EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001209/2025

Held in Dundee on 23-25, 28-30 September & 1 October 2026

Employment Judge Sangster

Sandie Peggie	**Claimant** **Represented by:** **Ms N Cunningham** **Barrister** **Instructed by:** **Ms M Gribbon** **Solicitor**
Royal College of Nursing	**Respondent** **Represented by:** **Mr D Hay, KC** **Advocate** **Instructed by:** **Ms J Forrest** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claimant's complaints of direct discrimination do not succeed and are dismissed.

REASONS

Introduction

1. This was a hearing to determine liability only, in respect of a claim raised by the claimant against her Trade Union. The only complaint before the Tribunal was of direct discrimination because of philosophical belief.

2. The respondent accepted that the claimant had the belief asserted in her claim form, namely *'a belief that biological sex is real, important, immutable, and not to be conflated with gender identity; that is to say, she holds the belief often referred to as 'sex realist' or 'gender critical'',* and that this was a protected

philosophical belief for the purposes of section 10 of the Equality Act 2010 (**EqA**).

3. In her claim (which was presented to the Tribunal on 14 May 2025 and amended on 30 December 2025, following an application to amend submitted on 20 October 2025) the claimant asserted that the following were acts direct discrimination because of protected belief (relying on hypothetical comparators):

    3.1. Failing to advise the claimant during the conversation with Stuart Fraser on 31 December 2023, or 1 or 2 January 2024…that she might have a claim against her employer and/or Dr Upton, or to refer the matter to its solicitors for advice;

    3.2. Refusing the claimant's request for legal assistance with her second claim without giving any, or any serious or sufficient, consideration to the merits of the claim, the reasons why she had had to take external legal advice on her first claim or the practicalities of supporting her in her second claim; and/or

    3.3. Failing to seek in full the assurances from [NHS Fife] requested by the claimant in her email of 29 August 2025 or to copy its membership employed by [NHS Fife], or to make any alternative proposal for assuring the claimant and her colleagues that they would have their union's support in asserting their rights:

        3.3.1. To single sex toilet, washing and changing facilities;

        3.3.2. Not to suffer discrimination because of sex realist (or gender critical) belief, including manifestation of that belief; and

        3.3.3. To discuss among themselves and, if necessary, organise to assert those rights.

4. In advance of the final hearing, parties lodged a joint bundle and a supplementary bundle. A number of documents were added, with consent, during the course of the hearing. The bundles extended to 1, 284 and 68 pages respectively.

5. The claimant gave evidence on her own behalf and called the following individuals as witnesses:

    5.1. Pauline Fox (**PF**), RCN member and retired nurse;

    5.2. Neale Hanvey **(NH),** former MP for Kirkcaldy and Cowdenbeath;

    5.3. Bethany Hutchison (**BH**), nurse & Director of Darlington Nursing Union;

5.4. Lisa Mackenzie (**LM**), formerly employed by the respondent as Policy Officer;

5.5. Jenifer Melle (**JM**)**,** nurse and RCN member;

5.6. Stephen O'Grady (**SO**), solicitor and legal officer with the Free Speech Union; and

5.7. Jenny Wilmott (**JW**)**,** nurse and RCN member.

6. The respondent led evidence from:

6.1. Stuart Fraser (**SF**), RCN Officer;

6.2. Patricia Marquis (**PM**), Executive Director for RCN England;

6.3. Norman Provan (**NP**), Associate Director (Employee Relations), RCN Scotland; and

6.4. Gillian Tait (**GT**), RCN Senior Officer.

7. Other individuals referenced in this judgment are:

7.1. Joanne Galbraith-Marten (**JGM**), Executive Director of Legal, Employment and Member Relations;

7.2. Margaret Gribbon (**MG**), the claimant's solicitor;

7.3. David Miller (**DM**), Director of People & Culture, NHS Fife; and

7.4. Beth Upton (**BU**), a junior doctor previously employed by NHS Fife.

Findings in Fact

8. This judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues which the Tribunal must consider to decide if the complaints made succeed or fail. If a particular point is not mentioned, it does not mean that it has been overlooked, it simply means that it is not relevant to the issues. The relevant facts, which the Tribunal found to be admitted or proven, are set out below.

