



EMPLOYMENT TRIBUNALS

Claimant: Ms S Akhtar

Respondent: Leicestershire Partnership NHS Trust

Heard at: Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE

On: 29 June 2026 (Tribunal reading in, parties did not attend)

30 June 2026, 1, 2 July 2026

6 July 2026

Before: Employment Judge Adkinson sitting with

Mr K Rose

Ms L Woodward

Appearances

For the claimant: In person

For the respondent: Ms A Smith, Counsel

JUDGMENT

UPON hearing from the claimant in person and from Counsel for the respondent

AND UPON considering the evidence

AND for the reasons set out below

IT IS THE TRIBUNAL'S JUDGMENT THAT

1. The following complaints of pregnancy and maternity discrimination (**Equality Act 2010 section 18**) were presented out of time. It is not just and equitable to extend time. Therefore they are dismissed for lack of jurisdiction, namely:
 - 1.1. On or about 1 November 2022, permanently removing Ms Akhtar's duties and responsibilities and transferring these to a newly created post,
 - 1.2. On or about 1 November 2022, denying Ms Akhtar a re-band and requiring her to apply for the newly created role (of Head of Legal),
 - 1.3. On or about 1 November 2022, making Ms Akhtar's role redundant, without consultation or discussion,

- 1.4. On a date between 1 November 2022 and 28 November 2022, Ms Dyer directing Ms Akhtar to keep her application for the newly created role of Head of Legal brief in content,
 - 1.5. Between 1 November 2022 and 28 November 2022, denying Ms Akhtar access to strategic management folders,
 - 1.6. Between 1 November 2022 and 28 November 2022 stating to Ms Akhtar prior to interview that LPT (Ms Dyer) “knew things would be difficult” and “hoped feelings would have calmed down by April” and “anyone who wanted to apply for a different job could.”
2. The following complaints of pregnancy and maternity discrimination (**Equality Act 2010 section 18**) fail and are dismissed.
- 2.1. On 5 December 2022 (date of interview outcomes) weighting the interview scoring towards the Integrated Care Board (“ICB”), National Health Service Improvement (“NHSI”) toolkit and joint partnership working with Northamptonshire Healthcare NHS Foundation Trust (“NHFT”) contrary to the job description which had a clear emphasis on legal competency and expertise,
 - 2.2. On 5 December 2022, appointing Ms Patel (a Trainee Solicitor) as Head of Legal,
 - 2.3. On 5 December 2022, informing Ms Akhtar and/or expecting that the Head of Legal role was to start immediately,
 - 2.4. On 5 December 2022, informing Ms Akhtar that the next time she applied for a role Ms Dyer would assist her, indicating that Ms Akhtar was expected to leave the Trust,
 - 2.5. Between 8 April 2022 and 5 December 2022, not making Ms Akhtar aware of systems and processes that came into being whilst Ms Akhtar was on maternity leave (which were used as interview scoring criteria),
 - 2.6. On 5 December 2022, putting Ms Akhtar in a position whereby she is managed by a Trainee Solicitor whom Ms Akhtar previously managed and was her training principle,
 - 2.7. Between 8 April 2022 and 5 December 2022, not providing Ms Akhtar with any KIT days to enable her to be aware of work developments,
 - 2.8. On 31 March 2023 Chris Manning being aggressive, intimidating and rude by enforcing that Ms Akhtar must liaise with Ms Patel as her new line manager despite Ms Akhtar not being informed that her line management had changed and that the grievance process had not been exhausted,
 - 2.9. On 27 March 2023 Ms Patel contacted Ms Akhtar by WhatsApp asserting her authority by requesting to discuss Ms Akhtar’s return to work,
 - 2.10. Dismissal Ms Akhtar.

3. The following complaints of harassment related to sex (**Equality Act 2010 section 26**) fail and are dismissed:
 - 3.1. On 31 March 2023 Chris Manning being aggressive, intimidating and rude by enforcing that Ms Akhtar must liaise with Ms Patel as her new line manager despite Ms Akhtar not being informed that her line management had changed and that the grievance process had not been exhausted,
 - 3.2. On 27 March 2023 Ms Patel contacted Ms Akhtar by WhatsApp asserting her authority by requesting to discuss Ms Akhtar's return to work.
4. The following complaints of victimisation (**Equality Act 2010 section 27**) fail and are dismissed:
 - 4.1. On 31 March 2023 Chris Manning being aggressive, intimidating and rude by enforcing that Ms Akhtar must liaise with Ms Patel as her new line manager despite Ms Akhtar not being informed that her line management had changed and that the grievance process had not been exhausted,
 - 4.2. On 27 March 2023 Ms Patel contacted Ms Akhtar by WhatsApp asserting her authority by requesting to discuss Ms Akhtar's return to work.
5. The complaint of constructive unfair dismissal fails and is dismissed.
6. There being no further complaints, the claim is dismissed.

REASONS

1. The gist of this case is that the claimant (Ms Akhtar) avers that her failure to succeed in her application to the respondent (LPT) to appoint her as Head of Legal Services is tainted by maternity or pregnancy discrimination (specifically her maternity leave) and that LPT's conduct was such as to breach the implied term of trust and confidence in response to which she resigned. There are also incidental claims of harassment related to sex and victimisation.
2. The gist of the Tribunal's conclusion is that her maternity leave was merely a coincidence – it was not in any way causative. She was not appointed because she (a) did not demonstrate that she was good enough in interview to be appointed (b) performed worse than the other candidates in any event, and (c) resigned not because of any breach of contract but because she had secured a significantly higher paid job elsewhere.
3. At the heart of this case is a simple fact. She is a solicitor. She was training Ms Neila Patel. Ms Neila Patel applied for the post. LPT appointed Ms Patel because she was the best candidate. Ms Akhtar cannot accept this. While her view is unjustified, we can understand why it might create a sense of grievance. It is this grievance that has been used as the justification to search for a cause of action before the Tribunal. In addition, there was no victimisation or harassment related to sex or dismissal.

The hearing

4. The hearing proceeded as follows.
 - 4.1. Ms Akhtar represented herself, though until about a week before the hearing solicitors had represented her throughout.
 - 4.2. Ms A Smith, Counsel instructed by Hempsons Solicitors, represented LPT.
 - 4.3. The Tribunal read in on day one, heard evidence on days 2, 3, and 4, allowed the parties day 5 to prepare closing submissions and heard those submissions and then deliberated on day 6.
 - 4.4. There was a timetable set for cross-examination and closing submissions. No party came close to breaching it.
 - 4.5. The Tribunal heard the following oral evidence:
 - 4.5.1. From Ms Akhtar herself;
 - 4.5.2. On the respondent's behalf from:
 - 4.5.2.1. Ms Kate Dyer, then Deputy Director of Governance and Risk, and Trust Secretary, now Director of Governance and Risk,
 - 4.5.2.2. Mr Chris Manning, Senior Human Resources (HR) Business Partner for the Director of Mental Health employed since 17 October 2022,
5. Ms Patel, Legal Affairs Assistant from 6 March 2015, acting Head of Legal Affairs from 24 June 2019 to 2 August 2019, 30 September 2019 to 30 November 2020, and 13 December 2021 to 14 December 2022 and Head of Legal Services since 15 December 2022. She was at material times a trainee solicitor whom Ms Akhtar supervised.
 - 5.1. There was an agreed bundle of 2052 pages.
 - 5.2. Each party presented written and oral closing arguments.
 - 5.3. The Tribunal has considered the oral evidence, documents to which the parties referred us (as we indicated would be the situation at the start of the hearing) and their closing arguments.
 - 5.4. During the hearings, we took appropriate breaks. We also took extra breaks as required to accommodate Ms Akhtar as needed. No party requested any other notable reasonable adjustment, and the Tribunal did not perceive the need for any either.
 - 5.5. Ms Akhtar requested we treated her as a litigant in person, even though she is a qualified solicitor. We did so, but the Tribunal made it clear from the outset the Tribunal's assistance would be limited out of necessity to ensure a fair hearing. It could explain things and help to formulate questions in cross-examination (in fact such assistance was not requested) but it could not decide how Ms Akhtar should pursue her claim or what questions she

might benefit from asking of which witnesses. In the end the Tribunal did not have to assist her to formulate questions.

5.6. No party has complained this was an unfair hearing. The Tribunal is satisfied the hearing was fair.

6. The Tribunal took time to make its decision. This is that decision. It is unanimous.

Issues

7. The parties had agreed a list of issues. The dates were put forward by LPT as being the most appropriate. Ms Akhtar did not dispute them as inaccurate. They tally with the evidence. We have preserved the order as set out in the agreed list of issues for continuity, even though it not entirely chronological.

8. By agreement we dealt with liability only and so we exclude issues of remedy below. The draft came from Ms Akhtar's side. It is as follows.

Pregnancy and maternity discrimination

9. Did LPT treat Ms Akhtar unfavourably as follows:

9.1. On or about 1 November 2022, permanently removing Ms Akhtar's duties and responsibilities and transferring these to a newly created post,

9.2. On or about 1 November 2022, denying Ms Akhtar a re-band and requiring her to apply for the newly created role (of Head of Legal),

9.3. On or about 1 November 2022, making Ms Akhtar's role redundant, without consultation or discussion,

9.4. On a date between 1 November 2022 and 28 November 2022, Ms Dyer directing Ms Akhtar to keep her application for the newly created role of Head of Legal brief in content,

9.5. Between 1 November 2022 and 28 November 2022, denying Ms Akhtar access to strategic management folders,

9.6. Between 1 November 2022 and 28 November 2022 stating to Ms Akhtar prior to interview that LPT (Ms Dyer) "knew things would be difficult" and "hoped feelings would have calmed down by April" and "anyone who wanted to apply for a different job could,"

9.7. On 5 December 2022 (date of interview outcomes) weighting the interview scoring towards the Integrated Care Board ("ICB"), National Health Service Improvement ("NHSI") toolkit and joint partnership working with Northamptonshire Healthcare NHS Foundation Trust ("NHFT") contrary to the job description which had a clear emphasis on legal competency and expertise,

9.8. On 5 December 2022, appointing Ms Patel (a Trainee Solicitor) as Head of Legal,

- 9.9. On 5 December 2022, informing Ms Akhtar and/or expecting that the Head of Legal role was to start immediately,
 - 9.10. On 5 December 2022, informing Ms Akhtar that the next time she applied for a role Ms Dyer would assist her, indicating that Ms Akhtar was expected to leave the Trust,
 - 9.11. Between 8 April 2022 and 5 December 2022, not making Ms Akhtar aware of systems and processes that came into being whilst Ms Akhtar was on maternity leave (which were used as interview scoring criteria),
 - 9.12. On 5 December 2022, putting Ms Akhtar in a position whereby she is managed by a Trainee Solicitor whom Ms Akhtar previously managed and was her training principle,
 - 9.13. Between 8 April 2022 and 5 December 2022, not providing Ms Akhtar with any KIT days to enable her to be aware of work developments,
 - 9.14. On 31 March 2023 Chris Manning being aggressive, intimidating and rude by enforcing that Ms Akhtar must liaise with Ms Patel as her new line manager despite Ms Akhtar not being informed that her line management had changed and that the grievance process had not been exhausted,
 - 9.15. On 27 March 2023 Ms Patel contacted Ms Akhtar by WhatsApp asserting her authority by requesting to discuss Ms Akhtar's return to work,
 - 9.16. Dismiss Ms Akhtar?
10. There is no dispute these alleged acts occurred during the protected period or maternity leave, pregnancy or pregnancy-related illness or outside of any protected period, as defined in the **Equality Act 2010 section 18** and neither party has suggested we need to concern ourselves with whether an act falls under the **Equality Act 2010 section 18(2)** or **sub-section (4)**. The parties treated them indistinctly, so we do the same. The issue therefore is simply: Was this because of Ms Akhtar's pregnancy, pregnancy-illness or maternity leave? Since most of the time everyone referred to the period as "maternity leave", we will for linguistic and grammatical simplicity refer to all these potential causes as "maternity leave" too.

