



EMPLOYMENT TRIBUNALS

Claimant: Miss Nabeela Mushtaq

Respondent: Birmingham Community Healthcare NHS Foundation Trust

FINAL HEARING

Heard at: Birmingham

On: 29 & 30 April & 1, 2, 7 to 9, 12, 13, 15, 16 & 19 May 2025
20 to 22 May & (decision-making in private) 16 June, 4 & 28 July 2025

Before: Employment Judge Camp & Mr M Z Khan
Mrs R J Pelter (29 & 30 April & 1 & 2 May 2025 only)

Appearances

For the Claimant: Miss G Cullen, counsel

For the Respondent: Mr C Ludlow, counsel

JUDGMENT

By consent, on 30 April 2025, the Claimant's complaints of indirect sex discrimination were dismissed upon withdrawal in accordance with rules 50 and 51 of the Employment Tribunal Procedure Rules 2024.

RESERVED JUDGMENT

Tribunal Member Mrs R J Pelter having withdrawn for personal reasons with effect from 7 May 2025 and the final hearing having continued before Employment Judge Camp and Mr M Z Khan only by consent:

The unanimous decision of Employment Judge Camp and Mr M Z Khan is that the Claimant's entire claim – consisting of complaints of pregnancy / maternity leave discrimination, direct sex discrimination, family leave detriment, direct disability discrimination, disability-related harassment, indirect disability discrimination, victimisation, detriment for making protected disclosures, flexible working request detriment, and unfair dismissal – fails and is dismissed.

REASONS

Introduction, complaints & issues

1. The Claimant was employed by the Respondent as a Band 5 or a Band 6 Immunisation Nurse from 10 September 2018. She resigned on 15 June 2023 with effect on 9 September 2023. She went through early conciliation twice – from 14 to 16 March 2023 and from 4 to 6 December 2023 – and presented two claim forms: the first on 31 March 2023 and the second on 8 December 2023. Employment Judge Kenward gave her permission to amend to add complaints at a preliminary hearing on 28 June 2024. The added complaints were of whistleblowing / protected disclosure detriment. As we understand it, they had been put forward for the first time in a document submitted by the Claimant on 13 November 2023. When giving permission to amend, Employment Judge Kenward did not decide time limits issues potentially arising in relation to these complaints.
2. The Claimant's claim is about things that happened between April 2021 – when she told her then line manager that she was pregnant, just after she had been offered a temporary promotion to a secondment role – and November 2023 – when a grievance she raised in February 2023 was rejected at stage 1 of the Respondent's grievance procedure. Her case is that she was subjected to over two years of discrimination, harassment, victimisation and otherwise unlawful detrimental conduct, connected with pregnancy, maternity and childcare issues, which destroyed her trust and confidence in the Respondent and led to her being constructively dismissed.
3. This final hearing has been to deal with liability only. The Claimant has pursued a very large number of complaints: well over 100 by our calculation. This is reflected in the length of the agreed list of liability issues: by itself 20 pages. (A version of that list, amended and annotated to correct errors and show concessions made during the hearing, is attached to this decision – from page 54 below – and forms an integral part of it.) It is also reflected in the length of Claimant's and Respondent's counsel's written closing submissions: 100 pages in total.
4. There are, though, rather fewer distinct allegations of mistreatment: around 30¹. What the Claimant has done in relation to most of them is allege that what happened was unlawful conduct of several kinds. She has pursued the following types of claim: pregnancy / maternity leave discrimination (Equality Act 2010 – "EQA" – section 18); direct sex discrimination; family leave detriment (Employment Rights Act 1996 – "ERA" – section 47C); direct disability discrimination (relying on the Claimant's son's admitted disability); disability-related harassment (ditto); indirect disability discrimination (ditto); victimisation; detriment for making protected disclosures (ERA section 47B; "whistleblowing detriment"); flexible working request detriment (ERA section 47E); and

¹ In the list of issues, allegations have been numbered 1 to 30, but some allegations are unnumbered, some numbers are missing, in some instances multiple allegations are given the same number, some numbering is inconsistent, and some allegations with different numbers are based on essentially the same facts.

constructive unfair dismissal (ERA sections 98 and 103A). In relation to constructive unfair dismissal, her case is that, with one or two exceptions, the allegations are part of a course of conduct from 30 April 2021 that cumulatively breached trust and confidence, a breach that she accepted when she resigned in June 2023.

5. The only type of claim the Claimant was making that she has withdrawn is indirect sex discrimination. She is not pursuing every type of claim in relation to every allegation, but in relation to most allegations at least two or three different types of claim are being made. There is no good reason for her to do this and it does not help her case overall – quite the reverse.²
6. What we have just written, and nothing we are going to write, is intended as a negative criticism of either side's legal representatives. It is unusual in the Employment Tribunals for both sides to be professionally represented, still more so for them to be represented by experienced and highly competent specialist counsel. We are extremely grateful to Miss Cullen for the Claimant and Mr Ludlow for the Respondent for their hard work and professionalism, which helped us get through what could well have been a difficult hearing smoothly, despite a number of unavoidable impediments³, with only slight slippage in the planned trial timetable.
7. It is, though, regrettable that, despite being repeatedly urged to do by the Tribunal, the Claimant has been unwilling to narrow her claim and to focus on what her legal advisers will no doubt have told her are the stronger parts of it. Be that as it may, we – the Tribunal – have to deal with all complaints that have not been abandoned and we have to endeavour to do so proportionately and without these Reasons becoming excessively long. To that end, what we are intending to do in this decision is, in the main, to focus not on the issues as such but on the allegations. (Even doing that, this Reserved Judgment and Reasons, not including attachments, runs to 53 pages).
8. In relation to each allegation, we shall:
 - 8.1 in so far as there are relevant factual disputes, decide what happened;

² As the Employment Appeal Tribunal (Griffiths J) relevantly remarked – albeit in a slightly different context – in a decision at a preliminary hearing in **1) Sainsbury's Supermarkets Ltd 2) Lloyds Pharmacy Ltd v Mrs A Ahmed & Others** UKEAT/0306/19/RN (22 May 2020; unreported): *"It is the usual experience of advocates and Judges that some points are better than others. It is a necessary professional discipline to identify the best points and to limit arguments to them. If they fail, the weaker points will make no difference. But, quite apart from the risk that they may tend to obscure the merits of the best, weaker points (which cannot change the outcome determined by the best points) take up time and resources and fail to respect the overriding objective to which the parties, as well as the court, are bound to pay attention."*

³ Amongst other things, there was an electrical fault in the building in which the Birmingham Employment Tribunals are situated and we had to evacuate and continue the hearing by video.

- 8.2 make a decision about why it happened as it did and in particular, where the Claimant was subject to what she thought was mistreatment, what the reason for the treatment was;
- 8.3 say what those decisions mean for the complaints set out in the list of issues.
9. We are not, then, going to address every issue in the list of issues. Equally and similarly, we are not going to address every dispute of fact, or every piece of evidence relied on, or every argument raised by the parties. All we shall deal with is what we think we need to in order to make and to explain our overall decision.
10. Issues we are not going to deal with include: time limits (except to the limited extent we do so immediately below); the dispute over the small number of alleged protected acts and protected disclosures that are not admitted to be protected acts and protected disclosures.
11. We cannot meaningfully deal with most time limits issues anyway as: all the complaints have failed on their merits; time limits are intimately tied up with the merits of the complaints, in terms of whether there was any relevant “*conduct extending over a period*” or “*series of similar acts or failures*” or “*act [that] extends over a period*” and therefore in terms of which complaints are out of time, which need an extension of time on a “*just and equitable*” or “*not reasonably practicable*” basis, and if so for how long. However, what we can say is that, assuming the complaint that is last in time (which concerns not upholding the Claimant’s grievance in November 2023) did not succeed, had they not failed on their merits, all of the whistleblowing detriment complaints would have failed for time limits reasons. This is because:
- 11.1 they were added by amendment;
- 11.2 adding them was a substantive amendment and for time limits purposes they would have been deemed presented to the Tribunal when the application to amend was made (see **Galilee v The Commissioner of Police of The Metropolis** [2017] UKEAT 0207_16_2211 and **Sheikholeslami v University of Edinburgh** [2018] UKEAT 0014_17_0510), which was 13 November 2023 at the earliest;
- 11.3 all of them were therefore deemed presented outside of the primary time limit in ERA section 48 of 3 months, plus any extension for early conciliation;
- 11.4 it was therefore for the Claimant to show that it was not reasonably practicable for them to be presented within that primary time limit;
- 11.5 the Claimant has failed to show this, not least because she evidently had the knowledge and ability to present a claim in March 2023, which could have included most of the whistleblowing detriment complaints she eventually put forward 8 months later.
12. In relation to the victimisation and whistleblowing detriment claims and the disputed protected acts and protected disclosures, we shall simply assume for the purposes of our decision that that all alleged protected acts and protected

disclosures are protected acts and protected disclosures. Doing this makes no difference to our decision, as we are entirely satisfied that in no sense whatsoever was anything about which the Claimant is making a complaint: done on the ground that she made a protected disclosure (actual or alleged); because the Claimant did a protected act (actual or alleged).

Evidence

13. We had witness statements and oral evidence from the Claimant herself on her own behalf and for the Respondent from eight individuals (all identified in the cast list): Miss Fisher, the Claimant's line manager at most relevant times; Ms Nicholls, the Claimant's line manager's line manager at all relevant times; Mrs Hewitt from HR; Mrs Aslam, a 'Freedom to Speak-up Guardian'; Mrs Paintain, Ms Nicholls's line manager's line manager's line manager (i.e. Mrs Paintain was five tiers of management above the Claimant); Mrs Molloy from HR; Mr Shakeel, a Manager in the Children's and Families Division; Mrs Shakeel [no relation], a Service Manager in the Children's and Families Division.
14. The individuals accused by the Claimant of being responsible for most of the alleged unlawful mistreatment she is making her claim about are Miss Fisher, Ms Nicholls and Mrs Hewitt. It was confirmed during the hearing that no allegations of unlawful mistreatment are being made against Mrs Aslam, Mrs Paintain or Mrs Molloy.
15. Also part of the evidence before us was a file or 'bundle' of documents that was, by consent, added to during the hearing and ended up totalling 2465 pages. Inevitably, and in the usual way in modern litigation, it was impossible for us to read more than a fraction of the contents of the bundle. We were heavily reliant on counsel to highlight the relevant parts of the relevant documents during cross-examination and in submissions.
16. We accept that all witnesses gave honest evidence, telling us the truth as they now see it. But it does not follow that their evidence was accurate. Human memory is imperfect. We all have false memories; we all genuinely believe things happened that didn't happen.
17. Overviewing the case, the first thing we note is that the Claimant's allegations go back to April 2021. All witnesses' memories from that time are going to be unreliable to a lesser or greater extent. Contemporaneous documentation and the inherent probabilities of any given situation – i.e. what is more (or less) plausible given human nature and how the world tends to work – has been the main evidential basis of our decision-making; much more so than witnesses' recollections.
18. The second thing we note is that the Claimant has a cognitive difference, which we do not have full details of, but which means she has difficulties processing information, particularly information given in speech. This adversely affects her ability to communicate orally and in particular means she is prone to misunderstand things that are said to her. At her request, reasonable adjustments were made for this during the proceedings. The first preliminary hearing (coincidentally before Employment Judge Camp), in October 2023, was

something of a waste of time because it was by telephone, which was an unsatisfactory and inadequate way of communicating with the Claimant. There were a number of examples during this final hearing of Respondent's counsel and the Tribunal having to reframe questions asked of the Claimant during cross-examination to assist understanding.

19. The Claimant is obviously intelligent and she is articulate in writing. As far as we can tell, her memory is no worse than anyone else's. And it is possible the Claimant would say that because of what has happened to her since 2021 she is more affected by her cognitive difference now than she was back then. Nevertheless, where we have to choose between differing accounts of meetings and telephone and video calls, including in situations where the Claimant gave a version of events at or near the time, we bear in mind the possibility that she may have, as it were, got the 'wrong end of the stick' and come out of the meeting or finished the phone or video call with an inaccurate impression of what had just been said.
20. Another thing that affects our assessment of the Claimant's credibility is the fact that from the outset, the Claimant appears to have had an expectation of mistreatment: of discrimination and victimisation. We are not sure why this was. We can only speculate, but it may in part have been a side-effect of Covid, which was still having a significant impact on the Claimant's area of work in April 2021 (and what happened around Covid sometimes damaged relationships in workplaces generally); and/or it may have been because of what she had heard from colleagues 'on the grapevine' (it is evident that, for example, the Claimant received misinformed gossip from others via WhatsApp); and/or it may be that challenges in her life outside work made her over-anxious.
21. Whatever the reason, this is an unusual case, in that there was no build-up of events over time which the Claimant looked back on and with hindsight attributed to discrimination. Instead, when the very first thing happened after she told the Respondent she was pregnant that was not to her liking – allegation 1 (see from paragraph 86 below) – she assumed she was being discriminated against. This can be seen from what she wrote at the time, in emails the Respondent admits were protected acts. Even when that particular issue was quickly resolved to her satisfaction, she continued to believe that she had been the victim of discrimination: she said as much to Mrs Aslam and Mrs Paintain in, respectively, May and July 2021. She also, at the earliest stage, before anything happened that she alleges was victimisation, expressed concerns that she would be victimised for complaining about discrimination.
22. The Claimant's expectation of discrimination and victimisation, and her assumption that the reason things happened was discrimination and victimisation, continued for the rest of her employment and beyond. Because of so-called confirmation bias, i.e. because (in simple terms) we all as human beings tend to see what we expect to see and to ignore what we don't, this will have distorted her perception of events. Her perceptions may well also have been affected by the significant stress factors there were for her outside of work⁴ and at times by mental

⁴ It is unnecessary, and therefore we think inappropriate, for us to go into these in what is a public document. They were detailed in the Claimant's witness evidence.

ill-health. Throughout, the Claimant has, it seems to us, been looking at things through the opposite of rose-tinted spectacles: she has assumed the worst of other people's motives, taken what was said and written to her and about her in the worst possible way, and has apparently been unable to entertain the possibility of an innocent explanation for anything that has occurred.

23. This is illustrated by the Claimant continuing to pursue complaints even where the evidence is wholly against her and where she must have been advised of this. For example, the first part of allegation 2 (see from paragraph 97 below) concerns the fact that in June 2021 she continued to be paid as a Band 5 in her first pay packet as a Band 6. On paper, she blamed Miss Fisher for this. However, the evidence included an email from Miss Fisher from before the Claimant started as a Band 6 instructing the relevant person to process the Claimant's promotion [1930]⁵ and a contemporaneous email from that person [385] confirming that they had acted on Miss Fisher's instructions, but that there had been an unidentified technical or system problem which meant her details were not updated at the time. Faced with this, rather than conceding that she might be wrong in light of the evidence she now had access to, she ended up making the fanciful suggestion that Ms Nicholls must have secretly countermanded Miss Fisher's instructions, or otherwise, somehow, prevented it from being effective.
24. We stress that we are not here blaming the Claimant. She cannot help what she thinks and how she feels. But her complete inability to take a step back from her own case and be at all objective about it, however understandable that is, does undermine her credibility.
25. We have two further general points to make concerning credibility, but of the Claimant's case rather than of the Claimant herself.
26. First, it is a fundamental part of the Claimant's case that, from as soon as Miss Fisher learned she was pregnant, in late April / early May 2021, Miss Fisher took against her, no longer wanted her to be employed by the Respondent, and set about trying to do her down; and that she did this because (amongst other reasons) she didn't like the Claimant going off on maternity leave, making allegations of discrimination, and, later, proposing to make a flexible working application. However, in April 2022, Miss Fisher was one of two members of a panel that interviewed the Claimant for a Band 6 substantive role that they then offered to her. Shortly before the interview, the Claimant had emailed Miss Fisher to say that she would be wanting to change her working hours (i.e. to request flexible working). Miss Fisher had previously granted a formal flexible working request the Claimant made in 2021. At the time of the interview, the Claimant was on maternity leave and was due to revert from a Band 6 secondment role to her substantive role, which was at Band 5, at the end of May 2022. In addition, when she interviewed the Claimant, Miss Fisher knew that the Claimant had, the previous year, accused her and Ms Nicholls of discrimination.
27. In other words, at a time when, if this fundamental part of the Claimant's case were well-founded, one would expect Miss Fisher to be persecuting the Claimant,

⁵ Numbers in square brackets are references to page numbers in the bundle.

she was doing something very much to the Claimant's benefit, namely offering her a Band 6 role.

28. The interview notes show that Miss Fisher rated the Claimant highly at interview and gave her similar scores to those given to the Claimant by the other panel member. It was not put to Miss Fisher during cross-examination that she 'had' to offer the job to the Claimant, or anything like that; nor was it put to her that she had an ulterior motive for doing so that is consistent with the Claimant's case.
29. We recognise that discriminators and victimisers do not necessarily discriminate and victimise every time an opportunity presents itself, but we nevertheless find it impossible rationally to reconcile Miss Fisher supporting the Claimant being offered this job in April 2022 with this part of the Claimant's case.
30. Finally, in relation to most of the Claimant's complaints, there is no plausible motive consistent with her case for those she accuses of discrimination, victimisation, and so on to have acted as they did. The point we are making has a general and a specific part to it.
31. The 'general' aspect to the point we are making is: that someone has done a protected act or made a protected disclosure (or done something else that means they are entitled to bring a claim if they are subjected to a detriment for doing it) does not in and of itself provide a reason for anyone and everyone to want to subject them to detriments. On the whole, people don't behave completely capriciously, nor do they treat others badly for the sake of it. For example, a manager will act against a whistleblower not because they meet the technical definition of a whistleblower in the ERA, but because their whistleblowing has had, or might have, some adverse impact on the manager or on close colleagues, such as causing embarrassment or inconvenience. Similarly, neither the fact that the Claimant might have been going to make a flexible working application, which no one would be under any obligation to grant, nor the fact that the Claimant's baby son had a heart condition, is by itself at all likely to have led to her managers wanting to act against her. It is necessary to ask of those against whom the Claimant makes allegations: why would they be sufficiently aggrieved with the Claimant to be motivated to mistreat her? In most instances, that question has no answer and we do not think they would be so motivated.
32. We move on to the 'specific' aspect of our point. If we assume that an individual the Claimant is accusing of e.g. discrimination was sufficiently motivated by (in this example) discriminatory prejudice to want, generally, to do something detrimental to the Claimant, we still have to consider the plausibility of them choosing to do to her the specific detrimental act they are accused of having done. The fact that someone may for no good reason have ill-feeling towards another person does not explain them behaving wholly irrationally in response to that ill-feeling. In relation to many – perhaps most – of the Claimant's complaints, even if the accused individuals so disliked the Claimant and/or were so unhappy with her that they wanted to force her out of her job (which is one of the things she is alleging), it would be quite bizarre for them to have tried to achieve this by doing the specific thing the complaint is about.
33. With those preliminary observations in mind, we shall now outline the basic facts.

Factual background

34. In this section of the Reasons we are not intending to resolve genuine and substantial factual disputes. Our decisions on those are made in the section (below, from paragraph 86, at page 16) where we look at the individual allegations. Anyway, in terms of what happened – as distinct from why it happened – little that is relevant is in reality in dispute; and the Claimant cannot meaningfully comment on quite a lot of what is both relevant and genuinely disputed, because the disputes concern things she has no direct personal knowledge of.
35. The parties' agreed chronology and 'cast list', attached respectively from page 73 and page 91 below, are part of our findings of fact and we refer to them.
36. In April 2021, the Claimant was working as a Band 5 nurse on a 37½ hour per week term-time-only contract. She had a one year old daughter. Her line manager was Ms Barnard. The Claimant applied for a Band 6, 12-month, all-year-round secondment role at the Respondent's Springfields Health Centre, where her line manager would be Miss Fisher. Her application was successful. She asked about changing her working hours in her new role from September 2021 to help with childcare commitments, from 8 am to 4 pm to 8.30 am to 4.30 pm. On 28 April 2021, Miss Fisher and Ms Nicholls confirmed those changed hours would be appropriate.
37. Around 30 April 2021, the Claimant told Ms Barnard she was pregnant and Miss Fisher and Ms Nicholls were told about this within a matter of days.
38. The Claimant's first allegation or set of allegations concern communications in early to mid-May 2021 between the Claimant, HR, Ms Barnard, Miss Fisher and Ms Nicholls. Within those communications, a proposal was put forward that the Claimant could work as a Band 6 with the hours she wanted, but based at a different health centre from Springfields – the Landsdowne Centre. The Claimant complained about this at the time, alleging discrimination.
39. The Claimant started her Band 6 secondment where she wanted it – Springfields Health Centre – on 1 June 2021.
40. The Claimant was initially paid for June 2021 at her old, Band 5 rate. This was later corrected.
41. In July 2021, sometime after a discussion between them, the Claimant sent Miss Fisher an email about entitlement to carer's leave and the position was then clarified by HR.
42. In August 2021 Miss Fisher granted a formal flexible working request the Claimant had made for her hours to be changed from the following month to – as above – 8.30 am to 4.30 pm.
43. On 27 November 2021, sooner than expected, the Claimant's son was born and she started maternity leave. He had and has a number of health problems, in particular a heart condition. The Respondent accepts he was a disabled person under the EQA at all relevant times.

44. The Claimant was left off the email distribution list of two emails from Miss Fisher, respectively of 8 December 2021 and 18 January 2022, telling staff that the Respondent was going to be rolling-out a Neonatal BCG Immunisation programme and that there would be some job vacancies. Ultimately, there were two vacancies for Band 6 immunisation nurses and the Claimant was included in the distribution list of Miss Fisher's email of 17 February 2022 telling staff the vacancies were being advertised. The Claimant applied and was, on 16 March 2022, interviewed by Ms Nicholls and another manager – via Teams as she had Covid – but was unsuccessful. Ms Nicholls gave her some feedback after this.
45. Two further Band 6 roles – in Springfields and in Birmingham & Solihull (a.k.a. Church Lane) – were advertised in April 2022. The Claimant was not told about them by Miss Fisher or Ms Nicholls, but she found out about them by other means. As explained in paragraphs 26 and 28 above, the Claimant applied, was interviewed by Miss Fisher and one other, and was successful for the Birmingham & Solihull vacancy, although Springfields would have been her first choice. She was formally conditionally offered this full-time role on 16 May 2022.
46. On 31 May 2022, with the Claimant still on maternity leave, her Band 6 secondment role – 12 months from 1 June 2021 – came to an end and she reverted to her substantive Band 5 role with effect from 1 June 2022, which meant reverting from an all-year-round to a term-time-only contract. This complicated working out how much annual leave the Claimant had accumulated during her maternity. HR – specifically, a Ms Owusu – seems to have had difficulties doing the relevant calculations.
47. During June and July 2022, there were email discussions between the Claimant and HR, and internally within HR, regarding the Claimant's start date in her new role and her accrued annual leave entitlement. On the face of that correspondence, the working assumption on all sides was that maternity leave would end on 31 August 2022, but that the Claimant would not start her new role until she had taken accrued annual leave. On 26 July 2022, in response to an email from the Claimant querying the position, Ms Nicholls wrote: *"Can I suggest we set a start date of 1/9/2022 but within the letter acknowledge this may be later due to annual leave accrued during maternity leave in previous position. We can then re-adjust the start date"*.
48. Also in July 2022, a Band 6 role at Springfields, as distinct from Birmingham & Solihull, came to the Claimant's attention. There was a discussion about it between the Claimant and Miss Fisher. The outcome was that on 5 August 2022, the Claimant was unconditionally offered a Band 6 role at Springfields. It was an all-year-round role, but 30 hours per week rather than full time. The offer letter stated that her starting salary would be £32,306, which was at the bottom of the Band 6 scale. The Claimant accepted the offer on 12 August 2022 and at the same time requested working hours of 8.30 am to 4.30 pm, with Wednesdays off. She would start on or around 1 October 2022, with her maternity leave finishing on 31 August 2022 and her being on annual leave from 1 September 2022.
49. On or around 15 August 2022, the Claimant queried the starting salary and Ms Nicholls told her by email that if she was requesting a higher starting salary within Band 6 she would need to complete a salary variation form. The salary variation

form she was asked to complete was marked as being for non-NHS employees coming into NHS employment (and by implication not for those like the Claimant who were already in NHS employment and were being promoted). She filled it in and sent it to Ms Nicholls on 24 August 2022. On 30 September 2022, Miss Fisher sent the Claimant another copy of the form, without mentioning the fact that the Claimant had already been sent and had completed one. The Claimant's application for a higher starting salary was ultimately successful and her higher pay was backdated to her start date in her new role.

