. She said that it was not possible to mitigate the stress risk assessment until her appeals had been concluded.

88. I do not accept this. I see no reason to believe that the H&S meeting had been held in bad faith. There was no reason not to seek to address the stress risk assessment until her appeals had been concluded. And the Medigold report did not unambiguously recommend an indefinite suspension on H&S grounds.

89. The Claimant's representative was not available for the proposed meeting. She did not propose an alternative date. Mr James emailed on 06.09.2021, to ask if one was possible "*this Friday*"[4], confirming that it was not an absence management meeting, but a meeting to help the Claimant to be working. Later that day, the Claimant responded to Mr James, with 11 questions, but did not answer his request about whether she would be available for a meeting on the new date he proposed.

[4] Which would be 10.09.2021.

90. Cross-examined about work on 02.09.2021, the Claimant said that there was no work to turn up to. She said that she was not emailed any link on which to log in for work, nor was she emailed any instructions.

91. Ms Gyane asked the Claimant if she had asked for instructions. Her answer was that it was not her job to request instructions, and also that she had agreed that there would be no work-related contact other than to sort the issues out.

92. There seems to me to be a tension in the Claimant's answer; either she did not seek instructions because she was of the view that it had been agreed that there would be no contact, other than to sort out the issues, or because she thought it was not her job to seek instructions.

93. I do not accept that the former explanation is correct. I have referred above to assertions by the Claimant that no contact had been agreed, when it had not.

94. The second explanation seems to me to be a positively obstructive attitude for the Claimant to have adopted. I do not consider that the Claimant adopted that attitude in good faith. It seems probable to me, and I find as a fact, that the assertion that it was not her job to seek instructions was an excuse to justify her not wanting to seek instructions, because she did not want to return to work.

95. In the course of her evidence, the Claimant suggested that she forgot about the option of teaching from home. Asked when, she referred to emails sent around the end of August 2021, that she didn't hear any more about it, and therefore forgot. I am sorry to say that find that evidence simply incredible.

96. On 10.09.2021, the Claimant sent Mr James an email, in which she said that she was not signed off work, because she was not sick.

97. On 15.09.2021, the Claimant submitted a third grievance. This one read as follows:

Further to my other two grievances, I unfortunately need to submit a third.

I have been attempting to ascertain why I my student loan repayments were under-deduucted, since June and have yet to receive an explanation.

My June payslip erroneously had me coded as absent from work and sick, which was untrue. On Monday 7th June, I obtained a fit note for the transition to remote working because I had no idea what I was meant to be doing because Ms hull had not explained that to me. On the Tuesday, I was off all day to attend the multidisciplinary antenatal clinic, that appointment and the threat to withhold my pay became the subject of my second grievance. Were I on sick leave, I could attend as many appointments as I wished and my pay would be unaffected, Ms Preedy would have known that, as would Mr James. Notwithstanding, I only received the files Curriculum Plans that I was to work on Tuesday 8th June 2021, so I could not have done any work on the Monday because Ms Hull overlooked that I was unable to access G-Drive remotely. I was also told off for failing to attend the Briefing at Fernbrook on Tuesday, when I had requested the day off to see a Consultant Obstetrician, a Consultant Endocrinologist, evaluate the data I had uploaded from my insulin pump before I left home and provide any blood samples required. This was my absolute right under the Employment Rights Act of 1996. Nevertheless, I had not been sent the link to the Fernbrook briefing, so could only have attended the Riverside briefing or none. On Wednesday 9th, I attended the Fernbrook briefing and they were alluding to something distressing that had happened the previous day, which I knew nothing about. I was working on the Curriculum Plans until I received the emails which formed the basis of the grievance I submitted on 10th June. This is not me rehearsing that grievance but demonstrating the discrepancy between my work and my pay. This also reduces the scope for anyone to assert that recording my pay as sick pay was a decision made in good faith.

There is a demonstrable unwillingness to comply with the Management of Health and Safety at Work Regulations of 1999, heed the OH advice and suspend me on Health and Safety, Maternity grounds. I mention this because the legislation will continue to apply until my son is 6-months-old, or I stop breastfeeding him, whichever happens later. Not acting in accordance with the law and OH's recommendations have also complicated the arrangement of the Grievance Appeal hearing, which in turn delays my return to work because the potential for workplace stress.