The respondent

9. The respondent is a certified trade union and professional body in the United Kingdom, whose membership consists of nurses, midwives, nursing support workers and students. The respondent has around 600,000 members in the UK, including around 55,000 members in Scotland.

10. Within NHS Scotland, unlike in NHS England, policies and guidance are developed nationally, through agreed partnership structures, and then applied

across all NHS Health Boards. This means that, unlike in England, individual Health Boards in Scotland do not have their own policies. Instead, there is a single suite of 'NHS Scotland' policies, known as 'Once for Scotland'. These policies are produced by a group called the NHS Scottish Workforce and Governance group (**SWAG**). The composition of SWAG is 50% trade union, and 50% employer and Government. NP is the staff side chair in SWAG.

11. As well as participating in collective bargaining, the respondent provides support to individual members regarding work-related matters. That support can include advice and guidance provided by the respondent's trained advisers (activists and officers), or legal advice and assistance provided by external solicitors. The respondent provides, on its website and in a document entitled 'On the Case', guidance for members in relation to the advice, support and representation which the respondent could provide. They state, in relation to this, that *'It is important that you have confidence in the ability of the RCN, as your official representative during the case, to provide you with expert, impartial advice about the best way to resolve your problem. If you choose to take independent legal or other advice on your case, the RCN may decide not to represent you.'* If a case is referred for external legal support, that support will only be provided where, in the opinion of the external lawyer, the claim has at least a 51% chance of success. In Scotland, NP decides, in the first instance, if a case should be referred to external solicitors for a merits assessment. NP has been the gatekeeper of that process for 18 years.

Findings regarding matters involving the claimant

12. The claimant is (and was, at all times relevant for the purposes of this judgment) a member of the respondent. The claimant is employed by NHS Fife as a staff nurse, and works in the Accident and Emergency Department at the Victoria Hospital, Kirkcaldy.

13. The claimant holds a belief which is a protected belief under section 10 of the Equality Act 2010, namely that biological sex is real, important, immutable and not to be conflated with gender identity. This is often referred to as a sex realist or gender critical belief.

14. The claimant and BU had an exchange of words in a female changing and toilets area within the Victoria Hospital on 24 December 2023.

15. The claimant was placed on special leave by NHS Fife on 30 December 2023, and suspended from work from 4 January 2024. (She has not yet returned to work. Since March 2025, her absence has been as a result of stress.)

16. On 4 January 2024, the claimant called RCN Direct, a call centre operated by the respondent which members can call to obtain advice. She explained that she had been suspended earlier that day, pending an investigation in relation

to a complaint made by a doctor (BU). The claimant stated that the doctor was transgender and that she had complained to the doctor about their presence in the female changing rooms. The claimant stated that she had previously discussed her concerns with her charge nurse, but had not heard back from them. The adviser at RCN Direct referred the matter to an official, and SF was subsequently asked to discuss matters with the claimant. SF was provided with the note of the conversation the claimant had with RCN Direct.

17. The claimant and SF first spoke, by telephone, on either 5 or 8 January 2024. The claimant informed SF that BU was using the female changing area. She stated that she had previously discussed her discomfort with this, with her line manager, but no action was taken. She stated that she had advised BU that she did not think BU should be in the female changing rooms, and that she had informed BU that the situation was akin to putting a man in a female prison. SF asked the claimant whether she had been referring to Isla Bryson, who had recently been in the news. The claimant confirmed that she was. SF asked if she knew that Isla Bryson was a convicted rapist. The claimant indicated that she had seen that on the news. SF stated that he thought that (likening BU to a convicted rapist) was most likely what caused the suspension, but NHS Fife would require to confirm the position before the claimant was asked to provide any response. He explained the suspension process to the claimant: namely that this was to allow an investigation to be conducted, that they would require to wait to see precisely what the allegations were, and the evidence which had been gathered in support of those, before discussing matters further. He explained that the process could take some time – around 4-6 weeks for an investigation team to be appointed, then further time for them to investigate. He explained that, under the Once for Scotland policies, the claimant would have the right to see all information collated, before responding. He explained that he would assess matters, with the claimant, once they were provided with further information. He informed the claimant that he would open a case (which he subsequently did), she would receive a letter confirming that and his contact details, and he would contact her again in around a month, but she should send him any information she received from her employer before then.