50. The Claimant was not at the time paid any wages for the month of September 2022. She raised this in an email to Ms Nicholls on 24 September 2022. On or about 3 October 2024 – i.e. 1 to 2 weeks' late – the Claimant was paid for September 2022, but she was paid 60 percent of her gross salary without deductions, rather than being paid a net wage with deduction of tax and national insurance in the normal way. This was rectified at the end of October 2022, but at that point a further error was made, in that she was paid as if she were still on a term-time only contract, something the Claimant complained about to Mrs Hewitt on 2 November 2022. This, too, was rectified, but it being rectified meant that in November 2022 she was paid more than she usually would have been, which – possibly due to an error by HMRC and/or the Department of Work and Pensions (DWP) – had a knock-on effect on her Universal Credit. She requested help from the Respondent sorting that out.
51. Meanwhile, on 29 September 2022, both the Claimant and Miss Fisher were querying the Claimant's annual leave entitlement. Later that day, Ms Owusu emailed both of them, incorrectly suggesting that the Claimant only had 42.3 hours (less than 1 ½ weeks) of annual leave to take up to the end of March 2023, broadly because – supposedly – she had taken too much annual leave by not working during September 2022. Miss Fisher and the Claimant then had a conversation about this, following which – also on 29 September 2022 – the Claimant emailed Ms Owusu expressing dissatisfaction.
52. The Claimant's first working day in her new role was 5 October 2022 and she had a one-to-one meeting with Miss Fisher on that day.
53. The Claimant's son fell ill on 9 October 2022 and she was not in work on 10 or 11 October 2022. She took one day as carer's leave and one day as emergency annual leave – both paid. She and Miss Fisher had a further one-to-one on the 13th. During that meeting, the Claimant suggested she was going to make a flexible working application. Following that meeting, the Claimant entered into further email correspondence with Mrs Aslam. This led to a telephone conversation between the Claimant and Mrs Molloy on or about 17 October 2022, which Mrs Molloy told Ms Nicholls and Miss Fisher about in a Teams meeting on 19 October 2022 and in an email of 27 October 2022.
54. On or about 14 October 2022, the Claimant did not attend a school vaccination session and instead stayed at Springfields to complete some compulsory refresher training. The same day she went off sick from work. Her GP signed her off for 3 months. The fit note suggested she might be fit for work if her hours were reduced.

55. On 3 November 2022, the Claimant had a telephone consultation with the Respondent's occupational health subcontractor. Their report said she had "*Mild anxiety*" and that "*Symptoms of personal stress [have led] to a decline in her mental health*". It suggested she would be fit to return to work on 3 December 2022, a phased return to work and, on return to work, "*Regular one to ones with management to aid support*" and "*Flexible working hours may be helpful to her manage her home circumstances as she is a single parents and her son has ongoing health needs, this may help reduce her stress levels*".
56. There was a further occupational health consultation and report on 20 December 2022. The likely return to work date was now 6 January 2023. The recommendations were for regular one-to-ones and a phased return to work were similar to what had been suggested in the previous report. The other recommendation in the 20 December 2022 report was, "*Some flexibility to attend any medical appointments including Counselling sessions as these [can] be difficult to book outside of work hours.*"
57. The Claimant returned to work on 9 January 2023. She had a one-to-one with Miss Fisher on 16 January 2023. She took emergency annual leave on 23, 26 and 27 January 2023 to look after her son. She and Miss Fisher had a telephone conversation on 27 January 2023 which became heated and which with hindsight marks the point where the relationship between the two of them fully broke down. The Claimant complained about Miss Fisher and requested an urgent meeting with HR.
58. On 30 January 2023, the Claimant completed a formal flexible working application form, asking to reduce her working week from 4 days to 3 days. She submitted it on 14 February 2023.
59. On 31 January 2023, Miss Fisher referred the Claimant to occupational health. The referral included this: "*Nabeela has ... shown an unreliable pattern of attendance due to her child being unwell*".
60. On 6 February 2023, the Claimant began a period of sick leave. Her initial, four-week GP fit note said she was not fit for work due to anxiety and stress at work. Subsequent fit notes referred just to stress at work or, in one case, "*Work related stress*". She did not in fact return to work between early February 2023 and the end of her employment.
61. There was a Teams meeting between the Claimant and Mrs Hewitt on 14 February 2023.
62. On 15 February 2023, the Claimant raised a formal written grievance.
63. From February 2023 onwards, there was a disagreement between the Claimant and the Respondent as to whether her grievance should be dealt with at stage 2 of the Respondent's grievance procedure – which is what she wanted – or whether it should, in the first instance, have to go through stage 1. The correspondence around this included an email of 23 February 2023 from Mrs Hewitt and a letter of 20 April 2023 inviting the Claimant to a grievance meeting from Mr Shakeel, about each of which the Claimant is making Tribunal complaints.

64. The Claimant started the early conciliation process on 14 March 2023.
65. In a letter to the Claimant of 27 March 2023 providing an update as to the current status of the Claimant's flexible working request, Mrs Hewitt wrote: *"you applied for a Band 6 position as Senior Immunisation Nurse. ... Following your successful appointment, in August 2022, you contacted the line manager Joanne Fisher and made a flexible working request verbally to reduce your working week from full time (5 days per week) to 4 days per week."* The Claimant refers to the second half of this as *"incorrect and/or fabricated information"* and is making Tribunal complaints about it.
66. On 31 March 2023, the Claimant presented her first Tribunal claim.
67. On 10 May 2023, Ms Nicholls wrote to the Claimant granting her flexible working request, *"on a temporary basis for a three month period following your return to work"*. In the letter, Ms Nicholls suggested that the Claimant had not engaged with the flexible working application process and that she had declined to meet to discuss the application. The Claimant is making Tribunal complaints about this.
68. The Claimant and Ms Nicholls corresponded in May and June 2023 about having a wellbeing meeting. The Claimant declined a meeting on the basis that, amongst other things, *"I have previously declined this meeting as I am receiving support from health professionals and well as taking my concerns forward to the Employment Tribunal"* (12 May 2023) and (24 May 2023), *"The issues I have raised have been made clear in my Claim statement to the Employment Tribunal and relates to my absence from work for which I am receiving ongoing support from my GP"*. In addition, she objected to having such a meeting with Ms Nicholls because she attributed her sickness absence, *"to the issues directly and indirectly involving yourself"* (24 May 2023).
69. On 30 May and 5 June 2023, Ms Nicholls corresponded by email with Mrs Hewitt about whether an alternative manager should be appointed *"to handle and support this sickness"* and whether that alternative manager could be Mr Shakeel.
70. On 30 May 2023, following Mrs Hewitt's advice, Ms Nicholls emailed the Claimant to say, *"I am committed to supporting you in your absence. However, if you wish to receive support from the Trust but do not believe that I am a suitable person to offer that support, then please confirm whether you would like a neutral manager to undertake this responsibility instead of myself."*
71. There are complaints about the Respondent's alleged failure to appoint a neutral manager, given dates of 5 June 2023 and *"June 2023"* in the list of issues. There is also a complaint that on 12 June 2023, Ms Nicholls informed *"the Claimant that a neutral manager to consider the grievance was yet to be appointed"*. 5 June 2023 is the date of the Claimant's reply to Ms Nicholls's email of 30 May 2023. The Claimant wrote: *"I do not believe yourself to be the best person to manage anything related to my absence from work due to the connecting concerns. If I kindly request a neutral to manager my absence and going forward with any employment matters. [sic]"*. 12 June 2023 is the date of Ms Nicholls's reply to the Claimant's email of 5 June 2023: *"I am awaiting details related to the allocation of a neutral manager to support your sickness absence – as soon as I have more*

information I will be in contact. // You previously mentioned you were getting support via [your] GP, declining any current team prevent support. // As we wait for the details regards the neutral manager if there is any additional support you feel you currently need please let me know and I will escalate the request to ensure you are supported."

72. By a letter dated 9 June 2023, which she sent to Ms Nicholls on 15 June 2023, the Claimant resigned, giving notice expiring on 9 September 2023. The covering email was a response to Ms Nicholls's email of 12 June 2023, which included this: *"I am disappointed that a neutral manager could not be assigned as of yet or the previous manager could not have been appointed. Unfortunately, I will not be waiting for this to [be] actioned. // As no neutral manager has been assigned, I will attach the relevant letter, which is my resignation. Although it is not marked for your attention, it expresses my reasons for resignation."*
73. We refer to the letter of resignation [1059 & 1060]. It included this: *"In the last 6 months I have been under undue stress in trying to seek support within the workplace and continued to be subjected to acts of unfair treatment and discrimination. ... From the period of March 2021 to the 20th May 2023 at differing periods I have received unfair treatment around my employment's opportunities and rights. ... This just wasn't a one-off incident there have been continuing acts of "errors", direct and indirect discrimination regarding my employment secondment and substantive post as a Senior Immunisation Nurse due to the fact I was pregnant at that time and then subsequently I had been on maternity leave. Most recently these acts, were related to my association by disability due to my caring needs for my children and due to my sex. ... management have tried to indicate they are "supportive" however, [their] actions did not represent this. There have been acts to undermine the unfair treatment I have received. These acts have included defamation of my character. In the letters dated the 30th March 2023 and most recently the letter dated 20th May 2023, that contradicts the "support" being offered."* The Claimant confirmed during her oral evidence that the reference to 20 May 2023 was a mistake and that she meant to refer to Ms Nicholls's letter of 10 May 2023.
74. The Respondent wrote to the Claimant asking her to reconsider her resignation on 21 June 2023. She confirmed she would not be doing so on 5 July 2023.
75. Sometime in (possibly) June or (more likely) July 2023, Mr Shakeel, who had been dealing with the Claimant's grievance, stepped down from dealing with it for personal reasons. He then became the person dealing with her sickness absence.
76. On 25 July 2023, Mrs Shakeel took over dealing with the grievance. The Claimant was invited to a grievance meeting/hearing in August 2023, which she declined to attend. An invitation to a further grievance meeting/hearing the following month was not responded to. Mrs Shakeel therefore dealt with the grievance on paper without a hearing. She rejected it. Her stage 1 grievance outcome letter [1389-1394], which speaks for itself and to which we refer, is dated 22 November 2023. The Claimant did not take the grievance any further.
77. The Claimant's employment ended on 9 September 2023 and she presented her second claim form on 8 December 2023.

The law

78. Both counsel have helpfully summarised the law in their written closing submissions. Rather than ‘reinventing the wheel’, and to save space in our already lengthy decision, we adopt Respondent’s counsel’s – Mr Ludlow’s – summary, which should be deemed to be incorporated into these Reasons. We mean no discourtesy to Claimant’s counsel, Miss Cullen, by preferring his summary to hers. It is simply that his summary is conveniently contained in an appendix to his submissions, and that there are a few points where we, respectfully, disagree with her.
79. Nevertheless, we shall make some observations of our own.
80. Our starting point is always the relevant legislation – the EQA and the ERA – and in particular, in the present case, EQA sections 13, 18, 19, 23, 26, 27 and 136 and ERA sections 47B, 47C, 47E and 48.
81. As to case law relevant to the complaints under the EQA, we note in particular:
- 81.1 paragraph 17 (part of the speech of Lord Nicholls) of the House of Lords’s decision in **Nagarajan v London Regional Transport** [1999] ICR 877 and paragraphs 9, 10 and 25 of the judgment of Sedley LJ in **Anya v University of Oxford** [2007] ICR 1451;
- 81.2 the recommendation of numerous appellate courts, e.g. the EAT in **Islington Borough Council v Ladele** [2009] ICR 387 EAT at paragraph 40(5), that we should try wherever possible to identify the ‘reason for the treatment’. That recommendation also applies to the ERA complaints;
- 81.3 in relation to the concept of detriment and to what could broadly be termed ‘causation’, paragraphs 48 to 51 and 61 to 74 of **Warburton v Northamptonshire Police** [2022] EAT 42. What is said about detriment in that decision is applicable to the ERA complaints as well;
- 81.4 as to the burden of proof and EQA section 136 more generally, paragraphs 36 to 54 of the decision of the Court of Appeal in **Ayodele v Citylink Ltd & Anor** [2017] EWCA Civ 1913. We are looking, first, for “*facts from which the court could decide, in the absence of any other explanation*” that unlawful discrimination or victimisation has taken place. Although the threshold to cross before the burden of proof is reversed pursuant to section 136 is a relatively low one – “*facts from which the court could decide*” – unexplained or inadequately explained unreasonable conduct and/or a difference in treatment and a difference in status⁶ and/or incompetence are not, by themselves, such “*facts*”. Further, section 136 requires us to look for facts from which it could be decided not simply that discrimination is a possibility but that it has in fact occurred – see **South Wales Police Authority v Johnson** [2014] EWCA Civ 73 at paragraph 23.

⁶ Or, in relation to a victimisation complaint, the fact that someone who had done a protected act was treated differently from someone who had not done one.

82. As to the ERA detriment complaints, on top of what we have already mentioned, we note only the following case law, which relates to what “*on the ground that*” in ERA sections 43B, 47C and 47E means, taking ERA section 48(2) into account: **NHS Manchester v Fecitt** [2011] EWCA Civ 1190; and **Ibekwe v Sussex Partnership NHS Foundation Trust** [2014] UKEAT 0072_14_2011. Both decisions are referred to in counsel’s written submissions. In **Ibekwe**, HH Judge Peter Clark endorsed an Employment Tribunal’s statement of the law relating to the burden of proof under ERA section 48(2) along these lines: where, following the making of a protected disclosure, the claimant is subjected to a detriment and there is no substantial evidence explaining the reason why they were subjected to that detriment, the claimant does not win by default; there remains an evidential burden on the claimant to establish a causal link between the making of the protected disclosure and the detriment. In the present case, the Respondent has explained the reason for the treatment that is alleged to be detrimental and we have accepted that explanation; and, in any event, the Claimant has come nowhere close to discharging that evidential burden.
83. As to the constructive unfair dismissal complaints, we note in particular **Omilaju v Waltham Forest London Borough Council** [2005] EWCA Civ 1493 and **Kaur v Leeds Teaching Hospitals NHS Trust** [2018] EWCA Civ 978 at paragraphs 39 to 46 (both mentioned in counsel’s submissions).
84. In addition, later in these Reasons we shall address particular points of law, as and when they arise in relation to particular complaints.

Decisions on the Claimant’s allegations

85. We shall now go through the allegations one by one, in roughly chronological order. When, below, we set the allegations out, we are quoting from the list of issues.

Allegation 1: Did the Respondent, following the Claimant notifying Lisa Barnard (LB) on 30 April 2021 that she was pregnant, as detailed in the Claimant’s email of 11 May 2021 to Fiona Nicholls (FN), on 4 May 2021 by FN, and on 7 May 2021 by Joanne Fisher (JF), make it more difficult for the Claimant to carry out the secondment role, at the advertised site by proposing, without consultation, for the Claimant to move sites to Lansdowne Health Centre and accept a change of hours, under the guise of lone working?

86. This an allegation of pregnancy / maternity discrimination and family leave detriment.
87. The broad thrust of what the Claimant is alleging as a matter of fact is correct, although her allegations not entirely factually accurate. We set out the basic facts in paragraphs 31 to 33 above. Ms Nicholls, through Miss Fisher, initially (on 28 April 2021) agreed to the Claimant working 8.30 to 4.30 instead of 8 to 4 from September 2021 at Springfields. Then, chronologically after the Claimant told the Respondent she was pregnant, there was some backtracking from what had been agreed. Ultimately, a little while later, it was agreed that the Claimant could indeed work 8.30 to 4.30 at Springfields.

88. On 4 May 2021, Ms Barnard, acting on information provided by Ms Nicholls, told the Claimant something along these lines: that 8.30 to 4.30 would only be available two days a week as there was a health and safety issue due to the fact that another member of staff would be working in the same part of Springfields as the Claimant after 4 pm only two days a week.
89. In a letter of 11 May 2021, the Claimant suggested that something else was said to her by Ms Barnard on 4 May 2021 as well: *“that Fiona [Nicholls] had stated that the change in hours could not occur as a Band 6, and that if I required those hours then I would need to stay as a Band 5 nurse and apply for change in working hours application of a Flexible Working Changes”*. We think this is most unlikely to have been the true position. It would make no sense at all from Ms Nicholls to have said any such thing and we can see what Ms Nicholls was actually proposing from other contemporaneous documentation. We think that either Ms Barnard or the Claimant must have misheard or misunderstood.
90. Ms Nicholls responded to the Claimant’s email of 4 May 2021 by asking Miss Fisher to sort things out with the Claimant. Miss Fisher did that by having a telephone conversation with the Claimant on 7 May 2021. The Claimant asked Miss Fisher to put what she was saying in an email because she was flustered by the conversation and wanted certainty. Miss Fisher duly emailed the Claimant straight after the conversation. In so far as there is a dispute about what Ms Nicholls wanted communicated to the Claimant, or about what Miss Fisher said to the Claimant in the telephone call, we think the best available evidence about both these things is Miss Fisher’s email. What plausible motive would Miss Fisher have for putting in writing something different from what she had just said or from what Ms Nicholls had asked her to communicate?
91. Miss Fisher’s email of 7 May 2021 [285] was reasonably clear: a change to the secondment was being proposed – not imposed; the change was that the secondment be carried out from the Lansdowne Health Centre (Lansdowne), where the Claimant had been working, rather than at Springfields; there was no suggestion of the Claimant potentially having to stay at Band 5; the proposal was ostensibly being made so that she could work her requested hours 8.30 to 4.30 without undue lone working and so that she would be working alongside the current Band 6 to support her professional development. She was asked to give a decision as to whether to accept this proposal or go to Springfields as previously planned on 10 May 2021. She was also told that a second Band 6 post at Springfields might be coming up.
92. In response, on 11 May 2021, the Claimant emailed Miss Fisher and Ms Nicholls alleging discrimination. This is one of the protected acts relied on for the purposes of the victimisation claim. The Claimant did not copy HR into the email or threaten to go over Miss Fisher’s and Ms Nicholls’s heads in it. And although she wrote to HR separately, she does not seem to have copied Miss Fisher or Ms Nicholls into that letter. Ms Nicholls reacted to the Claimant’s email by getting HR involved herself, seeking advice from them. This is exactly what we would expect Ms Nicholls to do if she were acting conscientiously and in good faith. Her email to HR of 11 May 2021 [2253-4] is solid evidence as to what was going on in her mind at the time. There is no discernible reason for her not to have told the truth in it.

93. In that email, amongst other things, Ms Nicholls:

93.1 explained that when she initially agreed to the Claimant working 8.30 to 4.30 at Springfields, there was another member of staff who would be working the same hours alongside her, but that member of staff had since been recommended for deployment into a role where she would only be working up to 4 pm, leaving in the part of Springfields where the Claimant would be working only someone who worked to 4.30 pm two days a week. Her concern was that if the Claimant *“works 8.30-4.30 from Springfields she will be on this side of the building on her own – it really is very quiet”*. It was, we find, a genuine concern about lone working and it had an objective basis, even though she ended up reluctantly accepting HR’s view that it was misplaced;

93.2 because of this, Miss Fisher had given the Claimant a choice between doing her Band 6 secondment at Springfields working 8.30 to 4.30 two days a week and 8 to 4 three days a week or doing it at Lansdowne working 8.30 to 4.30 every day.

94. We do not accept that what Miss Fisher proposed on 7 May 2021 at Ms Nicholls’s instigation made *“it more difficult for the Claimant to carry out the secondment role, at the advertised site”*, as alleged. It is also not right to say that (again as alleged) the proposal to change sites involved a change of hours. In fact, the proposal was put forward so that the Claimant could work 8.30 to 4.30 as had initially been agreed.

95. The contents of Ms Nicholls’s email to HR of 11 May 2021 are consistent with what Miss Fisher wrote to the Claimant four days earlier, following their telephone conversation. They also confirm that it was Ms Nicholls and not Miss Fisher who was responsible for the Respondent’s change of position since 28 April 2021. The potential significance of this is that it makes the Claimant’s narrative around this – that these changes were punishment for her pregnancy – even less plausible than they would otherwise be. If, as the Claimant alleges, Ms Nicholls had wanted to punish her because she had accepted the secondment days before announcing her pregnancy, this would be an odd way to do that. There was never any suggestion that the option of working at Springfields, or the Band 6 secondment, was being taken away. And whether the Claimant was at Springfields or at Lansdowne, Ms Nicholls would be her line manager’s line manager – her line manager at Lansdowne being Ms Barnard and her line manager at Springfields being Miss Fisher. It would make no difference to Ms Nicholls whether the Claimant worked at Springfields or at Lansdowne.

96. We find that the reason Miss Fisher did what she did was because Ms Nicholls instructed her to; and the reason Ms Nicholls gave those instructions is set out in her email to HR of 11 May 2021. In short, it was nothing to do with the Claimant’s pregnancy and her complaints of pregnancy and maternity discrimination and of family leave detriment about allegation 1 fail.

Allegation 2: Did the Respondent in June/July 2021 – i. Pay the Claimant incorrectly at a Band 5 salary? ii. Fail to rectify the salary issue for two months despite the Claimant raising the issue?

97. This an allegation of pregnancy / maternity discrimination, family leave detriment, victimisation, and whistleblowing detriment.
98. We have largely dealt with this allegation already – see paragraphs 23 and 40 above.
99. It is true that the Claimant was paid incorrectly at a Band 5 salary. The reason was an error with the Respondent's system – ESR – from which payroll, dealt with by a third-party payroll services company, got its information. (There seems to be some confusion or use of loose language in relation to this – describing something as a payroll error when it was in fact an ESR problem that resulted in payroll paying the wrong amount.) It was nothing to do with any of the things the Claimant alleges it was. Not only is there no evidence whatsoever to support her allegations, all the available evidence points against them. Moreover, the notion that, if Miss Fisher and/or Ms Nicholls had wanted to 'get at' the Claimant, they would have chosen to do that by somehow ensuring that the Claimant was paid incorrectly in this way is highly implausible. The Claimant was suggesting they thought she would not make a fuss and that if she hadn't made a fuss she would have been paid at Band 5 level throughout her secondment. There is no good reason in evidence or as a matter of logic or good sense to conclude that either of them might have thought that.
100. It is not true that the Respondent failed "*to rectify the salary issue for two months despite the Claimant raising the issue*". Naturally, the salary issue was not addressed until the Claimant raised it, because the Claimant's managers had no idea she was not being paid properly before she did so. But once she raised it, on 25 June 2021, it was sorted out within a week or so, such that her pay was rectified in her July 2021 pay-packet, on 22 July 2021.
101. All complaints based on allegation 2 therefore fail.

Allegation 4: Did the Respondent in July 2021, by the Claimant's line manager, Joanne Fisher (JF), provide the Claimant with incorrect information regarding the Respondent's policy on carers leave / leave for emergencies⁷?

102. This is an allegation of pregnancy / maternity discrimination, family leave detriment, victimisation, and whistleblowing detriment.
103. As to the basic facts, see paragraph 41 above. The more detailed precise facts are a little harder to come by, but it seems that there were discussions in February 2021 between the Claimant, Ms Nicholls and Ms Barnard, evidenced by emails of 4 and 5 February 2021, about how much carers and other special leave the Claimant had taken over the previous 9 months or so. Carers leave came up

⁷ The "*leave for emergencies*" part of this is in the list of issues only in relation to whistleblowing and was not in practice pursued at this hearing as something separate from the allegation about carers leave.

again in conversation between the Claimant and Miss Fisher in or around early July 2021. Working out how much carers leave the Claimant had to take was complicated by the fact that during Covid employees' carers leave entitlements had been increased, but had been brought back down again to (from the Carers Policy), a "*maximum of up to 3 working days within any rolling 12 month period*".

