

RESERVED



EMPLOYMENT TRIBUNALS

Claimant: Jasmine J Smyth

Respondent: Michelle Williams

Heard at: Wales

On: 17, 18, 19 & 20 August
2026

Before: Employment Judge Shotter

REPRESENTATION:

Claimant: In person

Respondent: Finlay Morrison, representative

RESERVED JUDGMENT

The judgment of the Tribunal is:

1. The claimant's claim of victimisation brought under section 27 of the Equality Act 2010 is dismissed on withdrawal.
2. The claimant's complaint of constructive unfair dismissal brought under section 91(c) of the Employment Rights Act 1996 is not well founded and is dismissed.
3. The claimant's claims brought under section 18 of the Equality Act 2010 as set out in allegation 4(a)(i), 4a(ii), 4a(iii), 4a(iv) and 4a(v) of the Agreed List of Issues were not presented within the applicable time limit. There was no

conduct extending over a period of time and it is not just and equitable to extend the time limit. In the alternative, the claimant was not discriminated against on the grounds of her pregnancy. The claimant's claim of pregnancy discrimination brought under section 18 of the Equality Act 2010 is not well founded and is dismissed.

4. The respondent's application to adjourn the final hearing is dismissed.

REASONS

1. The claimant brings complaints of unfair dismissal under Part X Employment Rights Act 1996 and pregnancy/maternity discrimination under s. 18 Equality Act 2010. Her claim of victimisation brought under section 27 of the Equality Act 2010 was withdrawn before this final hearing and has been dismissed on withdrawal.
2. This is a liability hearing following two preliminary hearings. The last one was held on the 17 February 2025 and case management orders were made. These case management orders have not been complied with and whilst I have a bundle before me it is unsatisfactory given the number of documents without dates which cannot sensibly be put into chronological order and made sense of. It was agreed the parties would provide and agree a separate bundle of social media messages showing dates and times on the actual message sent and received. I also took the claimant through the social media documents in the original bundle with a view to clarifying where they lay in the chronology. In addition, the respondent has not produced any witness statements including that of a key witness as a result of her ill-health and her representative failing to inform the respondent and keep her updated about this litigation. This is a matter between the respondent and her representatives and I merely record Mr Morrison's explanation as to why the respondent has not called her main witness, Harriet Pugsley, to give evidence at this hearing.
3. An application was made on behalf of the respondent to adjourn the hearing due to the failure to comply with case management orders and the respondent's ill health. I was provided with a response by the respondent's GP to a subject access request that included the following:

*"Telephone encounter @10.33 with Legal Representative
for pt ***** English - she is asking for medical info for pt
due to a legal matter where she needs to appear in court,
pt has told her that she is under Palliative Care Team and*

DN's and is very unwell and near to nervous breakdown due to all this. Judge has requested info to support a deference of her appearance, due to being unwell. I have sent email to patient with BMA Consent form to share records with **, ***** will get pt to sign and take photo of form and email back to me, so I can release information. Unfortunately, this will not include the District Nurses information as we do not get copies of this for patients records"*** [my emphasis].

4. It is undisputed the respondent is very unwell and in receipt of palliative care which includes visits from the district nurse and doctors on a regular basis, and prescription of various medication. The respondent's representatives explained that the respondent is dependent on several specialist health care professionals including GP, Neurology, Palliative, Respiratory, Dietetics and Occupational Therapy, who all provide symptom management to allow the Respondent to remain safely at home. In the written application to adjourn the respondent wrote "it will be untenable for the Respondent to attend on 17 August 2026 owing to her physical health deteriorations. **It is foreseeable, as her representatives, that this situation could become worse, and further foreseeable that the Respondent may remain unable to attend a hearing in future"** [my emphasis]. I also heard evidence from the respondent, and it apparent that she is unwell with a poor future prognosis.
5. The claimant objected to the adjournment application, and a preliminary hearing was held at the outset of this liability hearing for me to consider the respondent's application to adjourn and the basis for it, culminating in the parties reaching an agreement that the respondent could give evidence with reasonable adjustments in place. There is a concern, which I echo, that if I were to adjourn this case may never get to a trial given the respondent's ill-health and the fact that she is on palliative care with a bleak prognosis and a high possibility that the respondent's estate may have to take it over in the future.
6. Both parties agreed the hearing should not be adjourned, and I concluded it was in the interests of justice for both parties that the case is dealt with in the 4 days allocated. The reasonable adjustments agreed have enabled this to take place, which were as follows:
 - 6.1 The respondent would give evidence from her wheelchair and bed taking a break whenever she wanted including when medical treatment was necessary.

- 6.2 The respondent did not have a witness statement and gave evidence in chief which did not disadvantage the claimant, who produced a lengthy list of questions on cross-examination. We all took the view that it was preferable for the respondent to give evidence in this way rather than adjourn for a witness statement to be produced (which would more than likely not happen due to her ill-health) or adjourn the hearing to a later date and be in the same position we are in today, or worse, if the claim fell into the respondent's estate. The respondent explained to me, when describing her health, the end of life steps she had agreed with the medical profession and I took the view that it was imperative this case is finished in the trial window and does not get adjourned to some date in the future, even if a date could be expedited. I have also expedited the promulgation of this judgment and reasons.
- 6.3 I would read out the claimant's questions on cross examination recorded in a document, and the claimant would switch off her camera when the respondent was giving evidence. The claimant provided two separate lists of questions, which were largely all covered save for those that were not relevant (for example, about the working conditions which were not an issue set out in the agreed list of issues) and questions that had already been answered by the respondent. The second list of questions were provided after the respondent had produced documentary regarding an exchange of emails between Harriet Pugsley and Peninsula and the legal advice provided; the claimant bring given time during an adjournment to assimilate the new information in order that she could ask questions. I made it clear to the parties that I was not conducting cross-examination on behalf of the claimant and merely asked the questions written down together with clarification questions I would have asked after cross examination had finished. I was careful not to enter into the litigation arena and regularly checked with the parties concerning this.
- 6.4 The claimant, who experiences anxiety and panic attacks, was also able to take breaks whenever she wanted, which she did including on at least one occasion with no notice when being cross-examined by Mr Morrison. The claimant was supported by her Mother, Paula Smyth, throughout the hearing.
7. As a direct result of the adjustments put in place and the parties being given sufficient time to give their evidence with no pressure, this hearing proceeded smoothly despite the issues with the bundle which included duplication, documents in the wrong date order, documents with no dates in the wrong date order and documents which were incomplete. The claimant was given leave to produce documents which she had mistakenly left out of

the bundle, namely her wage slips, and the respondent provided a blank contract of employment which was not originally in the bundle.

Documents

8. I had before me an agreed bundle consisting of 288 pages in addition to the documents referred to above produced by the parties during the hearing. The claimant also provided a second bundle towards the end of her oral evidence prepared on the 12 April 2026 which included a list of dates inserted by the claimant in respect of documents which did not include dates or times when sent or received. I explained to the claimant that I could not accept this new bundle of evidence as there was an agreed bundle, however, the information provided was used by Mr Morrison to produce an agreed chronological bundle of texts and email exchanges which are already in the main bundle and had no dates, times or are cut off and/or unclear in part.
9. A second agreed bundle was produced at the end of the hearing before oral submissions were made which included new documents produced by the claimant. Mr Morrison confirmed the respondent was not prejudiced and I have granted to claimant leave to produce the additional documents on the basis that they are not disputed, are contemporaneous and thus relevant to the issues to be decided. With the exception of the contemporaneous documents, to which I refer below, I have not dealt with any other documents to which I was not referred to or taken by the parties, for example, the claimant's recent medical documents which may be relevant to remedy only.

List of Issues

10. At the outset of the hearing, we discussed the list of issues, and the claimant indicated that her case concerned the aftermath following her informing the respondent she was pregnant and when she took maternity leave. The list of issues sets out the claimant's case as understood at the case management preliminary hearing held on the 17 February 2025 with an amendment in relation to the last pregnancy discrimination allegations. The list of issues was agreed again today.

11. The agreed list of issues is as follows:

The Issues:

The issues the Tribunal will decide are set out below:

1. **Time Limits**

- a. Given the date the Claim form was presented and the dates of early conciliation, were the complaints brought under the Equality Act 2010 made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
- i. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - ii. If not, was there conduct extending over a period?
 - iii. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - iv. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 1. Why were the complains not made to the Tribunal in time?
 2. In any event, is it just and equitable in all the circumstances to extend time?