Victimisation

- 11. LPT concede that Ms Akhtar's grievance of 30 January 2023 is a protected act.
- 12. Did LPT subject Ms Akhtar to a detriment because of the protected act (or because LPT believed that Ms Akhtar had done or may do a protected act)? Namely:
 - 12.1. c

Harassment related to sex

- 13. Did LPT engage in the following unwanted conduct,

- 13.1. On 31 March 2023 Chris Manning being aggressive, intimidating and rude by enforcing that Ms Akhtar must liaise with Ms Patel as her new line manager despite Ms Akhtar not being informed that her line management had changed and that the grievance process had not been exhausted,
- 13.2. On 27 March 2023 Ms Patel contacted Ms Akhtar by WhatsApp asserting her authority by requesting to discuss Ms Akhtar's return to work,
- 14. If yes to either,
 - 14.1. Was the act related to Ms Akhtar's sex (female)? And if so,
 - 14.2. Did such conduct have:
 - 14.2.1. the purpose of violating Ms Akhtar's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms Akhtar?
 - 14.2.2. if not,
 - 14.2.2.1. did it have that effect?
 - 14.2.2.2. was that effect reasonable, taking into account Ms Akhtar's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect?

Constructive Dismissal

- 15. Did LPT commit a repudiatory breach of contract? In particular did LPT:
 - 15.1. Subject Ms Akhtar to pregnancy and maternity discrimination, victimisation and harassment as set out above?
 - 15.2. Between 8 April 2022 and 5 December 2022, put pressure on Ms Akhtar to engage with her managers despite this exacerbating Ms Akhtar's mental health?
 - 15.3. Between 6 July 2023 and 8 December 2023, progress the absence management process too quickly?
 - 15.4. On 22 November 2023, portray Ms Akhtar negatively to Occupational Health?
 - 15.5. As a result created, alternatively permitted, a working environment that was intolerable for Ms Akhtar in all the circumstances?
- 16. In all the circumstances, did LPT act without reasonable or proper cause, and in a manner that was calculated or likely to damage or seriously destroy the relationship of trust and confidence?
- 17. If there was such a breach, did C affirm/waive that breach and/or affirm/waive any breach by her delay?
- 18. Did Ms Akhtar resign on 8 December 2023 in response to the breach?

Jurisdiction

19. Given the date the first claim form was presented and the effect of early conciliation, any standalone complaint of discrimination that happened before 4 December 2022 has been brought out of time.
20. Were the discrimination and victimisation complaints made within the time limit in the **Equality Act 2010 section 123**? The Tribunal will decide:
 - 20.1. Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?
 - 20.2. If not, was there conduct extending over a period?
 - 20.3. If not, is it just and equitable to extend time?

Facts**Witnesses**

21. We set out our views of the witnesses first based on their answers, consistency with documents and their demeanour which we had the benefit of observing.
22. Ms Akhtar is not a credible or reliable witness in our view for the following reasons.
 - 22.1. Ms Akhtar did not answer questions asked but instead sought very often to give us the message she wanted us to hear. Often LPT had to repeat the question to get her to answer it. It came across that Ms Akhtar was there to give us a message rather than to assist us with answers to questions that would enable us to understand the strengths and weaknesses of evidence before us. It struck the Tribunal that the tenor of her answers to questions was that the role to which LPT recruited Ms Patel was that the role was Ms Akhtar's, even when that was not relevant to the question.
 - 22.2. The Tribunal was struck by very long pauses before Ms Akhtar answered what should be easy questions for her to answer. For example when asked what she relied on to show a link between her maternity leave and pregnancy and the alleged unfavourable treatment, she could not answer and, by agreement, she was allowed overnight to think about it. This is the key complaint before us and so the fact she could not answer without requiring significant time to consider it undermines her. We acknowledge that cross-examination is not a natural conversation, that people sometimes pause to think before answering questions and that sometimes there is a cultural barrier. However these pauses occurred only when questions went outside her narrative that LPT took the role she was doing away from her. We are satisfied none of these factors therefore provides an explanation.
 - 22.3. Even when reassured that she could answer that she did not know, she did not seem able to say that.

- 22.4. She did not even say she did not know, when reminded. She took time even to answer the most fundamental questions. There are some other factors, notably her interpretation of things in such an unreasonable manner they too undermine her credibility. We come to those within the reasons.
23. Ms Dyer was a credible witness. Nothing in cross-examination or the evidence generally suggested she was not reliable.
24. Ms Patel was a credible witness. She was direct and to the point. Nothing in cross-examination suggests she was not reliable.
25. Mr Manning was abrupt at times in his evidence. He gave us the impression he was firm in his approach at work. However there was nothing in the evidence or cross-examination that showed him to be anything other than a reliable witness. Therefore he is a credible witness. We can imagine he would be firm and perhaps intimidating in manner. However we are not persuaded he is unreliable or wrong in his evidence.
26. In the circumstances, where there is a conflict in the evidence our default is to prefer that of LPT's witnesses to that of Ms Akhtar.

Not putting the case in cross-examination

27. During the hearing LPT made it clear it would pursue in closing any argument available to it that Ms Akhtar had failed to put material matters in cross-examination to the witnesses. The Tribunal at the time explained to her the rule (as it understood it from **Browne v Dunn (1893) 6 R 67 HL** explained in **Griffiths v TUI UK Ltd [2025] AC 374 UKSC** and a rule we understand applies in the Tribunal: see **Secretary of State for Justice v Dunn UKEAT/0234/16/DM**), namely that a party should make it clear to the witness through questions which material parts of their evidence are disputed and give that witness an opportunity to comment, and that if a material matter were not clearly put in issue with the witness, then the Tribunal would presume that there was in fact no dispute. We recognise that at its heart is the need to ensure a fair trial and proportionality, so the rule has some flexibility. At its heart, we consider fairness is achieved if the witness knows from questions what the material key disputes are and has a chance in questions to put their version of events.
28. While a litigant in person, we cannot ignore that Ms Akhtar is a qualified solicitor and so we can expect her to have familiarity with this rule or at least understood it after the Tribunal explained it and LPT explained its position. When Ms Akhtar said she had finished cross-examining Ms Dyer (the main witness for the respondent) the Tribunal reminded Ms Akhtar of LPT's position, the rule and its effect so Ms Akhtar could consider whether she had ended cross-examination. We took a short break for her to reflect. On resumption afforded her an opportunity to ask further questions if she felt it appropriate. She did not do so.
29. We are satisfied that Ms Akhtar was sufficiently aware of LPT's position, of the rule and its effect. We are satisfied it is fair therefore to apply this rule in this case.

Introduction

30. We repeat that we have considered all the evidence and submissions. However for proportionality's sake we set out only that which we believe is necessary to understand the facts of the case. We cannot deal with every single point. The parties may take it that if a point they raised is not cited here, then we did not find it relevant or persuasive. With all of this in mind, we make the following findings of fact on the balance of probabilities.

About the respondent

31. LPT itself is an NHS Trust that provides mental health-related services to Leicester, Leicestershire and Rutland. It is a large public-sector employer, which has access to other cross-trust services of the NHS.
32. The NHS gets reorganised from time to time. One reorganisation was the move from Clinical Commissioning Groups to ICBs, the NHSI toolkit and joint partnership working with NHFT. These had been processes that had been planned, discussed and started to come into place over many years, well before Ms Akhtar's first period of maternity leave.

Respondent policies

33. LPT has a number of policies that govern the employment relationship. We need only quote parts of those policies. There is no dispute these were the relevant policies at all times material to this claim.

Recruitment and selection policy

34. The policy applies to both external recruitment and to internal transfer and promotions: paragraph 3.1. Subject to exemptions for those internal applicants at risk of redundancy or in certain disability-related situations, the policy applies equally to all candidates, whether internal or external. The purpose is to ensure LPT has the chance of attracting the best candidate.
35. This policy further provides as follows.
- "6.2 Additionally Recruiting Managers must ensure that any requirements specified as essential are genuinely required for the job.
- "...
- "12.22 Once all interviews have been concluded all panel members decide who has been successful. The candidate who scored highest when their answers are scored against the person specification should be the successful candidate and can receive a conditional offer of employment for the role. The offer is conditional on the applicant successfully completing pre-employment checks.
- "13.8 If an applicant does not hold the professional registration required for a post then they cannot be recruited into this post. The only exception to this is where an applicant is in the process of completing professional training and is waiting for their professional registration to come through, in which case if there is an appropriate role for the team then at the manager's discretion they can be recruited into the role."

Maternity, Paternity, Adoption, Shared Parental Leave and Parental Leave Policy and Procedure ("Maternity leave policy")

36. This policy provides:
- "8.1 KEEPING IN TOUCH DURING MATERNITY, ADOPTION OR SHARED PARENTAL LEAVE PERIOD
- " ...
- "8.1.2 To facilitate the process of keeping in touch, an employee may work for up to a maximum of 10 keeping in touch [days] [("KIT days")] without bringing their leave to an end.
- " ...
- "8.1.5 KIT / SPLIT days are intended to facilitate a smooth return to work for employees returning from maternity / adoption / shared parental leave. The work can be consecutive or not and can include training, specific project work, or other activities which enable the employee to keep in touch with the workplace.
- "8.1.6 The employee is neither obliged/required nor penalised for refusing to take up the KIT / SPLIT days, nor is the manager obliged to offer or agree to the employee working a KIT / SPLIT day."

Banding

37. Within LPT, roles and therefore employees are allocated to a band which dictates their pay. As the band numbers increase, so the band becomes more senior and better paid. Band 8 is divided into sub-bands with A at the bottom.
38. An employee can request a regrade of the band to which their role is allocated. The regrade involves allocating a score. If the score suggests the role should be in a different band, then LPT move the role to that different band. The adjustment in pay then follows automatically from the date of the regrade or thereabouts.
39. The regrade of a role is not the same as recruitment or promotion. The employee continues to be employed by LPT in the same role with the same duties and responsibilities. They are just paid at a different (correct) rate.

Other policies

40. The evidence discloses that LPT has a sickness absence policy. Neither party took us to it. We assume therefore that it is not relevant to assessing the complaints before us. We also assume that there has been no breach of it because no party has sought to refer us to its terms or suggest how LPT breached them.

About the claimant

41. LPT employed Ms Akhtar as a Legal Affairs Lead from 1 September 2024. The role is now called Legal Services Lead. The change is not material. It was originally a band 5 role but from 2 May 2014 LPT regraded it on application to band 6.

42. At all material times, Ms Akhtar was a qualified practising solicitor. The role required it because Ms Akhtar had to carry out reserved legal activities, which are defined in the **Legal Services Act 2007 Part 3**.

Ms Akhtar's job on commencement

43. When Ms Akhtar started, there was a job description. The description is detailed and we have considered it. It suffices to set out only the following parts for present purposes, taken from the start of the description.

"JOB PURPOSE:

"Investigate and manage potential and actual clinical negligence, employers/public liability and property expenses scheme claims against the Trust in line with statutory requirements and the NHS Litigation Authority rules. To analyse trends from claims received and provide management information (risk management feedback, themes and financial costing) to enable learning from claims to enhance patient and staff safety.

"Actively manage the Trust's Coroner's inquest caseload from initial statement/document gathering to attending court.

"Provide support to and deputise for administrative support to the Director of Corporate Affairs for legal affairs issues.

"Line manage and supervise and supervise continuous development of the Legal Affairs Assistant and Administrator.

"MAIN CHALLENGES:

"Adhere to tight deadlines imposed by the Courts, Coroner and Civil Procedure Rules.

"Effective management of internal and external relations using tact, persuasion and teamwork.

"Negotiation with legal advisors to ensure value for money.

"Handling sensitive and highly confidential information with respect to litigation claims, Inquests, Court of Protection cases and general legal advice.