104. Exactly when the Claimant and Miss Fisher had their conversation about carers leave is unclear, but there was an email from the Claimant to Miss Fisher on 15 July 2021 which begins, "*After having a conversation with you that day about not being able to [take] carers leave ...*", and we infer that the conversation was not long before, but not just days before that date. (She refers to "*that day*", not "*the other day*" or "*last week*"; she doesn't write "*earlier today*" either and the Claimant's evidence in her statement that the conversation was on 15 July 2021 seems to be wrong, although it is also possible that she meant to write "*today*" instead of "*that day*".) Miss Fisher must have said something to the effect – or something the Claimant understood to be to the effect – that she didn't think the Claimant had any carers leave left to take at that time. In her email of 15 July 2021, the Claimant expressed the view that she did in fact have carers leave "*from the last 12 months the first day I had taken any kind of leave was July 2020 ... So according to the policy I would be entitled to carers or other leave should I need it ... as it is from a renewal of a new 12 months, from the date you took any leave*".
105. The Claimant's email was just to Miss Fisher. In it the Claimant did not suggest she was going to ask anyone else about the issue; and Miss Fisher would have had no particular reason to think that the Claimant was any more likely to take her query to someone else in addition to Miss Fisher than she was when, recently, they had spoken about carers leave. We mention that because of what Miss Fisher did next, which was to forward the Claimant's query to HR. If the Claimant were right and Miss Fisher had deliberately misinformed her as to her rights under the carers policy when they spoke about it, which is what the Claimant is alleging, surely Miss Fisher would just have done the same again when the Claimant emailed her about it, i.e. emailed the Claimant back with something to the effect that the Claimant was wrong and that she wasn't due any carers leave. What Miss Fisher actually did was what we would have expected any sensible but inexperienced manager who was not certain of the position to do, namely seek advice from someone more knowledgeable than herself. The email she sent to HR reads as a genuine query from someone wanting help and who is just after the right answer. There is no implicit criticism of the Claimant in the email, nor does it 'fish' for a particular answer.
106. All that happened here was that there was genuine uncertainty as to the Claimant's carers leave entitlement, both the Claimant and Miss Fisher independently sought advice from HR about this, HR told them what they believed the position to be, and the Claimant and Miss Fisher then went forward on that basis.
107. Additionally, the Claimant suggested in her oral evidence that when she had the conversation with Miss Fisher about carers leave, she had had a specific need for it, and that what Miss Fisher said denied it to her. We do not accept that. Had that been the case the Claimant would almost certainly have made a separate

allegation and Tribunal complaint about it; and she would have made that separate allegation in her statement. We accept the Respondent's case, which is consistent with the Claimant's case on paper, and which is that the Claimant was asking a question about her entitlement for her future reference. In these circumstances, it is difficult to see where the detriment to the Claimant was in what occurred.

108. One slightly odd aspect of this complaint, which we did not appreciate until after we came to discuss and make our decision, is that the Respondent – or at least the individuals within HR who were advising the Claimant and Miss Fisher – probably misinterpreted the Carers Policy. What we are saying here is subject to any complications introduced during Covid, but, certainly, the Claimant's interpretation of the Carers Policy, as set out in her email of 15 July 2021 (see above) was incorrect.
109. If we assume everything was as set out in the written Carers Policy, without any Covid-related complications, given that the entitlement was to 3 days within a "*rolling 12 month period*", to decide whether someone had any carers leave left on any given date, what had to be done was to look back at the previous 12 months and see how many days carers leave they had taken in that period; and if she had taken 3 days in that period, she had none left, if she had taken 2 days in that period, she had 1 day left, and so on. For example, when looking at the Claimant's position on 15 July 2021, it was necessary to look at how much carer's leave she had taken from 16 July 2020 onwards; or if looking at her position on 31 December 2021, the relevant 12 month period was 1 January 2021 onwards.
110. According to the emails of 4 and 5 February 2021 mentioned earlier, the Claimant took carers leave on 18, 19, 20 and 21 January 2021. This meant: she was not be entitled to any carers leave until 19 January 2022, when she would have been entitled to 1 day; and she would not be back up to her full 3 days entitlement until 21 January 2022 (always assuming she had not taken any more Carers Leave since 21 January 2021). So if Miss Fisher did tell the Claimant, in or around early July 2021, that she had no carers leave left to take at that point in time, Miss Fisher was in all likelihood right.
111. In conclusion, the complaints made in relation to allegation 4 all fail because:
 - 111.1 we are not satisfied that Miss Fisher provided the Claimant with incorrect information about carers leave;
 - 111.2 if and in so far as Miss Fisher expressed a view about the Claimant's carers leave entitlement that turned out to be incorrect, we are not satisfied that Miss Fisher thought she was providing inaccurate information;
 - 111.3 the Claimant suffered no detriment by what passed between Miss Fisher and her, because any incorrect information was corrected before it had any practical impact on the Claimant;
 - 111.4 there is no substantial basis in the evidence for the Claimant's allegations as to the reasons why Miss Fisher said to her, in or around early July 2021, something that was (or that the Claimant understood to be) to the effect that

the Claimant had exhausted her entitlement to carers leave. The reason Miss Fisher said what she said was that that was what she truly thought the position was.

Allegation 5: Did the Respondent, in March 2022, by FN, fail to inform the Claimant of Band 6 opportunities, despite being informed by the Claimant that she was keen to progress her career at a feedback meeting?

Allegation 9: Did the Respondent, in April 2022, fail to inform the Claimant of a Band 6 role which had become advertised / available at Springfield Centre?⁸

112. These are allegations of pregnancy / maternity discrimination, family leave detriment, victimisation, and whistleblowing detriment.
113. Claimant's counsel's closing submissions confirm that both allegations relate to the Band 6 role the Claimant actually obtained in April / May 2022 and to the fact that Ms Nicholls did not ensure that the Claimant was told about it by management (although the Claimant found out about it by other means) – see paragraphs 44 and 45 above.
114. Ms Nicholls's substantially unchallenged evidence was that she asked for staff to be told about this vacancy and that she expected this to be done in the usual way, by email by their line managers. It was reasonable for Ms Nicholls to delegate this task to her subordinates, such as Miss Fisher, and to assume that they would carry it out. This is so irrespective of whether Ms Nicholls especially promised to tell the Claimant about future promotion opportunities when giving the Claimant feedback on her unsuccessful application for the Band 6 immunisation nurse roles, which we are not convinced she did.
115. The reason the Claimant was not told by management about the roles in March / April 2022 that she applied for was that Miss Fisher had removed the Claimant from the team email distribution list, as was her usual practice when staff were absent from work for long periods, e.g. on maternity or long-term sickness. It was not Miss Nicholls's fault and she did not know, nor could she reasonably have been expected to know, that Miss Fisher had not told the Claimant.
116. The complaints based on these allegations therefore fail.
117. Neither allegation is, on the face of it, made against Miss Fisher. It would be a curious allegation to be making against her, as behind it there logically has to be an allegation that whoever was responsible did not want the Claimant to apply for this promotion and get it – and Miss Fisher interviewed the Claimant and gave her the job (see paragraphs 26 to 29 above). In addition, we can see that Miss Fisher was not consciously excluding the Claimant from emails about job opportunities because she emailed the Claimant about the immunisation nurse roles on 17 February 2022. Miss Fisher explained – a coherent and plausible explanation – why the Claimant was included in the email distribution list of 17 February 2022 but not others: for other emails, she simply sent them to her team using her normal team email list and the Claimant had, as already mentioned, been removed from that list; for this email of 17 February 2022, for various reasons, she had to send

⁸ Different types of complaint have slightly different wording in the list of issues.

it to everyone under Ms Nicholls's management and so she had to use a different email distribution list. Her reason for removing the Claimant from her team email list, as she would anyone else who was away from work for an extended period, far from being pregnancy / maternity, family leave, victimisation / protected acts, or the Claimant's whistleblowing, was to avoid her being faced with a mountain of emails on her return to work.

118. The Claimant, through counsel, suggested she was pursuing complaints of pregnancy / maternity discrimination and family leave detriment partly on the basis of an argument that the Claimant was removed from the email distribution list because she had gone on maternity leave. We reject any such complaints. First, we don't think these are complaints (or the basis for complaints) that are before the Tribunal – the allegation before the Tribunal is that Ms Nicholls did or deliberately omitted to do something. Secondly, we think any complaint made on this basis confuses background circumstances without which (or 'but for' which) something would not have occurred and its true, effective or activating cause.⁹ The reason the Claimant was not sent Miss Fisher's email about this job was, as above, that, for good reasons that would have applied in relation to anyone who was expected to be off work for a long time, the Claimant had been removed from the email distribution list Miss Fisher used when sending it. For Miss Fisher not to have added the Claimant's email address to that email distribution list for the purposes of telling her team about job opportunities was no more than carelessness on her part.
119. Moreover, and in any event, Miss Fisher's oversight caused no detriment to the Claimant as the Claimant heard about the job anyway, applied for it, and got it. The unreasonable and unjustified belief the Claimant retrospectively had that she was being discriminated against and victimised (and so on) by Ms Nicholls is not a detriment as a matter of law.

Allegation 6: Did the Respondent give two of the Claimant's colleagues Band 6 roles without providing the same opportunity to the Claimant, namely by failing to provide her with full information about the roles, encourage her to apply for the roles and provide interview support from management?

120. This is an allegation of pregnancy / maternity discrimination, family leave detriment, victimisation, and whistleblowing detriment. It relates to immunisation nurse roles that the Claimant unsuccessfully applied for – see paragraph 44 above. There are two parts to it: Miss Fisher, as above, leaving the Claimant off the distribution list of two emails; Ms Nicholls allegedly providing support to the two successful candidates that she did not provide to the Claimant.
121. We have already explained the reasons why the Claimant was not sent the emails and that they were not the reasons the Claimant alleges they were: see paragraphs 117 and 118 above. These two emails are 'red herrings' anyway – neither of them provided specific information about the particular roles that were

⁹ Examples of discrimination cases where this distinction between what used to be called a "causa causans" and a "causa sine qua non" has been drawn are: **Seide v Gillette Industries Ltd** [1980] IRLR 427, EAT; **Warby v Wunda Group plc** EAT 0434/11 (27 January 2012).

later advertised. We do not have the advertisement, but have no reason to doubt that access to the “*full information about the roles*” was provided with it.

122. There is no evidence at all that Ms Nicholls (or anyone else) provided encouragement to others that was not equally available to the Claimant had she asked for it; nor any evidence to undermine Ms Nicholls’s evidence that she was named as the point of contact and information in the advertisement, that the two successful candidates contacted her (rather than the other way around) as that point of contact and information, and that she provided some additional information to them that she would have provided in exactly the same way had the Claimant contacted her. We also note that the Claimant accepts she was provided with some support for her application from management – from Lisa Barnard. Ms Barnard appears not to have provided anyone else with support.

123. In summary:

123.1 the Claimant suffered no detriment or disadvantage in connection with these Band 6 roles by not being sent the emails;

123.2 the Claimant was not treated detrimentally or in any relevant way differently, as alleged;

123.3 the opportunity the two successful candidates took up to get further information about the role from Ms Nicholls was equally open to the Claimant.

124. Finally in relation to this allegation, as with all others against Ms Nicholls: there is no proper basis in the evidence for the Claimant’s allegation that Ms Nicholls ‘had it in’ for her in and around March 2022, still less for the allegation that if she did have something against the Claimant, it was because of pregnancy / maternity, family leave, victimisation / protected acts, or the Claimant’s whistleblowing.

125. The complaints based on allegation 6 therefore fail.

Allegation 7: Did the Respondent, on 31 May 2022, require the Claimant to return to a Band 5 role resulting in a reduction in pay, including the Claimant’s holiday pay accrued for the period that she had been on maternity leave?

Allegation 8: In June and July 2022, did the Respondent, by FN and SS¹⁰, delay its contractual start date, causing the Claimant to revert to a Band 5 position?

126. These are allegations of pregnancy / maternity discrimination, family leave detriment, victimisation, and whistleblowing detriment. They relate to the fact that the Claimant’s Band 6 secondment role ended on 31 May 2022 and that she did not start her new substantive Band 6 role for several months after that. See paragraphs 46 to 48 above.

¹⁰ “by FN and SS” appears in the list of issues in relation to victimisation only, although the Claimant’s case seems to be that Ms Nicholls was responsible for this. “SS” is presumably a typographical error as Mrs Shakeel was, to the best of our knowledge, not involved at this stage; what “SS” is a typographical error for is not known.

127. The complaints based on these allegations fail. That is principally because the answer to the questions posed in the allegations is: no. No one in any relevant sense 'required' the Claimant to return to a Band 5 role on 31 May 2022 – it was what was always going to happen to what was always a 12-month role. Equally, no one 'delayed' the contractual start date of the new Band 6 role, and certainly not so as to cause "*the Claimant to revert to a Band 5 position*". That didn't even seem to be the case pursued by the Claimant during the hearing – through counsel, the suggestion seemed to be that if the Claimant had not been on maternity leave then she would probably have started in the new role quicker, perhaps in or around mid-June 2022, meaning she would only have reverted to Band 5 for 2 to 3 weeks.
128. We agree it is likely that had the Claimant not been on maternity leave, she probably would have started the new Band 6 role sooner than she did – but that is because had she not been on maternity leave she would have wanted and expected and asked to do so. If that is the true basis of the Claimant's case, then it is another instance of the Claimant confusing 'but for' causation with legal causation.
129. No one, including the Claimant herself, ever at the time suggested she might take up her new role before she completed her maternity leave and took the extra annual leave that she had accrued during her maternity leave. If she had asked to start the role during her maternity leave and had that request refused, that would be a solid potential basis for making a maternity discrimination claim, but that is not what happened. The plan – the Claimant's as much as everyone else's – was that she would finish her maternity leave (on 31 August 2022), then have a period of annual leave, then start her new role. Difficulties in calculating the Claimant's annual leave entitlement were, contrary to counsel's submissions, relevant to her start date. They were relevant because she was, as just mentioned, not going to start her new role until after taking annual leave; so the start date was dependent on how much annual leave she had.
130. Although none of the types of claim the Claimant is making about these allegations requires a comparator as such, it is instructive to ask what would have happened to someone else in a roughly comparable position. If an employee who had been successful at interview for a new and better role had, for whatever reason, accrued a great deal of annual leave that they wanted to take before they started working in that new role, 9 employers out of 10 – possibly 99 out of 100 – would expect them to take it before their promotion took effect. The 'reason for the treatment' in the Claimant's case was not her being, or having been, on maternity leave (or whistleblowing etc.). Instead, it was the tacit agreement between her and the Respondent that she would finish maternity leave and take accrued annual leave before assuming her substantive Band 6 role.
131. Our last point in relation to these allegations is that in so far as it is being suggested that there was a deliberate and calculated ploy on the part of Ms Nicholls to maximise the amount of time the Claimant spent being paid at the Band 5 rate and minimise her time being paid at the Band 6 rate, or anything along those lines, that suggestion is undermined by the fact that Ms Nicholls directly suggested to the Claimant a start date in the new role of 1 September 2022, in an email of 26 July 2022.

132. All complaints based on allegations 7 and 9 therefore fail.

Allegation 10: Did the Respondent, on 15 August 2022, by FN: i. Inform the Claimant that her starting salary would be the lowest level of the Band notwithstanding her previous Band 6 experience?; ii. Require the Claimant to complete a salary variation form which stated that it was for “non-NHS employees” despite her being a long-standing employee of the NHS?

Unnumbered allegation – “allegation 10A”: Did the Respondent, on 30th September 2022, by JF, ask the Claimant to complete a salary variation form even though she had completed and actioned FN’s request in August 2022?

133. Allegation 10 is an allegation of pregnancy / maternity discrimination, family leave detriment, victimisation, and whistleblowing detriment. The unnumbered allegation, which we have labelled 10A, is an allegation of pregnancy / maternity discrimination only.

134. The basic facts that are relevant to these allegations are set out in paragraphs 48 and 49 above.

135. The Claimant’s offer letter of 6 August 2022 had a starting salary set out in it that was at the bottom of the Band 6 scale. It was sent by someone from the recruitment team, not by Ms Nicholls.

136. The only evidence we have is that: neither Ms Nicholls nor any of the Claimant’s other managers was involved in setting salary levels; everyone moving up from the grade below, even if they had previously done a secondment role in the band they were moving up to, had by default a salary at the bottom of the band. There is no evidence of anyone else in a comparable situation ever being treated differently from the way the Claimant was treated.

137. On 15 August 2022, in response to a query from the Claimant, Ms Nicholls wrote to her confirming that her starting salary would be at the bottom of the band; but also explaining to her what she had to do if she wanted a higher salary, namely to complete and submit a salary variation form.

138. The salary variation form that was provided was marked for non-NHS employees because it was for non-NHS employees. There was no equivalent form for NHS employees like the Claimant. This was because there was officially no way for NHS employees to start anywhere other than the bottom of a salary band when moving up from the band below. However, a practice had grown up within the Respondent to stretch the rules so that NHS employees could, like non-NHS employees, apply to start higher up the band, by using the form for non-NHS employees. By providing the Claimant with the non-NHS form, Ms Nicholls was helping her in the only way she could. The other option would have been not to have provided her with any form at all and for the Claimant to have been unable to apply to move up the band. Giving her the form was entirely beneficial and not at all detrimental to the Claimant.

139. No one was suggesting the Claimant was a non-NHS employee. It would have been a ridiculous suggestion to make in relation to someone continuously employed by the Respondent for nearly four years at that point; if the Claimant

truly thought that, she was not being rational. It is puzzling that, if she was concerned, the Claimant did not simply email Ms Nicholls back with (something like), “Is this the right form?”

140. The notion that Ms Nicholls subjected the Claimant to a detriment by sending her the form, let alone that she did so for any of the reasons the Claimant is alleging, is almost nonsensical. Manifestly, she sent the Claimant the form because she wanted to help the Claimant; and her assistance was successful, in that the Claimant’s Band 6 starting salary was increased.
141. As to allegation 10A, Miss Fisher sent a second copy of the form in September 2022 because: she had been away on holiday and was not aware that the Claimant had already been sent one, had completed it, and had returned it; and, like Ms Nicholls, she wanted to help the Claimant to apply for a higher salary. We are again puzzled as to why the Claimant, if concerned at the time, did not send an email – in this instance an email saying, “Thank you for sending me this form, but I’ve already filled it in and sent it off. Do I need to send another one?” Once again, there was, objectively, no detrimental treatment; and the reason for the (non-detrimental) treatment was not as alleged by the Claimant.
142. For the above reasons, the complaints based on these two allegations fail.

Allegation 11: Did the Respondent, in late September 2022, by JF, incorrectly inform the Claimant that she had taken too much annual leave?

143. This is an allegation of direct sex discrimination, victimisation, and whistleblowing detriment.
144. As we understand it, all allegations of sex discrimination are effectively maternity discrimination claims, made on the basis that what happened was because the Claimant had had a baby and taken maternity leave – which as a matter of law would be because of the protected characteristic of sex under the EQA, as only women¹¹ can fall pregnant, give birth and take maternity leave.
145. This is one of a number of complaints in relation to which the Claimant’s case changed during the course of the hearing. On the face of it, it is about a conversation between the Claimant and Miss Fisher on 29 September 2022; and, in her oral evidence, the Claimant confirmed that it was indeed about that. However, in submissions, the suggestion being made on the Claimant’s behalf was that they had a conversation in August 2022 in which misinformation was provided. If that is the case being put forward, we do not accept it. Even in her witness statement, the Claimant says, ambiguously, “*It was during this conversation [in August 2022] that I was informed about my annual leave to be taken prior [to] return to work from maternity*”. If the Claimant had been misinformed about her annual leave entitlement by Miss Fisher as part of that alleged conversation in August 2022, not only would the Claimant have said so in terms, there would undoubtedly have been freestanding complaints about this.

¹¹ Those referred to as “*biological women*” in **For Women Scotland Ltd v The Scottish Ministers** [2025] UKSC 16.

146. We can work out what actually happened from the email exchange between the Claimant and HR of 29 September 2022 [608-609 & 617-618] and from emails between Mrs Hewitt and the Claimant of 30 September 2022 (in particular [651-653]).

146.1 On 28 September 2022, the Claimant discussed her annual leave entitlement with Ms Owusu and during the morning of the following day, the Claimant emailed Ms Owusu information with a view to Ms Owusu calculating what it was. The Claimant's email does not suggest any relevant prior conversation with Miss Fisher.

146.2 Ms Owusu calculated the Claimant's annual leave entitlement. She got it wrong and suggested the Claimant had taken far too much annual leave, when in fact she had taken only 2 hours extra. She emailed the Claimant and (amongst others) Miss Fisher and Mrs Hewitt about this at lunchtime on 29 September 2022. Her email did not suggest she was unsure about the calculation she had performed. However, at the same time as sending it, she also emailed Mrs Hewitt, forwarding the Claimant's email and stating, *"Please, can I ring you regarding the below email. I need help with complex annual leave calculation for [the Claimant]"*;

146.3 Miss Fisher then, on the same day, spoke to the Claimant about this, repeating what Ms Owusu's email to the Claimant said. It is therefore factually correct to say that in late September 2022 Miss Fisher incorrectly informed the Claimant that she had taken too much annual leave. But all Miss Fisher was doing was in good faith repeating misinformation provided by Ms Owusu (also in good faith; there is no substantial basis in the evidence to doubt this, and no complaint is made against Ms Owusu);

146.4 The Claimant then emailed Ms Owusu and, separately, others complained about what Ms Owusu had told her (and Miss Fisher had repeated).

146.5 Mrs Hewitt looked into it and emailed the Claimant on 30 September 2022 with the correct information.

147. The complaints of discrimination, victimisation and whistleblowing detriment are therefore unfounded. Like the great majority of the Claimant's complaints, they fall into the category (see paragraphs 30 to 32 above) of complaints where it is highly implausible that even if Miss Fisher had something against the Claimant because she is a woman, had done a protected act and/or had blown the whistle – which she didn't – Miss Fisher would choose this as a way of getting at her.

148. Further, we explicitly reject the following allegations made or implicit in claimant's counsel's closing submissions: that Miss Fisher had done her own calculation of the Claimant's annual leave entitlement; that this was a straightforward calculation that it was reasonable to expect Miss Fisher to do for herself. In fact, calculating the Claimant's annual leave entitlement was difficult and complicated, because of her very particular circumstances. It would be a daunting task for us. We accept the answer Miss Fisher gave during cross-examination when asked about it, the gist of which was that she would never have attempted to do the calculation herself.

149. It is true that Miss Fisher sent an email to Ms Nicholls, copying in Ms Owusu, during the morning of 29 September 2021 [620] which included this: “NM [the Claimant] *had taken all owed annual leave pre maternity leave up until April 2022. Therefore her annual leave allowance due is from April 22 until now.*” However:

149.1 Miss Fisher never attempted to work out the Claimant’s entitlement;

149.2 Miss Owusu did not take that information into account when doing her calculations of the Claimant’s entitlement, in that she seemingly ignored or overlooked the period 1 April to 31 May 2022 and was only looking at the period from 1 June 2022 onwards (see [618]). Miss Fisher herself highlighted this by email to Miss Owusu during the afternoon of 29 September 2022 [610];

149.3 the information – the fact that the Claimant “*had taken all owed annual leave ... up until*” 31 March 2022 – was apparently correct, in that it was repeated by Mrs Hewitt in her email of 30 September 2022 [652], mentioned above, in which she reassured the Claimant that she in fact had plenty of annual leave left to take in the holiday year to 31 March 2023;

149.4 Miss Fisher was not cross-examined about the source of that information, but it can only realistically have come from the Respondent’s records – it is not the kind of information Miss Fisher would keep in her head, still less make up.

150. If and to the extent the Claimant is arguing that the sex discrimination complaint should succeed because there probably wouldn’t have been an issue with annual leave had the Claimant not been on maternity leave, we reject that argument on the same basis as we reject similar arguments made in relation to other allegations: that ‘but for’ causation is not legal causation (see paragraph 118 above).

151. The complaints based on this allegation therefore all fail.

Allegation 12: Did the Respondent do the following in September to October 2022: a. Nonpayment of wage and only paying the Claimant 60% after she had raised the issue? b. Incorrectly pay the Claimant for October on the basis that she was employed on a term-time only contract when she was in fact employed on a whole year contract?

152. Allegation 12 is three allegations: non-payment of wage; payment of 60 percent of wage; paying the Claimant as if she were on a term time contract. They are pursued as complaints of direct sex discrimination, victimisation, and whistleblowing detriment.

153. What happened is not materially in dispute: see paragraph 50 above. Allegation 12 correct as a matter of fact, albeit what is missing from the bare allegation is that everything was quickly corrected and remedied. The question is: why did it happen?

154. We start by:

154.1 first, rejecting any complaint made on the basis of mere 'but for' causation – see paragraph 150 above;

154.2 secondly, noting that this is yet another allegation / set of allegations where the notion that even if someone had something against the Claimant, they would chose this as a way of getting at her is implausible (see paragraph 32 above).