2. Constructive Unfair Dismissal (Part X Employment Rights Act 1996)

- a. Was the Claimant dismissed?
- i. Did the Respondent do the following things:
 1. Drop the Claimant's hours?
 2. Discuss the Claimant's pregnancy with a former colleague?
 3. Access and use private messages between the Claimant and her colleague to create conflict and tension?
 4. Fail to give the Claimant any notice to attend a formal meeting?
 5. Force the Claimant to take early maternity leave?
 - ii. Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1. Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and
 2. Whether it had reasonable and proper cause for doing so.
- iii. Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.
 - iv. Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.
- b. If the Claimant was dismissed, what was the reason or principal reason for dismissal? I.e., what was the reason for the breach of contract?
 - c. Was it a potentially fair reason?
 - d. Did the Respondent act reasonably or unreasonably in all of the circumstances, including the Respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the Claimant?
 - e. The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

3. Remedy for unfair dismissal:

- a. If there is a compensatory award, how much should it be?
 - i. What financial losses has the dismissal caused the Claimant?
 - ii. Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - iii. If not, for what period of loss should the Claimant be compensated?

- iv. Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - v. If so, should the Claimant's compensation be reduced? By how much?
 - vi. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - vii. Did the Respondent or the Claimant unreasonably fail to comply with it?
 - viii. If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
 - ix. If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
 - x. If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
 - xi. Does the statutory cap apply?
- b. What basic award is payable to the Claimant, if any?
- c. Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

4. Pregnancy/ maternity discrimination (s.18 Equality Act 2010)

- a. Did the Respondent treat the Claimant unfavourably by doing the following things:
- i. Drop the Claimant's hours?
 - ii. Discuss the Claimant's pregnancy with a former colleague?
 - iii. Access and use private messages between the Claimant and her colleague to create conflict and tension?

- iv. Fail to give the Claimant any notice to attend a formal meeting?
 - v. Force the Claimant to take early maternity leave?
 - vi. Deny the Claimant the opportunity to return to work after her maternity leave began?
- b. Did the unfavourable treatment take place in a protected period?
 - c. If not did it implement a decision taken in the protected period?
 - d. Was the unfavourable treatment because of the pregnancy?
 - e. Was the unfavourable treatment because of illness suffered as a result of the pregnancy?
 - f. Was the unfavourable treatment because the Claimant was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave?

5. Remedy for discrimination

- a. Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?
- b. What financial losses has the discrimination caused the Claimant?
- c. Has the Respondent proven that the Claimant failed to take reasonable steps to replace their lost earnings, for example by looking for another job?
- d. For what period of loss should the Claimant be compensated?
- e. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
- f. Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?
- g. Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

- h.** Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- i.** Did the Respondent or the Claimant unreasonably fail to comply with it?
- j.** If so, is it just and equitable to increase or decrease any award payable to the Claimant?
- k.** By what proportion, up to 25%?
- l.** Should interest be awarded? How much?

Witnesses and witness statements

12. As indicated above, the claimant has provided witnesses statements, which includes the claimant's statement and that of Paula Smythe signed and dated 5 June 2026, who were the only witness whose evidence tested by cross-examination. Paula Smyth, the claimant's Mother, witnessed none of the events directly and I preferred the evidence given by the respondent which was supported by contemporaneous documents.
13. The claimant relies on two additional witness statements, Lowri Davis, a personal assistant employed by the respondent before she resigned. Lawry Davies did not witness any of the events which made up the allegations set out in the list of issues. The evidence of Lawry Davies is largely concerned with the issues Lawry Davies had with the respondent that were not relevant in this case. It is notable that Lawry Davies did not make any reference to the text message exchange between herself and the claimant she had forwarded to the respondent which resulted in a breakdown in the relationship with the claimant. As Lawry Davies could not be cross-examined on her evidence the respondent was unable to ask her about the email exchange. This is unfortunate given the claimant maintains Lowri Davies fabricated the email exchange at the time, and Lowri Davies was unable to clarify the position having attended part of this hearing beforehand Lowry Davis's evidence may have been directly relevant to the claimant's credibility, contributory fault and whether her employment would have ended in any event. No weight was given to Lawry Davies' witness statement.
14. The claimant also relies on a "character statement" provided by Olivia Davies, who had been employed as a personal assistant by the respondent, and largely gave evidence about her contract and criticisms of the respondent. No weight was given to this evidence.

15. The respondent gave oral evidence in chief and I found her to be a credible and honest witness who dealt with the questions put to her on behalf of the claimant in a straightforward manner, making concessions which may have disadvantaged her case, for example, with reference to the 23 July 2024 meeting the respondent was unable to say how many of the texts the claimant had been shown the texts produced by Lawry Davies because the respondent was too upset to look at them herself and her “head was down” throughout the meeting. The respondent stated in response to the question:

“You say allegations about text messages were discussed with me, correct?”

1. Yes. Harriet explained I was upset, some text messages had been brought forward and that were slanderous and derogatory, Harriet had printouts of them, and a lot of the time my head was down and I don’t know how much the claimant read. She said they were falsified and not real text messages, her witness Lowri Davies falsified them.

- Was I shown the messages I was being asked about?

2. Yes They were on printout and I don’t know how much of them were being looked out. They were upsetting for everyone.”

16. In direct contrast to the respondent’s credibility whose evidence was supported by contemporaneous documents, I found the claimant’s evidence was less than credible in respect of a number of matters as recorded in the findings of facts. I spent some time with the claimant seeking clarification of the text messages and emails included in the bundle, which had not been dealt with by her in the written statement and concluded having re-visited those documents during deliberations that the claimant’s evidence and her claims were undermined by the contemporaneous documents. In addition, the claimant gave contradictory oral evidence on cross-examination, for example, early on in her evidence maintaining she was not contractually required to work 40 hours per week and there was no written contract of employment, and later on in her evidence that she had worked 40 hours per week when she commenced her full time contract until additional hours were offered to her. The text messages sent by the claimant to Lawry Davies also undermined the claimant’s evidence that her contract included all of the hours she worked overtime as set out in the payslips as recorded below..

17. I have taken into account the original agreed bundle, the second agreed bundle, the additional documents provided by both parties and oral submissions (which I do not intend to repeat in any detail) and have arrived

at the following findings of facts having resolved the conflicts in the evidence on the balance of probabilities.

Findings of Facts

18. The respondent is a disabled elderly woman with severe health problems and requires around the clock care. She is vulnerable and supported by her daughters, who also provided some of the care, in addition to other employees working under a contract of employment. The employees come into the respondent's house and perform care duties, including personal care. The respondent is in and out of hospital and under a palliative care team which includes district nurses and doctors who visit her regularly. The respondent has a limited life expectancy and there have been discussions about what would happen if she required resuscitation including during the claimant's employment and when she was on maternity leave.
19. The claimant was employed by the respondent as a part time personal assistant on the 20 August 2023. The claimant's contractual hours were increased to 40 hours per week and these were her contractual core hours during the relevant period of this litigation, although the claimant was offered and worked additional hours as recorded on her payslips. The additional hours were available because the claimant, who also worked nights, was pleased to work as many hours as possible when there was a shortage of care workers. It is undisputed that Lowry Davies, who carried out the same work as the claimant, had resigned in 2024. Lowry Davies was good friends with the claimant until sometime after Lowry Davies' resignation when she provided the respondent with copies of text exchanges referred to below.
20. At some stage during her employment the claimant was provided with a written contract of employment, which could not be produced by the respondent as she had put it in a bag with order documents and mislaid them. The claimant maintains she was not provided with a written contract of employment. On the balance of probabilities, I preferred the evidence given by the respondent supported by her communications with the Direct Payment Support Service set out in the agreed bundle and find as a matter of fact that the claimant was provided with a written contract in accordance with section 1 of the Employment Rights Act 1996 ("the ERA").
21. In addition to including a blank written contract the second agreed bundle included a "Personal Assistant Code of Conduct" to which I was not taken to in evidence. I note however that a personal assistant was expected to "ensure that a professional relationship is maintained while providing paid

support to a direct payment recipient...must not form inappropriate personal relationships...abuse the trust of direct payment recipients...discuss any information relating to their employer or employer's family members with others..." The claimant was not asked about this Code of Conduct and I am not satisfied that she was provided with a copy by the respondent, however the conduct expected of her was relevant whether it had been explained to her or not given the personal nature of her employment with the respondent, who was vulnerable and a direct payment recipient. In short, it is a matter of common sense that a personal assistant providing intimate care to a vulnerable person should always act in a professional manner, not take advantage, and not form an inappropriate relationship. The relationship between the claimant and respondent as evidenced in the text messages and contemporaneous documents speaks for itself.