"Persuading and influencing staff in order to manage and maintain a number of key data bases."

The description then goes into specific tasks.

The legal affairs department

44. The department had 4 members.
45. The head of the department was Mr Frank Lusk at the start. His job was Director of Corporate Affairs and Strategy. He was also company secretary. He was Ms Akhtar's supervisor and line manager. He was responsible for the department's strategy, direction and general managerial decisions. Amongst other duties, he managed the panel of approved external solicitors to whom LPT could send work that required solicitors, input. He was responsible for managing the expenditure on and ultimate approval of instructing these external solicitors. If LPT needed legal advice that could

not be sourced from within the department, it instructed one of those external solicitors. Although no doubt knowledgeable about the law and procedure, which he had gained over many years' experience, he was not an authorised or exempt person within the meaning of the **Legal Services Act 2007**. Therefore he could not conduct reserved legal activities. Only Ms Akhtar could do that.

46. The use of external solicitors was necessary because of the expertise required, and because of the workload compared to the small teams.

The team also worked with NHS Resolution ("NHSR"). We need only detail the relationship in very simple terms they are the NHS insurers. Any clinical negligence dispute is referred to them, and they either release it back to LPT to handle (providing the indemnity) or deal with it themselves in which case the department acts as a liaison between LPT and NHSR. If LPT was dealing with it, it would be outsourced to external solicitors.

As a rule therefore contentious work (used in the lay sense and not that in the **Solicitors Act 1974**) was always outsourced to external solicitors. Ms Akhtar was acting in essence as in-house Counsel ensuring that the solicitors did the work, were value for money, providing her own legal input when required and keeping Mr Lusk updated on the progress of legal claims. She was not running a caseload in the sense that she was conducting the whole of litigation in-house personally.

47. Ms Patel worked in the department from 7 October 2013. She was a Legal Affairs Assistant, subordinate to Ms Akhtar. Indeed Ms Patel became a trainee solicitor at some point. Ms Akhtar was her authorised trainer for regulatory purposes.
48. There was also an administrator whose post was graded as band 3. We need not concern ourselves with this role further.

Ms Akhtar's first period of maternity leave

49. From 16 September 2019 to 2 December 2020, Ms Akhtar was away from work on maternity leave.

Maternity leave of others

50. While we do not have the details, both Ms Dyer and Ms Patel have taken maternity leave while employees of LPT and before Ms Akhtar's resignation.

Mr Lusk retires

51. In May 2020 Mr Lusk retired. Ms Akhtar told us that Mr Lusk had allocated her task and said that he intended that Ms Akhtar would take on his role. There is no direct evidence of this. However we consider it is irrelevant and make no finding of fact. There is no evidence that any such comments were more than an expression of hope. There is no evidence advanced to suggest that they are representations that create a legally or equitably binding promise. It is clear from Ms Akhtar's evidence to the Tribunal however that she saw his role as hers by right and that she would be in due course appointed to it.

52. On Mr Lusk's retirement, LPT appointed Ms Dyer as Ms Akhtar's line manager.
53. Mr Lusk's responsibilities were split up. Ms Dyer took over the role of company secretary temporarily. LPT moved the role of company secretary to a permanent post called Deputy Director of Governance and Risk. Ms Dyer was appointed to that role after competitive recruitment exercise in February 2021. She also took over the general management and strategy direction of the department that Mr Lusk had done, while LPT reviewed the structure of the Legal Affairs Department. Ms Akhtar disputes this. We prefer Ms Dyer's evidence, however. She was more credible. We accept her evidence that Mr Lusk and she met before his retirement to arrange a hand-over. Ms Akhtar was on maternity leave. She has produced nothing that suggests reasonably that Ms Dyer's evidence is incorrect.
54. From 24 June 2019 to 2 August 2019, 30 August 2019 to 26 November 2020 in the absence of both Mr Lusk and Ms Akhtar, Ms Patel took over the management of legal cases and day-to-day team management and was the Acting Legal Affairs Leader.

Reorganisation

55. LPT considered that the retirement of Mr Lusk might present an opportunity to consider the structure of the Legal Affairs Department. LPT considered this during both 2020 and 2021. Ms Dyer took the lead because, ultimately, she would have to present it to LPT's board and gain their approval. She explained, and we readily accept, that any form of change or reorganisation is not a swift process in the NHS – in fact it can take many months if only because the board meets so infrequently, and requires reports and the like before it makes a decision.
56. Ms Dyer spoke to members of the team about the idea of reorganisation. In June 2021 Ms Dyer asked Ms Patel and Ms Akhtar to liaise with each other to prepare a business plan for how the team might improve efficiency and thereby reduce costs. The aim of the plan was focused only on service need. It was not focused on career progression or regrading.
57. Ms Akhtar prepared a business plan proposal. She sent it to Ms Dyer on 27 September 2021.
58. When read with the emails between Ms Akhtar and Ms Patel about the report, the work came across to us very much as Ms Akhtar's work. There is nothing wrong with this. She was the more experienced, senior and longer serving so it is natural and expected. Ms Akhtar proposed that the administrator (band 3) and legal affairs assistant (band 5) remain. She proposed a new role of solicitor (which would be band 6) and that her role as Legal Affairs Lead would be regraded to band 8A, and become officially the head of the department, responsible for other matters like general management and strategy direction. She opined that any increase in salaries would be offset by being able to keep work in-house and so reduce expenditure on external solicitors.

59. Ms Akhtar envisaged that she would remain the Legal Affairs Lead. Thus Ms Akhtar's proposal would have resulted in her being regraded from band 6 to band 8A – essentially resulting in a large pay rise.

Was Ms Akhtar doing Mr Lusk's job?

60. There is a dispute about whether Ms Akhtar made this proposal simply to gain a pay rise, the essence of LPT's case, or because she was already undertaking the role of providing general management and strategy direction – Ms Akhtar's case.
61. We conclude that Ms Akhtar intended that she would remain Legal Affairs Lead and she would receive a regrade to band 8A. However it is quite apparent that Ms Akhtar believed she had taken over Mr Lusk's responsibilities for general management and strategy direction. The fact that she constantly emphasised this in cross-examination and placed emphasis on it in her evidence-in-chief shows this was her belief. It also fits with her assertion that Mr Lusk had said to her that he intended she would succeed to his position on his retirement.
62. We conclude that her belief however was wrong. Our reasons are as follows.
- 62.1. We accept Ms Dyer's evidence that much of the role was handed over to her. We refer to the evidence above and in particular note the fact they had a handover meeting. If Ms Akhtar was to take over, then the handover meeting would at the very least have involved her. It did not.
- 62.2. Ms Akhtar was on maternity leave when Mr Lusk retired and remained so until December after he retired. One or more other people were doing the role. It is more likely that Ms Dyer, as the more senior person between her and Ms Patel, took on the responsibilities as she stated in her evidence-in-chief.
- 62.3. Ms Akhtar repeatedly told us she was taking responsibility for witness statements, undertaking mediation and advocacy. Firstly we accept Ms Dyer's evidence she was involved in these too insofar as they were not reserved legal activities and took on the responsibilities for them as de facto director. Indeed she bore responsibility for e.g. settlements and whether to mediate. Secondly, we think that these tasks are more consistent with Ms Akhtar's role as a solicitor than as director of the department. In any case, she clearly was not doing these when on maternity leave. We also observe it was all expressed in general terms.
- 62.4. Mr Lusk was not legally qualified. There is no suggestion he was unable to discharge his duties effectively for this lack of qualification. He was in our view in effect a senior, experienced, administrator. Ms Dyer is not legally qualified either. She is a senior, experienced administrator. It is therefore credible she could take over his role.
- 62.5. The evidence from all parties was that within the team, work was fluid. It was a small team after all. Everyone did a bit of

everything, subject only to the need for professional qualification if the task were a reserved legal activity or depending on nature, seriousness and complexity of the task. The fact therefore that Ms Akhtar may have done some tasks that otherwise the director would do is not something that leads us to conclude she was in effect performing his role. In addition we refer to the fact that, as set out earlier, Ms Patel did some of the tasks when Ms Akhtar was away. This also emphasises the fluidity of the role.

- 62.6. As part of the business case, Ms Akhtar prepared a “list of duties carried out by the legal affairs lead”. It is very long. As the non-legal members noted drawing on their experience, it is unusual to see such a long job description. The evidence leads us to conclude that this list is what Ms Akhtar avers she was doing at the time. What we note however is that it is written in quite general terms and, unlike Ms Akhtar’s job description when she started, it does not set out the overarching purpose of the job and main challenges. It also makes no mention of the fluidity of tasks to which we referred above.
- 62.7. Ms Akhtar’s evidence about what she was doing made no mention of the fact that legal work, including that involving reserved legal activities, was outsourced on an ad hoc basis. It also makes no mention of the fact that she did not have power or responsibility to make decisions regarding funding or budgeting for external legal work or more generally. Mr Lusk did, and Ms Dyer took on that responsibility when he retired.
- 62.8. In cross-examination, Ms Akhtar did not identify any particular tasks she was doing, and which were taken from her later and allocated to the new head of department.
- 62.9. Ms Akhtar was aware she could apply for her job to be regraded, if she believed her tasks were commensurate with a higher band. She never applied for that to happen.
- 62.10. In summary we are left with the fact that she was acting up to cover some of what was Mr Lusk’s work. It was not a permanent arrangement. It is consistent with what one might expect in the absence of a permanent head of department and with the fluidity in the department.

Kerry O’Reardon took over as Ms Akhtar’s line manager for welfare

- 63. By late October 2021 (the date itself is not clear), Ms O’Reardon, Risk and Assurance Lead, took over line management of Ms Akhtar for welfare purposes. Ms Akhtar alleges this was because Ms Dyer was too busy to manage her. Whether true or not, we do not see anything sinister in this.

Ms Akhtar’s pregnancy-related absence

- 64. By 27 October 2021, Mr Akhtar told Ms O’Reardon that she was pregnant. From 8 November 2021 to February 2022, Ms Akhtar was unfit to attend work because of pregnancy-related illness. Ms O’Reardon sent her flowers on the department’s behalf, for which Ms Akhtar said “Thank you so much

for the beautiful flowers. Please pass on my thanks to the team – this really did cheer me up”. This tends to suggest there was no animosity within the team at the time and Ms Akhtar perceived none.

Was there a discussion of the plan with Ms Patel?

65. Ms Akhtar alleges that while she was on sick leave, Ms Dyer discussed the business case proposals with Ms Patel. She asks us to infer they were discussing the proposed reorganisation. The implication is that Ms Patel had input to the proposal, gained an advantage in the interview to which we will come, and that it demonstrates that LPT was setting up Ms Patel to become the new head of department.
66. It revolves around an email from Ms Patel to Ms Dyer on 27 January 2022. The title is “Figures for discussion tomorrow - for business plan”. The email then contains only a table which sets out the expenditure in various time periods on various types of work. The figures themselves are redacted and nothing turns on them.
67. The oral evidence is as follows.
 - 67.1. Ms Dyer says that the figures were likely for her report to the board but does not remember the meeting for which she required the figures. She is clear she did not have any discussion with Ms Patel about the business plan after this email.
 - 67.2. Ms Patel cannot recall the purpose of the email but confirmed it set out no more than current expenditure. She only discussed the business plan with Ms Dyer at the very start of the process and was part of the discussions that led Ms Akhtar and her to prepare the business case we referred to above. She is clear she did not otherwise discuss potential proposals with Ms Dyer.
68. Ms Akhtar could not give any evidence of any type of discussion she was alleging. She could not refer to any other document that evidenced any discussion between Ms Patel and Ms Dyer about the business case.
69. We conclude this email does not demonstrate what Ms Akhtar alleged. All that happened was that Ms Dyer asked for some figures and Ms Patel sent them. That is totally innocuous. Our reasons are as follows.
 - 69.1. There is no other document that suggests any discussion took place.
 - 69.2. The contents of the email are no more than a set of figures.
 - 69.3. The subject is consistent with there being a meeting of the board at which Ms Dyer might have to present figures as anything else.
 - 69.4. There is no reason for Ms Dyer to discuss the business case with Ms Patel.
 - 69.5. Ms Patel had already had input through the case that Ms Akhtar had prepared.
 - 69.6. None of the oral evidence demonstrates any type of discussion as Ms Akhtar alleges took place. At its highest, the allegation is somewhere between supposition and conspiracy.