155. So far as concerns failing to pay the Claimant for September 2022, the Respondent's internal communications show the truth of it. To quote from an email from Mrs Hewitt of 30 September 2022: "*Unfortunately, the line manager did not end her maternity leave in ESR [a computer system] at the time, resulting in no pay for Sept instead of annual leave*". (As an aside, it is clear from this email and other emails dating from late 2022 that Mrs Hewitt had nothing against, and much sympathy for, the Claimant at the time.)

156. It is being suggested on the Claimant's behalf that the Respondent has 'changed its story' in relation to this, in that the Respondent is now explicitly saying that the individual who should have recorded that the Claimant's maternity leave had ended on ESR, but failed to do so, was Ms Barnard and not Miss Fisher. However, that is not a change of story – it simply introduces into the equation the question of who "*the line manager*" was at the time; and that was not a completely straightforward question. We think the Respondent is right to say that at the time the Claimant's maternity leave ended, her line manager was Ms Barnard. This was because the Claimant's secondment ended on 31 May 2022, meaning she reverted to being at Band 5, under Ms Barnard's line management, from 1 June 2022 onwards, such that Ms Barnard was her line manager on 31 August 2022 when her maternity leave ended. The Claimant did not move back to being under Miss Fisher's line management until she started her new substantive Band 6 role in October 2022.

157. What happened, then, was that the Claimant 'fell between two stools'. There was no evidence from Ms Barnard, and the Claimant's case has never been that Ms Barnard inflicted detriments on her, but, in all likelihood, Ms Barnard simply overlooked the fact that the Claimant had technically become her line management responsibility, because she had not been the Claimant's line manager in practical terms for more than a year, and Ms Barnard was aware that when the Claimant came back to work she would be under Miss Fisher's line management.

158. There are broadly two possibilities:

158.1 that there was an unfortunate genuine oversight – the kind of thing that happens all the time in large bureaucratic organisations like the Respondent as a result of honest human error;

158.2 that Miss Fisher, in circumstances where she had interviewed the Claimant and was jointly responsible for the Claimant being offered the new job that was to start in October 2022, out of prejudice and/or caprice, deliberately

acted (and/or somehow prevented Ms Barnard from acting) so as to ensure that the Claimant would not be paid at the end of September 2022, in circumstances where it was a racing certainty that the Claimant would notice, that she would complain about it, and that it would be sorted out quickly – as indeed it was.

159. The second possibility – that being put forward by the Claimant – is highly improbable; and is, we find, not what occurred.
160. The second part of allegation 12 concerns the Claimant, in early October 2022, being paid 60 percent of her gross wage for September 2022 when the Respondent sought to address the non-payment of wages in September. As to this, there are contemporaneous emails, the authenticity of which has not been challenged, which show that as soon as the Respondent was told about the original mistake, the Respondent, though Mrs Hewitt, instructed the Respondent's payroll contractor to make "*full and proper pay for the whole of September*" [680]; and that payroll then unilaterally dealt with it as if it were a salary advance, by paying 60 percent of gross instead of paying the correct net amount after deductions of tax and national insurance. (We should explain that salary advances were paid this way for ease and speed – paying 60 percent of gross would usually ensure that the employee ended up with roughly, but slightly less than, their correct net pay, and any extra due to them once tax and national insurance was accounted for was paid in their next wage packet.) It was a payroll error, quickly corrected, which resulted in the Claimant getting slightly less pay in early October 2022 than had been due to her in late September 2022. It had nothing to do with the protected characteristic of sex, with pregnancy or maternity, or with any protected act or protected disclosure.
161. As to the third and final part of allegation 12, what happened is also reasonably clear from contemporaneous emails. The Claimant was for October 2022 paid as if she was working 25.97 hours on average per week instead of 30 hours per week; this was because she had not been moved from a term-time-only contract to an all year around contract in the computer records. This discrepancy was corrected in her next wage packet. The Claimant's suggestions that someone deliberately wanted her to get paid slightly less than usual one month and slightly more the following month, or that someone thought the Claimant would not notice the slightly lower payment, or would not complain about it, is unfounded. The explanation provided by Mrs Hewitt in her email of 3 November 2022 is much more plausible:

When your new assignment was entered for your Band 6 role, it was correctly entered as 30 hours per week. However, your working pattern was unfortunately not changed from term-time-only due to an oversight on data inputting, which resulted in the system thinking that you still worked 39 weeks per year, so divided your 30 hours per week down to 25.97 average.

This had already been corrected on 20th October, but the correction had missed the payroll cut off date for October.

The correction was [inputted] on 20th October but was backdated to be effective from 3rd October 2022 so your next pay will pick up the difference and pay any shortfall.

162. It is unclear who the Claimant says was responsible, but if it is Miss Fisher, we note that Miss Fisher sent an email on 29 September 2022 to the individual responsible for inputting the correct data, called TJ, in which she instructed them to “*arrange [the Claimant’s] hire*”, i.e. to put the Claimant’s details into ESR. Evidently, TJ just made a mistake. In addition, we repeat the point already made that we can see no reason consistent with normal human nature and behaviour why Miss Fisher would recruit Claimant into this role and then set about sabotaging her in that role, which is what the Claimant is alleging.
163. In short, this was another instance of innocent human error – an error by payroll and not by anyone the Claimant has directly accused. There is no proper basis in the evidence for us to find that anyone acted for the reasons alleged. These complaints fail.

Did the Respondent do the following:

Between 5 and 13 October 2022, by JF, state that “she knew what she was getting in for with the Band 6 position” and discourage the Claimant from making a flexible working request to reduce her hours as it would be dealt with by JF and FN? (First allegation 13¹²)

Between 5 and 13 October 2022, fail to show sympathy or support to the Claimant given the stress she was under, specifically JF’s response to the Claimant not wishing to administer vaccinations without completing mandatory refresher training following her maternity leave? (Allegation 14)

On 13 October 2022, by JF, fail to show the Claimant sympathy by informing the Claimant that she should not have been granted carer’s leave between 9 and 13 October to care for her disabled son? (Allegation 15)

164. The facts relevant to these allegations are outlined in paragraphs 52 to 54 above.¹³ They are allegations of disability-related harassment, victimisation, and whistleblowing detriment. The first allegation 13 is additionally pursued as complaints of direct sex discrimination, direct disability discrimination, and flexible working request detriment.
165. We note that in her witness evidence the Claimant made a number of other allegations about the events of early October 2022. They are not part of her claim and we think that if anything significant and important had occurred they would have formed part of it.

Disability claims - overview

166. As these are the first disability discrimination and harassment complaints we have dealt with in these Reasons, this is a convenient point to make some general comments about that part of the claim. A fair summary of our comments would be: all disability discrimination and harassment complaints are misconceived. This is because the fact that the Claimant’s son had and has conditions which

¹² There are two allegations labelled “*Allegation 13*” in the list of issues. The second – an alleged PCP relied on for an indirect disability discrimination claim – will be considered separately.

¹³ Some relevant events actually occurred on 14 October 2022 rather than the 13th. This does not affect the claim in any way.

constitute disabilities under the EQA, although supremely important to the Claimant herself (and understandably so) and at the forefront of her mind, was irrelevant to the Respondent's decision-making and is legally irrelevant to these proceedings as a whole.

167. We would say the same thing even if it were the case that at any relevant time anyone at the Respondent knew the Claimant's son was a disabled person; and they did not. Much time was spent during this hearing discussing what, e.g., Miss Fisher knew of the conditions he had. This included discussions about what was apparently identified during antenatal checks (and allegedly mentioned to the Claimant's managers), at a time when her son was not in law a person, let alone a person with one or more disabilities.
168. Putting all that evidence at its reasonable highest, the most it shows is that:
- 168.1 relevant individuals potentially knew the Claimant's son was poorly and at times very poorly and needing hospital treatment, with health conditions that the Claimant first gave details of in her flexible working application of January / February 2023 (albeit some individuals knew he had a heart condition and/or respiratory problems from around September 2022);
- 168.2 if those individuals had thought about it, gathered some additional evidence and taken advice (because the question of whether someone is or is not disabled under the EQA is not a question that a manager who is not also an HR expert or an employment lawyer can reasonably be expected to answer without advice; and whoever was advising would reasonably require more evidence than just a second-hand account of what the Claimant said) they would likely have been advised that the Claimant's son was disabled.
169. It is obvious to us that no relevant manager did think about whether the Claimant's son was disabled. Why, credibly, might they have done so, absent the Claimant explicitly saying him being disabled was relevant to her employment? And on what basis is it said they ought to have done so? Outside of employment tribunals and employment lawyers' offices, a manager, faced with a subordinate who mentions her child having health conditions during discussions about her work does not, and cannot reasonably be expected to, consider whether each part of the definition of disability in the EQA is satisfied in relation to that child – they simply think: this person has a sick child and that may affect her work; (potentially) I have sympathy for this person.
170. What the complaints of disability discrimination and harassment are really about is what could be termed, broadly, 'childcare issues' and in particular the Claimant wanting to be able to take time off at very short notice or without notice to look after her son. From the Respondent's point of view, it made no difference whether the childcare issues and the need to take time off arose from her son being unwell because of his disabilities, or unwell because of one or more conditions that did not amount to disabilities, or for some other reason. We are not sure that even the Claimant genuinely believes that the Respondent acted as it did because of ill-feeling towards her in any way connected with her son being disabled, or that

the Respondent would have acted differently if her son was unwell with conditions that weren't disabilities, but if she does it is not a rational belief.

171. The Claimant's case that particular actions were "*because of*" or "*related to*" disability is possibly based on an argument along these lines: the Respondent's actions were connected with the Claimant's need to take time off; she needed to take time off because her son was unwell; he was unwell because of his disabilities. If that is the argument, we reject it. The connection between the Claimant's son's disabilities and the Respondent's alleged actions is too distant and tenuous for them to be related to disability, let alone because of disability.
172. The reality is that (as Employment Judge Camp noted in the written record of the case management preliminary hearing of October 2023) the Claimant wants to make a type of claim that does not exist in English law: a claim that the Respondent failed to make adjustments to the Claimant's work to accommodate her son's disabilities. We will discuss this further in relation to the indirect disability discrimination claim.

First allegation 13

173. Moving back to the allegations themselves, we start with the first allegation 13. In the absence of a recording or contemporaneous near verbatim note, we are not satisfied that the alleged phrase ("*she knew what she was getting in for with the Band 6 position*") was said, particularly not on the basis of just the Claimant's say-so, for reasons given in paragraphs 17 to 24 above. The complaints therefore fail on the facts.
174. However, what is clear, not least from Miss Fisher's own evidence and from the signed note of the one-to-one of 13 October 2022, is that the Claimant was discouraged from making a flexible working request. She was discouraged by being told, albeit probably not in so many words, that although she was entitled to make a flexible working application, it was unlikely it would be granted because (to quote from the signed note): "*we need senior nurse cover for the full-time position as stated when she accepted the position*".
175. Why was she told this? The answer is: because that was the reality; that was how Miss Fisher genuinely saw the needs of the service. There is no obligation on an employer to grant a flexible working application and, although the Claimant did not and does not share this view, it was a reasonable view for Miss Fisher to take that, believing that she and Ms Nicholls were unlikely to grant a request by the Claimant to reduce her hours, it was better to be 'up front' with the Claimant about this than to lull her into a false sense of security by encouraging her to make a flexible working request that would not be granted.
176. Given that this was the 'reason for the treatment', even if the Claimant had made a more general claim about what was said at the meeting, rather than a claim specifically about an alleged comment that was not in fact said, the only one of her complaints that would be remotely arguable would be the complaint of flexible working request detriment.

177. Looking at such a complaint under ERA section 47E, we would have to consider, first, whether the Claimant made or proposed to make a flexible working application under ERA section 80F. It is not in dispute that she proposed to make one in late October 2022 (although she did not do so). Secondly, we would have to consider whether the Claimant was subjected to any detriment. On balance, we think she was. Although it was reasonable for Miss Fisher to communicate to the Claimant what we have found she did communicate (in paragraph 174 above), the Claimant evidently felt that what was said was to her detriment and, in her position, it was reasonable for her to feel like that.
178. The third thing we would have to consider in relation to such a complaint under ERA section 47E is whether the Respondent subjected the Claimant to this detriment “*on the ground that*” the Claimant was proposing to make a flexible working application. This is where the complaint would fail. Although Miss Fisher would not have said what she said if the Claimant were not proposing to make a flexible working request, that proposal was not the reason for the treatment. If saying, in effect, “we are not going to grant the request if you make it” is a detriment done on the ground that the Claimant was proposing to make a flexible working request, then every time someone made a request and it was refused, that would be a detriment done on that ground too. This is another example of the Tribunal having to distinguish between ‘but for’ causation and causation as a matter of law, as for some of the pregnancy / maternity discrimination complaints (see paragraph 118 above).
179. Finally in relation to this allegation, we note Claimant’s counsel’s written submission that this, “*was an act of direct sex discrimination and direct disability discrimination because the Claimant was a woman with caring responsibilities for her disabled son*”. We have already, in paragraphs 170 and 171 above, explained why a direct disability discrimination complaint does not get off the ground. As to direct sex discrimination, we are not sure what the significance of the Claimant being a woman is said to be in this context, but there is no good reason in the evidence to think that an appropriate comparator – a man with similar caring responsibilities – would have been treated any differently. This means there was no less favourable treatment, because of the protected characteristic of sex or otherwise.

Allegation 14

180. This allegation concerns an alleged conversation between the Claimant and Miss Fisher that is detailed in paragraph 67 of the Claimant’s statement. We have difficulties with this complaint because of its vagueness.
181. What is written in the statement is:

Instead of taking part in the vaccination programme, my colleague advised me to stay in a quiet area and to complete my training. On my manager’s return, Jo [Fisher] questioned why I had not gone to assist with the bigger session. She was again very unsupportive, the tone and language she used was in a manner of undermining my role as a nurse due to my responsibilities as a mother/carer. She said that she had already eased me into coming back, but as of Monday I would be required to take part in

bigger sessions. I tried to convey to Jo how I was struggling and the stress I was feeling under but there was no empathy from her nor any genuine concern, rather a look of frustration and the attitude that I should just get on with it.

182. Nothing specific in terms of what was allegedly said was put to Miss Fisher during cross-examination. The Claimant has her perspective on how Miss Fisher was towards her. But that perspective is inevitably affected by the Claimant's heightened emotional state at the time and by the fact that by October 2022 she had convinced herself that Miss Fisher was against her. We are not satisfied that objectively Miss Fisher's behaviour towards the Claimant was unreasonable or oppressive or otherwise detrimental. This claim therefore fails on the facts. If Miss Fisher did subject the Claimant to a detriment in this conversation, this was the result of dissatisfaction with the Claimant choosing not to undertake the work Miss Fisher had expected her to. It was not for the reasons the Claimant is alleging.

Allegation 15

183. This is an allegation about Miss Fisher allegedly telling the Claimant on 13 October 2022 that carers leave should not have been granted.
184. In a contemporaneous email [693], the Claimant told Mrs Aslam that: "*when my son [fell] ill on 9th October 2022, and i wasn't able to come into work on Monday 10th October 2022, i was told that i could take carers leave, i was more [than] happy to use annual leave or even work from home in the evening. When i returned to work today, i was told that the carers leave given to me on Monday, shouldn't have been given because i don't have any allowances, but it was agreed by the line manager and Band 8, that they were 'helping me out'.*"
185. On the basis of this email, we are satisfied that something along the lines of what is alleged was said. However, in the context, it does not demonstrate a failure to show sympathy. Instead, it appears to us to be someone – presumably Miss Fisher (although this is far from clear) – highlighting to the Claimant that even though the Claimant might not technically have been entitled to carer's leave, she was given it anyway, to help her out. If the Claimant thought this was a detrimental remark, we do not think it was reasonable for her to do so. In any event, the reason it was said was evidently that it was relevant to a discussion about the Claimant's absence from work on 10 and 11 October 2022. There is no substantial basis in the evidence that we can discern for us to find that the remark was made to get at the Claimant, or that it was something to do with disability, any protected act, or any protected disclosure.

Second allegation 13: Did the Respondent apply the Provision, Criterion or Practice (PCP) that Band 6 roles were not suitable for employees who required flexibility with their working hours or would it have done so?

186. This is an indirect disability discrimination complaint.
187. The complaint fails on the facts, in that the Respondent had no such PCP. The supposed evidential basis for the submission (paragraph 230 of Claimant's counsel's submissions), "*that it is more likely than not that the Respondent*

applied a PCP that Band 6 roles were not suitable for employees who required flexibility with their working hours” is obscure to us; indeed, what, specifically, is meant by “*employees who required flexibility with their working hours*” is equally so. As we shall explain later in these Reasons, what the Claimant actually wanted, and what the Respondent would have been unwilling to agree to (although she never asked for it in terms), was not something that most people would think of as “*flexibility with ... working hours*”. Instead, it was to be completely free to take days off work without notice, whenever and as often as she felt she needed to, indefinitely into the future.

188. In any event, this complaint is inarguable as a matter of law. EQA section 19(1) is: “*A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.*” “B” is the individual making the claim, in this case the Claimant. The wording means the “*relevant protected characteristic*” must be “*of B’s*”; the wording is not “*of B’s or of someone closely associated with B*”.
189. Conventionally, then, only disabled claimants could bring indirect disability discrimination claims. However, the European Court’s decision in **CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia** C-83/14, [2015] IRLR 746 (“**CHEZ**”) created a limited exception to that, which ultimately led to an amendment to the EQA to create a new section 19A of the EQA. The Claimant cannot rely on the new section because it did not come into force until 1 January 2024, but what she could in principle do is to require the Tribunal to read EQA section 19 with whatever insertions or deletions would be necessary to make it consistent with **CHEZ**, in accordance with the so-called **Marleasing** principle.
190. Unfortunately from the Claimant’s point of view, **CHEZ** does not help her in practice.
191. **CHEZ** is to the effect that there will be indirect discrimination in the following scenario¹⁴: there is a PCP which is applied to people with a relevant protected characteristic and puts them at a particular disadvantage when compared with people without it; it is also applied to an individual who does not have the relevant protected characteristic but who is put to the same particular disadvantage as those with the relevant protected characteristic. In that scenario the Tribunal will uphold an indirect discrimination claim notwithstanding the wording of EQA section 19: see **British Airways PLC v Rollett & Ors** [2024] EAT 131.
192. That is not the scenario here. The Claimant’s case is not that people with her son’s disabilities are put to particular disadvantage by the alleged PCP (and there is anyway no evidence to support such a case), let alone put to the particular disadvantage that she alleges she was put to in the list of issues, namely that: “*employees associated with a disabled person (in the Claimant’s case a son she has caring responsibilities for) as a whole are at a disadvantage as they are more likely to require flexibility in their hours*”.

¹⁴ Subject to whether any otherwise discriminatory PCP is justified as a proportionate means of achieving a legitimate aim.

193. In conclusion, the indirect disability discrimination would fail even if it were factually based, because it is made as if being associated with / the carer of a disabled person were a protected characteristic under the EQA and it is not one.

Allegation 16: Did the Respondent, between November 2022 and January 2023, fail to provide HMRC with a letter detailing the errors in the Claimant's salary, despite repeated requests, to enable the Claimant's universal credit to be corrected?

194. Complaints of victimisation and whistleblowing detriment are made about this allegation. The basic underlying facts are set out in paragraph 50 above.
195. There were, in fact, two separate issues here, one of which was dealt with by the Respondent and the other of which was not.
196. The first issue – the one which was sorted out – was that payroll needed to provide information to HMRC. This had to be done and was done electronically. The Claimant requested this for the first time in an email of 7 December 2022. Prior to that it was unclear what she wanted.
197. The second issue was a benefits issue with DWP. Mrs Hewitt suggested on 9 December 2022 that she could provide a letter to them – this was not something that the Claimant had asked for. The Claimant took up Mrs Hewitt's suggestion on 12 December 2022.
198. Given this context, the Claimant's complaint makes little sense. We do not accept that Mrs Hewitt would have volunteered to do something and then have deliberately not done it to spite the Claimant, even if she had taken against the Claimant, as she is alleged to have done.
199. Moreover, it is clear that Mrs Hewitt had not taken against the Claimant. Her emails to and about the Claimant in late 2022 show nothing but sympathy and concern. The Claimant relies on what Mrs Hewitt wrote in 2023, in very different circumstances and after a number of other things had happened.
200. In late December 2022 / early January 2023, even it were the case that Mrs Hewitt disliked whistleblowers / those who did protected acts generally (and there is no evidence of that), she had no reason at all to have anything against the Claimant. Mrs Hewitt's role was effectively as a locum or trouble-shooter, brought in to deal with particular issues; she had not been materially involved in anything before September 2022 and was not dealing with the Claimant on an ongoing basis until around February 2023.
201. It appears that Mrs Hewitt simply forgot to send the letter. We note that the Claimant stopped chasing for it in early January 2023, having chased for it only in mid-December and on 6 January 2023 (at which point Mrs Hewitt, who did not ignore any of the Claimant's communications with her, told the Claimant she was still waiting for some information from payroll). Presumably, the issue resolved itself. We have no good reason to doubt that had the Claimant raised the issue with Mrs Hewitt later in the month, Mrs Hewitt would have dealt with it.

202. Busy people sometimes just forget to do things, for no particular reason. This is by far the most likely explanation for what occurred; considerably more likely than that Mrs Hewitt was (consciously or unconsciously) motivated by the Claimant having done a protected act and/or blown the whistle.

Allegation 17 i. to iii.: Did the Respondent, following the Claimant's return to work following three months sickness leave on 9 January 2023, by JF, take a negative attitude towards the Claimant's request for flexibility in her hours as follows:

- i. Refuse to offer a working plan to manage the need to care for her disabled son instead stating requests for flexibility could be dealt with as they arose?***
- ii. Fail to refer to the Respondent's policies regarding time off to care for dependants or for the use of annual leave/unpaid leave for this purpose?***
- iii. Fail to implement the recommendations of OH?***

203. The complaints being pursued in relation to all parts of allegation 17 (including 17 iv., dealt with separately, below) are disability-related harassment, victimisation, whistleblowing detriment, and flexible working request detriment. The facts are outlined in paragraphs 54 to 57 above.

204. In relation to the whole of allegation 17, even if there was a detriment, it was nothing to do with any of the things the Claimant alleges it was.

205. It seems to us that there has been a certain amount of confusion in relation to this set of complaints. In particular, there appears to have been mixing up of events of October 2022 and those of January 2023. It is January 2023 to which these complaints relate. Even if we are mistaken about there having been confusion or a mix-up, the context is important.

206. The relevant context is:

206.1 on 13 October 2022, the Claimant told Miss Fisher that she was going to make a flexible working request and then did not do so;

206.2 it was unclear to Miss Fisher, and was objectively unclear, what the Claimant wanted in October 2022, except, potentially, a reduction in hours of some kind;

206.3 the Claimant wrote to Mrs Aslam on 13 October 2022 saying she wanted to make a flexible working request, but without saying what she was proposing in this respect;

206.4 there was then a telephone meeting between the Claimant and Mrs Molloy on or about 17 October 2022. One of the main purposes of that meeting was to ascertain what the Claimant wanted in terms of flexible working. This was so that Mrs Molloy could help the Claimant to make that request as the Claimant was suggesting her managers had inhibited her from making that request. However, when she spoke to Mrs Molloy, she remained unable,

despite Mrs Molloy's best efforts, to articulate what it was she wanted in terms of flexibility.