18. As he was speaking to the claimant, SF typed brief notes of his discussion with her. This contained a number of spelling mistakes and typographical errors. His note stated *'Called to member to discuss situation, member described that new doctor has started and they are a trans female and this has made members of staff uncomfortable as they are using the female changing area, member had discussed her discomfort with this, with her line manager however nothing was done, member was in a level of discomfort due to bleeding and the docot [sic] was in the changing room, the member adised [sic] the doctor that she did not think that* ***she*** *should be in their [sic] and said something along the lines of this is the same as when they put a man in a female prison,*

discussed with the member the potential that this could be seen as discriminatory and is most likely what has caused the suspension. discussed with member process of investigation and potential outcomes etc. Advised will open case.' The emboldening of the word 'she' is added. The claimant stated 'he', but SF recorded 'she' in the note he made.

19. SF understood that the claimant was asking for workplace representation, in relation to her suspension and impending the disciplinary investigation. He did not understand her to be asking for anything other than, or beyond, that. She did not ask any specific questions during the call, request legal assistance, or raise any concerns in relation to the approach SF proposed.

20. SF did not make a referral for legal support immediately following the call, or indicate to the claimant during the call that he would do so. The claimant had not requested that a referral be made. SF felt that further information was required before a referral could be considered, such as confirmation of the allegations against the claimant. He also wanted to investigate what the claimant had reported to her charge nurse, and what action was taken in response to the concerns raised by the claimant, before discussing matters further with the claimant.

21. SF's approach to the initial call with the claimant was in line with the approach he would take in other cases. Whilst he would, during a first call, provide initial advice and guidance on the implications of suspension and the process to be followed, he would wait until further information was obtained to provide detailed advice or guidance, so he was able to do so in an informed manner, having the full picture. In addition, he would not refer matters for legal support after an initial phone call: he would wait at least until further information was provided by the employer, in particular confirmation of the nature of the allegation to be investigated, and he was able to discuss that with the individual.

22. SF did not believe, from his discussion with the claimant, that she was asserting that she held a philosophical belief that biological sex is real, important, immutable and not to be conflated with gender identity. She did not say that, or use those terms. She did not refer to holding gender critical or sex realist beliefs, as she was unaware of those terms/expressions at the time. She simply stated that she felt uncomfortable that BU was using the female changing area and did not feel that BU should do so, with reference to a recent news story.

23. On 25 January 2024, the claimant met with her MP, NH, and she discussed with him that she had been suspended. She showed him her letter of suspension. He indicated that he would put the claimant in touch with Sex

Matters. He subsequently did so, and they referred the claimant to MG. By 2 February 2024, the claimant had instructed MG to act on her behalf.

24. The claimant first heard of the terms/expressions 'sex realist' and 'gender critical' in conversations with Maya Forstater at Sex Matters.

25. On 2 February 2024 MG emailed JGM, asking to arrange a time to speak in respect of an RCN related matter. JGM asked NP to speak to MG. A call, between NP and MG, was scheduled for 12 February 2024. In advance of that call MG confirmed, in an email dated 5 February 2024, that she had been instructed by the claimant *'to liaise with [NHS Fife] and possibly raise legal proceedings against them for alleged multiple breaches of the Equality Act 2010'.* MG stated that the work was being funded by Sex Matters, who were of the view that the claimant's case, and it the issues it raised, were of significant strategic importance. There was no request in that correspondence (and had been no such request prior to that point, from the claimant or her solicitor), for the respondent to provide legal support.

26. During their telephone conversation on 12 February 2024, MG informed NP that her view was that there *'was an industrial strategic role for the trade union to perform…notwithstanding the fact that legal support is not being provided'*. She informed him that a legal claim was likely to be raised by her, on the claimant's behalf. NP confirmed that the respondent would continue to represent the claimant at internal workplace meetings (which would be normal procedure where a member has external legal advice, as solicitors are not permitted to attend internal meetings/hearings, such as investigation and disciplinary hearings), and that NHS policies regarding suspension would be sent to MG, as she requested. This was subsequently done.