February 2022

70. In February 2022,
- 70.1. Ms Akhtar began a phased return to work in February 2022,
 - 70.2. Ms Dyer became LPT's company secretary – a role held previously by Mr Lusk, and
 - 70.3. Ms Dyer and Ms Akhtar had a one-to-one meeting. This is evidenced by an entry in Ms Dyer's agenda for the day in her electronic calendar. We conclude it happened. There are no notes of the meeting. We are satisfied from Ms Dyer's evidence it was an uncontroversial meeting in which Ms Akhtar raised no concerns. If she had done so, then we consider we would have seen evidence of some action being taken after the meeting to address them.

Ms Akhtar's second period of maternity leave

71. Ms Akhtar started her second period of maternity leave on 8 April 2022.
72. During this Ms O'Reardon commenced long-term sick leave. Therefore on 8 July 2022 Ms Dyer became her line manager instead.
73. During this period of maternity leave, Ms Akhtar did not have any KIT days. We refer to the policy above. We note that:
- 73.1. Ms Dyer did not suggest any (something which Ms Akhtar complains about), but
 - 73.2. Neither did Ms O'Reardon (about which Ms Akhtar does not complain).
 - 73.3. The policy as quoted above makes it clear that the employee can request KIT days, and
 - 73.4. Ms Akhtar did not make such a request.
74. We are satisfied that if she had requested them, then Ms Dyer would have made arrangements for a KIT day. The circumstances lead us to conclude that in fact there was no issue about KIT days, and that this is a complaint that has been thought about after the fact.

The finalised business plan for the department

75. During this maternity leave, the LPT finalised the business plan for the department. It was based on a plan proposed by Ms Dyer. The paper is known as "Paper E" for some reason. On the legal department, it says:
- "Legal team
- "A review of current legal expenditure indicates that it could be reduced, and the service improved if an internal solicitor were appointed. This would enable a more cost effective and tailored service that could better support the needs of the Trust.
- "It is therefore proposed to introduce a band 7 Solicitor post to the Legal Team to bring services in-house.
- "Funding

“Whilst the detailed costings have not been undertaken it can be seen from the table below the proposal should be cost neutral within the funding of the current posts compared to the new posts.”

76. The paper contained a table in which Ms Dyer set out her proposal.

“Current structure	New structure	Difference in funding
“Legal affairs Lead Band 6	Solicitor Band 7	To be funded from savings on external solicitor contract
“Legal Affairs Assistant Band 5	Claims and inquests manager band 6	No cost
“Legal administrator Band 3	Legal Administrator Band 3	No cost”

77. While looking at the table, it appears that the band 6 role becomes a band 7 role, this is simply down to how Ms Dyer formatted the table. She explained one is to read the columns. The rows do not indicate equivalence. She also admitted that she recognised for the first time the Table did not make it clear that the current band 5 and band 6 roles would remain. We accept this. Ms Dyer’s evidence was clear on this. It is supported by the fact the Table incorrectly suggests the department had a complement of 3 people, whereas all agree it was 4 people. It is also supported by Ms Patel’s evidence that the band 6 solicitor role and band 5 assistant role continued after the changes took effect and continues to this day.
78. Ms Dyer revisited the requirement that the Legal Affairs Lead (later renamed Head of Legal) be a solicitor. She considered the tasks the postholder would be required to undertake, the job evaluation, consulted human resources (“HR”) and consulted the qualifications that similar posts in other NHS trusts did and did not require. She also reflected on the guidance in the Recruitment and Selection Policy (which we quoted above). Because it was a management and strategy role she did not consider it was essential that the recruit be a qualified solicitor from the start because they would not be undertaking a reserved legal activity. She concluded from this that a person who was either a solicitor or working towards that qualification would be appointable. The business plan proceeded with that amendment.
79. Ms Akhtar contends that Ms Dyer made the change to ensure that Ms Patel would be appointed. There is no direct evidence of this. Besides Ms Dyer’s explanation is credible and we accept it.

Ms Dyer and Ms Akhtar meet

80. Ms Dyer and Ms Akhtar met on 6 October 2022? The medium of the meeting is disputed but irrelevant. Ms Dyer explained to Ms Akhtar the proposal and its effect. She explained that the role would be advertised both internally and externally. We accept this is appropriate because within the LPT one cannot simply be promoted to a more senior position or role. We make clear promotion is different from a regrade – the latter involves no change in job or role.

81. It became apparent in the conversation that if LPT launched the recruitment exercise when it had planned, Ms Akhtar would be overseas and unable to apply in her own time from her home environment. Ms Dyer therefore moved the dates to ensure Ms Akhtar did not suffer this potential disadvantage. Ms Dyer told Ms Akhtar that her current post was not going to change – there would continue to be a solicitor in band 6. Ms Akhtar expressed gratitude for this. Ms Akhtar was unable in evidence to acknowledge this favourable treatment. We consider this reflects on how she has approached this case generally: Looking for fault and ignoring the remainder.

Recruitment launched

82. LPT launched the application process with an advert published on 14 November 2022. The advert made it clear that it was open to a “qualified solicitor or someone working towards that role.” The advert was balanced, detailed and clear.

The strategic management folders

83. LPT has a number of folders on its network where it stores various files. One was called the “CEO folder”. It contained various things like reports, budgets and minutes of meetings – highly confidential information. Legal Affairs also stored all of their files with a sub-folder within the CEO folder.
84. However LPT discovered it was not confidential. In December 2021, then became aware that a number of people, including external solicitors, had access to it.
85. At a date before Ms Akhtar commenced her second period of maternity leave, LPT moved the Legal Affairs folder to another location and restricted access to the CEO folder to those who needed it. Those who were denied access included Ms Dyer, Ms Patel and Ms Akhtar. It appears there was an oversight, and Ms Dyer did not tell Ms Akhtar of the move because she was on maternity leave.
86. In November 2022 Ms Akhtar telephoned to Ms Dyer about the lack of access because she said she needed a file to help with her application. Ms Dyer explained the change to her and stayed on the telephone while Ms Akhtar navigated on her computer to the new Legal Affairs folder. She ended the call only when Ms Akhtar confirmed she could access the new location.

Alleged advice on need for brevity in the application

87. Ms Akhtar alleged that Ms Dyer told her during the call to keep her application for the newly created role of Head of Legal Services brief in content. Ms Dyer denies making this statement. We accept Ms Dyer’s evidence based on credibility and that, of the 3 people who applied, Ms Akhtar’s application was the longest and, in any event, cannot be described as brief. We note that the length is clearly not an issue because what she wrote was enough to secure her an interview.

Alleged comments on knowing things would be difficult etc.

88. Ms Akhtar also alleges that in the call Ms Dyer said to Ms Akhtar that “We will have to meet up in April to discuss your job role. I know it will be difficult, but I am hoping that by April feelings would have settled and anyone who wants to apply to another job they can,” and asks us to infer this shows the outcome was predetermined. Ms Dyer denies any knowledge of this conversation.
89. On balance of probabilities we conclude that Ms Dyer did not say these things. We accept that, as presented in the evidence-in-chief, the account makes no sense. There is no obvious trigger to the comments – they come from nowhere. Ms Dyer is likely to recall saying them and her credibility leads us to conclude she would have told us if she said them.
90. However even if she had said them, then Ms Akhtar’s evidence in cross-examination shows they would be innocuous. Ms Akhtar told us that they came about after she asked Ms Dyer what would happen if she were unsuccessful. In that context we agree with LPT the alleged comments are innocuous. It also undermines Ms Akhtar’s credibility that in her evidence-in-chief she gave no hint of this important piece of context, which changes the implication significantly. It tends to suggest to us Ms Akhtar is picking and choosing what to tell us.

Interviews

91. Interviews took place on 5 December 2022.
92. There were 3 candidates.
- 92.1. Ms Patel,
- 92.2. Ms Akhtar, and
- 92.3. Candidate A, who was an external candidate.
93. The interview panel consisted of Ms Dyer, Ms Daljit-Kaur Bains (who was the system leader for the new ICB and Ms Amy Holden, a partner at Capsticks. Capsticks are one of the external panel firms to whom LPT send work.
94. Each prepared a score sheet independently. The scores were tallied. In accordance with the policy, LPT would offer the position to the highest scoring candidate. Any person who scored below a certain threshold was not eligible for appointment and so could not be appointed under that exercise. Therefore if there were no candidate successfully found, LPT would re-advertise the role.
95. We have seen the scoresheets and the questions the panel asked. The interview was a competency-based interview. In summary, they asked questions to enable candidates to provide examples of work to show they had the skills needed for the work. They were not asked to demonstrate knowledge of or work involving ICB, NHSI or joint partnership working with NHFT. It did provide an opportunity to provide examples of e.g. thinking at a strategic level, contribution to system working and improvements that she has led. Each question was equally weighted.

96. Ms Akhtar also says that Ms Dyer failed to make Ms Akhtar aware of “systems and processes that came into being while she was on leave and which were used in the scoring system”, and that this too disadvantaged her. We reject that for substantially the same reasons we found there were no questions about ICB, NHSI or working with NHFT: There were none about systems and processes that came into being, and so none were used in the scoring system. Ms Akhtar was unable to point to a question that was about this topic. We have seen the questions and cannot see any about this topic either. In any case, we repeat what we say about KIT days: Ms Akhtar was free to request a KIT day, but chose not to do so.
97. The only question that required some research was a presentation on the topic: “What are the key priorities and opportunities within a quality improvement and efficiency programme for legal services and how might we apply this to Leicestershire Partnership NHS Trust?”. Ms Bains marked this as “strong” awarding $\frac{4}{4}$, Ms Dyer and Ms Holden marked it as “acceptable” awarding $\frac{3}{4}$. This score is a good score. However it is less than that scored by Candidate A.
98. This shows to us that any perceived disadvantage from being on maternity leave or lack of access to the CEO folder was not an actual disadvantage. We are satisfied as well from the evidence that all information needed to answer this question is available on the public-facing website of LPT and NHS websites generally. Candidate A’s success as coming second and being appointable also undermines Ms Akhtar’s allegations. They did not work in the department even but clearly managed to prepare well and to give good answers.
99. The result was that Ms Patel scored highest, was above the threshold, and was therefore successful. Candidate A scored second highest, was above the threshold but lost out to Ms Patel. Ms Akhtar did not pass the threshold for appointment and also came third.
100. Ms Akhtar points to the final scores. Each interviewer awarded scores of the same order of magnitude for Candidate A and for Ms Akhtar. However for Ms Patel we note that Ms Bains awarded 27, whereas Ms Holder and Ms Dyer awarded 39 and 37 respectively. We have considered the interview notes made by each interviewer. They do not disclose in our view anything other than reasonable disagreement about what marks an answer deserved. We also note that even Ms Bains scored Ms Akhtar the lowest of the 3 candidates. This also leads us to conclude that the outcome that Ms Akhtar came 3rd was a fair assessment. The real difference is that Ms Bains rated Candidate A highest, Ms Holden and Ms Dyer rated Ms Patel highest.
101. Ms Akhtar suggested this showed that LPT through Ms Holden and Ms Dyer had decided in advance that Ms Patel would be the successful candidate. We see no evidence of that. We do not accept that they would waste time interviewing the other candidates if they were not good enough. In any event Candidate A performed well also and clearly impressed the panel. Besides, if LPT appointed Ms Patel because she was Ms Patel, it shows that Ms Akhtar’s maternity leave played no part – on Ms Akhtar’s evidence to the Tribunal, it was clear that the issue was that she was not Ms Patel.