207. When explicitly asked by the Tribunal precisely what flexible working she wanted in late October 2022, the Claimant, when pressed, suggested she in fact wanted a period of unpaid leave. We do not accept that. First, she did not articulate this at the time, to Miss Fisher or to Mrs Molloy. We agree with the Respondent that it was not for them to tell the Claimant what she wanted and that it would not have been appropriate for her managers to suggest to the Claimant that she might like to spend a period of time without pay. Had they done that, it is likely the Claimant would be pursuing a claim about them making that suggestion. Secondly, the Claimant was very worried about her finances. She was worried generally and she was particularly worried in late 2022 because of the problems with her pay.
208. When discussing what she wanted in January 2023 in her oral evidence, the Claimant appeared confused. On the one hand, she suggested that she wanted, or might have wanted, unpaid leave. On the other: she mentioned carers leave and other forms of paid leave; the whole basis of this part of her claim is that some kind of concrete plan should have been put in place.
209. In relation to allegation 17 i. specifically, it is eminently possible that the Claimant has mixed up conversations with Miss Fisher that occurred on different dates in January 2023. We can see from the record of the one-to-one on 16 January 2023 that there was some discussion of the Claimant having childcare needs with which she would need to be supported. Miss Fisher may well have said something at that one-to-one to the effect that if the Claimant's son suddenly fell ill again, this would have to be dealt with as and when it arose.
210. Having considered all of the Claimant's evidence around this, it seems to us that what she really wanted was something that did not exist and that very few, if any, employers would be willing to grant her, namely a guarantee that whenever her son fell ill, she would be able, without warning or notice, to be able to take as much time off, paid, as she needed to overcome her childcare difficulties. We quite understand the difficult situation the Claimant was placed in, as a single parent of a disabled child who might fall ill at any time and without anyone she could rely on to look after her son if he fell ill, but the fact that the Claimant cannot help being in that situation does not mean that the Respondent could reasonably be expected to permit the Claimant to do what she wanted to do, however disruptive to the provision of its services this was.
211. The case the Claimant has pursued in Tribunal is not, however, that she asked the Respondent for such a guarantee and that it was refused – it is much vaguer than that in terms of what she wanted / expected from the Respondent. As to her case on the facts (in so far as we can pin down what it is), our findings are:
 - 211.1 the Respondent did not "*Refuse to offer a working plan to manage the need to care for her disabled son*". The Claimant did not ask for one and was unable to explain what she wanted. Had she been able to explain what she wanted, she would have been asking for something the Respondent would indeed have refused to give her, eminently reasonably;

211.2 Miss Fisher probably did, sometime in January 2023, say something to the effect that requests for flexibility – i.e. requests for time off relating to issues suddenly and unpredictably arising with the Claimant's son – could be dealt with as they arose. That was in the context a reasonable thing for her to say, the reason she said it was that she believed this was the only practicable way of dealing with them (and we agree with Miss Fisher about this) and, whatever the Claimant felt about it, it was not in law a detriment as it would have been unreasonable for someone in her position to take it as such.

Allegation 17 ii.

212. We remain unclear as to what the Claimant is suggesting the Respondent / Miss Fisher failed / refused to do that was detrimental to her in terms of referring to policies, unless it is a repetition of the previous allegation. The Claimant was well aware of the possibility of the use of carers leave, annual leave and unpaid leave. None of those things was suitable for what she actually wanted. It is not for the employer to tell the employee what they want. There was no detriment here and (whether there was detriment or not) certainly not any deliberate omission to do something for the reasons alleged.

Allegation 17 iii.

213. This allegation is about an alleged failure to implement occupational health recommendations. The relevant OH report is the one from December 2022. That was the report that made recommendations about what should happen in connection with the Claimant's return to work in January 2023. There was a report in November 2022, but at that stage the Claimant was expected to be returning to work in December and it was overtaken by events. The whole point of obtaining an up to date report is to get relevant, up to date information and advice; had the Respondent followed recommendations made in the November report that were not made in the December report (it seems to be one of the bases of this allegation that the Respondent should have done this), the Respondent would have been acting wrongly and potentially in breach of its duty of care to the Claimant.

214. The recommendations made in the December 2022 report were: "*Regular one to ones with management to aid support*"; a "*2 week phased return to help rebuild her stamina, therefore I recommend that she work 50% [of her hours in week one] and 75% in week two*"; "*Some flexibility to attend any medical appointments including Counselling sessions as these [can] be difficult to book outside of work hours*". All of these things were either put in place or were not relevant. The irrelevant recommendation was the last one: the Claimant confirmed in answer to a direct question from the Tribunal that she had never had a problem getting time off to attend booked medical appointments. This complaint therefore fails on the facts.

215. In its December 2022 report, OH did not repeat the recommendation made in the November 2022 report for "*flexible working hours to help her manage her home circumstances*". Further, at the point in time when the Claimant returned to work, she was not asking for flexible working hours. She had never put in a flexible

working request in her Band 6 role and the problem was not her working hours but the fact that her son might without warning fall ill and need looking after by her for an indefinite period.

Allegation 17 iv.: Did the Respondent force the Claimant to use annual leave to manage her caring responsibilities for her son on 23 or 26 January 2023 and on 27 January 2023?

216. It is an undisputed fact that the Claimant took emergency leave on these dates. There is a dispute about whether the Claimant was offered carers leave. Even giving the Claimant's evidence the benefit of every doubt, there is no suggestion that she explicitly asked for carers leave and had it refused. There is, then, no proper basis for the allegation that the Claimant was 'forced' to use annual leave: she asked for time off on an emergency basis and was granted it.
217. Also, we think it is more likely that the Claimant chose to take the time as annual leave rather than as carers leave than that Miss Fisher required her to take annual leave rather than carers leave. It would make no difference to Miss Fisher which the Claimant took, but there are obvious answers to the question, 'why would the Claimant choose to take annual leave if carers leave was on offer?', namely that the Claimant only had three days carers leave to take in any rolling 12 month period, had already taken at least one day of carers leave in the previous 12 months, in October 2022 (so she would not have been able to take all three days in January 2023 as carers leave in any event), and she may well have wanted to save her two remaining days of carers leave for when she really needed them.
218. Accordingly, even if there were evidence satisfying us that Miss Fisher potentially wanted to treat the Claimant detrimentally because of something to do with disability, and/or because had proposed to make a flexible working request, did a protected act and/or blew this whistle – and there is not – this claim would fail on its facts.

Allegation 18:

Did the Respondent, by JF, adopt a negative and unsupportive attitude towards the Claimant's request for flexibility by failing on 27 January 2023 to grant the Claimant's requests for a conversation to discuss changing care arrangements?

Did the Respondent, on 27 January 2023, by JF, be negative and unsupportive in response to the Claimant's attempts to discuss her needs regarding working hours?

Did the Respondent, on 20 January 2023, by JF, ignore the Claimant's attempts to discuss her needs regarding working hours?

219. Allegation 18, although (as above) worded slightly differently in different parts of the list of issues and giving two different dates, is a single allegation. As in relation to allegation 17 above and allegations 19 to 21 below, the Claimant is making the following types of complaint: disability-related harassment; victimisation; whistleblowing detriment; flexible working request detriment.
220. In her oral evidence, the Claimant confirmed that this allegation in fact related to something that happened on 23 January 2023. She suggested there was a

relevant email, which we have been unable to identify. She relies on part of the same evidence – paragraph 81 of her witness statement – as is relied on in relation to allegation 17 i. Suffice it to say that we are not satisfied that the Claimant in any clear and coherent way asked to have a conversation “to discuss changing care arrangements” with Miss Fisher which Miss Fisher refused to have.

Allegation 19:

Did the Respondent, by JF, adopt a negative and unsupportive attitude towards the Claimant’s request for flexibility by adopting a rigid and inflexible approach to the Claimant’s request to discuss further changes to her home and caring obligations, instead approving a request for annual leave to cover a specific care need on 23 or 26 January 2023?

Did the Respondent, on 23 and 26 January 2023, by JF, adopt a rigid and inflexible approach to the Claimant’s request to discuss further changes to her home and caring obligations instead approving a request for annual leave to cover a specific care need?

Did the Respondent, on 23 and 26 January [2023], by JF, ignore the Claimant’s request to discuss further changes to her home and caring obligations instead approving a request for annual leave to cover a specific care need?

221. This is another allegation that is worded slightly differently in different parts of the list of issues. In this instance that difference in wording makes the allegation internally contradictory: either Miss Fisher adopted a “*rigid and inflexible approach*” to a request for a discussion or she “*ignore[d]*” it; it is difficult to see how she can have done both.
222. Be that as it may, allegation 19 is for all practical purposes a duplicate of allegations 17 and 18 and the complaints based on it fail for the same reasons: we don’t think there was a “*request to discuss further changes to her home and caring obligations*” which was ignored and/or towards which Miss Fisher adopted “*a rigid and inflexible approach*”; when speaking to the Claimant, Miss Fisher was not motivated by conscious or unconscious dislike due to (or connected with) the Claimant’s son’s disability, any protected act, any protected disclosure, or any proposed or actual flexible working request.

Allegation 20:

Did the Respondent, by JF, adopt a negative and unsupportive attitude towards the Claimant’s request for flexibility [by] displaying a short temper and/or hostile approach towards the Claimant when she requested time off due to a medical emergency on 27 January 2023?

Did the Respondent, on 27 January 2023, by JF, be short-tempered with the Claimant when she requested time off to care for her son and say that she could not keep doing this?

223. (Types of complaint: as for 17 to 19.) On the basis of the parties' oral and written witness evidence, the following is common ground between them:

223.1 there was a telephone conversation between the Claimant and Miss Fisher on 27 January 2023 in which the Claimant asked to take the day off to deal with a medical emergency;

223.2 during the conversation, Miss Fisher said something to the effect that she could not keep agreeing last minute requests for emergency leave;

223.3 during the course of the conversation the Claimant became upset and raised her voice;

223.4 during the conversation, Miss Fisher accused the Claimant of shouting at her;

223.5 the conversation ended with the Claimant hanging-up on Miss Fisher;

223.6 immediately after the conversation, both the Claimant and Miss Fisher independently wrote down a version of the conversation in an email. We note that the fact that the emails were close in time to the conversation does not necessarily make them more accurate than something produced later, not least because it is very common to write in such emails what one would like to have said rather than what one actually did say.

224. It was obviously a heated telephone conversation. The Claimant was in a heightened emotional state. Miss Fisher was clearly – and understandably – disappointed that the Claimant was once again phoning on the day of her shift to take emergency leave, disrupting the Respondent's ability to provide its services. If we are compelled to prefer one side's version of events over the other side's, we prefer Miss Fisher's. This is on the basis:

224.1 that the Claimant's heightened emotional state and conviction that she should be permitted to take as much time off as she needed, whenever she needed it, and that it was unreasonable for Miss Fisher to 'push back' at all about it (something which shines through her email of 27 January 2023 in which she gives her version of the meeting) make it inherently likely that she would become angry and shout;

224.2 that – putting the fanciful allegation that Miss Fisher was 'gaslighting' her to one side – Miss Fisher would be unlikely to suggest to the Claimant in a private two-way conversation that the Claimant was shouting unless Miss Fisher perceived that she was;

224.3 that in her email of 27 January 2023, the Claimant denied even raising her voice during the conversation, something she now admits she did.

225. In conclusion:

225.1 as explained above, the Claimant was not making a “request for flexibility” but was instead wanting and expecting during her employment to be able regularly to take days off work – as much time off as she felt she needed to take – without warning or notice;

225.2 of the two of them, it was the Claimant who was more short-tempered;

225.3 Miss Fisher was not “hostile” or unduly “unsupportive” or “negative”, although she did express dissatisfaction because the Claimant was yet again phoning on the morning of a day she was due to be working to say she would not be coming into work. Although we are sure that she could with the benefit of hindsight have used gentler and/or more tactful language when speaking to the Claimant (it is always possible to have worded things better), it was reasonable for Miss Fisher to tell the Claimant, in some way, shape or form, that she could not carry on doing this;

225.4 Miss Fisher’s words and actions were motivated by her concern that the Claimant taking time off at the last minute was adversely affecting the Respondent’s ability to provide its services and by her need as the Claimant’s manager to communicate to the Claimant that things could not continue as they were. It was not anything to do with disability, actual or prospective flexible working requests under ERA section 80F, protected acts, or protected disclosures.

Allegation 21:

Did the Respondent, by JF, adopt a negative and unsupportive attitude towards the Claimant’s request for flexibility [by] referring to the Claimant as “unreliable” in an OH referral on 31 January 2023?

Did the Respondent, on 31 January 2023, by JF, make an OH referral which described the Claimant as “unreliable” due to her caring responsibilities?

226. (Types of complaint: as for 17 to 20.) This is a false allegation. Miss Fisher, accurately and legitimately, referred to the Claimant’s pattern of attendance – not the Claimant herself – as unreliable: see paragraph 59 above. She did this because it was true and was relevant information to provide to occupational health. The reference was not made in connection with any “request for flexibility”.

Allegation 22: Did the Respondent, on 14 February 2023, by SH, discourage the Claimant from lodging a formal grievance about her flexible working request and state that it would result in a “breakdown of working relationships” if the Claimant was to proceed?

227. This is an allegation of disability-related harassment, victimisation, whistleblowing detriment, and flexible working request detriment. It concerns what was allegedly said during the Teams meeting between the Claimant and Mrs Hewitt on 14 February 2023.

228. It is understood to be purely about Mrs Hewitt allegedly discouraging the Claimant from lodging a formal grievance by stating “*that it would result in a “breakdown of working relationships” if the Claimant was to proceed*”. If the Claimant is making any other specific allegation about something Mrs Hewitt supposedly said or did in the meeting to discourage a grievance, we don’t know what it is.
229. We are not satisfied that Mrs Hewitt said the alleged words; and if she said something similar, it was not in the context within which the Claimant puts the alleged comment. It is inherently unlikely that Mrs Hewitt, an experienced HR professional, would, out of the blue, without prompting, say any such thing. Her account, which is that the Claimant said she wanted to preserve relationships with managers and was worried that raising a grievance might damage relationships, and that, possibly, she [Mrs Hewitt] agreed with the Claimant that it would do that (as clearly it would) is supported by the contemporaneous documentation. In particular, in her meeting notes, Mrs Hewitt wrote: “*You were keen to retain a working relationship with your line manager and did want to resolve the situation yet felt unable to enter any resolution discussions at the moment and would prefer to follow the grievance process instead.*”
230. The Claimant commented on Mrs Hewitt’s meeting notes in an email of 3 March 2023, giving her own version, but said nothing about that sentence. We think she would have done so if she thought it was inaccurate. In addition, the Claimant did not in her comments on the meeting notes suggest that Mrs Hewitt had, as alleged, “*discourage[d] the Claimant from lodging a formal grievance about her flexible working request and state[d] that it would result in a “breakdown of working relationships” if the Claimant was to proceed*”.
231. In summary: Mrs Hewitt did not make the alleged comment; the only comment she might have made that was along similar lines was not detrimental (in that a reasonable person in the Claimant’s position would not have taken it as such); if Mrs Hewitt said anything like that, she said it as part of a conversation with the Claimant in which she was agreeing with something the Claimant said, because it was true, and not for any of the reasons the Claimant is alleging she said it.
232. We note that allegation 22 is the first of three allegations (allegations 23 and 25 are the other two) in relation to which the Claimant’s case is that: the Respondent / Mrs Hewitt did not want the Claimant to raise a formal grievance because that would ‘have’ to be (or so the Claimant says) dealt with at stage 2 of the Respondent’s grievance process; stage 2 would involve an investigation, which

they wanted to avoid. That case has no logical or evidential basis. Apart from anything else:

232.1 the contemporaneous documentary evidence shows Mrs Hewitt discussing on 14 February 2022 the Claimant putting in a grievance and the meeting ending with the Claimant saying she was putting in a grievance;

232.2 that evidence also shows Mrs Hewitt being perfectly amenable in principle to the grievance being dealt with at stage 2, based on what the Claimant told her about it supposedly having already gone through stage 1;

232.3 any grievance not resolved at stage 1 to the Claimant's satisfaction could be taken to stage 2 by her – no one could prevent her from doing that.

233. Generally, the Claimant's case as to the Respondent's alleged motivations makes even less sense than it otherwise does¹⁵ when those accused of subjecting the Claimant to detriments and so on are individuals other than Miss Fisher and Ms Nicholls. For example, we can think of no sensible reason why, even in theory, (e.g.) Mrs Hewitt or Mr Shakeel: would care that the Claimant had raised or was proposing to raise a grievance about Miss Fisher and (to a limited extent) Ms Nicholls; or that she had made a flexible working request; or that she had accused others of discrimination; or, in Mrs Hewitt's case¹⁶, would have anything against the Claimant because she has a disabled son – let alone care enough to want to do her down.

Allegation 23: Did the Respondent, on 23 February 2023, by SH, inform the Claimant that she had to go through a Stage 1 informal grievance procedure despite the Claimant informing her she had already done so?

Allegation 25: Did the Respondent, on 20 April 2023, by SS, write to the Claimant to invite her to a Stage 1 Grievance Meeting despite the Claimant having already completed Stage 1 of the process?

234. These are allegations of victimisation, whistleblowing detriment, and flexible working request detriment. The facts relevant to them and to the rest of the Claimant's allegations are outlined from paragraph 62, above, onwards. What we just wrote in relation to allegation 22, in paragraphs 232 and 233 above, is relevant to them too.

235. Allegation 23 is factually accurate. The reason Ms Hewitt informed the Claimant that she would have to go through stage 1 was that she took the view that the Claimant had not, in fact, already gone through stage 1; and that stage 1 was part of the grievance process which had to be completed.

236. As it happens, we agree with Mrs Hewitt's assessment that the Claimant had not already gone through stage 1. The Claimant had not, before her grievance of 15 February 2023, raised any kind of informal grievance about the specific things she was bringing a grievance about. Some of those things occurred in January

¹⁵ See paragraphs 30 to 32 above.

¹⁶ No disability-related harassment complaint is made against Mr Shakeel.

2023 and raising what the Claimant raised with Mrs Aslam in 2021 and 2022 did not begin to satisfy stage 1 of the Respondent's procedure. Raising things with a 'Speak-up Guardian' has a completely different purpose and effect from raising a formal or informal grievance. Even if we and Mrs Hewitt are wrong about this, it was a reasonable assessment for Mrs Hewitt to make. But more important than that we agree with Mrs Hewitt is the fact that we are entirely satisfied that what she told the Claimant genuinely reflected her views and that that was the sole reason she expressed them.

237. The first part of allegation 25 is factually accurate but, for reasons just given, the second part ("*despite the Claimant having already completed Stage 1 of the process*") is not. The reason Mr Shakeel put his name to the letter of 20 April 2023 in which the Claimant was told, amongst other things, that she had to go through stage 1, was that that was the advice he was given by HR and he agreed with the advice.
238. The only evidence we have is to the effect that, other than in the most exceptional of circumstances, employees were not allowed to jump straight to stage 2. The Claimant was being treated the same as anyone else would have been treated, and reasonably so. The reason she was treated in this way was that the Respondent was properly following its procedures. The Claimant's complaints about this are without foundation.

Allegation 24: Did the Respondent, by Samantha Hewitt (SH), on 27 March 2023, write to the Claimant with correspondence containing incorrect and/or fabricated information, notably that the Claimant had requested a reduction in hours in August 2022, which was not correct?

239. This is an allegation of disability-related harassment, victimisation, whistleblowing detriment, and flexible working request detriment.
240. The Claimant is right about what was written and about it being incorrect – see paragraph 65 above. She is wrong to describe it as "*fabricated*". Mrs Hewitt simply misread something recorded on the Respondent's computer system [770]: "*This person has been in contact and has asked if she can change the offer to the position at Springfields Centre for 30 hours AYR -- we agreed*". She made an assumption that this meant the change had been requested by the Claimant; and we can quite see why she made that assumption. It was an honest mistake – no more or less. The complaints based on this allegation therefore fail, as the reason for the treatment was not as alleged.
241. Further, we have referred a number of times to allegations where it seems to us that even if the individual accused of subjecting the Claimant to a detriment wanted to do the Claimant down, it is most unlikely that they would do so in the way alleged (see paragraph 32 above). This is very much one of those allegations. It would be a strange way for anyone to 'get at' the Claimant. In fact, we struggle with the idea that this was detrimental to her to any significant extent. The suggestion that it was seems to be based on the idea that Mrs Hewitt was suggesting that, because the Claimant had already applied for flexible working in the previous 12 months, she couldn't apply again, in accordance with the law as it stood at the time. But Mrs Hewitt never said or suggested that. On the contrary,

she sought to encourage the Claimant to put in a flexible working application; and within the NHS in 2023, there was no restriction on the frequency with which flexible working applications could be made; and this was something Mrs Hewitt was well aware of.

Allegation 26: Did the Respondent, by FN, on 10 May 2023, write to the Claimant to agree her flexible working request temporarily and state that the Claimant had not responded to and/or engaged in the process? If so, were FN's assertions that the Claimant had declined to discuss the application correct?

242. This is an allegation of disability-related harassment, victimisation, whistleblowing detriment, and flexible working request detriment.
243. There can be no factual dispute about the contents of the letter [1034-1035], which does indeed (see paragraph 67 above) include a statement that the Claimant had “*declined to meet to discuss your application*” and statements the gist of which was that the Claimant had “*not responded to and/or engaged in the process*”.
244. We agree with Respondent’s counsel’s submissions in paragraphs 110 to 113 of his written closing submission. The Respondent was agreeing to the Claimant’s flexible working request temporarily, despite the fact – and it was a fact – that the Claimant was refusing to go through the process until her grievance had been dealt with. Objectively, this was to the Claimant’s benefit, not her detriment. It was, moreover, reasonable to describe the Claimant’s refusal to attend meetings and go through the flexible working process until the grievance process had been completed as declining to discuss the application and not engaging with the process.
245. The reasons Ms Nicholls wrote this letter were: potentially to help the Claimant get back to work by temporarily granting her flexible working request; to explain why it was only being granted temporarily; to highlight the attempts that had been made to get the Claimant to engage with the flexible working process; to reflect what had happened from Ms Nicholls’s and the Respondent’s point of view.
246. If there was detriment here, the reason the Claimant was subjected to it was not any of the reasons she is contending for. This means her complaints fail.

Allegation 27: Did the Respondent, on 12 June 2023, by FN, inform the Claimant that a neutral manager to consider the grievance was yet to be appointed?

Unnumbered allegation: Did the Respondent, in June 2023, fail to appoint a neutral manager in place of FN to manage the Claimant’s absence and be a point of contact for her grievance?

Allegation 30: Did the Respondent, on 5 June 2023, despite the Claimant’s request for a neutral manager (that is, someone other than FN) to manage her sickness absence, fail to appoint such a neutral manager

247. Allegation 27 is: victimisation; whistleblowing detriment; flexible working request detriment. The unnumbered allegation (which overlaps with, but is not identical to, allegation 30, in that it mentions having a manager to “*be a point of contact for*

her grievance” as well as to manage the Claimant’s sickness absence) is: victimisation; whistleblowing detriment. We mention allegation “30” purely to highlight how certain allegations are worded differently in relation to the unfair dismissal complaints. We also note that within the unfair dismissal part of the list of issues, the numbering of the allegations seems to have gone a little awry.

248. The basic facts are set out in paragraphs 68 to 71 above.
249. Allegation 27 is untrue: see paragraph 70 above; Ms Nicholls informed the Claimant on 12 June 2023 that, *“I am awaiting details related to the allocation of a neutral manager to support your sickness absence”*, i.e. not a *“neutral manager to consider the grievance”*. Even if it were true, it is difficult to see how telling the Claimant something that everyone agrees was true could be detrimental to the Claimant, nor why Ms Nicholls would provide the Claimant with accurate information with the intention of subjecting her to a detriment for any of the reasons the Claimant alleges.
250. The real allegation seems to be the unnumbered one, which for convenience sake we shall label allegation “29” (there being no allegation 29 in the list of issues, although allegation numbers 28 and 30 are used, in the unfair dismissal section).
251. We note the following about and in relation to allegation 29:
- 251.1 it is not about the failure to appoint a manager to deal with the Claimant’s grievance;
- 251.2 it is not about delay in deciding the grievance;
- 251.3 it relates to an alleged delay in appointing someone in place of Ms Nicholls (not in place of Mr Shakeel);
- 251.4 the Claimant had only confirmed she wanted a neutral manager to be assigned in place of Ms Nicholls on 5 June 2023 and had prepared her resignation letter before Ms Nicholls’s reply of 12 June 2023, which was a temperate and reasonable one;
- 251.5 Ms Nicholls was not the point of contact for the grievance – Mr Shakeel was (up to around the end of June / beginning of July, when he became the person managing the Claimant’s sickness absence) – and what the Claimant was asking for on 5 June 2023 was for a different *“person to manage anything related to my absence from work”*, not a *“neutral manager in place of FN to ... be a point of contact for her grievance”*. There was no issue around supposedly not having a point of contact for the Claimant’s grievance that we are aware of in June 2023.
252. On the facts, then, the only part of allegations 27 and 29 that is potentially sustainable is the allegation that the Respondent, *“in June 2023 [failed] to appoint a neutral manager in place of [Ms Nicholls] to manage the Claimant’s absence”*. The Claimant’s case is – that it to say, it has to be in practice – that one or more individuals within the Respondent decided to delay replacing Ms Nicholls as the

person handling the Claimant's sickness absence until Mr Shakeel was appointed (most likely in early July 2023), and did so because the Claimant did a protected act and/or made a protected disclosure.