22. The respondent did not pay the claimant directly. The claimant was paid through a Direct Payments Scheme run by the Social Services department at Neath Port Talbot County Borough Council. Harriet Puglsey was the senior payments advisor at the relevant time and she advised the respondent on employment matters such as contracts and maternity leave in addition to Peninsula who provided legal advice under an insurance policy. It is clear from the exchange of correspondence between Harriet Pugsley and the respondent that a contract of employment for the claimant existed, and it was lost along with other documents.
23. It is important to note the nature of the employment relationship in this case. The respondent was not running a business; she was employing the claimant to look after her and relied on the advice of others to circumnavigate her obligations as an employer, sometimes ignoring that advice against her own best interests in order to advantage the claimant as set out in the factual matrix below, for example, the respondent was urged to carry out a formal investigation with a view to proceeding down the disciplinary route against the claimant. The respondent chose not to do so because she was concerned about the claimant and her baby's health.
24. The claimant and respondent became close friends and the respondent viewed the claimant as family; she was like a daughter to her and they discussed matters such as the difficulties the claimant had in an earlier pregnancy when she lost her baby. In turn, the claimant expressed in the text messages sent to the respondent how she considered her to be like a Mother to her and more important than her family. The claimant regularly expressed her love for the respondent up until she went off on her maternity leave, thus undermining her evidence concerning the alleged pregnancy discrimination.

25. The claimant fell pregnant in or around February 2024 and did not inform the respondent. The claimant was friends with Lawry Davies, a personal assistant also employed by the respondent at the time, and she sent her texts about her pregnancy and photographs of the scan celebrating that she was expecting a boy.
26. During the period February 2024 to 11 June 2024 the claimant continued to perform the physical duties required of a personal assistant including using the hoist and working nights. The claimant accepted all hours offered to her, and she was working long hours in excess of the core 40 hours per week.

11 June 2024 respondent's knowledge of pregnancy

27. On the 11 June 2024, the claimant informed the respondent that she was pregnant. The text exchange was as follows after the claimant informed the respondent that another employee had asked her if she was pregnant to which the claimant responded "no." The claimant texted despite being aware of her pregnancy for a period of approximately 4 months:

"...I didn't want to do this over text. I've been panicking a lot but have recently found out I am...I've been so anxious and upset about telling you because I don't want to lose my job or you to think I'm not capable because I've been doing it and not known and I've been totally fine...I promise only my mam and squish know!...I really love working for you and I really don't want you to have to get rid of me...Please don't think I'm being secretive, I've only kept it to myself because I missed the important scans and blood tests. I promise you and abs and Sadie were one of the first person I wanted to tell."

28. The claimant did not mention that she had sent a copy of the scans and photographs of shopping for the baby to Lawry Davies approximately 4 months earlier in February 2024.
29. In cross examination of the respondent the claimant maintained the relevant date was 22 June 2024 which the respondent disputed as her understanding was the 11 June 2024 is the date of knowledge. The respondent was correct and the claimant confirmed when she gave oral evidence and was shown the email sent to the respondent that the date of knowledge was not 22 June 2024. This is relevant insofar that the claimant bases her case on the nexus between the date she informed the respondent and the acts of alleged discrimination which followed. I have dealt with this further in my conclusion.
30. The respondent texted the claimant back on first hearing of her pregnancy "Firstly massive congratulations me and Abbie are so happy for you. **Secondly you are a nob I'd never get rid of you xxx**" and "Don't ever be

scared to tell me anything. I am so happy for you like **I'm going to be a 'fake Nana' to your baby xxx**" [my emphasis].

The claimant responded "I feel so relieved. **You're all like my family.**"

The respondent wrote "You're an idiot. I can't wait to see you tomorrow. No more hoist pulling!!!! I feel awful xxx"

31. An exchange of text messages followed about the claimant's pregnancy ranging from the due date 4 October 2024, name of the baby and shopping for baby clothes. The respondent texted "...You are taking all the time you need. **Don't worry about anything at all, you are always and forever going to have a job here even when you have 6 kids x**" and in a follow up text "I'm honestly happy for you... You need to tell me anything you need as far as work goes. Caitlin has Sam here doing an assessment for hoisting...we can have her risk assess you? You are not to be pulling the hoist anymore though! I feel awful that you've been doing it. I'm so happy for you xxx...**your job here is 100% not affected. I'd be devastated if you left.** We can talk tomorrow but you ARE having proper maternity leave. I'm so excited for you and I could knock your head off for being worried to say sooner...if you killed someone I'd let you bury the body in the garden! I'm with you all the way. We love you"[heart emoji] [my emphasis].

31.1 The claimant responded "I'll do whatever I need to but I promise you nothing feels too big I am genuinely comfortable with anything we do...**You're the nicest person ever...**I promise you I would have told you if I was five minutes pregnant like I did before [emoji] I just wanted to know everything was okay and healthy first. **Love you all to bits. My second family (heart emoji)** [my emphasis].

31.2 The respondent followed up with "**We'll do whatever you want and if you change your mind down the line we'll change your hours. I'll do whatever to keep you here.** I really want you to have as much time as you want with the baby. **You need time off; you can bring him with you too...This is everything I could want for you....**" [my emphasis].

31.3 The claimant responded "...but honestly I was past 20 weeks when I found out" explaining she had missed two scans and "seems very rushed but I've had a couple of weeks to come around and get my results and a bit of a peace of mind.."

31.4 The respondent wrote "I'll talk to you properly tomorrow but we are so happy for you. You need to relax and enjoy your pregnancy you need a whole day off...no work. Just time to yourself to do what you want! **I know it's not**

my place to say this but you're going to burn out if you keep going the way you have been xx" and "sleep rest and eat its part of your job description now" [my emphasis].

Risk assessment

32. The respondent was supported by Harriet Pugsley in respect of managing the claimant's pregnancy and risk assessments as evidenced in the bundle which includes an email sent on the 13 and 18 June 2024 attaching the completed risk assessment form and the respondent's response on the 21 June 2024 "Everything looks good to Jasmine and myself." A further risk assessment was arranged for 5 July 2024. There was an agreement that the claimant left work at 2pm every day she worked, had Wednesdays off, did not work nights or weekends.
33. The 13 June 2024 risk assessment referred to the hoist **"to be moved by other carers...continence aids managed by other carers...Jasmine to inform MW if hours are too much. MW is very flexible and accommodating. Overnights have now stopped"** [my emphasis].
34. The claimant never complained about the hours being too much or too little and said nothing about her hours being dropped until this litigation.
35. The respondent emailed Harriet Pugsley on the 27 June 2024 "Jasmine isn't able to do what she was doing before, I have addressed this with her from my viewpoint Caitlin is doing a lot more when she arrives in the afternoon and honestly for myself and Caitlin that isn't an issue **we'll make any adjustments for Jasmine. She spent last night at Singleton hospital...and wanted to work today but I insisted she did not come in and Caitlin has covered for the day...she is definitely struggling and her well being is of course a priority. I've suggested to her that she takes every Wednesday off (we have already agreed she is no longer doing night stays)...the new PA...available from 8 July she can commit 100% to night stays and more than happy to hep during the day if needed...**" [my emphasis].
36. In a second email to Harriet Pugsley from the respondent sent on the 27 June 2024 she wrote "Am I able to get another PA to work nights and pick up some of the hours Jasmine needs off she isn't having an easy pregnancy...I have someone also who...has done night shifts."
37. Contrary to the claimant's evidence and oral submissions, I find on the balance of probabilities that the respondent required additional staff because

of understaffing. It is uncontroversial that the claimant was unable to carry out a number of duties and work the hours (including the overtime and nights) she had undertaken earlier, for example, in May 2024. The respondent's explanation is untainted by pregnancy discrimination and supported by the contemporaneous documents, and although the claimant continued working she was given time off, reduced duties and reduced hours as part of the risk assessment and it was not a retributory act because the claimant was pregnant. I note that the respondent emailed Harriet Pugsley on the 9 July 2024 referring to the claimant "having some physical difficulties due to back pain and sciatica." Throughout this period the claimant was paid her contractual 40 hour entitlement in full.

38. The claimant maintains no proper risk assessment was carried out and although this is not an allegation in the list of issues it is one set out in further information provided by the claimant. The claimant is mistaken and I preferred the respondent's evidence that two risk assessments were carried out, the first one immediately after the claimant informed her she was pregnant. As a result of the risk assessment a number of adjustments were made to the claimant's duties; she was no longer to work nights, carry out any hoisting or any heavy physical work, her hours were reduced from 8am to 2pm 4 days a week with no requirement to attend work on a Wednesday for which the claimant was paid her contractual 40 hours even though she did not work those hours. The claimant did not complain at the time about this, her reduction in the hours of work to 4 days a week 8am to 2pm (24 hours instead of 40 hours) and no night working for which the claimant received payment of her 40 hour contractual entitlement. The contemporaneous evidence reflects the claimant was happy not to work and in one text reported to the respondent that she had spent time which would otherwise have been a working day with her horse at the stables.
39. In oral evidence on cross-examination the claimant indicated that she was unsure whether she would be paid the 40 hours or not, and the issue was not being offered work rather than the amount of pay. I found the claimant's evidence less than credible. The wage slips reflect the claimant was paid £2585 net in May 2024, £3051.64 in June, £2068.62 in July and £1521.92 in August when she worked a part week. The wage slips do not reflect the claimant was not working, and I preferred on the balance of probabilities the respondent's evidence that the claimant carried out some work on reduced hours and duties following the risk assessment agreed with the claimant as evidenced in the contemporaneous documents.
40. A third risk assessment was due to take place with the respondent, claimant, and Harriet Pugsley.