Please see the attached documents for reference.

Yours faithfully

Belinda Washington

98. It is common ground that, on 18.09.2021, the Claimant started a 2-week period of maternity leave, having given birth the previous day.

99. On 01.10.2021, Ms Preedy emailed the Claimant. She said that the Claimant was due back in work on the following Monday, and asked her to attend the Fernbrook site for her return to work meeting. She was told that a room had been identified for expressing milk and changing her cannula.

100. On 03.10.2021, the Claimant responded to Ms Preedy. She wrote:

Please see the email below which directly contradicts OH's guidance. As it was sent at 16:57 on Friday, there was no opportunity for me to arrange to be accompanied by a trade union representative for a return to work meeting, nor was there any opportunity for me to seek clarification of the H&S concerns that arise between the proposal below and the July OH report.

Please accept this email as notification of me discharging my obligations under Section 44 of the Employment Rights Act 1996 and avoiding work-related hazards that pose me imminent risks as a new mother under Regulation 16 of The Management of Health and Safety at Work Regulations 1999.

Yours faithfully

Belinda Washington

101. If the Claimant felt that the request that she attend on-site was not consistent with the Medigold report's guidance, she could have made that point and offered to attend remotely. She did not do so. Rather than react in a cooperative way to what I find to be serious and good-faith attempts to address her concerns, the Claimant again pushed back at the suggestion that she return to work.

102. Mr James emailed Ms Preedy and others, commenting on the Claimant's email, on 04.10.2021. He wrote:

Hello Both

Please see email below from BW regarding her return to work from maternity leave, which she said was today. We sent an email to her on Friday, ahead of her return.

The purpose of the return to work meeting would have covered her normal reasonable adjustments and risk assessments for her working normally.

The OH report she refers to was almost 100% around her perception of risks and her stresses during later maternity and not her work postnatal. She has not provided a Fit note since July to cover her absence prior to maternity leave.

She gave us notice that she was coming back to work, we did not call the meeting – this is just normal workplace back to work after absence, per policy. Due to her taking 2 weeks maternity leave, we have not had any KIT days or meetings to speak with her around adjustments. It would also not be a normal meeting for a representative to attend. As she said she was returning today, and gave us notice for that, she could have contacted her rep for support if needed.

I would like for us to notify her that this absence is unpaid as she has not returned to work. There is no requirement to have a 5 day notice, and there are no risks that are preventing her from being at work.

Are you able to check with legal to see whether there is anything else? And confirm that an email as above can be sent?

Regards

Evan

103. The Claimant's third grievance was considered at a grievance meeting on 03.11.2021. The minutes of this meeting are rather shorter than those of the previous meetings. Brevity in itself would be no bad thing, but the minutes are scant insofar as identified actions are concerned.

104. On 08.12.2021, the Respondent advised the Claimant that it would be unable to pay Statutory Sick Pay after 11.12.2021.on 09.12.2021, the Respondent informed the Claimant that, due to the length of her sickness absence, her occupational sick pay at the full rate of pay would come to an end on 07.12.2021, from which date she would be paid at half rate, in conjunction with statutory sick pay if applicable.

105. On 16.12.2021, Ms Baldwin, who had taken on the role of acting headteacher, wrote to the Claimant, to ask why she had not returned to work, there being no fit note indicating that she was unfit to work.

106. The Claimant was asked about the position on this date. It was put to her that, as she was not working, the Respondent had a choice of either paying

her sick pay, or not paying her. The Claimant disputed this. On her case, I can see why she did not accept it, because her position is that she was available to work from home. But I do not accept that that was, in fact, the reality of her position. She was not willing to work from home.