27. On 15 February 2024, MG intimated to NHS Fife that she had been instructed by the claimant to raise proceedings against them in the Employment Tribunal, and that the claim was supported by Sex Matters.

28. The claimant commenced ACAS early conciliation against NHS Fife and BU on 26 February 2024.

29. On 27 February 2024, the claimant emailed SF to advise him that she had been asked by NHS Fife to attend a suspension review meeting on 6 March 2024. She asked that he attend that meeting with her. SF agreed to do so. MG emailed SF on 4 March 2024, stating that *'NHS Fife should be referred to this firm if they make any attempt during the suspension review meeting to discussing [sic] Sandie's legal claims.'*

30. On 7 March 2024, the claimant attended a suspension review meeting with NHS Fife. SF accompanied the claimant, meeting her in person for the first time on that date. During that meeting, a new allegation in relation to patient

care was raised by NHS Fife. SF discussed this with the claimant, informing her that he did not feel that it was right for her to be hearing about that allegation for the first time, in that context. He informed her of the process for seeking legal assistance via the respondent, but stated that it most likely would not be provided, as she had sought independent legal advice. He stated it was NP's decision (as he was the budget holder for legal and the decision maker).

31. The claimant presented a claim to the Employment Tribunal, against NHS Fife and BU, on 2 May 2024. The claim was given case number 4104864/2024 (**the First Claim**). MG was identified as the claimant's representative in the ET1 claim form. The claim included complaints of discrimination in respect of various matters, including placing the claimant on special leave in December 2023, suspending her in January 2024 and subjecting her to a disciplinary investigation.

32. On 8 May 2024 MG emailed SF, copying in NP. She stated that legal proceedings had been raised, and that Counsel's opinion was that the claims were strong. She stated that she would keep them advised as the litigation progressed.

33. On 30 August 2024, the claimant attended an investigatory meeting with NHS Fife. SF accompanied her to that meeting.

34. On 5 September 2024, the claimant was informed that the final hearing in relation to the First Claim would take place before the Employment Tribunal in February 2025.

35. The claimant was issued with NHS Fife's investigation report on or around 13 December 2024, which recommended that the claimant be called to a disciplinary hearing. It included a new allegation that the claimant had misgendered BU at the investigation meeting in August 2024.

36. On 22 December 2024, MG sent an email to SF and the claimant. She stated as follows: *'The draft ET Bundle has been sent and it includes the disciplinary investigation report which has not yet been issued to either of you. I have only skimmed read the Inv Report and so if you are short of time today go straight to the Findings in fact and read from page 20 – 24 onwards (page 356 – 358 using the JDB numbering). Although the Report is not written in clear terms, it appears that 3 of the 4 allegations are not being progressed with only allegation 4 going to a disciplinary hearing. The Report also recommends further allegations of "misgendering" to be pursued against Sandie for her referring to R2 as a man during the disciplinary process/to colleagues. These allegations were not part of this investigation and in my view cannot form part of the allegations going to a disciplinary hearing without being inv under R1's disc procedures. My preliminary view is that this decision /report regarding*

misgendering being an act of misconduct amounts to further discrimination/harassment and or victimisation of Sandie and I will be discussing this further with Counsel tomorrow morning. I will be back in touch Sandie.'

37. On 23 December 2024, the claimant had a discussion with MG and her Counsel, who provided her with advice regarding the implications of the investigation report, and how she should respond to the inclusion of the new allegation. That included a discussion about the claimant having a further legal complaint in relation to this, and whether, tactically, the First Claim should be amended to include that further complaint, or whether that should be raised as a separate/second claim. It was determined that, given the proximity of the final hearing in relation to the First Claim, a new claim should be brought in relation to the further complaint(s) that arose from the investigation report.

38. On 23 December 2024, MG sent an email to SF, copied to the claimant, stating as follows:

'I have now had time to discuss the attached Report with Sandie and Counsel. On reflection, Sandie's instructions are that the Board should not be told that they need to investigate the new allegations of "misgendering" since the view is she should let them go ahead with a potentially procedurally defective disciplinary hearing/process. That is, including these allegations for determination at any disciplinary hearing. The RCN could then advance the procedural defect argument during the disciplinary hearing itself.