A watershed moment: Lawry Davies sending the respondent copies of text messages

41. In or around 16 July 2024 Lawry Davies sent the respondent copies of text messages which reflected the claimant had informed Lawry Davies about her pregnancy as early as February 2024. Lawry Davies also provided text messages from the claimant showing the claimant's telephone number on the 14 April 2024 referring to the respondent as "Chelle:" and complaining about the hours she had "offered" to work:

"I can't deal with this shit with Chelle. I'm ready to walk. All fucking weekend...I'm not entitled to one fucking day off without being made to feel guilty for it...I cannot physically be there 7 days a week and care for mo in between does she not get it??? There's not a single weekend where I've not offered to go there I'm told no then she makes me feel guilty? What am I supposed to do like!! She's drop our hours even more just to be a cunt She needs someone who has no life working for her I genuinely am bored of her and her shit I'm sick of the junk we constantly have to clear Because their dirty hoarders. If Xmas time she thinks I'm putting up 5 million trees she can fuck off Oh wait I'll be on maternity. It's a fucking pisstake. I ain't going back honestly might just find a nice office number in Ilansamlet" [my emphasis].

Lawry Davies suggested "Admiral" to which the claimant responded "yeah something like that...She's made me want to go back to an office job."

42. When the respondent read the text messages she believed them to be true and was very upset by the content and photographs taken of the respondent's home and shared with Lawry Davies, and ex-employee who had resigned in 2024.
43. On the 16 July 2026, the respondent emailed Harriet Pugsley about the claimant; "As a background Jasmine told me...as well as yourself...she found out she was pregnant at 20+ weeks. The date of telling me was the 11 June. I understand she didn't have to tell me but this is the stem of the deceit and how elaborate her story was...**There are photos being circulated of my home she has taken critically talking about.**" The respondent attached the text messages she had been provided with by Lawry Davies pointing out **"that's how she speaks about me compared to how she speaks to me as seen in the next attachments... As you can imagine**

myself and family are deeply upset by this we have had Jasmine in our life for 11 months she was family to us. I feel I don't know who she is, I'm nothing like the image she's portraying of me, she's called Abbie a little slut. You've been in my home we are not dirty hoarders. I never put a pregnancy ban on her. I've had a weekend of no sleep, crying, and self doubt. I cannot have her in my home I adored and would have done anything for the woman I thought she was but she's not that person I don't know who she is" [my emphasis].

44. I find as a matter of fact that following the text messages and photographs provided to the respondent by Lawry Davies the respondent had doubts about the claimant and their employment relationship continuing. The respondent no longer wanted the claimant to carry personal care work given the comments, which the respondent found hurtful and so upsetting that she had difficulty re-reading the text messages. The shift in the employment relation was totally unconnected to the claimant's pregnancy and solely attributable to the claimant's description of her employer and so I find taking into account the factual matrix and timings as invited to do so on a number of occasions by the claimant during oral submissions.
45. In addition to the claimant's behaviour being a barrier to her carrying out some of the duties, I find on the evidence before me that there were occasions when she did attend work but carried out no or little duties, and there were times the claimant was unable to physically attend due to the respondent's grandson having chickenpox (as evidenced in a text message sent to the claimant by the respondent), the claimant and daughter having suspected covid, the respondent being in hospital and the claimant's car being off the road for approximately a week so she was unable to attend work. The dates when all these events took place are far from clear, however, it does appear they fall within the period the claimant has brought her complaint of pregnancy discrimination, for example, the 18 July 2024 text message concerning the claimant not being required to work as a result of chicken pox and the claimant's reply offering to garden for the respondent "I feel like I've seriously let you down this week." And another text "Just let me know if you need anything I feel so useless here" to which the respondent wrote "I keep telling you there is nothing you could have done last week, nothing at all..." It is unfortunate that due to the passage of time and the claimant issuing proceedings outside the statutory time limit, evidence is not as clear as it could have been and I find that this has prejudiced the respondent.

Pregnancy risk assessment meeting 23 July 2024

46. A pregnancy risk assessment meeting had previously been arranged with the claimant, Harriet Pugsley, and the respondent for the 23 July 2023. It was to be an informal meeting. The claimant's assertion that it was a "formal meeting" or an "almost formal meeting" is mistaken.
47. It is accepted that at the meeting the claimant was questioned by Harriet Pugsley about the date when she first became aware that she was pregnant and asked about text messages provided to the respondent by Lowry Davies. The claimant was not given notice that she would be asked about the Lowry Davies text messages and it took her by surprise. I find the claimant's evidence that she was not shown the text messages not credible, and on the balance of probabilities conclude the claimant was shown them maintaining they were fabricated in response. The claimant was very upset; she had not expected the text messages to come to light and realised that they could affect her employment relationship with the respondent, which they did as the respondent was upset that the claimant did not inform her of her pregnancy early on when they were such close friends and described one of her daughters as a "slag," the respondent a "cunt" and a "hoarder."
48. The meeting of 23 July 2024 was a watershed in the employment relationship. The claimant realised that the respondent was very upset by the text messages and this could affect the future of her employment, as evidenced in the communications which followed. It is undisputed that at this meeting the respondent's head was down. She did not look at the claimant and could not look at the documents provided by Lowry Davies.
49. I find that the "risk assessment meeting" was an attempt by the respondent and Harriet Pugsley to understand from the claimant whether there was any truth in the information provided by Lowry Davies. The claimant was not advised beforehand that the meeting would deal with these issues, and I find that the respondent, concerned for the claimant's pregnancy, was loath to act on the advice she had been given, which was for a formal investigation to be conducted with the support of Harriet Pugsley and Peninsula, with a view to proceeding down the disciplinary route, as evidenced in the exchange of communications set out below.

Exchange of emails which followed the 23 July 2024 meeting

50. The exchange of email which followed the 23 July 2024 meeting are key, undermining the claimant's case and her evidence, and are set out below, the claimant having indicated that she would be taking the rest of the week off as a result:

50.1 The claimant wrote: "I've had some time to think...I think its best for both of us if I took the rest of the week off...I'm totally hurt beyond words that to some extent Lowri's lies have totally been believed this far and **resulted in an almost formal meeting...I've stayed true to myself and said all I can say regarding her accusations...It's quite easy to form up a convincing conversation that didn't happen without having a recipient on the other receiving end. It can be done and dated within minutes.** Very easily. I want you to know I love my job and always have done..." [my emphasis].

50.2 The respondent wrote after the nurse had left "...I was a wreck too, nothing was making sense. **Because of how much I thought of you as Harriet confirmed today I stopped a formal investigation, there's no way I wanted to put you through that. I know you said the texts etc aren't from you I wasn't to know that...it was your bag in the photo...it all looked genuine then all the messages saying things about Abbie and me. I was devastated reading them as they said how awful I was and expected you here 7 days a week and never gave you a break. I was sulky, moody and treated you like a slave and not fit to breathe. This was obviously a million miles away from the Jasmine I knew but it looked genuine. I didn't want a formal investigation, I stopped that, I even asked to speak to you alone but was advised against it. The last thing I'd intentionally do was to hurt you especially as you're pregnant...I want all this to stop, you're pregnant and don't need the stress and I had to have the doctor because my heart rate was so high...I want to talk this out with you...I hope you can understand after what I'd seen and things being said that were true they seemed to back up the texts. This is not going to be resolved in one day...**" [my emphasis].

50.3 The claimant responded blaming Lowry Davies alleging she was trying to "worm herself" back to take over the claimant's job and "anything said about you or the family is lies...I'm so annoyed you had to go through this...You're human and she's convincing...disgusting and evil...knowing I'm at the end of my pregnancy...she's clever and cunning but not clever enough...**I feel like I've lost trust and a relationship with my whole family**...I can only apologise for what she has caused" [my emphasis].

51. A further exchange of texts took place which culminated in the respondent writing "**It wasn't as straightforward as thinking you had sent them, there are so many more and they did match up with real things that was happening here. So yes we think they were real BUT we know like this isn't the Jasmin we know...**" again referring to her concern over the claimant's pregnancy.