253. There is next to no evidence to support the Claimant's case. The only thing providing it with any support at all is the bare fact that no one was appointed in place of Ms Nicholls for about a month from the Claimant confirming she wanted a neutral manager appointed, on 5 June 2023. However, that there was some delay does not suggest any particular reason (e.g. that the Claimant blew the whistle) for that delay.
254. Given that the Claimant's resignation came on 16 June 2023 and that until 5 July 2023 the Respondent was seeking to persuade the Claimant to retract it, there was not really any undue delay at all, in our view. The suggestion that seems to be being made in allegation 30 as part of the unfair dismissal claim that the Respondent should have found and appointed a replacement for Ms Nicholls immediately, on 5 June 2023, is wholly unrealistic; as is any suggestion that an appointment should at least have been made by 16 June 2023, when the Claimant resigned.
255. What there is no support at all for in the evidence is the allegation that the reason for any undue delay was any protected act or protected disclosure.
256. Things simply take a long time in organisations like the Respondent. That – and the fact that the Claimant resigned, meaning the Respondent focussed on the resignation – is by a considerable margin the most likely explanation for such delay as there was in replacing Ms Nicholls as the person handling the Claimant's sickness absence. These allegations therefore fail.

Unnumbered allegation: Did the Respondent, in November¹⁷ 2023, by Yasmin Shakeel, fail to uphold the Claimant's grievance?

257. This – which we shall call allegation “31” – is an allegation of victimisation and whistleblowing detriment.
258. Allegation 31 is factually correct: Mrs Shakeel did not uphold the Claimant's grievance at stage 1. Given the evidence before her, and the Claimant's choice not to have a grievance meeting / hearing, it would have been surprising had she done otherwise. Once again, the Tribunal complaints being made are unsupported by any established facts. It would be fair to say that, based on Mrs Shakeel's oral evidence, the decision was jointly made by her and HR, but the submission (paragraph 186 of Claimant's counsel's written submissions) that, *“this was an act of victimisation and detriments, because HR was following the management line, knowing that the Claimant had issued ET proceedings and wanting to present a positive Management response that denied the Claimant's complaints”* is nothing more than speculation and is not evidentially based.

¹⁷ The wrong month – September 2023 – is given in the victimisation complaint in the list of issues.

Summary re. non-dismissal complaints

259. All the Claimant's complaints about things other than dismissal fail on their merits. Many fail on their facts – because we have rejected the Claimant's version of events. All of them fail because of the lack of evidence to support the Claimant's allegations that individuals within the Respondent acted as they did for any of a number of improper reasons: that the Claimant was pregnant, had a baby, was on, and then had been, on maternity leave; that she is a woman; that her son is disabled; that she was going to make, and later made, a formal flexible working application; that she did protected acts; that she made protected disclosures. Most of those allegations lacked any plausibility in any event: see paragraphs 25 to 32 above. Some claims – such as disability discrimination and disability-related harassment claims (see paragraphs 166 to 172 and 186 to 193 above) – are fundamentally misconceived. The whistleblowing detriment complaints have fatal time limits issues (see paragraph 11 above).
260. We are not unsympathetic towards the Claimant. She, as best we can tell, genuinely believes in her claim and she has had to overcome numerous difficulties in her non-working life, but there was no objective basis for the great majority of her Tribunal complaints; and she was making serious and potentially career-ending allegations against a number of people. In fairness to those people – Miss Fisher, Ms Nicholls, Mrs Hewitt, Mr S Shakeel and Mrs Y Shakeel – we should make clear that the Claimant's allegations against them are completely unfounded.

Dismissal

261. Finally, we turn to the Claimant's claims about an alleged dismissal. Her case is that she was constructively dismissed following a breach of trust and confidence by the Respondent. The following types of complaint are made, in addition to 'ordinary' unfair dismissal and automatically unfair (whistleblowing) dismissal: pregnancy / maternity leave discrimination; direct sex discrimination; direct disability discrimination; disability-related harassment; victimisation.
262. We can deal with all these complaints briefly.
263. In light of our findings, above, the Claimant was plainly not constructively dismissed. The only conduct of the Respondent that could form a significant part of a breach of trust and confidence was the non- and under-payment of the Claimant's wages in late 2022. We think this was probably not a breach of trust and confidence in and of itself at the time, given that it was a series of relatively minor errors that were quickly corrected and given the lack of any apparent basis for the Claimant's belief that they were not errors but deliberate and malicious acts and omissions. If there was a breach of trust and confidence in late 2022, she affirmed her contract of employment well before she resigned. Of the things the Claimant relies on, we cannot identify anything that happened in 2023 before she resigned that could constitute even a last straw in accordance with **Omilaju**, still less anything that was without reasonable and proper cause and was calculated or objectively likely to destroy or seriously damage the relationship of trust and confidence between her and the Respondent.

264. As we have rejected all her other complaints, if the Claimant was constructively dismissed her dismissal could only be an 'ordinarily' unfair one – no other complaint about dismissal could succeed.
265. Because we have decided there was no breach of trust and confidence, we are unable to deal with the Respondent's submission that the Claimant did not resign in response to such a breach.
266. In summary and conclusion, the Claimant's entire claim fails.

Employment Judge Camp

Approved on 28 July 2025

IN THE EMPLOYMENT TRIBUNALS MIDLANDS WEST

BETWEEN:

MS NABEELA MUSHTAQ

Claimant

AND

BIRMINGHAM COMMUNITY HEALTHCARE NHS FOUNDATION TRUST

Respondent

LIST OF ISSUES – LIABILITY ONLY

Notes

1. *There is no complaint relating to holiday pay or other payments.*
2. *Bold-type references to “Allegations” relate to the Allegation numbers in tables produced by the Claimant for each respective Claim.*

TIME LIMITS

1. Given the date the first Claim Form was presented, and the dates of ACAS Early Conciliation, any complaint about something that happened before 15 December 2022 may not have been brought in time. Were the Equality Act 2010 complaints made within the time limit in section 123? The Tribunal will decide:
 - a. Was the complaint made to the Tribunal within three months (plus Early Conciliation extension) of the act to which the complaint relates?
 - b. If not, was there conduct extending over a period?
 - c. If so, was the complaint made to the Tribunal within three months (plus Early Conciliation extension) of the end of that period?
 - d. If not, was the complaint made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - i. Why was the complaint not made to the Tribunal in time?
 - ii. In any event, is it just and equitable to extend time?
2. Were the complaints made under the Employment Rights Act 1996 made within the time limits in the relevant sections? The Tribunal will decide:
 - a. Was the complaint made to the Tribunal within three months (plus Early Conciliation extension) of the act to which the complaint relates?
 - b. If not, was it reasonably practicable for the complaint to be presented within three months?

- c. If not, was the complaint made within a further period that the Tribunal thinks was reasonable?

PREGNANCY/MATERNITY LEAVE DISCRIMINATION - S.18 EQUALITY ACT 2010

3. Did the Respondent do the following:

- a. Following the Claimant notifying Lisa Barnard (LB) on 30 April 2021 that she was pregnant, as detailed in the Claimant's email of 11 May 2021 to Fiona Nicholls (FN), on 4 May 2021 by FN, and on 7 May 2021 by Joanne Fisher (JF), make it more difficult for the Claimant to carry out the secondment role, at the advertised site by proposing, without consultation, for the Claimant to move sites to Lansdowne Health Centre and accept a change of hours, under the guise of lone working. **(Allegation 1)**
- b. In June/July 2021: **(Allegation 2)**
- i. Pay the Claimant incorrectly at a Band 5 salary?
- ii. Fail to rectify the salary issue for two months despite the Claimant raising the issue?
- c. In July 2021:
- i. By the Claimant's line manager, Joanne Fisher (JF), provide the Claimant with incorrect information regarding the Respondent's policy on carers leave ? **(Allegation 4)**
- d. In March 2022:
- i. By FN, fail to inform the Claimant of Band 6 opportunities, despite being informed by the Claimant that she was keen to progress her career at a feedback meeting? **(Allegation 5)**
- ii. Give two of the Claimant's colleagues Band 6 roles without providing the same opportunity to the Claimant, namely by failing to provide her with full information about the roles, encourage her to apply for the roles and provide interview support from management? **(Allegation 6)**
- e. On 31 May 2022, require the Claimant to return to a Band 5 role resulting in a reduction in pay, including the Claimant's holiday pay accrued for the period that she had been on maternity leave? **(Allegation 7)**
- f. In June and July 2022, did the Respondent delay its contractual start date, causing the Claimant to revert to a Band 5 position? **(Allegation 8)**
- g. In April 2022, fail to inform the Claimant of a Band 6 role which had become advertised? **(Allegation 9)**
- h. On 15 August 2022, by FN: **(Allegation 10)**
- i. Inform the Claimant that her starting salary would be the lowest level of the Band notwithstanding her previous Band 6 experience?

- ii. Require the Claimant to complete a salary variation form which stated that it was for “*non-NHS employees*” despite her being a long-standing employee of the NHS?
 - i. On 30th September 2022 by JF, ask the Claimant to complete a salary variation form even though she had completed and actioned FN’s request in August 2022?
 - j. Dismiss the Claimant with effect from 9 September 2023 (see the complaint of unfair dismissal below)? **(no Allegation number)**
4. If so, did the above amount to unfavourable treatment?
5. If so, was this treatment because of the Claimant’s pregnancy and/or because she took maternity leave? It appears, though the Respondent is to confirm, that all the alleged unfavourable treatment took place in a protected period.

DIRECT SEX DISCRIMINATION – S.13 EQUALITY ACT 2010

6. Did the Respondent do the following:
- a. In late September 2022, by JF, incorrectly inform the Claimant that she had taken too much annual leave? **(Allegation 11)**
 - b. In September to October 2022, **(Allegation 12)**:
 - i. Nonpayment of wage and only paying the Claimant 60% after she had raised the issue?
 - ii. Incorrectly pay the Claimant for October on the basis that she was employed on a term-time only contract when she was in fact employed on a whole year contract?
 - c. Between 5 and 13 October 2022, by JF, state that “*she knew what she was getting in for with the Band 6 position*” and discourage the Claimant from making a flexible working request to reduce her hours as it would be dealt with by JF and FN? **(Allegation 13)**
 - d. Dismiss the Claimant with effect from 9 September 2023 (see the complaint of unfair dismissal below)? **(no Allegation number)**
7. If so, did the Respondent treat the Claimant less favourably than it would have treated someone else in not materially different circumstances (that is a hypothetical comparator)? The Claimant does not identify an actual comparator.
8. If so, was the treatment because of sex?
9. If so, other than in relation to the dismissal, was the Claimant put to a detriment?

FAMILY LEAVE DETRIMENT – S.47C EMPLOYMENT RIGHTS ACT 1996

10. Did the Respondent do the following:
- a. Following the Claimant notifying LB on 30 April 2021 that she was pregnant, as detailed in the Claimant’s email of 11 May 2021 to FN, on 4 May 2021 by FN, and

on 7 May 2021 by JF, make it more difficult for the Claimant to carry out the secondment role at the advertised site, by proposing without consultation, for the Claimant to move site to Lansdowne Health Centre, and accept a change of hours under the guise of lone working? **(Allegation 1)**

b. In June/July 2021: **(Allegation 2)**

- i. Pay the Claimant incorrectly at a Band 5 salary?
- ii. Fail to rectify the salary issue for two months despite the Claimant raising the issue?

c. In July 2021:

- i. By JF, provide the Claimant with incorrect information regarding the Respondent's policy on carers leave? **(Allegation 4)**

d. In March 2022:

- i. By FN, fail to inform the Claimant of Band 6 opportunities, despite being informed by the Claimant that she was keen to progress her career at a feedback meeting? **(Allegation 5)**
- ii. Give two of the Claimant's colleagues Band 6 roles without providing the same opportunity to the Claimant, namely by failing to provide her with full information about the roles, encourage her to apply for the roles and provide interview support from management? **(Allegation 6)**

e. On 31 May 2022, require the Claimant to return to a Band 5 role resulting in a reduction in pay, including the Claimant's holiday pay accrued for the period that she had been on maternity leave? **(Allegation 7)**

f. In June and July 2022, did the Respondent , delay its contractual start date, causing the Claimant to revert to a Band 5 position? **(Allegation 8)**

g. In April 2022, fail to inform the Claimant of a Band 6 role which had become available at Springfields Centre? **(Allegation 9)**

h. On 15 August 2022, by FN: **(Allegation 10)**

- i. Inform the Claimant that her starting salary would be the lowest level of the Band notwithstanding her previous Band 6 experience?
- ii. Require the Claimant to complete a salary variation form which stated that it was for "*non-NHS employees*" despite her being a long-standing employee of the NHS? By doing so, did the Respondent subject the Claimant to a detriment?

11. By doing so, did the Respondent subject the Claimant to a detriment?

12. If so, was it for a prescribed reason under S.47C(2) Employment Rights Act 1996? The Claimant relies on the following prescribed reasons:

- a. Pregnancy, childbirth, or maternity in accordance with S.47C(2)(a); and
- b. Ordinary, compulsory or additional maternity leave in accordance with S.47C(2)(b).

It is agreed that it is for the Claimant to prove a prima facie case that the treatment in question was for one of the prescribed reasons and that if she does it is then for the Respondent to show the ground on which any act or deliberate failure to act was done (section 48(2)).

DIRECT DISABILITY DISCRIMINATION – S.13 EQUALITY ACT 2010

13. Did the Respondent do the following:

Between 5 and 13 October 2022, by JF, state “*she knew what she was getting in for with the Band 6 position*” and discourage the Claimant from making a flexible working request to reduce her hours as it would be dealt with by JF and FN? **(Allegation 13)**

Dismiss the Claimant with effect from 9 September 2023 (see the complaint of unfair dismissal below)? **(no Allegation number)**

14. If so, did the Respondent treat the Claimant less favourably than it would have treated someone else in not materially different circumstances (that is a hypothetical comparator)? The Claimant does not identify an actual comparator.
15. If so, was the treatment because of the Claimant’s son’s disability? It is accepted that the Claimant’s son was a disabled person as defined by section 6 of the Equality Act 2010 at the relevant times.
16. If so, other than in relation to the dismissal, was the Claimant put to a detriment?

HARASSMENT RELATED TO DISABILITY – S.26 EQUALITY ACT 2010

17. Did the Respondent engage in the following conduct:
- Between 5 and 13 October 2022, by JF, take a negative and resentful approach to the Claimant’s son’s disability and the need for her to be flexible by stating “*she knew what she was getting in for with the Band 6 position*” and discouraging her from making a flexible working request? **(Allegation 13)**
 - Between 5 and 13 October 2022, fail to show sympathy or support to the Claimant given the stress she was under, specifically JF’s response to the Claimant not wishing to administer vaccinations without completing mandatory refresher training following her maternity leave? **(Allegation 14)**
 - On 13 October 2022, by JF, fail to show the Claimant sympathy by informing the Claimant that she should not have been granted carer’s leave between 9 and 13 October to care for her disabled son? **(Allegation 15)**
 - Following the Claimant’s return to work following three months sickness leave on 9 January 2023, by JF, take a negative attitude towards the Claimant’s request for flexibility in her hours as follows: **(Allegation 17)**
 - Refuse to offer a working plan to manage the need to care for her disabled son instead stating requests for flexibility could be dealt with as they arose?
 - Fail to refer to the Respondent’s policies regarding time off to care for dependants or for the use of annual leave/unpaid leave for this purpose?
 - Fail to implement the recommendations of OH, namely fail to provide support and flexible working hours to help the Claimant manage her home circumstances given that she is a single parent and her son has

- ongoing health needs and further fail to support the Claimant with attending medical appointments which are difficult to book outside of work hours?
- iv. Force the Claimant to use annual leave to manage her caring responsibilities for her son on 23, 26 January 2023 and on 27 January 2023?
 - e. By JF, adopt a negative and unsupportive attitude towards the Claimant's request for flexibility as follows:
 - i. By failing on 27 January 2023 to grant the Claimant's requests for a conversation to discuss changing care arrangements; **(Allegation 18)**
 - ii. By adopting a rigid and inflexible approach to the Claimant's request to discuss further changes to her home and caring obligations, instead approving a request for annual leave to cover a specific care need on 23 or 26 January 2023? **(Allegation 19)**
 - iii. Displaying a short temper and/or hostile approach towards the Claimant when she requested time off due to a medical emergency on 27 January 2023? **(Allegation 20)**
 - iv. Referring to the Claimant as "*unreliable*" in an OH referral on 31 January 2023? **(Allegation 21)**
 - f. By Samantha Hewitt (SH), on 27 March 2023, write to the Claimant with correspondence containing incorrect and/or fabricated information, notably that the Claimant had requested a reduction in hours in August 2022 which was not correct? **(Allegation 24)**
 - g. By FN, on 10 May 2023, write to the Claimant to agree her flexible working request temporarily and state that the Claimant had not responded to and/or engaged in the process? If so, were FN's assertions that the Claimant had declined to discuss the application correct? **(Allegation 26)**
 - h. On 14 February 2023, by SH, discourage the Claimant from raising a grievance by saying it would lead to a breakdown in relationships **(no Allegation number)**?
 - i. Dismiss the Claimant with effect from 9 September 2023 (see the complaint of unfair dismissal below)?
18. If so, was the conduct unwanted?
19. If so, did the conduct relate to the Claimant's son's disability?
20. Did it have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
21. If so, was it reasonable for the conduct to have that effect having regard to:
- a. All the circumstances of the case and
 - b. The perception of the Claimant?

VICTIMISATION – S. 27 EQUALITY ACT 2010

22. Did the Claimant do the following protected acts:
- a. In conversations with LB on 30 April 2021 and 4 May 2021 challenge the removal of the secondment opportunity initially and subsequent obstacles being put in her place namely the refusal to agree to the alteration of the Claimant's hours in the secondment role as discriminatory because of pregnancy and/or her right to maternity leave? **Admitted protected act**

- b. On 4 May 2021 in an email to JF and FN raise the same concern? **Admitted protected act**
 - c. In an email to JF on 11th May 2021 and a letter to Pamela Rimmer (PR) on 11 May 2021, raise the same concern? **Admitted protected act**
 - d. ~~In emails to Afsana Aslam (AA) (the Claimant first made contact on 8 May 2021, then a phone call on 17 May 2021 followed up by an email), the Respondent's Freedom to Speak Up Guardian, raise the same concern and follow up those concerns on 15, 26 July 2021 and 5 August 2021 (with the Claimant having emailed Afsana Aslam on 8 June 2021, to express concerns about confidentiality and the difficulties the Claimant had experienced to secure the position if she were to speak to Claire Paintain (CP)?~~
 - e. ~~In a Teams meeting with Claire Paintain (CP) on 13 July 2021 raise the same concern?~~
 - f. ~~In an email to AA on 13 October 2022, raise concerns regarding JR's discouragement of her proceeding with a flexible working request?~~
 - g. ~~In emails on 29 September 2022 to CP, JF, SH, Priscilla Owusu, on 2, 8, 11 November 2022, 7 and 14 December 2022, 6 January 2023, raise concerns regarding the Respondent's failure to pay her correctly and the detrimental impact this had had on her?~~
 - h. In an email to AA, CP, FN, PR, JF on 27 January 2023, discuss with AA her concerns relating to management's approach to her request to take carer's leave? **Disputed protected act**
 - i. In an email and letter to David Coles (DC) on 15 February 2023, raise a grievance related to discrimination because of pregnancy and/or her right to maternity leave, and submitting this on 15 February 2023? **Admitted protected act**
 - j. By her first Claim to the Tribunal, on 31 March 2023? **Admitted protected act**
 - k. By her resignation letter on 9 June 2023, raise concerns about discrimination because of pregnancy and/or her right to maternity leave? **Admitted protected act**
23. Did the Respondent do the following things:
- a. In June / July 2021: **(Allegation 2)**
 - i. Pay the Claimant incorrectly at a Band 5 salary?
 - ii. Fail to rectify the salary issue for two months despite the Claimant raising the issue?
 - b. In July 2021:
 - i. By JF, provide the Claimant with the incorrect information regarding the Respondent's policy on carers leave? **(Allegation 4)**
 - c. In March 2022:
 - i. By FN, fail to inform the Claimant of Band 6 opportunities, despite being informed by the Claimant that she was keen to progress her career at a feedback meeting? **(Allegation 5)**
 - ii. Give two of the Claimant's colleagues Band 6 roles without providing the same opportunity to the Claimant, namely by failing to provide her with full information about the roles, encourage her to apply for the roles and provide interview support from management? **(Allegation 6)**
 - d. On 31 May 2022, require the Claimant to return to a Band 5 role resulting in a reduction in pay, including the Claimant's holiday pay accrued for the period that she had been on maternity leave? **(Allegation 7)**
 - e. In June and July 2022, by FN and SS, delay its contractual start date, causing the Claimant to revert to a Band 5 position? **(Allegation 8)**
 - f. In April 2022, fail to inform the Claimant that a Band 6 role had become available at Springfields Centre? **(Allegation 9)**

- g. On 15 August 2022, by FN, do the following: **(Allegation 10)**
- h. Inform the Claimant that her starting salary would be the lowest level of the Band notwithstanding her previous Band 6 experience?
- i. Require the Claimant to complete a salary variation form which stated that it was for “non-NHS employees” despite her being a long-standing employee of the NHS?
- j. In late September 2022, by JF, incorrectly inform the Claimant that she had taken too much annual leave? **(Allegation 11)**
- k. In September to October 2022: **(Allegation 12)**
 - i. Nonpayment of wage and only pay the Claimant 60% of her September salary after she had raised the issue?
 - ii. Incorrectly pay the Claimant for October on the basis that she was employed on a term-time only contract, when she was in fact employed on a whole year contract?
- l. between 5 and 13 October 2022, by JF, state “she knew what she was getting in for with the Band 6 position” and discourage the Claimant from making a flexible working request to reduce her hours as it would be dealt with by JF and FN? **(Allegation 13)**
- m. Between 5 and 13 October 2022, fail to show sympathy or support to the Claimant given the stress she was under, specifically JF’s response to the Claimant not wishing to administer vaccinations without completing mandatory refresher training following her maternity leave? **(Allegation 14)**
- n. On 13 October 2022, by JF, inform the Claimant that she should not have been granted carers leave between 9 and 13 October to care for her disabled son? **(Allegation 15)**
- o. Between November 2022 and January 2023, fail to provide HMRC with a letter detailing the errors in the Claimant’s salary, despite repeated requests, to enable the Claimant’s universal credit to be corrected? **(Allegation 16)**
- p. Following the Claimant’s return to work following three months’ sickness leave on 9 January 2023, by JF: **(Allegation 17)**
 - i. Refuse to offer a working plan to manage the need to care for her disabled son, instead stating that requests for flexibility could be dealt with as they arose?
 - ii. Fail to refer to the Respondent’s policies regarding time off to care for dependants or for the use of annual leave/unpaid leave for this purpose?
 - iii. Fail to implement the recommendations of OH?
 - iv. Force the Claimant to use annual leave to manage her caring responsibilities for her son on 23 or 26 January 2023 and on 27 January 2023?
- q. On 27 January 2023, by JF, be negative and unsupportive in response to the Claimant’s attempts to discuss her needs regarding working hours? **(Allegation 18)**
- r. On 23 and 26 January 2023, by JF, adopt a rigid and inflexible approach to the Claimant’s request to discuss further changes to her home and caring obligations instead approving a request for annual leave to cover a specific care need? **(Allegation 19)**
- s. On 27 January 2023, by JF, be short-tempered and/or hostile with the Claimant when she requested time off to care for her son and say she could not keep doing this? **(Allegation 20)**
- t. On 31 January 2023, by JF, make an OH referral which described the Claimant as “unreliable” due to her caring responsibilities? **(Allegation 21)**
- u. On 14 February 2023, by SH, discourage the Claimant from lodging a formal grievance about her flexible working request and state that it would result in a “breakdown of working relationships” if the Claimant was to proceed? **(Allegation 22)**
- v. On 23 February 2023, by SH, inform the Claimant that she had to go through a Stage 1 informal grievance procedure despite the Claimant informing her she had already done so? **(Allegation 23)**

- w. On 27 March 2023, by SH, write to the Claimant with correspondence containing incorrect and / or fabricated information, notably that the Claimant had requested a reduction in hours in August 2022 which was not correct? **(Allegation 24)**
- x. On 20 April 2023, by SS, write to the Claimant to invite her to a Stage 1 Grievance Meeting despite the Claimant having already completed Stage 1 of the process? **(Allegation 25)**
- y. On 10 May 2023, by FN, write to the Claimant to agree her flexible working request temporarily and state that the Claimant had not engaged in the process? If so, were FN's assertions that the Claimant had declined to discuss the application correct? **(Allegation 26)**
- z. On 12 June 2023, by FN, inform the Claimant that a neutral manager to consider the grievance was yet to be appointed? **(Allegation 27)**
- aa. In June 2023, fail to appoint a neutral manager in place of FN to manage the Claimant's absence and be a point of contact for her grievance? **(no Allegation number)**
- bb. In September 2023, by Yasmine Shakeel (JS), fail to uphold the Claimant's grievance? **(no Allegation number)**
- cc. Dismiss the Claimant with effect from 9 September 2023 (see the complaint of unfair dismissal below)?