Ms Akhtar could not explain how not being Ms Patel meant there was maternity discrimination.

102. Ms Akhtar also suggested, without evidence, that Ms Dyer had given Ms Patel help in making her application. We reject this. Ms Dyer's evidence does not support such an allegation. Ms Akhtar's evidence does not support it. No documents support it. Moreover, Ms Patel's evidence was most credible. She had taken steps, without the assistance of LPT, to secure an external mentor to help her with the application and preparation for interview. She also researched and read the documents that we referred to above that were available on the public websites.
103. After considering the advert, the questions in interview, the interviewers' notes and outcome, we find as a fact that the recruitment process was fair to all candidates.

Start date

104. At the interview, LPT told Ms Akhtar that it expected the appointee to start as soon as possible and told Ms Akhtar this. LPT did not say the successful candidate was expected to start immediately. We accept the evidence that she was also told this would be subject to any prior commitments e.g. notice period. We see no evidence that LPT would not have delayed the start date to accommodate maternity leave. The non-legal members, drawing on their industrial experience, note that there is nothing odd, sinister or unusual about wanting an employee to start as soon as possible subject to e.g. notice periods, maternity leave etc.

Outcome and Ms Patel's appointment

105. On 5 December 2022, after the interviews, LPT appointed Ms Patel to the role of Head of Legal Affairs.
106. Ms Akhtar avers that appointing Ms Patel (a trainee solicitor) still as Head of Legal Affairs was unfavourable treatment. This allegation is distinct from what one might have expected, i.e. not appointing Ms Akhtar. There is no explanation or evidence of what was unfavourable about Ms Patel specifically being appointed.
107. The result was that Ms Patel was Ms Akhtar's superior, and Ms Akhtar was Ms Patel's line manager for the purposes of qualifying as a solicitor. We can see why this might upset Ms Akhtar: firstly being leapfrogged by one's trainee is bound to be upsetting and Ms Akhtar's evidence left us with the impression that she assumed that her appointment was a formality, i.e. it was her role by right. This is emphasised by her complaints and her evidence, her suggestion in the business case her role be band 8A and her evidence that Mr Lusk was lining her up as his successor. However it is important to maintain context, which Ms Akhtar repeatedly overlooked: This came about because she was not the best candidate in a fair recruitment process. Ms Akhtar accepted in cross-examination that this would not have been the situation if she had performed better in interview.

Ms Dyer called Ms Akhtar with the outcome of the interview and provides written feedback

108. Ms Dyer telephoned Ms Akhtar to tell her the outcome on 5 December 2022 and that she had been unsuccessful.
109. The parties agree that in the call Ms Dyer told Ms Akhtar that the next time she applied for a role, Ms Dyer would assist Ms Akhtar. Ms Akhtar says this was an indication that Ms Dyer was expecting Ms Akhtar to leave LPT. The evidence from Ms Akhtar is that, by expectation, Ms Dyer was intimating Ms Akhtar should or ought to leave.
110. We find as a fact this was not the purpose of the call and was not its subtext. Ms Dyer denied in her evidence-in-chief that this was her expectation. Ms Akhtar did not challenge that in cross-examination. There is no other evidence to support. Although Ms Akhtar had failed the interview, she was still secure in her appointment as Legal Affairs Lead at band 6. The post was not going to cease to exist, and there was no move to readvertise it. In context it cannot be reasonably seen as adverse or negative in any way: One can reach that conclusion only through unreasonable interpretation and supposition. That Ms Akhtar has taken this step is something further that shows us she looks for the negative to support her claim, and it is something that undermines her credibility.
111. Ms Dyer wrote to Ms Akhtar on 16 December 2022 with written feedback. It read:
- “Happy to talk it all over, that might be better than an email but so you have something in the meantime these were the summary points.
- “☐ Came across as confident and prepared. Whilst questions were answered they were specific and limited to
- practical examples of current day to day role rather than wider thinking.
- “☐ Responses were good and well thought through but were quite theoretical and/or did not include reasons why or examples with outcomes (i.e. what went well)
- “☐ Skills at a strategic level not evidenced enough – needed more around strategic and system ambition
- “☐ Quality Improvement need further strengthening in terms of evidencing response although an understanding was demonstrated.
- “☐ Staff development – evidence was day to day, not enough re wider development, succession planning, training for the future to shape the team and be ready for new things on the horizon.
- “Lets [sic.] get a date in the diary for the new year to have a general catch up, would be good to see you and plan for your return / keeping in touch days Have a lovely Christmas with your family, and I look forward to seeing you soon.”
112. We quote it because we consider it a fair summary from what we have read in the interview notes, is supportive because it provides positives and areas for improvement for next time and because of the last paragraph.

Grievance

113. Ms Akhtar lodged a grievance on 30 January 2026. In our view a detailed analysis of the grievance process sheds no light on the issues we must determine. Therefore we limit our observations to the following.
- 113.1. The grievance was alleged against Ms Dyer and in short says that because she was on maternity leave, she has been disadvantaged in the recruitment process.
- 113.2. It is conceded that the grievance is a protected act.
- 113.3. In our view the real reason for the grievance is her unhappiness she failed the process and Ms Patel succeeded because
- 113.3.1. She wrote:
- “I feel degraded and humiliated that as a qualified solicitor of 11 years PQE, who has managed NP since 2014 that I will now have to face a situation where I will be managed by her as a trainee solicitor, who has yet to demonstrate competency as a solicitor. I find it particularly distressing that this detriment has been caused solely due to my decision to have a child and take maternity leave from work.”
- 113.3.2. In the initial discussion about the grievance, Ms Akhtar said her preferred solution would be to rerun the selection process but exclude Ms Patel.
- 113.4. There has been no criticism of the process itself. We are satisfied it was a fair process in any event with reasonable amount of investigation, discussion and with well-reasoned conclusions.
114. As part of the background to her evidence and the case, and with a view to persuading us there was discrimination, Ms Akhtar has repeatedly told us that Ms Dyer was unsympathetic to her pregnancy and maternity leave. This is a significant allegation because if true it would put Ms Dyer's behaviour in a different light. We would expect Ms Akhtar to raise this in her grievance at least. However she did not make any mention of this
- 114.1. in her grievance,
- 114.2. in the grievance meeting,
- 114.3. in the additional points she provided after that meeting,
- 114.4. in her appeal, or
- 114.5. in the additional points she raised after LPT presented its reply to the appeal (the appeal proceeded on paper at Ms Akhtar's request in her email of 26 April 2023).
- We find this is significant. She was able to raise the allegation of discrimination and her complaints about the recruitment process. Ms Akhtar accepted she could and should have stated it.
115. The only evidence in support is that Ms Akhtar evidence that Ms O'Reardon told her that Ms Dyer had said this. This evidence carries no weight in our

view. There is no explanation about why Ms O'Reardon was not here to give this evidence beyond she was not contactable. We do not know what efforts Ms Akhtar made. We know nothing about the circumstances in which the comment was made or the words used. It is multiple hearsay. There is no contemporaneous evidence of it being said because it is not in the grievance etc. or anywhere else. We know nothing of Ms O'Reardon's motives for the alleged comment. It is telling that Ms Akhtar herself never mentioned it at the time.

116. We conclude that Ms Dyer never demonstrated anything to Ms Akhtar that suggested she was unsympathetic to Ms Akhtar's pregnancy and in fact was not unsympathetic. We also take into account both Ms Dyer and Ms Patel had taken maternity leave. It therefore appears incongruous she would be unsympathetic anyway.

End of maternity leave – the WhatsApp

117. Ms Akhtar's maternity leave was to end of 10 April 2023.
118. On 27 March 2023, Ms Patel tried to telephone Ms Akhtar to discuss her return to work. Ms Akhtar did not answer. Therefore Ms Patel sent a WhatsApp message to Ms Akhtar as follows:

"Hi Sameah, how are you? How are those beautiful children? I wondered if you are free this week for a quick catch up about returning to work? Please let me know when you are free, it will be great to speak to you x"

Followed the next day with:

"Hi Sameah, sorry forgot to mention that I am off on Thursday but I am free any other day. Look forward to hearing from you!"

119. Ms Akhtar described this as Ms Patel "asserting her authority". After hearing the evidence and submissions we are still not clear what this phrase is supposed to convey. However we cannot see how this could in any reasonable way and giving as much benefit to the doubt to Ms Akhtar as we can, be described as Ms Patel "asserting her authority". She is simply requesting a catch up about returning to work. She was now Ms Akhtar's line manager. The message is friendly, open, sensitive and appropriate. It cannot be seen reasonably be seen as negative.

End of maternity leave – call with Mr Manning

120. On 30 March 2023, Ms Akhtar emailed Ms Vanda Walker in HR. She requested Ms Walker to call her back to discuss "a management issue at work". She provided no other detail. Ms Walker could not deal with it, so she passed it to Mr Manning.

121. There is no dispute about what they discussed, which was as follows in summary:

121.1. Mr Manning called Ms Akhtar on her mobile on 31st March 2023 at 15:30. Ms Akhtar said she wanted to book annual leave ahead of her maternity leave ending. She said she did not want to contact Ms Patel and asked who she should contact instead. She said she wanted to liaise with Ms O'Reardon. However Mr Manning explained this was a temporary measure, and Ms Dyer

was previously Ms Akhtar's line manager, but because of Ms Patel's appointment, she should contact her because Ms Patel was her new line manager.

- 121.2. We accept Mr Manning's evidence that in the call Ms Akhtar repeated that she felt it was degrading, humiliating and unsupportive to have Mrs Patel, as a trainee solicitor manage her. Mr Manning however repeated the grievance raising this had been dismissed, subject to appeal at that time.
- 121.3. The call dropped. After 30 seconds Mr Manning hung up. He was unable to take Ms Akhtar's call about 15 minutes later. He tried to call her about an hour after Ms Akhtar's call but could not get an answer.
122. The call is further confirmation that Ms Akhtar's real grievance is Ms Patel's appointment.
123. Ms Akhtar avers that Mr Manning was "aggressive, intimidating and rude" and "enforcing" Ms Akhtar to liaise with Ms Patel as her new line manager. We conclude this did not happen. Ms Akhtar did not put this to him in cross-examination. There is also no explanation for why he might act as alleged. LPT's HR provide support and advice. They do not manage people. It did not affect him or his work. In addition Mr Manning is more credible than Ms Akhtar. Ms Akhtar has demonstrated a tendency to interpret things in the worst way. We noted Mr Manning could be abrupt and firm. This "no-nonsense" approach is not aggressive, intimidating or rude. Our conclusion is that Ms Akhtar did not want Ms Patel to line manage her, wanted Ms O'Reardon line manage her, and has used these labels to describe Mr Manning's approach because, ultimately, she did not get what she wanted.

Absence management

124. Ms Akhtar's maternity leave ended on 10 April 2023. She took annual leave until 6 June 2023 inclusive.
125. On 24 May 2023 Ms Akhtar, Ms Dyer and a member of HR met to discuss her return to work. Ms Akhtar had Ms O'Reardon accompanying her. After the meeting, Ms Dyer emailed Ms Akhtar that day to confirm that she looked forward to Ms Akhtar's return, that Ms Akhtar had said she was ready and did not need any special support, that her job description had not changed and, in a separate email, that Ms Patel was now her line manager. On 26 May 2023, Ms Patel emailed Ms Akhtar a polite message to say she was looking forward to Ms Akhtar's return.
126. On 7 June 2023, Ms Akhtar did not attend work. Ms Patel and Ms Dyer were concerned for her welfare and discussed by email how to check on her welfare. She emailed Ms Dyer at midday, not Ms Patel. Ms Dyer reminded her she was to contact Ms Patel. Her doctor had issued a sick note for the period 6 to 19 June 2023 citing "work-related stress". The assessment was done on 6 June 2023. Ms Akhtar did not provide the sick note until 7 June 2023.
127. On 19 June 2023, Ms Akhtar did not attend work. She did not tell LPT. On 20 June 2023 Ms Dyer emailed Ms Akhtar asking if all was well that she

was concerned for her welfare. Ms Akhtar replied saying she was ill and provided a sick note dated 19 June 2023 for the period 19 June 2023 to 18 July 2023 citing “work related stress”. Ms Akhtar requested only that someone from HR contact her. She averred that emails from people involved in the grievance exacerbated her symptoms.