52. The claimant responded **"I know I haven't said these things. I'm so worried things won't ever been the same and you won't want me to ever come back there.** I feel like a criminal but I haven't even done anything" [my emphasis]. The claimant realised that the information provided to the respondent by Lowry Davies could result in her losing her job and she was left with the prospect of another meeting with Harriet Pugsley as the respondent who made it clear in her texts that the issue could not be sorted out in text messages and they would need to meet.
53. The respondent wrote in response that the information appeared genuine "I am open to your suggestion that they are not real" and "I just want all of this to go away." In another text the respondent suggested a meeting and wrote "Let's have a talk. I'll arrange it so nobody else if here. We had too good a relationship to not listen to each other now." The claimant responded **"I just don't know where to go to from here. I'm worried you hate me and want nothing more to do with me. I don't feel like I'm safe or my job is.** I feel like people are going to be talking about me" [my emphasis].
54. The respondent in response assured the claimant "I don't hate you. Nobody does. This has happened at the worse time possible to you. Let's talk we can do it any time." The claimant suggested a time for a meeting and wrote **"I want you to always be reminded I do love you all like a family...The only bad word I've said about you is you're too fucking nice to people who don't deserve it"** [my emphasis].
55. I find as a matter of fact that in direct contrast to the claimant's evidence and oral submissions that the respondent had breached the implied term of trust and confidence at the 23 July 2024 meeting and its aftermath, she did not consider this to be the case and understood that as a result of the information provided by Lowry Davies she could lose her job due her own behaviour. The claimant understood that the relationship she had with the respondent had been adversely affected to such an extent that "It's not the same. **You're like a mam to me, it's all breaking my heart xx.**" In response the respondent made it clear "Please don't think I think differently of you as a person...**it does look convincing but I am as I've said open to it's a fake. If I thought less of you based on what I've seen we wouldn't be talking. I care for you more that you'll know. It is a heartbreaking situation**" [my emphasis]. In the email exchange the respondent urged the claimant to "keep talking" The claimant also referred to pretending to being at work and seeing to her horse and promised the respondent "I come to you about everything and anything and hope you can trust me enough to do the same." An employee who believed their employer was discriminating against that and breaching the implied term of trust and confidence would not have written in such terms, and I find that at the time this had not crossed the

claimant's mind. It was only until she decided not to return to work from maternity leave and issue these proceedings the claimant raised these allegations.

The respondent asking the claimant to return to work

56. On the 1 August 2024, the respondent texted the claimant referring to her ill health and asking her to "come to work as normal from Monday please."
57. By the 1 August 2024, the claimant had still not provided any explanation as to how Lawry Davies had allegedly fabricated her telephone number, photographs and text messages.
58. It is clear from the earlier contemporaneous documents in the bundle the claimant was asked to come into work for the 2 August 2024 for a risk assessment. The claimant did not attend work and her evidence that she was not asked to return to work is not credible. The claimant did not want to return to the workplace and explain either to the claimant or Harriet Pugsley her behaviour, for which she had no credible explanation. I am satisfied that the claimant was asked to come into work the next day being the 2 August 2024. Instead of returning the claimant texted the respondent referring to workplace gossip and "someone with a personal issue with both you and me...**playing with my life and a job they know I loved and would put above anything**" [my emphasis]. In a second message the claimant made reference to the meeting with Harriet Pugsley "I **feel it's a heads up for me to answer questions to and I don't have the answers. I am not blaming you.**" The respondent clarified that the meeting was about risk assessment to which the claimant responded "I'm **just taken aback and willing to move past it all and still be a good PA. I just am finding it hard to feel like your mind is already made up. My heart is just broken**" [my emphasis].
59. The respondent responded "I'm not sure what you mean by taken aback and willing to move past it all. I haven't said or done anything that's in any way critical of you. **I've stopped formal investigations in support of you.** This whole drama is about me but I'm the only one who has no say in it. **My mind was made up for you to be a PA...I absolutely hate that you're pregnant and going through this, there's not a single thing I've said or done that hasn't been without consideration to you**" [my emphasis].
60. The contemporaneous documents reflect the respondent, who was unwell, was admitted to hospital in or around the 5 August 2024.

61. On the 14 August, the respondent texted the claimant informing her that she was arranging a meeting with Harriet Pugsley.. The claimant after an exchange of text messages responded, **“Just don’t want to have the brunt in a meeting with Harriet...I don’t think I can take the stress of another unexpected meeting of something I haven’t done”** [my emphasis].
62. The risk assessment did not go ahead. The claimant did not attend work and the respondent was unwell. The claimant had not explained in any email communications to the respondent (or any communication) why and how Lawry Davies had fabricated the documents and yet continued to criticise Lawry Davies and other unnamed people. It is notable that there was no criticism of the respondent and I find as a matter of fact that it did not cross the claimant’s mind that the respondent was in fundamental breach of contract at any stage during this period, including the risk assessment meeting. In the meantime, the claimant did not attend work full time, her attendance was sporadic. The claimant did not attend meetings, for example, take up the respondent’s invitation to have a discussion with her about the text messages. The claimant continued to receive her full contractual pay for forty hours a week. It is notable that at no stage did the respondent indicate to the claimant she would be formally investigated or disciplined, which was a step open to the respondent and one her independent advisors were suggesting. The respondent believed the claimant had sent the texts in dispute but chose not to take action because she was concerned about the claimant’s pregnancy, and so I find on the balance of probabilities. At no stage did the respondent suggest the claimant took early maternity leave, contrary to the claimant’s allegations in this case, I find as a matter of fact there was no evidence whatsoever the claimant was “forced” to take early maternity leave, and her oral evidence to this effect was undermined by the contemporaneous documentation and raised yet a further question mark over her credibility.

The claimant’s proposal to take early maternity leave.

63. The claimant was faced with the prospect of returning to work and explaining the text messages either to the claimant or possibly Harriet Pugsey, which the claimant feared would possibly take place at a risk assessment meeting despite the respondent’s denials and offer to meet the claimant separately.
64. In a text message on the 19 August 2024 out of the blue the claimant wrote to the respondent “I’ve been thinking a lot about things and **I don’t want you stressing or having to chase around to sort stuff out for those maternity assessments** and all the rest of it on the op of being poorly...I want to look to see if I can taken holidays I have left or there and then roll

into maternity after that because I don't want to be off and not earning. **But let me say I want nothing more than to be here doing my job right now and for the past previous week to help you through all this shit you've had to face. And would come back in a heartbeat. I would have stayed until the last second before the baby comes!...You are still my family...**" [my emphasis].

65. Contrary to the claimant's case there was no suggestion the respondent was in breach of contract and the claimant considered herself to have been constructively dismissed or continued to work having objected to the respondent's behaviour as submitted by the claimant. The text message makes it clear the proposal of taking early maternity leave came from the claimant, who attempted to couch it in terms which would benefit the respondent when the reality was that the respondent needed answers to explain the text messages, which was not forthcoming from the claimant. It is notable that during this period the respondent was clearly unwell following a hospital admission and the claimant's text message was couched in emotionally manipulative terms as highlighted.
66. The respondent texted the claimant "Do you have any free time tomorrow its easier than texting." The claimant agreed and met with the respondent and the early maternity leave was agreed which included holidays and the claimant texted "Yes that's perfect that's relieved a lot of stress for me so thank you so much for that emoji xxx" In a follow up email the claimant wrote "it's the most logical way through this at the moment, loads of delays and bumps in the road...you not being well...and I'm also at a stage where he's engaged so he could arrive sooner than later...**I'm gutted though I would have stayed until I popped! Xx.**"
67. On the 25 August 2024, the claimant emailed the respondent complaining that Lawry Davies "has been telling everyone I've lost my job and been sacked." The respondent responded "I'm fed up with rumours about your job. You, Harriet, Vicky and I know all know what's going on. **It's nobody's business and the truth will be there for everyone when your maternity leave ends.**" The respondent indicated that she would be going to see a solicitor "if confidentiality rules were broken." The claimant texted the respondent describing Lawry Davies as "evil and cruel [sad emoji] **I do miss you so much though my life doesn't feel normal not seeing you every day.**" This was the last communication from the claimant to the respondent until her resignation letter and I find as a matter of fact that the claimant did not consider the respondent to have been in breach of contract before she went off on maternity leave and she was fully aware that the respondent expected her to return to her job after the maternity leave had finished. The

respondent did not know when the maternity leave was due to finish as she had been given no information by the claimant.

68. The claimant did not keep in contact with the respondent in the weeks following and did tell her when the baby was born in direct contrast to the texts she sent to the respondent highlighted above particularly referring to her as “family.”
69. In January 2025, the claimant sought advice from Harriet Pugsley about the claimant returning from maternity which she understood could be in January 2025 given the maternity leave had started in August 2024. In a text message the respondent was advised to wait until May 2025 and take further advice “from our service as they can support you to liaise with the insurance company [Peninsula] to talk you through the process of Jasmine’s return to work and how this will look.” The respondent was advised not to make contact with the claimant during her maternity leave period.