107. On 04.01.2021, the Respondent received a further report from Medigold Health on the Claimant. The report explained that the Claimant identified her concerns as follows:

1) Her diabetes. To manage this safely she reports she needs :
- *A clean area in which she can administer medications*
- *Protection from risk of assault*
- *Time to attend necessary medical appointments*
- *A system of disposing safely of any sharps she uses in adjusting her blood sugar control. I understand you have suggested a sharps bin, but she does not feel this is suitable because of the difficulty of preventing students from accessing the sharps.*

2) Her low back pain. To manage this safely she reports she needs:
A suitable chair
Protection from risk of assault

3) Her stress levels. To manage this safely, she reports she needs :
Implementation in full of the adjustments suggested in the risk assessment undertaken in response to her development of significant work-related stress.
She would also need to have adjustments made to allow her to continue her planned parenting tasks.
She will also need to assess the practicality of her commute to work because she has moved since she last attended the workplace and has not tested the journey yet.
…

108. A number of specific questions were posed and answered, including the following:

Estimated return to work date.
As soon as she feels she will be safe in her role.

Ability to continue in current contractual role performing full job role requirements and if not suggested alternative roles employee may be fit enough to perform should the business wish/be able to accommodate this.
If you are able to meet her expectations regarding workplace adjustments, she feels she would be able to enjoy the role.

If there is a medical reason why management would not be able to maintain reasonable contact with the absent employee.
No

Whether continued Occupational Health involvement in this case would be appropriate.
I suggest at this stage you have the necessary medical information and both you and Ms Washington will work together to try to resolve the difficulties attending her deployment. If that cannot be achieved within a reasonable timeframe, I suggest you both need clarity and should look towards redeployment.

109. The report also stated that:

Ms Washington mentioned she would accept medical retirement, but I think that would be an unfortunate and inappropriate outcome while she is able and willing to offer many more years of teaching.

110. On 21.06.2022, the Claimant had applied for ill-health retirement. It seems to me to be probable, and I find as a fact, that the Claimant had by this point, and possibly some time before, identified ill-health retirement as the goal she wished to achieve, to avoid having to return to a job for which she had developed a strong dislike.

111. On 16.08.2022, Ms Baldwin wrote to the Claimant, asking for sick notes covering the period from 01.10.2022, and advising that her sick pay reduced to nil from June 2022.

112. On 29.09.2022, the 1st Respondent received an Occupational Health report on the Claimant, from Total Health:Works. The report included the following:

…She has severe damage on trust and confidence in her employer given her current work situation as a teacher and she has a stress adjustment reaction related to the treatment she has received from her employer.

Occupational Health Recommendations
In my professional opinion Belinda Washington would be fit to return to work but this does not appear to be possible for her current employer given her adverse work experience to date. This appears to have been related to the

implications of her insulin dependent diabetes associated with a work risk management arrangement.
In my professional opinion she had a stress adjustment reaction which in my view could have an adverse impact on her future employment prospects.

113. On 03.01.2023, the Claimant advised the 1st Respondent that she had applied for ill-health retirement.

114. On 19.01.2023, the Claimant was invited to a return to work meeting on 25.01.2023. The letter noted that, at a hearing before Employment Judge Self on 11.01.2023, she had said that the only thing she needed to return to work was a clean room to change her cannula when required. The letter said that this had been offered in May 2021, was still available, and was clean, private and lockable.

115. It seems to me that the position the Claimant related to Employment Judge Self was likely to be true, that all she genuinely needed to return to work was somewhere to change her cannula. It seems to me to be improbable that she would have made that concession other than genuinely. However, I do not accept that she had any genuine intention of returning to work.

116. A meeting was held, on 20.02.2023. After the meeting, Ms Baldwin wrote a lengthy letter to the Claimant. The letter referred to photographs of the room designated for the Claimant's use, with a privacy screen for the small window above the door. The pictures were sent in an email.

117. The letter concluded:

We look forward to welcoming you back on Monday 27 February 2023 and working with you to make this a successful return. I can confirm that your return has been facilitated following advice from OH that you are fit to return and confirmation from yourself that the only thing you needed to return was a clean safe room.

For the avoidance of any doubt, you are expected to return to work on Monday 27 February 2023; should you choose not to return then I will have to consider what further actions I need to take, which could include disciplinary action.

118. Two days later, the Claimant was sent further photographs of the room.

119. Photographs were included in the material put before me on the second day of the hearing. They show a small, clean-looking room. The door appears to have a small window, which appears to have been at least partially blocked. In one picture, from outside the room, there is light that may possible come from an external window, but looks more consistent with that which a computer screen might emit. The second picture, from within the room, appears to have only electric lighting.