128. On 22 June 2023 Ms Akhtar and Ms Gail Phillipson, HR, were in contact. The only relevant matter is that Ms Phillipson stated that Ms Dyer would be Ms Akhtar’s line manager because she did not want Ms Patel to manage her.
129. Ms Dyer invited Ms Akhtar to a Stage 1 Long Term Sickness Meeting on 26 June 2023. Ms Akhtar emailed Ms Dyer on 6 July 2023 to say she could not attend because of illness and stress. Ms Dyer proposed 11 July 2023, but Ms Akhtar did not reply.
130. On 9 July 2023 Ms Akhtar again emailed Ms Phillipson and said contact with Ms Dyer and Ms Patel made her stressed and anxious. Again Ms Phillipson said she provided HR support only and could not meet her manager.
131. Ms Akhtar did not return to work on 17 July 2023. On 18 July 2023 she submitted a sick note obtained the previous day. The note read that Ms Akhtar was not fit to work because of “Work related stress and not to communicate with Kate or Neila”. Ms Akhtar’s medical notes show that these words came from Ms Akhtar’s electronic request to her doctor for a sick note, that there was no examination, and that on balance the doctor simply cut and pasted what Ms Akhtar had written. With the benefit of that knowledge, the note has little value because it amounts to no more than self-diagnosis. However no-one at LPT would know this at the time. She was signed off from 17 July to 16 August 2023. LPT did not stop contact between Ms Dyer and Ms Patel on the one part with Ms Akhtar on the other. They took the view that their temporary and actual line manager, they had to keep in contact to promote her welfare and to deal with employment issues. The welfare concerns were exacerbated by delayed contact and the view that work-related stress must be dealt with promptly.
132. On 19 July 2023 Ms Dyer referred Ms Akhtar to occupational health (OH).
133. On 17 August 2023 Ms Patel provided another fit note for work-related stress to 16 September 2023.
134. On 29 August 2023, Ms Dyer invited Ms Akhtar to a resumed Stage 1 meeting. This took place on 7 September with Ms Phillipson also in attendance. In preparation LPT provided Ms Akhtar with a “wellbeing action plan” document that contained a “Wellbeing wheel”. In short, the employee uses this as a prompt to assess their wellbeing both overall and in different segments of their life. It helps to identify the problems and then to find solutions. Ms Akhtar did not complete this. She did not give us a good reason for not doing so. We consider it a positive gesture by Ms Dyer to provide it. Ms Akhtar agreed to Ms Dyer attending. A follow up meeting was arranged for 29 September 2023, following receipt of the OH report.

135. The OH report is dated 14 September 2023 and was written after Ms Akhter spoke to the writer, a Senior Occupational Health Nurse 2 days before. She wrote (so far as relevant) as follows.
- “I would suggest that in line with the trust policy, managers and the staff facilitate mutually regular 1:1 contact for update and wellbeing checks respectively, whilst staff is on sick leave.
- “I would recommend both parties address the ongoing management and work issues unrelated to occupational health and seek further input from human resources or from other external or independent advisers if need be.
- “Is there any further support we can give to Sameah at this time?
- “Mrs Akhtar describes her underlying condition, and this could be predisposed by the ongoing work-related stress. Nevertheless, I would perceive that your meeting last Thursday may be aimed at resolving issues through joint plans of support that both parties would benefit from.”
- Ms Dyer and Ms Patel took this report to support their position that they should be contacting Ms Akhtar and speaking to her to provide welfare support and because they were their managers.
136. On 16 September 2023 Ms Akhtar provided another sick note to 10 November 2023 for work-related stress.
137. The meeting on 29 September 2023 did not proceed because Ms Akhtar did not attend. It was rearranged to 6 November 2023.
138. Ms Akhtar did not attend on 6 November 2023 either. Ms Akhtar requested again that future meetings be with Ms Phillipson because the last meeting with Ms Dyer triggered a panic attack. Ms Phillipson again made it clear she could not manage Ms Akhtar’s absence – it required a manager to conduct the policy.
139. Ms Akhtar was signed off sick on 10 November 2023 to 23 November 2023 for work-related stress.
140. On 22 November 2023 Ms Dyer referred Ms Akhtar to OH again, because of the limited contact.
141. The key text read as follows.
- “Can you please advise us on whether Sameah will be fit to return to her role within the Legal Team at LPT?
- “As previously advised by you when you met with her on 12 September, we are looking at what we can do to support Sameah to come back to work and engage. Unfortunately we have been unable to engage with Sameah since the 7 September 23, communication is limited with the HR advisor and we are not receiving timely sick notes. As noted Gail has spoken to Sameah about this and the mechanisms we have in the Trust to support re-building relationships including mediation. Could you please advise us on whether Sameah is fit to engage in this dialogue please so that we can plan this with Sameah?
- “What time frame would this need and what mechanisms would help Sameah at this time to engage with us?

“Is there any further support we can give to Sameah at this time?”

142. Ms Akhtar alleged the referral was negative in that it said she did not provide timely fit notes and that Ms Dyer and Ms Patel had been unable to engage with her since 7 September 2023. Ms Akhtar accepted in cross-examination these statements were accurate.
143. Ms Akhtar also alleged that the referral was inaccurate because it did not refer to the sick note saying that she should not have contact with Ms Dyer or Ms Patel.

Resignation

144. Ms Akhtar saw this referral for the first time on 4 December 2023. She resigned on 8 December 2023. She cited the sick note about no contact with Ms Dyer or Ms Patel and alleged the resignation was due to unfair, discriminatory, degrading and hostile treatment.

Alternative employment

145. Her resignation does not tell the whole story. In fact in November 2023 Ms Akhtar applied for a new role with Magna Housing. She said this was because she was unsure if the situation could be resolved with the trust. They offered her a role at c.£12k per year more than LPT paid her on 4 December 2023.
146. An email from the recruitment consultant on 4 December 2023 shows that she had secured the role by this date because they wrote “It was pleasure speaking to you just now. Congratulations for your new role 😊.” They also wrote that “We are so glad that your current line manager would like to release you in 4 weeks’ time and figure cross the green light from your HR tomorrow, and please keep us in the loop.”
147. On 5 December 2023 she wrote so far as relevant to the recruitment consultant who found the post for her as follows.
- “Thank you for the information regarding the offer. I will complete the compliance check and candidate form later today.
- “[T]hank you for the opportunity, I am excited for this challenge and I look forward to meeting you soon.
- “I can confirm I will be able to start work week commencing 2 January.”
148. LPT did not cross-examine Ms Akhtar on whether the words about her current line manager being willing to release her in 4 weeks suggested dishonest. Clearly they are not accurate. No-one at LPT had intimated that they were going to dismiss Ms Akhtar and she had not spoken to anyone at LPT about leaving by this point. What was put to her was that Ms Akhtar had decided to leave for a better paid job and that the OH referral had nothing to do with it. Having considered the chronology and the words of the emails with the recruitment consultant, we agree. Ms Akhtar resigned only because she had a better job offer, and as the above shows because she could not accept that Ms Patel would be her manager.

Other matters

149. After Ms Akhtar resigned, LPT recruited a solicitor into the band 6 role that Ms Akhtar occupied. They remain employed and undertake the same role that Ms Akhtar undertook.
150. Ms Akhtar alleged she was in effect redundant. Applying the definition in the **Employment Rights Act 1996 section 139**, this is wrong. The job that LPT employed her to do remained and needed doing. The duties remained the same. There was no redundancy.

Presentation of claim

151. Ms Akhtar undertook early conciliation between 3 March 2023 and 6 March 2023. She presented her claim on 5 April 2023. Anything before 4 December 2023 is more than 3 months and so outside any limitation period. Ms Akhtar gave no evidence about why it would be just and equitable to extend time.

Law**Pregnancy and maternity discrimination**

152. The effect of the **Equality Act 2010** makes it unlawful to subject a woman to unfavourable treatment because she is pregnant, suffers pregnancy-related illness or is taking maternity leave. As noted earlier, the parties proceed on the assumption Ms Akhtar at all relevant times satisfied at least one of those criteria.
153. “Unfavourable treatment” does away with the need for a comparator. In the **Code of Practice on Employment [5.7]** “unfavourable” in a disability-context means “put at a disadvantage” and at **[4.9]** that a claimant suffers a disadvantage if they could reasonably say they would prefer to be treated differently – an unjustified sense of grievance is not enough. This corresponds in substance with the test in **Shamoon v RUC Chief Constable [2003] IRLR 285 UKHL** for “detriment” and likewise in **St Helens Metropolitan Borough Council v Derbyshire [2007] UKHL 16**.
154. We note that in **Williams v Trustees of Swansea University Pension and Assurance Scheme aor [2019] ICR 230 UKSC** the Supreme Court suggested at [27] that little is likely to be gained from seeking to draw narrow distinctions between unfavourable, detriment and disadvantage, or the subjective/objective approach. They endorsed the paragraphs of the Code we quote above as helpful advice to the relatively low threshold.
- We approach them as analogous terms in practice, at least so far as this case is concerned. No-one has sought to argue there is a material difference between them so far as this case is concerned.
155. We note the following points:
- 155.1. A failure to consult a woman on maternity leave about changes to her job does not mean that there is necessarily a breach of the **Equality Act 2010 section 18 (Smith-Twigger v Abbey Protection Group Ltd EAT 0391/13)**.

- 155.2. The protected characteristic need not be only reason for the unfavourable treatment, but it must have a “significant influence on the outcome”: see **Nagarajan v London Regional Transport [1999] ICR 877 UKHL**, the Code at [3.11].
- 155.3. Motive is irrelevant: The code [3.14] and **R(E) v Governing Body of JFS aors [2010] 2 AC 728 UKSC**.
- 155.4. Where the reason is not apparent, we can look at conscious as well as sub-conscious motives: **R(E)**.
- 155.5. We have taken into account the guidance that discriminators tend not to advertise the fact (**Glasgow City Council v Zafar [1998] IRLR 36 UKHL**), people may be unwilling to admit to themselves they are discriminatory (**Nagarajan**) and that discrimination can be based on innocent or well-intentioned motives even (**King v Great Britain-China Centre [1991] IRLR 513 CA**; **Amnesty International v Ahmed [2009] ICR 1450 EAT**).

Victimisation

- 156. The **Equality Act 2010 section 27** makes it unlawful for an employer to subject an employee to a detriment because the employee has done a protected act or because they believe that the employee has done, or may do, a protected act.
- 157. A protected act is “(a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act”: **section 27(2)**.
- 158. The points made in paragraph 155.2 above onwards apply as much to victimisation as they do to pregnancy discrimination. We also approach the meaning of detriment in the same way as unfavourable treatment in paragraph 153 above.