The claimant’s ill health

70. By the 2 May 2025, the claimant was experiencing “significant anxiety” and sought medical intervention. The 2 May 2025 medical report records “You state this limits your availability to socialise and go out into the community.” The claimant was diagnosed with post-natal depression and it appears the claimant had no intention of returning to work, and so I found given her actions in not contacting the respondent at all concerning her medical condition. The 2 May 2025 medical report confirming the position was not provided to the respondent and the claimant did not inform her of any mental health issues which prevented the claimant from returning to work. The claimant, who had been on holiday and maternity leave for approximately 10 months, was silent about her intentions. The respondent was waiting for the claimant to get in contact and inform her when she intended to return and was unaware the claimant was not returning.
71. In early June 2025, the claimant raised a complaint about the respondent to Neath Poer Talbot Council, who was not her employer. The claimant did not refer the complaint to the respondent, who knew nothing about it. I have not seen details of the complaint.
72. On the 16 June 2025, the claimant emailed ILBP Wales Office enclosing a fitness to work certificate dated 10 June 2025 to an unknown date confirming the claimant was not well enough to return to work in any capacity due to pregnancy and post-natal stress related problem. The claimant was seeking payment of sick pay which was refused as she was still on maternity leave. The respondent was not provided with a copy of the sick note, and in oral

evidence the claimant explained the reason for this was that the relationship had broken down. I did not find the claimant's evidence credible, concluding on the balance of probabilities that the claimant had decided not to return and proceed down the litigation route instead. It is notable that the claimant was fully aware the respondent expected her to return to work and that the issue concerning the texts messages was unresolved with the prospect of the claimant providing an explanation as to how they could have been fabricated by Lowry Davies, who was to appear as a witness in this litigation on behalf of the claimant.

73. On the 15 July 2025, the claimant entered ACAS early conciliation without raising a grievance with the respondent first. By this stage there had been no contact between the claimant and respondent for approximately 11 months.
74. The claimant's claim form was presented on the 18 August 2025, the date of issue by ACAS of the early conciliation certificate. In the claim form the claimant confirmed her employment was continuing and claims constructive unfair dismissal, pregnancy discrimination and victimisation referring to the 24 July 2024 meeting as "formal" and an "interrogation" believing she was left with "the impression that my job was unsafe." The claimant further alleged the respondent had instructed her "not to tell anyone I was still employed at the same time as telling others that I no longer had a job." The claimant claimed injury to feelings, psychiatric injury and aggravated damages including loss of earnings and financial losses. The claimant confirmed she suffered from "agoraphobia."
75. I find as a matter of fact that there was no evidence whatsoever that the respondent had left the claimant with the "impression" that her job was unsafe and find the respondent had made it clear that the claimant was to return to work after her maternity leave and she did not want to proceed down the formal investigation/disciplinary route. The claimant understood that she was still required to provide an explanation for the text messages, outstanding since the 23 July 2024 when the claimant maintained they were fabricated without providing any further explanation. I find on the balance of probabilities that the claimant could not explain how the text messages were fabricated and was concerned that as a result her job would be at risk. The respondent never gave this indication.
76. By the 22 September 2025, the claimant received a Work Capability Assessment decision confirming she had a limited capacity for work and was not required to search for work or provide fit notes.

77. It became apparent to the claimant that she could not bring a complaint of constructive unfair dismissal as she remained in employment, and on the 31 October 2025 (some 6 weeks after the Work Capacity Assessment) the claimant emailed the respondent directly enclosing her resignation letter effective immediately. This was the only direct correspondence sent by the claimant to the respondent after she had gone off on early maternity leave. The claimant alleged there had been a fundamental breach of contract “before, during and after my maternity leave” referring to “meetings in the plural “misrepresented as pregnancy risk assessments yet were in fact interrogations.” The claimant attributed her mental health condition and agoraphobia to the respondent’s discriminatory behaviour. I find as a matter of fact the sole reason for the claimant’s resignation was to bring a valid complaint of constructive unfair dismissal in this litigation.
78. At a preliminary hearing held on the 17 February 2026 the respondent was informed for the first time by the claimant that she had given birth on 12 September 2024.
79. On the 6 March 2026, the claimant provided additional information about her claim.
80. The effective date of termination of the claimant’s employment was 31 October 2025.

The law

81. I have not been referred to any case law or legal principles by the parties, and rely as guidance on well-known cases, a number of which are referenced below.

Constructive unfair dismissal

82. Section 95(1)(c) of the Employment Rights Act 1996, as amended (“the ERA”) states that there is a dismissal when an employee terminated his or her contract, with or without notice, in circumstances that he or she is entitled to terminate it without notice by reason of the employer’s conduct.
83. The Tribunal’s starting point was the test laid down by the Court of Appeal in *Western Excavating (ECC) Ltd –v- Sharp [1978] ICR 221* whether the employer was guilty of conduct which is a repudiatory/significant breach going to the root of the contract. The issues to be decided upon in this respect were: Was there a fundamental breach on the part of the employer? Did the claimant terminate the contract by resigning? Did the claimant prove that the effective cause of her resignation was the respondent’s fundamental breach of contract? In other words, what was the effective cause of the employee’s resignation? Did the claimant delay and therefore act in such a

way that is inconsistent with an intention to treat the contract as an end? The Court of Appeal “made it clear that questions of constructive dismissal should be determined according to the terms of the contractual relationship and not in accordance with a test of ‘reasonable conduct by the employer’” relevant to the claimant’s complaint regarding the number of hours for which she worked and was paid.

The implied term of trust and confidence

84. There is an implied term in every contract of employment to the effect that the employer will not without reasonable and proper cause, conduct itself in a manner likely to destroy, or seriously damage the relationship of confidence and trust between employer and employee. In order to constitute a breach of the implied term it is not necessary for the employee to show that the employer intended any repudiation of the contract: the Tribunal’s function is to look at the employer’s conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it; or put another way, the vital question is whether the impact of the employer’s conduct on the employee was such that, viewed objectively, the employee could properly conclude that the employers were repudiating the contract. The correct test of repudiatory conduct by an employer is set out in the Court of Appeal judgment in the case of *Paul Buckland V Bournemouth University Higher Education Corporation* [2010] EWCA Civ 121, and this is an objective test.
85. The House of Lords in *Malik v Bank of Credit; Mahmud v Bank of Credit* [1997] UKHL 23, held that the breach occurs when the proscribed conduct takes place. The employee may take the conduct as a repudiatory breach, entitling him to leave without notice. If the employee stays, the extent to which staying would be a waiver of the breach depends on the circumstances. Lord Steyn referred to the implied obligation covering a diversity of situations in which “a balance has to be struck between an employer’s interests in managing his business as he sees fit, and the employee’s interest in not being unfairly and improperly exploited,” and to the impact of the employer’s conduct being objectively assessed to ascertain whether objectively considered, it is likely to destroy or cause serious damage to the relationship between employer and employee. If it is found to be so, then a breach of the implied obligation may arise.

Last straw

86. A course of conduct can cumulatively amount to a fundamental breach of contract entitling the employee to resign and claim constructive dismissal following a “last straw” incident. The last straw itself does not need to amount to a breach – *Lewis v Motorworld Garages Limited* [1986] ICR 157 CA. Glidewell LJ said at para 169F “The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, although each individual

incident may not do so. In particular, in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken e together amount to a breach of the implied term?"

87. In *Omilaju v Waltham Forest London Borough Council* [2005] ICR 481 the Court of Appeal held that the act constituting the last straw need not be the same character as the earlier acts, nor must it constitute unreasonable or blameworthy conduct, although in most cases it will do so. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final last straw, even if the employee genuinely but mistakenly interprets the act as hurtful and destructive on his or her own trust and confidence in the employer.

Employee must resign in response to repudiatory breach

88. The employee must leave in response to a breach committed by the employer. This breach may be an actual breach or an anticipatory breach ... it is not enough that the employee expects the employer to repudiate the contract and leaves in anticipation.

89. In the well-known EAT case of *Walker v. Josiah Wedgwood & Sons Ltd* [1978] ICR 744, IRLR 105 the EAT held "... it is at least requisite that the employee should leave because of the breach of the employer's relevant duty to him, and that this should demonstrably be the case. It is not sufficient, we think, if he merely leaves ... **And secondly, we think, it is not sufficient if he leaves in circumstances which indicate some ground for his leaving other than the breach of the employer's obligation to him**" (per Arnold J). [my emphasis].

Waiver of breach

90. *Weston Excavating* cited above; The employee "must make up his mind soon after the conduct of which he complains; for if he continues for any length of time without leaving, he will lose his right to treat himself as discharged."