24. By doing so, did it subject the Claimant to detriment?

25. If so, was it because the Claimant did a protected act?

26. Was it because the Respondent believed the Claimant had done, or might do a protected act?

PROTECTED DISCLOSURE DETRIMENTS – S. 47B EMPLOYMENT RIGHTS ACT 1996

27. Did the Claimant make a disclosure of information as follows:

a. In conversations with LB on 30 April 2021 and 4 May 2021 challenge the removal of the secondment opportunity initially and subsequent obstacles being put in her place namely the refusal to agree to the alteration of the Claimant's hours in the secondment role as discriminatory because of pregnancy and/or her right to maternity leave? **Admitted protected disclosure**

b. On 4 May 2021 in an email to JF and FN raising the same concern? **Admitted protected disclosure**

c. In a letter to Pamela Rimmer (PR) on 11 May 2021, raising the same concern as well as the Claimant's concern about JF's proposal as contained in her email to the Claimant on 7 May 2021 to move the Claimant to Lansdowne Health Centre? **Admitted protected disclosure**

~~d. In an email to Afsana Aslam (AA), the Respondent's Freedom to Speak Up Guardian, on 8 May 2021 raising the same concern?~~

~~e. In a Teams meeting with Claire Pantain (CP) on 13 July 2021 raising the same concern?~~

~~f. In an email to HR and AA on 13 October 2022, raising concerns regarding JR's discouragement of her proceeding with a flexible working request?~~

g. In an email to CP, JF, SH and AA on 2, 8 and 11 November 2022, raising concerns regarding the Respondent's failure to pay her correctly and the detrimental impact this had had on her? **Disputed protected disclosure**

h. In an email on 27 January 2023, discussing with AA her concerns relating to management's approach to her request to take carer's leave? **Disputed protected disclosure**

i. In an email and letter to SH on 15th February 2023, raising a grievance related to discrimination because of pregnancy and/or her right to maternity leave? **Admitted protected disclosure**

j. ~~By her first Claim to the Tribunal, on 31 March 2023?~~

k. By her resignation letter on 9 June 2023, raising concerns about discrimination because of pregnancy and/or her right to maternity leave? **Admitted protected disclosure**

It is accepted that if the Claimant made any qualifying disclosure, it was protected because it was made to her employer.

28. Did the Claimant believe the disclosure of information tended to show that the Respondent had breached a legal obligation towards the Claimant, specifically discriminating against her in respect of her pregnancy and/or her right to take maternity leave, and was that belief reasonable?

29. Did the Claimant believe the disclosure of information was in the public interest and was that belief reasonable?

30. Did the Respondent do the following things:

a. In June / July 2021: **(Allegation 2)**

- i. Pay the Claimant incorrectly at a Band 5 salary?
- ii. Fail to rectify the salary issue for two months despite the Claimant raising the issue?

b. In July 2021:

- i. By JF, provide the Claimant with the incorrect information regarding the Respondent's policy on carers leave / leave for emergencies? **(Allegation 4)**

c. In March 2022:

- i. By FN, fail to inform the Claimant of Band 6 opportunities, despite being informed by the Claimant that she was keen to progress her career at a feedback meeting? **(Allegation 5)**
- ii. Give two of the Claimant's colleagues Band 6 roles without providing the same opportunity to the Claimant, namely by failing to provide her with full information about the roles, encourage her to apply for the roles and provide interview support from management? **(Allegation 6)**

- d. On 31 May 2022, require the Claimant to return to a Band 5 role resulting in a reduction in pay, including the Claimant's holiday pay accrued for the period that she had been on maternity leave? **(Allegation 7)**
- e. In June and July 2022, delay its contractual start date, causing the Claimant to revert to a Band 5 position? **(Allegation 8)**
- f. In April 2022, fail to inform the Claimant to a Band 6 role which had become advertised? **(Allegation 9)**
- g. On 15 August 2022, by FN, do the following: **(Allegation 10)**
 - i. Inform the Claimant that her starting salary would be the lowest level of the Band notwithstanding her previous Band 6 experience?
 - ii. Require the Claimant to complete a salary variation form which stated that it was for "*non-NHS employees*" despite her being a long-standing employee of the NHS?
- h. In late September 2022, by JF, incorrectly inform the Claimant that she had taken too much annual leave? **(Allegation 11)**
- i. In September to October 2022: **(Allegation 12)**
 - i. Only pay the Claimant 60% of her September salary?
 - ii. Incorrectly pay the Claimant for October on the basis that she was employed on a term-time only contract, when she was in fact employed on a whole year contract?
- j. Between 5 and 13 October 2022, by JF, state "*she knew what she was getting in for with the Band 6 position*" and discourage the Claimant from making a flexible working request to reduce her hours as it would be dealt with by JF and FN? **(Allegation 13)**
- k. Between 5 and 13 October 2022, fail to show sympathy or support to the Claimant given the stress she was under, specifically JF's response to the Claimant not wishing to administer vaccinations without completing mandatory refresher training following her maternity leave? **(Allegation 14)**
- l. On 13 October 2022, by JF, inform the Claimant that she should not have been granted carers leave between 9 and 13 October to care for her disabled son? **(Allegation 15)**
- m. Between November 2022 and January 2023, fail to provide HMRC with a letter detailing the errors in the Claimant's salary, despite repeated requests, to enable the Claimant's universal credit to be corrected? **(Allegation 16)**
- n. Following the Claimant's return to work following three months' sickness leave on 9 January 2023, by JF: **(Allegation 17)**
 - i. Refuse to offer a working plan to manage the need to care for her disabled son, instead stating that requests for flexibility could be dealt with as they arose?
 - ii. Fail to refer to the Respondent's policies regarding time off to care for dependants or for the use of annual leave/unpaid leave for this purpose?
 - iii. Fail to implement the recommendations of OH?

- iv. Force the Claimant to use annual leave to manage her caring responsibilities for her son on 23 or 26 January 2023 and on 27 January 2023?
 - o. On 20 January 2023, by JF, ignore the Claimant's attempts to discuss her needs regarding working hours? **(Allegation 18)**
 - p. On 23 and 26 January, by JF, ignore the Claimant's request to discuss further changes to her home and caring obligations instead approving a request for annual leave to cover a specific care need? **(Allegation 19)**
 - q. On 27 January 2023, by JF, be short-tempered with the Claimant when she requested time off to care for her son and say she could not keep doing this? **(Allegation 20)**
 - r. On 31 January 2023, by JF, make an OH referral which described the Claimant as "*unreliable*" due to her caring responsibilities? **(Allegation 21)**
 - s. On 14 February 2023, by SH, discourage the Claimant from lodging a formal grievance about her flexible working request and state that it would result in a "*breakdown of working relationships*" if the Claimant was to proceed? **(Allegation 22)**
 - t. On 23 February 2023, by SH, inform the Claimant that she had to go through a Stage 1 informal grievance procedure despite the Claimant informing her she had already done so? **(Allegation 23)**
 - u. On 27 March 2023, by SH, write to the Claimant with correspondence containing incorrect and / or fabricated information, notably that the Claimant had requested a reduction in hours in August 2022 which was not correct? **(Allegation 24)**
 - v. On 20 April 2023, by SS, write to the Claimant to invite her to a Stage 1 Grievance Meeting despite the Claimant having already completed Stage 1 of the process? **(Allegation 25)**
 - w. On 10 May 2023, by FN, write to the Claimant to agree her flexible working request temporarily and state that the Claimant had not engaged in the process? If so, were FN's assertions that the Claimant had declined to discuss the application correct? **(Allegation 26)**
 - x. On 12 June 2023, by FN, inform the Claimant that a neutral manager to consider the grievance was yet to be appointed? **(Allegation 27)**
 - y. In June 2023, fail to appoint a neutral manager in place of FN to manage the Claimant's absence and be a point of contact for her grievance? **(no Allegation number)**
 - z. In November 2023, by Yasmine Shakeel (JS), fail to uphold the Claimant's grievance? **(no Allegation number)**
31. If so, did any or all of the above amount to a detriment?
32. If so, were any or all of the above done on the grounds that the Claimant had made one or more protected disclosures? It is agreed that it is for the Claimant to prove a prima facie case that the treatment in question was because of one or more protected disclosures and that if she does it is then for the Respondent to show the ground on which any act or deliberate failure to act was done (section 48(2)).

~~INDIRECT SEX DISCRIMINATION — S.19 EQUALITY ACT~~

~~33. Did the Respondent apply the Provision, Criteria or Practice (PCP) that Band 6 roles were not suitable for employees who required flexibility with their working hours or would it have done so? (Allegation 13)~~

~~34. If so, did the PCP put women at a particular disadvantage when compared to men? The Claimant alleges that women as a whole were at a disadvantage as they bear a greater part of domestic and childcare responsibilities than men and are more likely to require flexibility in their hours.~~

~~35. If so, did the PCP put the Claimant at that disadvantage?~~

~~36. If so, can the Respondent show that the PCP is a proportionate means of achieving the following legitimate aims: safe and effective delivery of healthcare services; ensuring that there is sufficient staff available to meet the needs of the service; ensuring that there is a sufficient mix of experience and skills to meet the needs of the service; ensuring fair distribution of workload between staff. The Tribunal will decide in particular:~~

- ~~a. Was the PCP an appropriate and reasonably necessary way to achieve those aims?~~
- ~~b. Could something less discriminatory have been done instead?~~
- ~~c. How should the needs of the Claimant and the Respondent be balanced?~~

INDIRECT DISABILITY DISCRIMINATION – S.19 EQUALITY ACT

37. Did the Respondent apply the Provision, Criteria or Practice (PCP) that Band 6 roles were not suitable for employees who required flexibility with their working hours or would it have done so? **(Allegation 13)**

38. If so, did the PCP put other employees with disabled children at a particular disadvantage when compared to those who did not have disabled children? The Claimant alleges that employees associated with a disabled person (in the Claimant's case a son she has caring responsibilities for) as a whole are at a disadvantage as they are more likely to require flexibility in their hours.

39. If so, did the PCP put the Claimant at that disadvantage?

40. If so, can the Respondent show that the PCP is a proportionate means of achieving the following legitimate aims: safe and effective delivery of healthcare services; ensuring that there is sufficient staff available to meet the needs of the service; ensuring that there is a sufficient mix of experience and skills to meet the needs of the service; ensuring fair distribution of workload between staff. The Tribunal will decide in particular:

- a. Was the PCP an appropriate and reasonably necessary way to achieve those aims?
- b. Could something less discriminatory have been done instead?
- c. How should the needs of the Claimant and the Respondent be balanced?

SECTION 47E EMPLOYMENT RIGHTS ACT 1996

41. Did the Claimant make or propose to make a flexible working request under section 80F Employment Rights Act?

42. If so, did the Respondent do the following:

- a. Between 5 and 13 October 2022, by JF, state “*she knew what she was getting in for with the Band 6 position*” and discourage the Claimant from making a flexible working request to reduce her hours as it would be dealt with by JF and FN? **(Allegation 13)**
- b. Following the Claimant’s return to work following three months sickness leave on 9 January 2023, by JF: **(Allegation 17)**
 - i. Refuse to offer a working plan to manage the need to care for her disabled son, instead stating requests for flexibility could be dealt with as they arose?
 - ii. Fail to refer to the Respondent’s policies regarding time off to care for dependents or for the use of annual leave/unpaid leave for this purpose?
 - iii. Fail to implement the recommendations of OH?
 - iv. Force the Claimant to use annual leave to manage her caring responsibilities for her son on 23 or 26 January 2023 and on 27 January 2023?
- c. On 20 January 2023, by JF, ignore the Claimant’s attempts to discuss her needs regarding working hours? **(Allegation 18)**
- d. On 23 and 26 January, by JF, ignore the Claimant’s request to discuss further changes to her home and caring obligations instead approving a request for annual leave to cover a specific care need? **(Allegation 19)**
- e. On 27 January 2023, by JF, be short-tempered with the Claimant when she requested time off to care for her son and say that she could not keep doing this? **(Allegation 20)**
- f. On 31 January 2023, by JF, make an OH referral which described the Claimant as “*unreliable*” due to her caring responsibilities? **(Allegation 21)**
- g. On 14 February 2023, by SH, discourage the Claimant from lodging a formal grievance about her formal working request and state that it would result in a “*breakdown of working relationships*” if the Claimant was to proceed? **(Allegation 22)**
- h. On 23 February 2023, by SH, inform the Claimant that she had to go through the Stage 1 informal grievance procedure despite the Claimant informing her she had already done so? **(Allegation 23)**
- i. On 27 March 2023, by SH, write to the Claimant with correspondence containing incorrect and/or fabricated information, notably that the Claimant had requested a reduction in hours in August 2022 which was not correct? **(Allegation 24)**
- j. On 20 April 2023, by SS, write to the Claimant to invite her to a Stage 1 Grievance Meeting despite the Claimant having already completed Stage 1 of the process? **(Allegation 25)**
- k. On 10 May 2023, by FN, write to the Claimant to agree her flexible working request temporarily and state that the Claimant had not engaged in the process? If so, were FN’s assertions that the Claimant had declined to discuss the application correct? **(Allegation 26)**
- l. On 12 June 2023, by FN, inform the Claimant that a neutral manager to consider the grievance was yet to be appointed? **(Allegation 27)**

43. If so, did the above amount to detriments?

44. If so, was the Claimant subjected to the above detriments because she made or proposed to make a flexible working request under s.80F? It is agreed that it is for the Claimant to prove a prima facie case that the treatment in question was for that reason and that if she does it is then for the Respondent to show the ground on which any act or deliberate failure to act was done (section 48(2)).

UNFAIR DISMISSAL – S.95 (C) EMPLOYMENT RIGHTS ACT 1996 / AUTOMATIC UNFAIR DISMISSAL – S.103A EMPLOYMENT RIGHTS ACT 1996

45. a. Did the Respondent do the following:

In April and May 2021:

- i. Following the Claimant notifying LB on 30 April 2021 that she was pregnant as detailed in the Claimant's email of 11 May 2021 to FN, on 4 May 2021 by FN, and on 7 May 2021 by JF, make it more difficult for the Claimant to carry out the secondment role at the advertised site, by proposing without consultation, for the Claimant that she move site to Lansdowne Health Centre, in order to undertake the secondment opportunity and to accept the change of hours under the guise of lone working? **(Allegation 1)**
- ii. Between 30 April and 7 May 2021, by JF and FN, state that the Claimant had declined the offer of a secondment position, without consulting the Claimant? **(Allegation 1)**
- iii. On 7 May 2021, by JF, offer the Claimant an alternative position under the guise of the lone working policy? **(Allegation 1)**

b. In June/July 2021: **(Allegation 2)**

- i. Pay the Claimant incorrectly at a Band 5 salary?
- ii. Fail to rectify the salary issue for two months despite the Claimant raising the issue?

c. In July 2021:

- i. [intentionally blank]
 - ii. By JF, provide the Claimant with incorrect information regarding the Respondent's policy on carers leave? **(Allegation 4)**
- d. In July 2021, by JF, fail to follow its leave policy, when the Claimant asked for clarification, telling her she was not entitled to leave? **(Allegation 5)**
- e. Following March 2022, fail to notify the Claimant of Band 6 opportunities and therefore fail to give the Claimant the opportunity to develop her career in the same way as others who were not on maternity leave **(Allegation 6)**
- f. On 17 March 2022, recruit for two Band 6 roles without notifying the Claimant and moreover, encourage/support the two successful candidates to apply? **(Allegation 7)**
- g. In June and July 2022, by FN, delay its contractual start date, causing the Claimant to revert to a Band 5 position and fail to respond to the Claimant's enquiries? **(Allegation 8)**
- h. In April 2022, fail to inform the Claimant of a Band 6 role which had become advertised? **(Allegation 9)**

- i. On 15 August 2022, by FN, do the following: **(Allegation 10)**
 - i. Inform the Claimant that her starting salary would be the lowest level of the Band notwithstanding her previous Band 6 experience?
 - ii. Require the Claimant to complete a salary variation form which stated that it was for “non-NHS employees” despite her being a long-standing employee of the NHS?
- j. In September to October 2022: **(Allegation 11)**
 - i. On or around 25 September 2022, fail to pay the Claimant on the date payment of her salary was due and then pay her only 60% of her September salary?
 - ii. Incorrectly pay the Claimant for October on the basis that she was employed on a term-time only contract when she was in fact employed on a whole year contract?
- k. Between 5 and 13 October 2022, by JF, state “*she knew what she was getting in for with the Band 6 position*” and discourage the Claimant from making a flexible working request to reduce her hours as it would be dealt with by JF and FN and would be refused by them? **(Allegation 12)**
- l. Between 5 and 13 October 2022, by JF, state that the Band 6 role was needed to be filled all day, which was not correct? **(Allegation 13)**
- m. Between 5 and 13 October 2022, fail to show sympathy or support to the Claimant given the stress she was under, specifically JF’s response to the Claimant not wishing to administer vaccinations without completing mandatory refresher training following her maternity leave? **(Allegation 14)**
- n. On 13 October 2022, by JF, inform the Claimant that she should not have been granted carers leave between 9 and 13 October to care for her disabled son? **(Allegation 15)**
- o. Between November 2022 and January 2023, fail to provide HMRC with a letter detailing the errors in the Claimant’s salary, despite repeated requests, to enable the Claimant’s universal credit to be corrected? **(Allegation 16)**
- p. Following the Claimant’s return to work following three months sickness leave on 9 January 2023, by JF: **(Allegation 17)**
 - i. Refuse to offer a working plan to manage the need to care for her disabled son instead stating requests for flexibility could be dealt with as they arose?
 - ii. Fail to refer to the Respondent’s policies regarding time off to care for dependants or for the use of annual leave/unpaid leave for this purpose?
 - iii. Force the Claimant to use annual leave to manage her caring responsibilities for her son?
- q. On 20 January 2023, by JF, ignore the Claimant’s attempts to discuss her needs regarding working hours? **(Allegation 18)**
- r. On 23 and 24 January, by JF, ignore the Claimant’s request to discuss further changes to her home and caring obligations instead approving a request for annual leave to cover a specific care need? **(Allegation 19)**

- s. On 27 January 2023, by JF, be short-tempered with the Claimant when requesting time off to care for her son and say she could not keep doing this? **(Allegation 20)**
- t. On 31 January 2023, by JF, make an OH referral which described the Claimant as “unreliable” due to her caring responsibilities? **(Allegation 21)**
- u. On 14 February 2023, by SH, discourage the Claimant from lodging a formal grievance about her formal working request and state that it would result in a “breakdown of working relationships” if the Claimant was to proceed? **(Allegation 22)**
- v. On 20 February 2023, by SH, attempt to organise a meeting to discuss a flexible working request in an attempt to dissuade the Claimant from pursuing a grievance? **(Allegation 24)**
- w. On 27 March 2023, by SH, write to the Claimant with correspondence containing incorrect and / or fabricated information, notably that the Claimant had requested a reduction in hours in August 2022 which was not correct? **(Allegation 25)**
- x. On 20 April 2023, by SS, write to the Claimant to invite her to a Stage 1 Grievance Meeting despite the Claimant having already completed Stage 1 of the process? **(Allegation 26)**
- y. On 10 May 2023, by FN, write to the Claimant to agree her flexible working request temporarily and state that the Claimant had not engaged in the process? If so, were FN's assertions that the Claimant had declined to discuss the application correct? **(Allegation 28)**
- z. On 5 June 2023, despite the Claimant's request for a neutral manager (that is, someone other than FN) to manage her sickness absence, fail to appoint such a neutral manager **(Allegation 30)**
46. If so, did these acts constitute a repudiatory breach of contract? The Claimant relies on the matter set out at paragraph 46(z) above as the last straw. Her alternative case, if that was not capable of being a last straw, is that cumulatively and/or separately each of the above acts or omissions was a repudiatory breach of contract.
47. The Claimant relies on the implied term of trust and confidence, so that the Tribunal will need to decide:
- a. whether the Respondent behaved in a way that was likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and
 - b. if so, whether it had reasonable and proper cause for doing so.
48. If so, did the Claimant resign at least partly in response to the breach?
49. Did the Claimant affirm her contract of employment before resigning, such that she is not entitled to treat herself as constructively (unfairly) dismissed? The Respondent relies on the Claimant's conduct in continuing to work at the Respondent from April 2021 to June 2023 and her acceptance of salary to include maternity, holiday and sick pay and / or acceptance of 3 months' notice pay.
50. If the Claimant was constructively dismissed, was the reason or the principal reason for her dismissal (that is the reasons why the Respondent conducted itself in the manner giving rise to the fundamental breach of contract – see **Salisbury NHS Foundation Trust v Wyeth [2015] UKEAT/0061**) the fact that she made one or more of the below protected disclosures?

- i. In terms of protected disclosures alleged – did the Claimant make a disclosure of information as follows: [see issue paragraph 27 above]
 1. In conversations with LB on 30 April 2021 and 4 May 2021 challenge the removal of the secondment opportunity as discriminatory because of pregnancy and/or her right to maternity leave?
 2. On 4 May 2021 in an email to JF and FN raise the same concern?
 3. In an email to JF on 11 May 2021 and a letter to Pamela Rimmer (PR) on 11 May 2021, raise the same concern?
 4. In emails to Afsana Aslam (AA) (the Claimant first made contact on 8 May 2021, then a phone call on 17 May 2021 followed up by an email), the Respondent's Freedom to Speak Up Guardian, raise the same concern and follow up those concerns on 15, 26 July 2021 and 5 August 2021 (with the Claimant having been contacted by Afsana Aslam on 8 June 2021, to express concerns about confidentiality and the difficulties the Claimant had experienced to secure the position if she were to speak to CP)?
 5. In a Teams meeting with Claire Paintain (CP) on 13 July 2021 raise the same concern?
 6. In an email to HR and AA on 13 October 2022, raise concerns regarding JR's discouragement of her proceeding with a flexible working request?
 7. In emails on 29 September 2022 to CP, JF, SH, Priscilla Owusu, on 2, 8, 11 November 2022, 7 and 14 December 2022, 6 January 2023, raise concerns regarding the Respondent's failure to pay her correctly and the detrimental impact this had had on her?
 8. In an email to AA, CP, FN, PR, JF on 27 January 2023, discuss with AA her concerns relating to management's approach to her request to take carer's leave?
 9. In an email and letter to DC on 15 February 2023, raise a grievance related to discrimination because of pregnancy and/or her right to maternity leave, and submitting this on 15 February 2023?
 10. By her first Claim to the Tribunal, on 31 March 2023?
 11. By her resignation letter on 9 June 2023, raise concerns about discrimination because of pregnancy and/or her right to maternity leave?

It is accepted that if the Claimant made any qualifying disclosure, it was protected because it was made to her employer.

- ii. Did the Claimant believe the disclosure of information tended to show that the Respondent had breached a legal obligation towards the Claimant, specifically discriminating against her in respect of her pregnancy and/or her right to take maternity leave, and was that belief reasonable?
- iii. Did the Claimant believe the disclosure of information was in the public interest and was that belief reasonable?

51. If not, what was the reason or principal reason for her dismissal and is it a potentially fair reason within s.98(2) of the Employment Rights Act 1996? The Respondent relies on some other substantial reason justifying dismissal of someone holding the Claimant's position, namely the Claimant's failure to return to work and engage with the Respondent and / or an inability and / or unwillingness to perform her contractual duties.