Harassment related to sex

- 159. The **Equality Act 2010 section 26** provides a respondent (or its employee) harasses an employee if they engage in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of either violating the employee's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

In deciding whether conduct has the effect, we must consider the employee's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
- 160. The Tribunal should:
 - 160.1. consider the 3 elements separately even though they overlap,
 - 160.2. have regard to the context to assess if it was reasonably apparent what was the purpose or effect,

- 160.3. be sensitive to hurt that result from offensive comments or conduct but seek not to encourage a culture of hypersensitivity (see **Richmond Pharmacology v Dhaliwal [2009] IRLR 336 EAT**).
161. The Tribunal's approach to the reasonableness of the effect was explained in **Pemberton v Inwood [2018] ICR 1291 CA** as follows. A Tribunal must consider **both**:
- 161.1. whether the claimant perceives themselves to have suffered the effect in question (subjective); **and**
- 161.2. whether it was reasonable for the conduct to be regarded as having that effect (objective).
162. The conduct must be related to the protected characteristic. Unacceptable general anti-social behaviour not related to a protected characteristic is not enough: **Brumfitt v Ministry of Defence [2005] IRLR 4 EAT; UNITE v Nailyard [2018] IRLR 730 CA**.
163. We have also considered the Code **[7.8]** which says:
- "7.8 The word 'unwanted' means essentially the same as 'unwelcome' or 'uninvited'. 'Unwanted' does not mean that express objection must be made to the conduct before it is deemed to be unwanted. A serious one-off incident can also amount to harassment." We have also had regard to the list of examples of unwanted conduct in the Code at **[2.8]**.

Burden of proof in Equality Act 2010 complaints

164. The **Equality Act 2010 section 136** sets out the way that the burden of proof operates. It was explained in **Efobi v Royal Mail Group Ltd [2019] 2 All ER 917 CA; [2021] 1 WLR 3863 UKSC** which reviewed and endorsed a substantial number of earlier authorities. The Tribunal takes from it the following principles:
- 164.1. Determine if the claimant has proven on balance of probabilities, facts from which the Tribunal could properly conclude the respondent discriminated against the claimant. The Tribunal can consider all the evidence (including that from the respondent) to decide ultimately if the claimant has discharged that burden. The Tribunal must ignore however any explanation for proven treatment at this stage.
- 164.2. If the claimant succeeds at the first stage, then the burden moves to the respondent to show on balance of probabilities the reason for the treatment was not one prohibited by **Equality Act 2010**.
- 164.3. These provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal can make positive findings on the evidence one way or the other.
- 164.4. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. Likewise general unreasonable or unfair behaviour. They are not, without more, sufficient material from which a tribunal could properly

conclude that the respondent had committed an unlawful act of discrimination, harassment or victimisation.

Time limits in Equality Act 2010 complaints

165. The time limit for bringing a claim is 3 months from the act (which is defined to include an omission) complained of unless it is just and equitable to extend time: **Equality Act 2010 section 123**. If an act is found to be non-discriminatory or that it did not happen, it cannot be part of a continuing act: **South Western Ambulance Service NHS Foundation Trust v King [2020] IRLR 168 EAT**.
166. The Tribunal has a broad discretion when weighing up all the circumstances to decide if it is just and equitable to extend time, but length of delay and reasons for it are always relevant, as is the prejudice to the respondent if a claim that is out of time is allowed to proceed: **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194 CA**, **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23**.

Constructive unfair dismissal

167. There are 3 elements to establishing a constructive dismissal (**Western Excavating (ECC) Ltd v Sharp [1972] ICR 221 CA**):
- 167.1. The employer actually (or anticipatorily) fundamentally breached the contract (repudiatory breach);
 - 167.2. It was a reason the employee resigned; and
 - 167.3. The employee's conduct did not amount to them affirming the contract before they resigned.
168. Into each contract there is an implied term of trust and confidence (the implied term). This is that
- “The employer shall not without reasonable and proper cause conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.”
- Malik v Bank of Credit and Commerce International SA [1997] ICR 606 HL; Courtaulds Northern Textiles Ltd v Andrew [1979] IRLR 84 EAT.**
169. Breach of the implied term is necessarily repudiatory: **Morrow v Safeway Stores [2002] IRLR 9 EAT**.
170. **Kaur** sets out guidance on the correct approach to the constructive element of a constructive unfair dismissal claim.
- 170.1. What was most recent act (or omission) that triggered or caused the employee to resign?
 - 170.2. Has the employee affirmed the contract since that act?
 - 170.3. If no, was the act or omission itself a repudiatory breach?
 - 170.4. If no, was it part of a course of conduct which taken together amount to breach of implied term of trust and confidence?

- 170.5. If yes to either of the preceding questions, did the employee resign in response to that breach?
171. The breach must be **a** reason for resignation, but does **not** need to be the sole or principal reason for resignation: **Nottinghamshire County Council v Meikle [2005] ICR 1 CA**.
172. Affirmation is an issue of conduct, not mere delay itself: **Chindove v William Morrison Supermarkets plc UKEAT/0201/12**, though if a delay goes on too long it could be evidence of affirmation: **WE Cox Toner (International) Ltd v Crook [1981] ICR 823 EAT**.
173. Where a person resigns because an event is the last straw, that event must be more than innocuous. It must contribute materially to the circumstances that amount to the alleged fundamental breach of contract, however slightly. It does not however need to be an example of unreasonable or blameworthy conduct: **Omilaju v Waltham forest London Borough Council [2005] ICR 481 CA**. It does not itself need to be a breach of contract: **Lewis v Motorworld Garages Ltd [1986] ICR 157 CA**.
174. The Tribunal must assess the matter objectively. The motives of the parties or their subjective intentions are irrelevant: **Leeds Dental Team v Rose [2014] ICR 94 EAT**.

Conclusions

175. We now set out our conclusions on the complaints before us.

Pregnancy and maternity discrimination

Did LPT treat Ms Akhtar unfavourably as follows:

- a. *On or about 1 November 2022, permanently removing Ms Akhtar's duties and responsibilities and transferring these to a newly created post?*
 - b. *On or about 1 November 2022, denying Ms Akhtar a re-band and requiring her to apply for the newly created role (of Head of Legal)?*
 - c. *On or about 1 November 2022, making Ms Akhtar's role redundant, without consultation or discussion?*
176. We take these together for convenience but consider each separately. We refer to our findings of fact. As a fact Ms Akhtar's role and responsibilities existed both before and after the reorganisation. Her evidence about the tasks she said she took on is vague. The facts show that:
- 176.1. No duties and responsibilities were removed,
 - 176.2. She was not denied a regrade because she never applied for one.
 - 176.3. She was not made redundant.
177. It is correct that she had to apply for the role of Head of Legal Affairs. This is the only part that succeeds of these complaints. Therefore except to that extent, these complaints fail on the facts.
178. We conclude that being made to apply for the role of Head of Legal Affairs (if she wanted the job) is not unfavourable treatment. She may well not have

wanted to have to apply for the job. She clearly thought that it was to be hers as of right. However this was a different post to hers created after the reorganisation of responsibilities in the department. We conclude in the circumstances that it is of the category of being an unjustified sense of grievance. The recruitment policy makes it clear that it must be advertised. To have to demonstrate one is the best candidate of all applicants is entirely reasonable. The result is there was no unfavourable treatment. This allegation fails too.

- d. *On a date between 1 November 2022 and 28 November 2022, Ms Dyer directing Ms Akhtar to keep her application for the newly created role of Head of Legal brief in content?*

179. Our findings of fact show that Ms Dyer did not do this. This complaint fails.

- e. *Between 1 November 2022 and 28 November 2022, denying Ms Akhtar access to strategic management folders?*

180. She was denied access to the CEO folder. So was everyone else. The allegation succeeds to that extent. She was not denied access to the department's folder. In fact Ms Dyer helped her to access it. Therefore the complaint otherwise fails.

181. Being denied access to the CEO folder is not unfavourable treatment. Everyone material to this case was denied access. There were no documents within it to which she has demonstrated she required access. She was able to access the department's folder and guided on how to do so. In any event she has not demonstrated to us how it really created a problem. The documents that might assist were available online to all and the interview was competency-based, not knowledge based. The sense of grievance is not justified. The complaint must fail.

- f. *Between 1 November 2022 and 28 November 2022 Stating to Ms Akhtar prior to interview that LPT (Ms Dyer) "knew things would be difficult" and "hoped feelings would have calmed down by April" and "anyone who wanted to apply for a different job could?"*

182. We found as a fact that Ms Dyer did not say these things. This complaint fails.

- g. *On 5 December 2022 (date of interview outcomes) weighting the interview scoring towards the Integrated Care Board ("ICB"), National Health Service Improvement ("NHSI") toolkit and joint partnership working with Northamptonshire Healthcare NHS Foundation Trust ("NHFT") contrary to the job description which had a clear emphasis on legal competency and expertise?*

183. We found as a fact this is incorrect. The complaint therefore fails.

- h. *On 5 December 2022, appointing Ms Patel (a Trainee Solicitor) as Head of Legal?*

184. There is no dispute this happened. However Ms Akhtar was unable to explain what is unfavourable about Ms Patel specifically being appointed (as we noted, the complaint is not and never has been that that Ms Akhtar was not appointed). We realise Ms Akhtar would now be responsible for training her line manager as a solicitor. We can see why that might cause

upset. However we do not accept that it is self-proving that this is therefore unfavourable treatment. We also note that Ms Patel was the best candidate in interview. There can be no justified grievance about losing out to a better candidate. This complaint fails.

- i. *On 5 December 2022, informing Ms Akhtar and/or expecting that the Head of Legal role was to start immediately?*
185. This is incorrect. They told her they wanted the successful candidate to start as soon as possible. In any case they would have made allowances for notice periods, maternity leave etc. This allegation must fail.
- j. *On 5 December 2022, informing Ms Akhtar that the next time she applied for a role Ms Dyer would assist her, indicating that Ms Akhtar was expected to leave the Trust?*
186. This complaint fails. Ms Dyer did offer assistance (as we found above). However it requires a leap not justified by any of the evidence to show that LPT expected Ms Akhtar to leave. As we found above, to justify that interpretation requires unreasonable interpretation and supposition.
- k. *Between 8 April 2022 and 5 December 2022, not making Ms Akhtar aware of systems and processes that came into being whilst Ms Akhtar was on maternity leave (which were used as interview scoring criteria)?*
187. We consider this complaint must fail.
 - 187.1. There were no KIT days. Ms Akhtar could have requested them but did not.
 - 187.2. We can assume (without deciding) therefore that while Ms Akhtar was away, LPT did not keep her abreast of any new systems or processes. It is worth bearing in mind though that, as we found above, ICBs, NHFT joint partnership and NHSI toolkit were not initiatives that were created and came into being only during her maternity leave. These are the processes Ms Akhtar cites and relies on. Therefore the premise of her allegation is wrong.
 - 187.3. The premise is wrong in a more fundamental way: as we found as a fact, these systems and processes were not used as interview scoring criteria.
188. The result is there is no unfavourable treatment as alleged.
 - l. *On 5 December 2022, putting Ms Akhtar in a position whereby she is managed by a Trainee Solicitor whom Ms Akhtar previously managed and was her training principle?*
189. This complaint must fail. As we commented above, we can understand why Ms Akhtar might be upset to be training her now line manager. However as we said, we do not accept this is self-proving unfavourable treatment. The reason this happened was because Ms Patel was the successful candidate in a fair selection process. Ms Akhtar was the worst performing candidate on each interviewing panel member's assessment.

m. Between 8 April 2022 and 5 December 2022, not providing Ms Akhtar with any KIT days to enable her to be aware of work developments?

190. Ms Akhtar could have asked for KIT days but did not do so. There is no obligation on either side to offer them – they are optional. It is not unfavourable treatment for LPT not to offer Ms Akhtar KIT days that she neither requested nor intimated in any other way she might like. We conclude it is not unfavourable treatment not to offer a KIT day to someone who does not request it or does not otherwise intimate they might want one.

n. On 31 March 2023 Chris Manning being aggressive, intimidating and rude by enforcing that Ms Akhtar must liaise with Ms Patel as her new line manager despite Ms Akhtar not being informed that her line management had changed and that the grievance process had not been exhausted?

191. Ms Patel was Ms Akhtar's line manager. Telling someone to liaise with their line manager is entirely appropriate. However as we found above, Mr Manning did not "enforce" it and was not "aggressive, intimidating and rude". The complaint fails on the facts.

o. On 27 March 2023 Ms Patel contacted Ms Akhtar by WhatsApp asserting her authority by requesting to discuss Ms Akhtar's return to work?