91. In *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 978; [2019] ICR 1 in considering a claim for constructive dismissal Underhill LJ, at paragraph 55, summarised the proper approach as a five-stage test in the following way:

"55. I am concerned that the foregoing paragraphs may make the law in this area seem complicated and full of traps for the unwary. I do not believe that that is so. In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:

- (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation? In Ms Smyth's case she relies on the respondent forcing her to take early maternity leave (as recorded in the agreed List of issues) however, I have taken the claimant's last allegation of unfavourable treatment, namely, allegedly denying the claimant the opportunity to return to work after her maternity leave began also as a possible last act and would have taken this into account had the claimant met the burden of proving her pregnancy discrimination claim, which she has not.
- (2) Has he or she affirmed the contract since that act?
- (3) If not, was that act (or omission) by itself a repudiatory breach of contract?
- (4) If not, was it nevertheless a part (applying the approach explained in *Omilaju* [2005] ICR 481) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) 8 breach of the *Malik* term? (If it was, there is no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para 45 above.)
- (5) Did the employee resign in response (or partly in response) to that breach?

Section 18 Pregnancy discrimination

92. 18 Pregnancy and maternity discrimination: work cases

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
- (2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably:
 - (a) because of the pregnancy, or
 - (b) because of illness suffered by her as a result of it.
- (3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.
- (4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.
- (5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to

be regarded as occurring in that period (even if the implementation is not until after the end of that period).

- (6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends:
 - (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
 - (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.
- (7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as:
 - (a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or
 - (b) it is for a reason mentioned in subsection (3) or (4).

Burden of proof

93. Section 136 of the EqA provides: (1) this section applies to any proceedings relating to the contravention of this Act. (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provisions concerned, the court must hold that the contravention occurred. (3) Subsection (2) does not apply if A shows that A did not contravene the provisions. (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule."

94. In determining whether the respondent discriminated the guidelines set out in *Barton v Investec Henderson Crossthwaite Securities Limited* [2003] IRLR 332 and *Igen Limited and others v Wong* [2005] IRLR 258 apply, as affirmed in *Ayodele v CityLink Ltd* [2018] ICR 748. The claimant must satisfy the Tribunal that there are primary facts from which inferences of unlawful discrimination can arise and that the Tribunal must find unlawful discrimination unless the employer can prove that it did not commit the act of discrimination. The burden of proof involves the two-stage process identified in *Igen*. With reference to the respondent's explanation, the Tribunal must disregard any exculpatory explanation by the respondent and can take into account evidence of an unsatisfactory explanation by the respondent, to support the claimant's case. Once the claimant has proved primary facts from which inferences of unlawful discrimination can be drawn the burden shifts to the respondent to provide an explanation untainted by sex [or in the present case disability], failing which the claim succeeds.

Conclusion – applying the law to the facts

Burden of Proof

95. The claimant has not proved, on the balance of probabilities, facts from which the Tribunal could decide, in the absence of any other explanation, that the respondent subjected her to the pregnancy discrimination and the burden has not shifted. If I am wrong on the application of the burden of proof, and the burden shifted to the respondent to prove on the balance of probabilities that the claimant's pregnancy was no part of the reason: *Igen* cited above, I would have gone on to find in the alternative that the explanation given by the respondent untainted by pregnancy discrimination.

Time Limits

96. With reference to time limits I find the claimant's claims set out in allegation 4(a)(i), 4a(ii), 4a(iii), 4a(iv) and 4a(v) were not presented within the applicable time limit. There was no conduct extending over a period of time and it is not just and equitable to extend the time limit. The claims are therefore dismissed. The claimant has not provided any explanation as to why she did not issue her claims earlier, for example, when she was taking her holiday entitlement in August 2024. I concluded, taking into account the factual matrix supported by the claimant's own text messages, that the reason for the claimant not issuing proceedings within the statutory time limit was down to the fact that at the time she did not consider herself to have been discriminated against on the grounds of her pregnancy. Had the claimant genuinely believed the respondent was discriminating against her she would not have sent the texts referring to the respondent as "family," coming back to work in "a heartbeat" and feeling "gutted" about taking her holidays early "I would have stayed until I popped." I also note that the claimant was well enough to raise a complaint about the respondent with the local authority in early June 2025 followed by ACAS early conciliation on 15 July 2025 and find that her ill health was not the reason why proceedings were not issued in time.

97. In the alternative, had I found the claims were brought in time (which I did not) I would have gone on to find that they were not well-founded, and taking into account the balance of prejudice between the parties find the prejudice fell in favour of the respondent defending a weak unmeritorious claim brought out of time which directly affected the evidence bearing in mind the substantial delay before the respondent became even aware the claimant was bringing a complaint of pregnancy discrimination.

Constructive Unfair Dismissal (Part X Employment Rights Act 1996)

98. In order for the claimant to be able to successfully claim constructive dismissal, four conditions must be met: (1) There must be a breach of contract by the employer. This may be either an actual breach or an anticipatory breach. If there is no breach of contract that is the end of the matter. (2) If there is a breach of contract that breach must be sufficiently important to justify the claimant resigning, or else it must be the last in a series of incidents which justify her leaving. A genuine, albeit erroneous, interpretation of the contract by the employer will not be capable of constituting a repudiation in law. (3) She must leave in response to the breach and not for some other, unconnected reason. (4) She must not delay too long in terminating the contract in response to the employer's breach, otherwise she may be deemed to have waived the breach and agreed to vary the contract. The claimant has failed to meet the four tests.

99. With reference to the first issue, namely, was the Claimant dismissed, it is accepted the claimant resigned and the effective date of termination was 31 October 2025.

100. With reference to issue 2a, namely did the respondent do the following things on the balance of probabilities I concluded as follows:

100.1 Allegation: reduce the claimant's hours. The claimant's core contractual hours of 40 hours per week were not dropped unilaterally. The claimant agreed a reduced work schedule as part of the pregnancy risk assessment which advantaged her as she was paid her full contractual rate of pay for hours she did not have to work. The claimant did not raise any issue with the reduced time she was in work at the time, going as far as stating after the 23 July 2024 meeting "think it's best for both of us if I took the rest of the week off..." and later expressing her view that the respondent, who she loved as a family, "is you're too fucking nice to people who don't deserve it." Had the claimant genuinely believed the respondent was reducing her hours in breach of contract she would not have written this. The claimant accepted that there were a number of duties she was unable to carry out, including night shift, and it stands to reason that the claimant could not have been offered to work the additional hours she had volunteered for previously as reflected in the wage slips, and she did not. I am also satisfied that the overtime requests made to the claimant to work (which she could refuse) would have diminished when the respondent employed additional personal assistants. In the text messages sent to Lowry Davies the claimant uses the phrase "there's not a single weekend where **I've not offered to go there** I'm told no then she makes me feel guilty? What am I supposed to do like!! She's drop our hours even more just to be a cunt..." confirming

that the claimant was offering to work additional hours which could be reduced by the respondent, underlining the true position regarding the contract. In *Western Excavating* above the Court of Appeal confirmed questions of constructive dismissal should be determined according to the terms of the contractual relationship and not in accordance with a test of 'reasonable conduct by the employer. The claimant's contract was for 40 hours per week, she was paid 40 hours a week after agreeing with the respondent to work less hours, and even on occasion very few hours which enabled the claimant to take part in her leisure activities when she should have been in work, including looking after her horse and painting the stables according to the contemporaneous documents.

100.2 Allegation: Discuss the Claimant's pregnancy with a former colleague. The former colleague referred to by the claimant is Lowry Davies, and the undisputed evidence before me was that Lowry Davies approached the claimant with the text messages and information about when the claimant first knew she was pregnant. There is no evidence that the claimant sought this information, she was unaware of the pregnancy and in a text message to the claimant made it clear that she had not listened to rumours about it. It was not a breach of contract for the claimant to listen to Lowry Davies and then ask the claimant about what she had been told and read.

100.3 Allegation: Access and use private messages between the Claimant and her colleague to create conflict and tension. The factual matrix reflects that far from accessing and using private messages in the way described by the claimant, the respondent ignored legal advice with the view to avoiding conflict and tension. The allegation suggests the respondent actively sought to access the private messages. It was the claimant's friend who brought the messages to the respondent's attention and whilst the respondent tried to ignore them, she was unable to do so given their content including the claimant's stated intention to resign and seek a different type of job in the office.

100.4 Allegation: Fail to give the Claimant any notice to attend a formal meeting. The claimant had notice of the pregnancy risk assessment notice and the attendees, she did not have notice of the fact that Lawry Davies had disclosed to the respondent damaging text messages and photographs. The claimant has made much of this fact, ignoring the impact of the text messages sent to the respondent as set out above. The claimant's real concern was not any breach of the implied term of trust and confidence on the part of the respondent but the fact she had been found out and could be facing investigation, disciplinary and dismissal for her own fundamental breach of contract in communications

with a fellow employee including taking photographs of the respondent's home which was shared.