120. That same day, the Claimant replied. Her e-mail reads:

Dear Juliette,

Thank you for your letter. My response is informed by your obligations under paragraphs 46.6 and 46.11 of the School Teachers Pay and Conditions Document. I will address my concerns regarding paragraph 46.10 elsewhere.

As an English teacher, I do not understand your understanding of Dr Sarangi's statement that "in my professional opinion Belinda Washington would be fit to return to work but this does not appear to be possible for her current employer given her adverse work experience to date" to mean that I should return to EOTAS Swindon, please explain.

Your letter ignores the explicit agreement that the plan be referred to corporate health and safety so that their assessment inform any decisions.

It ignores the de-escalation training at the heart of TeamTeach.

It ignores the inherent risk to any employee who has been prevented from being at work for 19 months because of a failure to make reasonable adjustments and whose return to work is only nominally being facilitated because a Judge ordered it.

It ignores the HSE's Management Standards, including the relationships and the blackmail.

It ignores my mental health.

It ignores the foreseeable safeguarding complaint being made because the retaliatory grievance and ridiculous GDPR complaint for using my own personal data in grievances did not secure my resignation.

When the omissions above have been addressed, I can respond definitely. At present, I am not reassured that there is not still a serious and imminent risk of harm.

With best wishes

Belinda

121. It seems to me that the Claimant is once again looking for every possible reason not to return to work.

122. The Claimant received a reply from Rebecca Hayward, a senior HR adviser at the 1st Respondent, advising that she was expected to return to work on 27.02.2023.

123. The following day[5], the Claimant submitted a fit note, stating that "*request due to her chronic condition; may be fit for work if Corporate H&S facilitates proper mitigation of risks & true engagement with OH report.*" It said that this would be the case for 3 months.

124. On 13.03.2023, a disciplinary meeting was held.

125. On 20.03.2023, Ms Baldwin wrote to the Claimant, advising her that she was dismissed with effect from 13.03.2023. In the letter, reference was made to the Claimant having asked Ms Baldwin and Becky Howard, in a return to work meeting, 'why would I want to return to work and mess up your ill-health retirement application'. It seems to me that this sentiment is consistent with the Claimant's approach throughout, of not wanting to return to work.

Law

126. The ERA, s13, provides that:

> ***13.— Right not to suffer unauthorised deductions.***
> *(1) An employer shall not make a deduction from wages of a worker employed by him unless—*
> *(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*

[5] According to the agreed chronology. This may be wrong, as, although he fit note is stated to run from 23.02.2023, it is in fact dated the following day.

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—
(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.
(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.
(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.
(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.
(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

127. I was referred by counsel to Miles -v- Wakefield Metropolitan District Council[6], in which the House of Lords held that an employee's right to remuneration depends on their willingness to do the work they are employed to do. Ms Gyane advanced the case as being authority for the proposition that the Tribunal has to determine whether the Claimant was ready and willing to work. She also referred me to Cuckson -v- Stones[7] and Luke -v- Stoke-on-Trent City Council[8] as authority for the proposition that an employee who deliberately or

[6] [1987] 2 AC 539 – an incorrect citation was included in the written submissions prepared.
[7] [1843-60] All ER Rep 390.
[8] [2007] EWCA Civ 761 [2007] ICR 1678.

unreasonably refuses to do any work is not entitled to any pay, and Miller -v- 5M (UK) Ltd[9] in support of the proposition that an offer by an employee of part-performance does not oblige an employer to accept part-performance.

128. These propositions of law were not disputed by Mr Gloag.

129. Mr Gloag in turn referred me to the Statutory Sick Pay (General) Regulations 1982, Regs 2 & 5, as meaning that Statutory Sick Pay cannot be paid for the first 7 days of sickness absence, and that any day on which work is done, does not qualify for SSP or as a waiting day. Mr Gloag in particular cited in his written submissions Regs 2(2) and 5(3)(a), but it is, I think, preferable to set out Regs 2 and 5 in their entirety:

2.— Persons deemed incapable of work

(1) A person who is not incapable of work of which he can reasonably be expected to do under a particular contract of service may be deemed to be incapable of work of such a kind by reason of some specific disease or bodily or mental disablement for any day on which —