52. Was the dismissal fair within the meaning of s.98(4) Employment Rights Act 1996?

17.01.2025

Annotated and slightly amended and reformatted by EJ Camp 21 May 2025

IN THE EMPLOYMENT TRIBUNAL AT MIDLANDS WEST

NABEELA MUSHTAQ

Claimant

v

BIRMINGHAM COMMUNITY HEALTHCARE NHS FOUNDATION TRUST

Respondent

AGREED CHRONOLOGY

Date	Event	Page Number
10.09.2018	C commenced employment FT as a Band 5 Immunisation Nurse.	
29.8.2019	C went on Maternity Leave.	
3.7.2020	C returns to work following Maternity Leave (and accrued annual leave).	
10.3.2021	Email for advert for Band 6 secondment/fixed term at Springfields	252
28.4.2021	Internal Secondment Agreement – C appointed to Band 6 secondment position at Springfields Health Centre from 1.6.2021 – 31.5.2022 C request for hours in secondment role 8:30 – 4:30 due to nursery to start from September 2021.	259 - 260
28.4.2021	Email from Joanne Fisher to Lisa Barnard Confirm hours between 8:30 – 4:30 appropriate for Band 6 role. Secondment agreement for Band 6 (signed by Claimant (28.4.2021), Lisa Barnard	256 – 257 259

	(28.4.2021), Joanne Fisher (22.4.21) and Claire Paintain 29.4.2021) with Claimant request for hours.	
29.4.2021	Email from Fiona Nicholls to Claire Paintain – confirming C has been successful in secondment for immunisation team for 12 months Band 6.	261 - 265
30.04.2021	C notifies Ms Lisa Barnard she is pregnant.	
4.5.2021	Email from Lisa Barnard to C – risk assessment re. C's pregnancy.	266
4.5.2021	Email from C to Fiona Nicholls, cc'd Lisa Barnard re. not being treated fairly or given opportunity to complete flexi time request for secondment after announced pregnancy.	267 - 268
5.5.2021	Email from Lisa Barnard to C attaching pregnancy risk assessment (via telephone).	271 - 275
6.5.2021	Conditional Offer of Appointment – Band 6 Senior Immunisation Team Nurse – 12 months full time 37.5 hours per week all-year-round.	283 - 284
6.5.2021	Email from C to Lisa Barnard – written confirmation of C's pregnancy, noting verbal confirmation provided on 30.4.2021.	290
7.5.2021	Telephone call between C and Joanne Fisher Email from Joanne Fisher to C re. Band 6 secondment: R alleges proposal stating that it would be beneficial to carry out post at Lansdowne Centre from a lone working perspective.	285
7.5.2021	Email from Lisa Barnard to Fiona Nicholls cc' Joanne Fisher - C is upset with secondment situation and doesn't feel able to undertake vaccines.	286

10.5.2021	Text messages between C and Sarah E re. Band 6 role.	292
8.5.2010 - 10.5.2021	Email – C contacts Speak Up Guardian Afsana	293 - 294
11.5.2021	Email C to Joanne Fisher cc' Fiona Nicholls, C expresses concern about change towards secondment offer after informed managers of her pregnancy. C feels discriminated against because of pregnancy announcement.	295
11.5.2021	Letter from C to HR re concerns around offer of secondment position. C raises concern of unfair treatment and discrimination due to pregnancy. No lone working risk assessment was carried out and no consultation with C. Conditions of offer of employment changed after announced pregnancy.	296 -298
13.5.2021	Emails Fiona Nicholls and Pamela Rimmer re. secondment and pregnancy.	300 - 310
11 - 14.5.2021	Email between C and Fiona Nicholls to arrange a meeting to discuss secondment and working hours.	327 - 333
12 - 17.5.2021	Email between Pamela Rimmer to C re. flexible working request and lone working (response to C's letter).	311 - 315
17.5.2021	C confirms intention to accept Senior Immunisation Nurse Band 6 secondment.	317
17.5.2021	Meeting between C, Fiona Nicholls and Joanne Fisher. Email: Meeting	323 - 326
17.5.2021	Email from C to Afsana Aslam Telephone call between Afsana Aslam and C.	2026 - 2027
18.5.2021	Email from C to Pamela Rimmer re. issues re secondment.	318

26.5.2021	Email from Joanne Fisher to Alli Olatunji re. completing C's hire at Band 6.	1930 - 1931
27.5.2021	Email from Afsana Aslam to Claire Paintain sharing feedback from C, including deviation from formal process, staff member felt discriminated against due to pregnancy, attitude and approach of leadership at Band 8a.	399 - 400
27.5.2021	Email from Claimant to Fiona Nicholls and others re. conditional offer of appointment.	353
28.5.2021	Unconditional offer letter – Band 6 senior immunisation team nurse (secondment).	357 - 358
01.06.2021	Claimant commenced Band 6 secondment position at Springfields Health Centre.	
1.6.2021	Email from Afsana Aslam to C asking if C would like to meet with Claire Paintain.	1934
2.6.2021	C's application for flexible working from 8:30am – 4:30pm to start from 1.9.2021 for three months.	363 - 364
8.6.2021	Email from C to Afsana Aslam re. her experiences.	380
25.6.2021	Email from C to Payroll C alleges incorrectly paid Band 5 salary June-July 2021.	382
28.6.2021	Email from Payroll to C Nothing received from service to inform of move to Band 6 so cannot confirm re. pay. Email chain re. pay.	383 384 – 386, 389-397, 401
1 – 2.7.2021	Email from C re. whether pay has been correctly processed. Payroll confirmed no paperwork has been received. C's secondment processed.	401; 411 402-403, 410

2.7.2021	Updated pregnancy risk assessment	404 – 407
9.7.2021	Email from Lisa Barnard to Alli Olatunji – C is not entitled to any carers' days until Jan 22.	416
13.7.2021	Teams Meeting between C, Claire Paintain and Afsana Aslam.	423 – 426; 1937
15.7.2021	Emails from C and Joanne Fisher re. carer's leave. C forwarding email chain from 5 th Feb 2021 confirming C's carer's/compassionate leave with HR.	428 – 431 432 - 436
15.7.2021	Email chain between C and HR re. carer's leave policy. Email from C to Afsana Aslam	432 - 436
July 2021	C <u>alleges</u> Ms Joanne Fisher provides C with incorrect information on carers leave policy.	
26.7.2021	Email from C to Joanne Fisher re. pay and whether policy was being correctly applied.	437
26.7.2021; 5.8.2021	Email chain C and Afsana Aslam re. update on action plan.	452 - 455
03.08.2021	OH report re. C's pregnancy and patient facing roles.	456 - 459
25.8.2021	Outcome of Flexible Working Request – accepted Letter from Joanne Fisher to C.	460 – 461
27.9.2021	Maternity Leave form (commencing 1 st Dec 2021) and MATB1 form.	482 – 487
19.10.2021	Maternity leave approval.	498 – 499
27.11.2021	C commences Maternity Leave	498-501
8.12.2021	Fiona Nicholls asks Joanne Fisher (and Lisa Barnard and Emma Ingram) to share with Team	495

	that the Trust has been selected to deliver neo-natal vaccination programme.	
22.12.2021	C email Afsana Aslam and Claire Paintain re. maternity pay.	496 - 497
18.1.2022	Email from Fiona Nicholls to share with staff re. BCG immunisation programme and development opportunities. C <u>alleges</u> that this email was not sent to her.	513 – 515
20.1.2022	Email from Caroline Carew to Joanne Fisher re interest in finding our more and doing training/competencies.	516 - 517
26.1.2022	Afsana Aslam replies to C email (dated 22.12.2021) re. maternity pay.	525 - 526
17.2.2022	Email to staff, including C re. posts for staff within the Neo-Natal BCG immunisation programme. Email from Fiona Nicholls to HR requesting adverts be actioned for BCG roles.	523 – 524 521 - 522
16.3.2022	Interviews for Band 6 BCG vaccination roles. C was unsuccessful.	
4.3.2021	Email from C to Afsana Aslam re. maternity pay and asking for someone to look into calculations. No reply to this email.	525
10.3.2022	Email from Sharon Bant and Selene Haslem to Fiona Nicholls re. interview support for Band 6.	513, 528 – 529
15.3.2022	C asks to re-book Band 6 interview due to Covid.	530
10 – 16.3.2022	Whatsapp messages between C and Lisa Barnard re. interview for Band 6 role.	532 – 543
March 2022 – April 2022	C <u>alleges</u> R alleged failure to inform C of Band 6 role being advertised	

	C <u>alleges</u> R gave two of NM's colleagues Band 6 roles	
5.4.2022 – 13.4.2022	C emailed Jo Fisher requesting information about when to submit flexible working request prior to return to work.	545 – 547
April 2022	Additional two Band 6 Immunisation role advertised	
13.5. 2022	C successfully interviewed for Band 6 role	549 - 563
16.5.2022	Conditional Offer of Appointment letter – Band 6 Senior Immunisation Nurse – Permanent 37.5 hours per week at Birmingham and Solihull site.	564 – 565
17.5.2022	C accepted conditional offer of Band 6 role.	
1 June 2022	C reverts to substantive Band 5 role (secondment ending on 31 May 2022)	
8.6.2022, 20.6.2022	C emailed HR re. update on start date for Band 6 role	574 – 577
7.7.2022 – 19.7.2022	Emails Fiona Nicholls to Priscilla Owusu and C, re. annual leave and C's pay on maternity leave.	567 – 573, 578-588
11 - 15.7.2022	C informed by Sarah E that Band 6 role available	2414 - 2417
26.7.2025	Email from Fiona Nicholls to C re. annual leave entitlement during maternity leave and start date. FN confirms start date of 1.9.2022 but may adjust due to annual leave.	588 – 589
June and July 2022	C <u>alleges</u> R delayed contractual start date causing C to revert to Band 5 position	
5.8.2022	Unconditional Offer of Employment – Band 6 Senior Immunisation Team Nurse – 30 hours all-year-round at Springfields's base.	600 - 601

August 2022	C alleges telephone call between C and Joanne Fisher re. annual leave calculation and agreed day off as Wednesday.	
12.8.2022	Email C accepts Band 6 position at Springfields. Email C to Joanne Fisher – requesting confirmation of same hours 8:30 – 4:30 and Wednesdays as day off.	602 – 603
15.8.2022	Email from FN - C informed she would commence at bottom of Band 6 scale and to complete salary variation form if requesting a higher starting band. C agrees to complete the form.	604 – 605
24.8.2022	C complete salary variation form as requested by FN for 'non-NHS employee.'	656
1.9.2022	C maternity leave ends but remained off work due to annual leave.	
September 2022	C <u>alleges</u> she was not paid her correct salary, initially paid nil, and then paid at 60%.	
September 2022	Telephone call C and Joanne Fisher re. C's changed personal circumstances.	
24.9.2022	Email C to Fiona Nicholls (cc. Priscilla Owusu) incorrect pay for September.	606
29.9.2022	Email chain C, Priscilla Owusu, Fiona Nicholls, Joanne Fisher re. annual leave and pay error. C states should have been paid Band 6 salary but was paid at Band 5 salary. Email from Priscilla Owusu to Claimant – breakdown of annual leave entitlement. Email from Samantha Hewitt re. annual leave payment.	608 – 612 632 – 634
29.9.2022	Email and Telephone call between C and Ms Joanna Fisher re. annual leave.	617 - 618

29.9.2022	Email from C to Claire Paintain re. errors in calculation of pay. C was told by manager that she has taken too much annual leave. Email from C to Pamela Rimmer	615 – 616 613
29.09-08.11.2022	Email chain Joanne Fisher, Fiona Nicholls, and HR and C re. C's annual leave and pay.	620 – 624, 639 – 641, 647 – 648; 651 – 655, 663-664, 668, 671- 685, 723- 728, 734
29 - 30.9.2022	Emails between C and Claire Paintain re. payroll issues.	615 – 616; 635
30.9.2022	Email to Fiona Nicholls re. C's payroll action required.	643 – 645
30.9.2022	Email from Jo Fisher asking C to complete salary variation form that C alleges she had already completed and returned.	646
1.10.2022	C providing salary variation form to Jo Fisher, C alleges for a second time.	656
October 2022	C <u>alleges</u> was incorrectly paid 30 hours at term-time-only not all-year-round	
3.10.2022	Email between C and Samantha Hewitt re. C's pay.	661 - 664
5.10.2022	C returns to work post-maternity leave as Band 6 Immunisation Nurse. Return to work meeting on 5.10.2055	 665 – 666
10.10.2022 – 11.10.2022	C's son was unwell and C took one day as carer's leave and one day emergency annual leave.	

13.10.2022	1-1 meeting between C and Joanne Fisher. C <u>alleges</u> that Joanne Fisher said “ <i>You knew what you were getting in for with the Band 6 position.</i> ” C wanted to make flexible working request, C <u>alleges</u> that Joanne Fisher discouraged her from doing so and stated that it would not be accepted.	690 - 692
13.10.2022	C <u>alleges</u> that Joanne Fisher failed to show sympathy by informing C she should not have been granted carer’s leave between 9 – 13 October 2022.	
13.10.2022	Email chain between C and Afsana Aslam re. advice ongoing concerns. Telephone call between Afsana Aslam and C.	693 – 698,
14.10.2022	Email between C and Afsana Aslam re options	699, 702 – 705
14.10.2022	C alleges she was unable to undertake school vaccination as she had not completed mandatory refresher training. C alleges that Joanne Fisher was unsupportive.	
14.10.2022	C certified as may be fit for work on altered hours for 3 months by GP	706
17.10.2022	Telephone call from Lesley Molloy to C (summarised by Lesly Molloy in email dated 27 th October 2022 to Joanne Fisher and Fiona Nicholls but not sent to the Claimant)	717
18-26.10.2022	Email chain Fiona Nicolls and David Coles re staff members (including Claimant) completed salary variation form to request higher starting band	713-715
19.10.2022	C certified as unfit to work for 3 weeks by GP	712
19.10.2022	Meeting between Fiona Nicholls, Joanne Fisher and Lesley Molloy re. Call with C and discussions about flexible working (summarised in email on 27 th October 2022)	717 - 718

24.10.2022	Telephone call C and Joanne Fisher.	
24.10.2022	Email to Fiona Nicholls re. payroll and C's working hours.	709 - 711
2.11.2022	Email from C to Samantha Hewitt re. incorrect pay in November 2022.	726 – 728
2.11.2022	Email from Olatunji Alli to Joanne Fisher re. C's pay query.	723 - 728
3.11.2022	Occupational Health assessment and report – C suffering from stress. Recommends flexible working due to son's health needs.	729 – 733
8.11.2023	Email from C to Samantha Hewitt (cc' Joanne Fisher and Claire Paintain) re. ongoing errors with pay.	734
11.11.2022; 7.12.2022; 12 - 14.12.2022	Emails from C re. errors in her pay; Email from C to HR and Claire Paintain re. universal credit and HMRC requesting information about C's pay.	736 – 737; 741 – 743
9.12.2022 & 6.1.2023	Letter to C re. Changes to Contract of Employment.	739 – 740
11.11 - 12.12.2022	Email chain C and Samantha Hewitt re DWP and universal credit	741-745, 759
20.12.2022	Occupational Health assessment and report with recommendations, including phased returns, flexible working and regular one-to-ones.	746 – 750
9.1.2023	C returns to work from long-term sickness absence. C <u>alleges</u> that JF took a negative attitude re. C's request for flexibility, re. failed to offer a working plan, failed to refer to R's policies, failed to implement OH recommendations, forced C to use annual leave to manage caring responsibilities.	760

11.1.2023	Letter to C re. Changes to Contract of Employment	766 - 767
16.1.2023	Return to work meeting C and Joanne Fisher.	763 – 764; 853 – 854
20.1.2023	C <u>alleges</u> that she tries to arrange meeting with Joanne Fisher about support.	
23.1.2023 – 24.1.2023	C <u>alleges</u> that she requests discussion with Joanne Fisher re. further home changes / care arrangements.	
23 & 26.1.2023	C takes (emergency) annual leave for specific caring arrangements.	
27.1.2023	C absent due to son's health needs. C <u>alleges</u> Joanne Fisher stated she could not keep giving emergency annual leave. C <u>alleges</u> Joanne Fisher was short tempered and/or hostile. C <u>alleges</u> Joanne Fisher was negative and unsupportive to C's attempts to discuss her needs re. working hours.	
27.1.2023	Email from C to Afsana Aslam (cc' Claire Paintain, Fiona Nicholls, Joanne Fisher and Pamela Rimmer and forwarded to Samantha Hewitt) re. Request formal urgent HR meeting/grievance.	856– 858
27.1.2023	Emails from Samantha Hewitt to Joanne Fisher following C's email re request for a formal meeting to discuss grievances to work towards solutions. Email chain re. request for formal urgent HR meeting between Fiona Nicholls, Samantha Hewitt, David Coles, Joanne Fisher.	855 866 - 869
27.1.2023	Email from Joanne Fisher to Samantha Hewitt re. on-going issue relating to C	862-863
30 - 31.1.2023	Emails between Fiona Nicholls and C re. sickness from work.	901 - 902

30.1.2023	Application for flexible working	915 – 918
31.1.2023	OH referral completed by Joanne Fisher. C <u>alleges</u> she was referred to as unreliable	877 – 882
1.2.2023	C call with Afsana Aslam	883
6.2.2023	C signed off work – GP for 4 weeks	886 – 887
8.2.2023	C call with Afsana Aslam	894 - 895
8 - 10.2.2023	Email from C to Joanne Fisher re. OH referral and her concern that it was not factual. Request for copy of referral. C confirms that she will be raising a formal grievance.	904 – 906
10.2.2023	Email C and Samantha Hewitt stating that C is unable to attend meeting on 17 th Feb 2023 and C alleges she requested an alternative date. C confirms that she will be submitting a formal grievance.	898 – 899
14.2.2023	C submits flexible working request.	915 – 918
14.2.2023	Meeting between C and Samantha Hewitt on Teams. C <u>alleges</u> Samantha Hewitt discourages C from raising a grievance stating that it would lead to breakdown in relationship.	907
15.2.2023	C submits formal grievance to David Coles	920 – 926
17.2.2023	Email chain including Lesley Molloy, Samantha Hewitt and other members of HR team re. C's grievance.	931 – 934
20.2.2023	Email from Samantha Hewitt to Joanne Fisher and Fiona Nicholls re. employee situation.	943 – 944
21.2.2023	Email from C to Samantha Hewitt confirming C's position that she has raised matters informally and seeks formal grievance.	935 – 936

23 - 24.2.2023	Email from C to Sam Hewitt re grievance and FWR Email chain C and Sam Hewitt re grievance and FWR C alleges that Fiona Nicholls replied that C should use the informal procedure. C alleges that she had already gone through Stage 1.	947 – 948 953 – 956
23.2.2023	Email between Samantha Hewitt and David Coles re. C's grievance.	949
23.2.2023	Email between Fiona Nicholls and Joanne Fisher and Samantha Hewitt that Fiona Nicholls will manage C's sickness absence.	942
27.2.2023	Grievance Letter Acknowledgment	957
27.2.2023	Email from Samantha Hewitt re. summary of meeting on 14 th Feb 2023. C replies that there are discrepancies from what was said at meeting.	965-966
27.2.2023	Wellbeing telephone call Fiona Nicolls and C	958 – 962, 971-972
3.3.2023	Email from C to Samantha Hewitt re. C's additional details to discussion. Email from C to Samantha Hewitt re. Flexible Working Request and Stage 2 grievance.	977 – 979 975- 976
6.3.2023	C absent – GP statement of fitness to work certificate.	982
14.3.2023	Early Conciliation (ACAS)	1
14 - 16.3.2023	Email from C to Samantha Hewitt re. policies for grievance and flexible working.	983 – 984
16.3.2023	Early Conciliation Certificate issued by ACAS	1

29.3.2023	Letter from Fiona Nicholls to Claimant re. Managing and Supporting Attendance Policy – Wellbeing Meeting	995 – 996
30.3.2023	Letter from Samantha Hewitt to C re. flexible working request (letter dated 27.3.2023 but sent to C by email on 30.3.2023). C's responses to letter.	987 – 989 1001 991 – 994
31.03.2023	ET1 - Claim Form #1 and Grounds of Claim	2 – 19
03.04.2023	C's email to Fiona Nicholls declining well being meeting	1005
4.4.2023	ET Correspondence – Notice of Preliminary hearing for Case Management	20 – 21
18.4.2023	Email from Samantha Hewitt to Sharjeel Shakeel re. C's grievance.	1006 - 1007
19.04.2023	Emails re reference request for C (C alleges it was for bank positions that C did not wish to take up).	1008, 1015-1016
20.04.2023	C invited to stage 1 grievance meeting by Sharjeel Shakeel.	1010 – 1012;
20 - 25.4.2023	Emails re. C's grievance between Sharjeel Shakeel and Samantha Hewitt	1021
24.5.2023	ET Correspondence – Response Accepted	38 – 39
25.04.2023	Letter from Claimant to Sharjeel Shakeel declining invite to Stage 1 grievance.	1023 - 1024
28.04.2023	ET3 and Grounds of Resistance (Claim #1)	22 – 37
10.5.2023	Letter from Fiona Nicholls confirming flexible working request temporarily accepted.	1034 - 1035
6 & 9.5.2023	Letter from Fiona Nicholls to C offering well-being meeting. (GP fitness to work statement attached – 1 month).	1029-1033

5.6.2023	Email chain C and Fiona Nicholls re well-being meeting and C confirming did not believe Fiona Nicholls should be managing as she was not a neutral manager.	1039-1042, 1046
12.05-12.6.2023	Email from Fiona Nicholls to C stating awaiting details for neutral manager. C alleges no neutral manager had been allocated yet.	1045
June 2023	C alleges R failed to appoint a neutral manager to manage C's absence and be a point of contact during grievance.	
15. 6.2023	C resignation (letter dated 9.6.2023)	1058 - 1060
21.6.2023	Response to C's resignation letter and request whether C wishes to re-consider her resignation.	1068 – 1069; 1083 - 1082
5.7.2023	C confirms that she wishes to continue with her resignation.	1070
6.7.2023	Letter appointing Shajeel Shakeel as C's interim manager and accepting resignation, confirming last working day will be 9 th September 2023.	1091 - 1092
13.7.2023	Email from Fiona Nicholls accepting C's resignation and attaching letter dated 6 th July 2023 (above).	1087;
25.7.2023	Emails between Yasmin Shakeel and Samantha Hewitt re. C's grievance.	1102
4.8.2023	C invited to informal stage 1 grievance meeting by R (Yasmin Shakeel).	1190 - 1196
10.8.2023	Letter from C - C declines to attend informal stage 1 grievance and does not consider Samantha Hewitt is neutral.	1294 - 1296

5.9.2023	C invited to informal grievance meeting on 19 th September 2023.	1339 - 1341
9.9.2023	C last date of employment. C alleges unfair dismissal (automatic and discriminatory constructive unfair dismissal)	
13.9.2023	R accepts disability (C's son) Conditions – double aortic arch, SVC, ASD	40
20.10.2023	EJ Camp - Preliminary hearing for case management -	41 – 47
22.11.2023	Grievance outcome letter	1388 - 1394
13.11.2023	C provides further information in respect of Claim #1	50 – 93
4.12.2023	ACAS Certificate – Claim #2	94
6.12.2023	Date of issue of ACAS certificate	93
8.12.2023	ET1 Claim form #2 and Grounds of Claim	95 – 116
18.12.2023	ET Correspondence – Notice of Preliminary Hearing	117 – 118
12.1.2024	ET3 and Grounds of Resistance (Claim #2)	119 – 139
15.2.2024	Claims consolidated	142 – 143
15.3.2024	ET – Record of Preliminary hearing before Judge Faulkner	144 – 157
1.5.2024	GP letter - NM involved in two road traffic accidents	176
28.6.2024	ET - Case Management hearing before Judge Kenward (including new hearing dates)	199 – 205

29.4.2025 to 21.5.2025	Final Hearing (est. 16 days)	
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20 May 2025

IN THE EMPLOYMENT TRIBUNAL AT MIDLANDS WEST

Nabeela Mushtaq

Claimant

v

Birmingham Community Healthcare NHS Foundation Trust

Respondent

CAST LIST

Claimant:

Nabeela Mushtaq (Claimant) – Immunisation Nurse

Respondent:

Afsana Aslam	Speak Up Guardian
Lisa Barnard	Immunisation Team Clinical Manager (Lansdowne Health Centre)
David Coles	Head of Service
Sarah Engledow	Nurse colleague of the Claimant
Joanne Fisher	Immunisation Team Clinical Manager
Samantha Hewitt	HR Business Partner
Lesley Molloy	HR Business Partner
Fiona Nicholls	Operation Manager School Aged Immunisation Service
Priscilla Owusu	HR Advisor, Children & Family Division
Claire Paintain	Divisional Director Children & Family Division
Pamela Rimmer	HR Business Partner
Siham Sherif	HR Recruitment Officer
Sharjeel Shakeel	Group Manager (formerly Service Manager)
Yasmin Shakeel	Service Manager for School Age Immunisation Service