100.5 The text messages reflect the claimant was aware of Lowry Davies messages content, and her evidence at this hearing that she was not is not credible. The claimant was fully aware of the text messages disclosed to the respondent and was concerned about keeping her employment with the respondent maintaining they were fabricated without explaining how. The claimant's evidence that the respondent was discriminating her on the grounds of her pregnancy is far from the truth. There was no evidence whatsoever of discrimination during this period leading to the claimant going off on maternity leave and the aftermath. The reality was that the claimant was concerned her relationship with the respondent had changed as a result of the text messages and she was at risk of an investigation and disciplinary involving Harriet Pugley, which the claimant wanted to avoid hence her refusal to meet with Harriet Pugsley again as she was fearful questions would be asked and suggested taking her holidays and maternity leave instead.

100.6 Finally, the claimant argues that the respondent was in breach of contract and discriminatory during the 23 July 2024 meeting maintaining she was interrogated by the respondent. I prefer the respondent's evidence that she said very little if anything, Harriet Pugley asked the claimant about the text messages and photographs as she was entitled to do without putting the claimant on notice beforehand orally or in writing. The meeting was an informal attempt to see if there was anything in what Lowry Davies had to say about the claimant and there was no formal disciplinary investigation when the ACAS Code required compliance by the respondent because the respondent, against all advice, put a stop to it while waiting for the claimant to explain to her how the information had been fabricated because the claimant wanted to believe the claimant's version of events. The claimant never offered up this explanation.

100.7 The 23 July 2024 meeting was not a formal investigation meeting; it was informal and there was no requirement to give the claimant notice that she would be shown and asked questions about a possible misconduct matter either under the contract or the ACAS Code of Practice. The issue for the claimant is that she had been found out, and her criticisms of the respondent are a smokescreen behind which the claimant seeks to hide the fact that she was the one in fundamental breach of the implied term of trust and confidence.

100.8 Allegation: Force the Claimant to take early maternity leave. This did not happen as set out in factual matrix above. The claimant suggested taking her holidays and an early maternity leave following the respondent asking her to return to work and attend a pregnancy risk assessment with Harriet Pugsley. The claimant believed that Harriet Pugsley, unlike the respondent who was trying her hardest to believe the claimant's explanation that Lawry Davies had fabricated the evidence against her, would not be so understanding and she did not want a meeting.

100.9 With reference to the issue, namely, was there a breach the implied term of trust and confidence I find there was no breach let alone a fundamental breach of contract. The respondent had not behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent, quite the reverse. The respondent went against her own best interests to fit in with the claimant's requirements, protecting the claimant against the consequences of her actions and paying the claimant for hours she had agreed not to work. The factual matrix reflects a different reality to that put forward by the claimant in her pleaded case and at this liability hearing, one where the respondent was trying everything in her power to keep the claimant onside with a view to her returning to work after maternity leave. It was the claimant who was dictating to the respondent when she would work, how she would work and when she would take maternity leave in texts aimed at engineering an outcome through flattery and promises which never came to pass in the knowledge that the respondent was vulnerable, relied on her and believed she was family when the claimant was employed to act as her personal carer.

100.10 With reference to the issue: Whether it had reasonable and proper cause for doing so, I found the respondent had reasonable and proper cause for all its actions as reflected in the factual matrix.

100.11 If I am wrong in my assessment as to whether the respondent was in breach of contract or not, in the alternative I would have gone on to find there was one reason for the claimant's resignation. With reference to the issue, namely, did the claimant resign in response to the breach I found the only reason the claimant resigned was because she was unable to bring a complaint of constructive unfair dismissal and wished to do so. In short, the breach of contract was not a reason for the claimant's resignation, and I did not accept the claimant's argument that she resigned because the respondent failed to get in touch with her during pregnancy leave. There was an issue before the claimant went off on maternity leave, namely the text messages and photographs, which

the claimant never cleared up despite the respondent requesting her to do so. This is the backdrop to the claimant not getting in touch with the respondent after the baby was born and not informing the respondent when she intended to return to work after maternity leave, in the knowledge that as far as the respondent was concerned, her return was expected. The respondent is not under a contractual duty to keep in contact with the claimant under these specific circumstances, and whilst I accept in the ordinary course of events employer and employee mutually keep in contact including having a return to work date, a work visit before the return to work (possibly with the baby) this did not happen, despite the respondent's suggestion made before the maternity leave period that the claimant went to work with the baby. I have found the respondent was not in breach of contract, and yet the claimant took it upon herself to bypass the respondent when she wanted payment of sick leave and raise a complaint prior to issuing these proceedings.

100.12 There is no need for me to deal with the remaining issues, however in the alternative on the theoretical assumption that there had been a breach of contract, with reference to the next issue, namely did the claimant affirm the contract before resigning I found that she did as reflected in the text messages she sent to the respondent immediately before going holiday/early maternity leave as recorded above. Giving the texts their ordinary common sense interpretation, their meaning cannot be clearer and the claimant's words and actions showed that she chose to keep the contract alive even after the alleged breach. For example, after the 23 July 2024 meeting texting the respondent "I want you to always be reminded I do love you all like a family," "You're like a mam to me," "I come to you about everything and anything and hope you can trust me enough to do the same," "I feel it's a heads up for me to answer questions to and I don't have the answers. I am not blaming you," "I'm just taken aback and willing to move past it all and still be a good PA," "I don't want to be off and not earning. But let me say I want nothing more than to be here doing my job right now and for the past previous week to help you through all this shit you've had to face. And would come back in a heartbeat. I would have stayed until the last second before the baby comes!...You are still my family," "I'm gutted though I would have stayed until I popped! Xx" and the last communication to the respondent on the 25 August 2024 "I do miss you so much though my life doesn't feel normal not seeing you every day." These are not the words of a person who believes their employer to be in breach of contract or discriminating against her on the grounds of her pregnancy.

6. Pregnancy/ maternity discrimination (s.18 Equality Act 2010)

101. With reference to the first issue, namely, did the Respondent treat the Claimant unfavourably by doing the following things, I have dealt with all the allegations dismissing them above, with the exception of vi.
102. With reference to the issue, namely, did the respondent deny the claimant the opportunity to return to work after her maternity leave began I find that it did not. In order to deny an employee the opportunity to return to work there must be a positive action on the part of the respondent to prevent that employee from doing so. In this case the claimant was aware that the respondent expected her to return after maternity leave, and it was the claimant who chose not to take that opportunity up. Instead, she decided that litigation was her favoured course of action. Had the claimant wished to return to work after maternity leave she would have said so, but she had no intention of doing so evidenced by her lack of communication and by-passing the respondent entirely until it became apparent to her that in order to progress her claim she needed to resign. The respondent had no knowledge of the claimant's illness because the claimant had chosen not to inform her, and there was no unfavourable treatment because of the pregnancy, because of illness suffered as a result of the pregnancy or because the Claimant was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave. The respondent actively sought to protect the claimant from a disciplinary investigation, she did not want her to resign and it is clear from the contemporaneous documents that the respondent was very happy with the claimant being pregnant, wanted to take part in it, sought to protect the claimant and her baby against the consequences of the claimant's breach of the implied term of trust and confidence she owed the respondent and to the very end made it very clear that the claimant's job was there for her to return to.
103. Had the claimant's persuaded me to extend the time limit for bring her claims under section 18 of the EQA, which she has not, I would have gone on to find in the alternative that the claimant was not discriminated against on the grounds of her pregnancy. The claimant's claim of pregnancy discrimination brought under section 18 of the Equality Act 2010 is not well founded and is dismissed.
104. In conclusion, the claimant's claim of victimisation brought under section 27 of the Equality Act 2010 is dismissed on withdrawal. The claimant's complaint of constructive unfair dismissal brought under section 91(c) of the Employment Rights Act 1996 is not well founded and is dismissed. The claimant's claims brought under section 18 of the Equality Act 2010 as set out in allegation 4(a)(i), 4a(ii), 4a(iii), 4a(iv) and 4a(v) of the Agreed List of Issues were not presented within the applicable time limit. There was no

conduct extending over a period of time and it is not just and equitable to extend the time limit. In the alternative, the claimant was not discriminated against on the grounds of her pregnancy. The claimant's claim of pregnancy discrimination brought under section 18 of the Equality Act 2010 is not well founded and is dismissed. The respondent's application to adjourn the final hearing is dismissed.

105. Given the respondent's ill-health I have asked the Tribunal administration to promulgate this judgment and reasons (which were written in my own time to avoid delay) as a priority.

Judge Shotter

27 August 2026

Judgment sent to the parties on:

17 September 2026

For the Tribunal:

Kacey O'Brien

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and

Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/