192. We refer to our finding of fact. The message does not begin to show Ms Patel "asserting her authority" over Ms Akhtar. We would even go so far as to say that the allegation is totally without merit. This complaint fails.

p. Dismiss Ms Akhtar?

193. This complaint fails because she was not dismissed. We deal with why under constructive unfair dismissal.

Was any unfavourable treatment because of Ms Akhtar's maternity leave?

194. If the complaints had got this far, they would have failed still. We conclude that there is no evidence of any pregnancy or maternity discrimination.

194.1. Ms Akhtar never put to the relevant witnesses the material allegation that they acted as they did because of her maternity leave. She was well aware of the rule, given the opportunity to ask, and well aware LPT would pursue this issue.

194.2. Ms Akhtar could not explain when asked by the Tribunal and LPT why any of the above acts were because of her maternity leave. Eventually it came down to the fact she was on maternity leave. This is a mere coincidence of circumstances. It is not enough from which one could properly infer there was discrimination.

194.3. It will be noted in the facts we do not mention once any fact or evidence that links alleged treatment to maternity leave. The reason is simple. There was no evidence at any time that caused the Tribunal even to consider that it might be demonstrable of a causal link between the act and maternity leave. Simply there is no evidence of any causal link. We come to that conclusion even after considering what proper inferences we might draw and recognising the caveats that discrimination is not usually overt and motive does not matter.

Victimisation

195. LPT concede that Ms Akhtar's grievance of 30 January 2023 is a protected act.

Did LPT subject Ms Akhtar to a detriment because of the protected act (or because LPT believed that Ms Akhtar had done or may do a protected act)? Namely:

- a. *On 31 March 2023 Chris Manning being aggressive, intimidating and rude by enforcing that Ms Akhtar must liaise with Ms Patel as her new line manager despite Ms Akhtar not being informed that her line management had changed and that the grievance process had not been exhausted?*
 - b. *On 27 March 2023 Ms Patel contacted Ms Akhtar by WhatsApp asserting her authority by requesting to discuss Ms Akhtar's return to work?*
196. In relation to each of these we repeat our conclusions where the same allegations appear under "Pregnancy and maternity discrimination" above.
197. We also repeat our conclusions about the alleged causal link as though it applied to victimisation, i.e.
- 197.1. Not put in cross-examination,
 - 197.2. Ms Akhtar cannot explain why she says there is a link between the alleged conduct and protected act, and
 - 197.3. There is no evidence of any such link anyway. The nearest is Mr Manning clearly knew of the grievance. There is nothing to show it affected his conduct towards Ms Akhtar. It is in our view not enough from which we could properly conclude there was victimisation.
198. The complaints are dismissed.

Harassment related to sex

Did LPT engage in the following unwanted conduct,

- a. *On 31 March 2023 Chris Manning being aggressive, intimidating and rude by enforcing that Ms Akhtar must liaise with Ms Patel as her new line manager despite Ms Akhtar not being informed that her line management had changed and that the grievance process had not been exhausted?*
 - b. *On 27 March 2023 Ms Patel contacted Ms Akhtar by WhatsApp asserting her authority by requesting to discuss Ms Akhtar's return to work?*
199. In relation to each of these we repeat our conclusions where the same allegations appear under "Pregnancy and maternity discrimination" above.
200. We also repeat our conclusions about the alleged causal link as though it applied to harassment, i.e.
- 200.1. Not put in cross-examination that it related to sex,
 - 200.2. Ms Akhtar cannot explain why she says there is a link between the alleged conduct and protected act, and
 - 200.3. There is no evidence of how it related to sex anyway.
201. That is sufficient to dispose of these complaints. They are dismissed.

Constructive Dismissal

202. We have reordered the issues slightly to reflect the approach in **Kaur**.

Did LPT commit a repudiatory breach of contract?

In particular did LPT:

a. *Subject Ms Akhtar to pregnancy and maternity discrimination, victimisation and harassment as set out above?*

203. It did not. Therefore this cannot be part of any alleged breach of the implied term of trust and confidence.

b. *Between 8 April 2022 and 5 December 2022, put pressure on Ms Akhtar to engage with her managers despite this exacerbating Ms Akhtar's mental health?*

204. The Tribunal has found this to be the real difficult part of the case.

205. Ms Woodward takes the view that Ms Akhtar is correct to describe LPT's conduct as putting pressure on Ms Akhtar to engage with Ms Dyer and Ms Patek despite this exacerbating Ms Akhtar's mental health. Ms Patel, Ms Dyer all sought to engage with her. Ms Phillipson told Ms Akhtar in effect that she needed to engage with them. Ms Akhtar made it clear that doing so exacerbated her adverse mental health. Moreover there is the doctor's note which says Ms Akhtar should not communicate with Kate or Neila. We now know that this is Ms Akhtar's diagnosis, but LPT did not. Ms Woodward makes the point that LPT is a large organisation and concludes that it would not have been unreasonable for LPT to have found another line manager, even if only temporary for the period that relations are normalised.

Mr Rose disagrees. He notes the doctor's sick note but also notes that OH met with and discussed the situation with Ms Akhtar. OH recommended that managers and Ms Akhtar facilitate mutually regular 1:1 contact for update and wellbeing checks respectively, whilst staff is on sick leave and there be further management to deal with the work-related stress. He also notes that the fact is that Ms Akhtar was going to have to work with Ms Patel and Ms Dyer as her superiors in the department if she was ever going to return to work. Therefore direct engagement was necessary and appropriate.

The Judge tends to side with Mr Rose for the same reasons that Mr Rose gives.

c. *Between 6 July 2023 and 8 December 2023, progress the absence management process too quickly?*

206. We have looked at the chronology above and note:

206.1. Sickness absence began on 19 June 2023 and lasted until resignation on 8 December 2023.

206.2. Stage 1 began with an invite on 26 June 2023,

206.3. The matter never progressed beyond stage 1,

206.4. There were 2 referrals to occupational health,

206.5. The reason was work-related stress.

- 206.6. We accept that it is important to deal with absences because of work-related stress promptly to promote the welfare of the employee, to enable the employee to return to work promptly for both their and the employer's benefit and to avoid the stress or issue causing it becoming entrenched.
- 206.7. No party has referred to any policy to show that the progression was otherwise than in accordance with the policy.
207. We conclude that it cannot be said that the absence management process was progressed too quickly in the circumstances.
- d. On 22 November 2023, portray Ms Akhtar negatively to Occupational Health?*
208. We conclude the referral to OH on 22 November 2023 was factually accurate because Ms Akhtar accepts it was correct when it said that Ms Akhtar failed to provide timely sick notes and could not engage with Ms Patel or Ms Dyer since 7 September 2023. We also conclude all the information was material to the task being asked of OH.
209. We conclude that the referral does not become materially inaccurate because it did not refer to the sick note that said she should not have to engage with Ms Patel or Ms Dyer. It was clear that there was no engagement. There was in any case going to be an appointment with OH so she could have added the detail then if she felt it important. We do not consider a factually accurate referral can reasonably be described as negative in the way Ms Akhtar seeks to describe it.
- e. As a result created, alternatively permitted, a working environment that was intolerable for Ms Akhtar in all the circumstances?*
210. The only real thing that could be reasonably said to create or permit an intolerable working environment is the need to engage with Ms Patel and Ms Dyer. While there are differences on whether there was pressure applied to engage with Ms Patel or Ms Dyer, we are unanimous in our view that being expected to engage with one's immediate superiors in the circumstances of this case (particularly the need to resolve work-related stress, the referrals to OH etc.) it cannot reasonably be said the working environment was made or allowed to be intolerable to Ms Akhtar

What was most recent act (or omission) that Ms Akhtar says triggered or caused the employee to resign?

211. Ms Akhtar says it was the OH referral of 22 November 2023. However

Has the employee affirmed the contract since that act?

212. No. She did not see it until 4 December 2023. There is nothing in her conduct to show between then and her resignation on 8 December 2023 she affirmed the contract.

If no, was the act or omission itself a repudiatory breach?

213. No. The referral is factually accurate. The omission of the sick note is not material. We do not consider a reasonable person could say a factually accurate referral can be negative like Ms Akhtar alleges. In any event, even if it were negative, the Tribunal concludes that it cannot be a repudiatory

breach to provide material and factually accurate information to OH for the purposes of seeking their advice and input.

If no, was it part of a course of conduct which taken together amount to breach of implied term of trust and confidence?

214. No. We consider that a reasonable person would not see this as a break of the implied term. We consider that taking everything relied on, and in particular Ms Woodward's view of the allegation of pressure on Ms Akhtar to engage with Ms Patel and Ms Dyer, it does not show a breach of the implied term. In particular we conclude as follows.

214.1. There was no discrimination, harassment or victimisation.

215. The absence management procedure was not progressed too quickly. In any event it was reasonable and proper to start and progress it because of the nature of the absences. We refer to our conclusions above.

215.1. Even if she were pressured to engage with Ms Patel and Ms Dyer, that is for a reasonable and proper cause. They are her superiors. Ms Patel is her line manager. Ms Patel heads the department that Ms Akhtar works in. They have responsibility for their staff. They acted out of concern for her welfare and a desire to fix the work-related stress issue. They were also relying on an occupational health report that promoted contact between them.

215.2. We cannot say that the circumstances reasonably amounted to an intolerable work environment for Ms Akhtar.

If yes to either of the preceding questions, did the employee resign in response to that breach?

216. There was no breach. Therefore the answer is no.

217. We also conclude as follows. She resigned because she had sought and secured another job that was much better paid. We accept that an employee might look for employment before they resign, and that it is possible both a breach and securing a new job can be reasons for resigning – all that matters is if the breach is a reason.

218. However the facts of this case lead us to conclude that even if the above were a breach, it played no part. It is quite apparent from the evidence that Ms Akhtar's real complaint is that she believed she should have got the job, and she was aggrieved she lost out to Ms Patel. The facts point clearly to this – most significantly the suggestion Ms Akhtar made that LPT should run the recruitment process again but exclude Ms Patel. We note also the chronology and that,

218.1. She applied for the new job before she saw the OH referral. We conclude that she was already going to quit.

218.2. She secured the job on 4 December 2023. She had not resigned by this point. However she had clearly reported she had to give 4 weeks' notice because the recruitment consultant reports she had said her current manager would like to release her in 4 weeks' time. We conclude this is evidence she had already decided to go.

219. On 5 December 2023 she was already confident she could start work on 2 January 2024. She had not resigned by this point though on her own case she knew of the OH referral's contents.
220. All of this leads us to conclude that the OH referral played no part in the decision to resign. Nor did any perceived breach of contract. Her comments about her manager agreeing she can go in 4 weeks are inconsistent with it being a reaction to the OH referral or indeed any other alleged breach.
221. There was no constructive dismissal. It is why the dismissal cannot be discriminatory. In any event Ms Akhtar did not put in cross-examination that her dismissal was discriminatory.

Jurisdiction

222. Given the date the first claim form was presented and the effect of early conciliation, any standalone complaint of discrimination that happened before 4 December 2022 has been brought out of time.
223. It means that allegations a, b, c, d, e and f for pregnancy and maternity discrimination are out of time. The delay is about 1 month for a, b, and c and 1 week for the rest.
224. We consider the delay is significant. There is no reason given for the delay so there can be no good reason. There is no evidence about any other circumstances relating to the delay. They cannot be a continuous act as they are not acts of discrimination.
225. We conclude that it is not just and equitable to extend time. They are therefore dismissed for lack of jurisdiction in any event, though they would have failed on their merits anyway.

Approved by the Judge

Employment Judge Adkinson

Date: 14/07/2026

JUDGMENT SENT TO THE PARTIES ON

14/09/2026

J. Woolley

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment or order are set out above. They are full reasons. There will be no further written reasons.

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