(a)

(i) he is under medical care in respect of a disease or disablement as aforesaid,

(ii) it is stated by a registered medical practitioner that for precautionary or convalescent reasons consequential on such disease or disablement he should abstain from work, or from work of such a kind, and

(iii) he does not work under that contract of service, or

(b) he is—

(i) excluded or abstains from work, or from work of such a kind, pursuant to a request or notice in writing lawfully made under an enactment; or

(ii) otherwise prevented from working pursuant to an enactment,

by reason of it being known or reasonably suspected that he is infected or contaminated by, or has been in contact with a case of, a relevant infection or contamination

(2) A person who at the commencement of any day is, or thereafter on that day becomes, incapable of work of such a kind by reason of some specific disease or bodily or mental disablement, and

(a) on that day, under that contract of service, does no work, or no work except during a shift which ends on that day having begun on the previous day; and

(b) does no work under that contract of service during a shift which begins on that day and ends on the next,

shall be deemed to be incapable of work of such a kind by reason of that disease or bodily or mental disablement throughout that day.

[9] UKEAT/0359/05/DA

(3) For the purposes of paragraph (1)(b)—
"enactment" includes an enactment comprised in, or in an instrument made under—
(a) an Act; or
(b) an Act of the Scottish Parliament; and
"relevant infection or contamination" means—
(a) in England and Wales–
(i) any incidence or spread of infection or contamination, within the meaning of section 45A(3) of the Public Health (Control of Disease) Act 1984 in respect of which regulations are made under Part 2A of that Act (public health protection) for the purpose of preventing, protecting against, controlling or providing a public health response to, such incidence or spread, or
(ii) any disease, food poisoning, infection, infectious disease or notifiable disease to which regulation 9 (powers in respect of persons leaving aircraft) of the Public Health (Aircraft) Regulations 1979 applies or to which regulation 10 (powers in respect of certain persons on ships) of the Public Health (Ships) Regulations 1979 applies; and
(b) in Scotland, any–
(i) infectious disease within the meaning of section 1(5) of the Public Health etc (Scotland) Act 2008, or exposure to an organism causing that disease, or
(ii) contamination within the meaning of section 1(5) of that Act, or exposure to a contaminant,
to which sections 56 to 58 of that Act (compensation) apply.

5.— Qualifying days
(1) In this regulation "week" means a period of 7 consecutive days beginning with Sunday.
(2) Where an employee and an employer of his have not agreed which day or days in any week are or were qualifying days or where in any week the only day or days are or were such as are referred to in paragraph (3) , the qualifying day or days in that week shall be—
(a) the day or days on which it is agreed between the employer and the employee that the employee is or was required to work (if not incapable) for that employer or, if it is so agreed that there is or was no such day,
(b) the Wednesday, or, if there is no such agreement between the employer and employee as mentioned in sub-paragraph (a),
(c) every day, except that or those (if any) on which it is agreed between the employer and the employee that none of that employer's employees are or were required to work (any agreement that all days are or were such days being ignored).
(3) No effect shall be given to any agreement between an employee and his employer to treat as qualifying days—
(a) any day where the day is identified, whether expressly or otherwise, by reference to that or another day being a day of incapacity for work in relation to the employee's contract of service with an employer;

(b) any day identified, whether expressly or otherwise, by reference to a period of entitlement or to a period of incapacity for work.

130. The Claimant's contract of employment has been referred to above. It was averred on behalf of the Claimant that only sick leave covered by a medical certificate falls within the entitlement for occupational sick pay under section 3.2 of the Respondent's Attendance Management Policy

131. Parts 1-3 of the Respondent's Managing Employee Health, Wellbeing and Attendance Policy was included in the bundle.

132. 3.2 of the Policy reads as follows:

> ***3.2 Occupational Sick Pay***
>
> *3.2.1 The National Conditions of Service for Local Government staff and Teaching staff sets out details of the Occupational Sick Pay Scheme. All staff receive payment of full or half pay, dependent on length of service.*
>
> *For NJC staff, where employees have continuous local government service any absence with their previous employer in the preceding 12 month rolling*
> *period will be taken into account when calculating sick pay entitlement. For*
> *all Support Staff (NJC) the entitlement for Occupational Sick Pay shall be determined on the first day of absence. Staff will not move to a new entitlement level until they return to work.*
>
> *For the purpose of calculating a teacher's entitlement to sick pay, a year is*
> *deemed to begin on 1st April and end on 31st March of the following year.*
> *Where a teacher starts service after 1st April in any year, the full entitlement for that year will be applicable. Where a teacher is on sick leave on 31 March in any year, no new entitlements shall begin until the teacher has resumed duty and the period from 1 April until the return to duty is regarded as the preceding year's entitlement.*
>
> *When a teacher moves to another employer, any sick pay paid during the current year by the previous employer shall be taken into account in calculating the amount and duration of sick pay payable by the new employer.*

3.2.2 Subject to meeting the sickness absence notification requirements and other conditions, the Occupational Sick Pay provisions are outlined below:

For School Support Staff:

Occupational Sick Pay	
During 1st year of service	*1 months (sic) full pay and (after completing 4 months service)* *2 months half pay*
During 2nd year of service	*2 months full pay and* *2 months half pay*
During 3rd year of service	*4 months full pay and* *4 months half pay*
During 4th and 5th year of service	*5 months full pay and* *5 months half pay*
After 5 years service	*6 months full pay and* *6 months half pay*

For teaching staff:

During the first year of service	*Full pay for 25 working days and after service, half pay for 50 working days*
During the second year of service	*Full pay for 50 working days and then half pay for 50 working days*
During the third year of service	*Full pay for 75 working days and half pay for 75 working days*
During the fourth and subsequent years	*Full pay for 100 working days and half pay for 100 working days*

3.2.3 The School reserves the right to terminate employment before the expiry of Occupational Sick Pay, in accordance with this procedure.

3.2.4 Any sickness absence occurring during the 12 months immediately before the first day of absence is counted towards the calculation of sick pay entitlement.

133. I see no basis for the assertion that sick leave means only leave covered by a certificate. I am mindful that I did not allow the Claimant to allow on paragraph 4.1.3 of the policy (see above). However, that provision contemplates the position where an employee's manager believes them not to be fit to return to work, notwithstanding the absence of certification. In this case, the Claimant's employers believed her to be fit to return to work, so, even if I had allowed the Claimant to rely on that provision, it would not assist her.

Consideration of the agreed issues

Was the Claimant on a period of sickness absence between 04.10.2021 and 23.02.2023?

134. The Claimant, in her written submissions, went into considerable detail regarding the time before this question. This was unhelpful, but was consistent with the Claimant's prolixity. It seems to me that her case on that she was not on sick leave during this period, and that she bases that contention on two things:

(a) The absence of fit notes covering the time, and;
(b) Mr James' email dated 04.10.2021, set out in full above.

135. Mr Gloag in the Claimant's written submissions, contends that Mr James in the above stated that he did not believe that the Claimant was on sick leave.

136. Cross-examined by Ms Gyane, the Claimant stated that her position was that, other than when on maternity leave, in the period from September to December 2021, she was available to work from home.

137. The Respondents position was that the 1st Respondent treated the Claimant as being off sick. They said that it may have been too generous in doing so, but that is, nonetheless, what it did.

138. I find that the Claimant was indeed treated by the 1st Respondent as being on sick leave in the relevant period. Her contention that she was ready and willing to work, but was not given any, is disingenuous. At every turn, the Claimant sought to avoid engaging with efforts to get her back to work. I find that the Claimant did not intend to return to work, was not ready and willing to return to work, but was in fact determined not to return to work. That the 1st Respondent paid her sick pay at times when there was no Fit Note current was, I find, a generous approach taken towards an employee who was resistant to returning to work.

139. I find that the Claimant was not available for work, or on an authorised absence, during the relevant period.

140. I understand the parties to agree that, if I find the Claimant was on sick leave for the relevant period, it is not contended that there was any failure to pay her any amount she was properly owed.

141. For the above reasons, the Claimant's claim is dismissed

Employment Judge David Hughes
Date 29 November 2023

Reserved Judgment & Reasons sent to the Parties:
08 December 2023

FOR EMPLOYMENT TRIBUNALS