The Board has contacted Sandie looking for a meeting early in the new year to discuss the Report. You and Sandie should liaise regarding this meeting but she will be unable to attend a meeting until around late February 2025. This is because much of her non working time from early January 2025 to the 3rd February 2025 (when the ET hearing starts) will be taken up preparing for the hearing. This will include, amongst other things, reading the 500 page plus ET production Bundle, attending on calls /remote meetings with me and or Counsel and working with me to update and finalise her detailed witness statement.

I have advised Sandie that Counsel and I are of the view that the Report is evidence of further discrimination and or harassment against her by the Board on the grounds of sex and or her gender critical beliefs and victimisation. A new ET application will need to be raised with respect to these claims as there is insufficient time to introduce them to the existing ET claim. Accordingly, Sandie would now like to make a formal application to the RCN for them to provide legal support to enable her to pursue this second ET claim. I would be grateful if you could now provide Sandie with the relevant application forms for completion. The Report is dated the 13th December 2024 and so for legal time

limit purposes the ACAS EC procedure must be invoked by no later than the 12th March 2025 at the latest but no doubt the RCN/RCN's Solicitors allocated the case will ensure that Sandie's legal time position is protected. Can you please confirm that the relevant application form will be emailed to Sandie at your earliest convenience?

If you need any further information or documents for submitting with Sandie's legal assistance application form, please get in touch.'

39. On 31 December 2024, the claimant emailed SF asking him to check his notes of the investigation meeting regarding a particular point. She then stated *'Margaret has also noted that there are further insights of comments which could be seen as harassment towards myself. I think it is appropriate that I ask the union to be involved in making a case against the comments being made by the NHS and hope you can facilitate this.'*

40. SF was unable to determine whether the respondent would provide legal support to the claimant. It was not his decision to make. NP was the individual authorised to make decisions in relation to that in Scotland. Application forms are not completed in relation to requests for legal support: requests are simply sent to NP. On 3 January 2025, SF forwarded the email chain from MG (which included MG's emails of 22 & 23 December 2024) to NP, stating '*Please see below…I can call and explain to the member our process and basis of prospects etc but not sure if this is something we can or cant support because she is being supported for a separate claim in regards to the initial ET for discrimination just wanted to run it past you first before I discuss with the member.'*

41. SF and NP had a discussion following SF's email. NP decided that the respondent could not provide legal support in relation to a second claim, and the case should not therefore be referred to external solicitors for a merits assessment. He made that decision because the claimant had taken her own legal advice on the First Claim and the new complaint, and he felt the new complaint was intrinsically and inextricably linked with the First Claim: it arose from the same disciplinary proceedings. He was aware that the claimant had taken legal advice from MG in relation to the First Claim, and that there had been no request for legal support from the respondent in relation to that. MG's initial contact with the respondent, on 5 February 2024, had been via NP. She had informed him that she was instructed by the claimant, and that Sex Matters were funding the claimant's case. It was clear, from the terms of MG's emails to NP at that time, that MG understood this would preclude the provision of legal support from the respondent. In MG's email of 22 December 2024, she had stated a preliminary view on the new complaint, and had stated that she and the claimant would be discussing this further with Counsel the next day. The following day she wrote to NP again, confirming that that discussion had

indeed taken place, setting out the claimant's instructions to her in relation to the new complaint, as a result of that discussion, and what advice she had given the claimant in relation to that ('*I have advised Sandie that Counsel and I are of the view that the Report is evidence of further discrimination and or harassment against her by the Board on the grounds of sex and or her gender critical beliefs and victimisation.')* From this, NP concluded that there had been a legal and strategic discussion, involving the claimant, MG and Counsel, in relation to the new complaint.

42. NP's decision not to offer legal support was consistent with the decisions he had made in respect of all other cases where an individual had taken independent legal advice, over the past 18 years. Whilst the 'On the Case' document suggested an element of discretion ('*If you choose to take independent legal or other advice on your case, the RCN **may** decide not to represent you'*), NP had only ever exercised that discretion in exceptional circumstances, where it was clear that the individual was entirely unaware that the respondent may be able to provide legal support, had sought advice elsewhere and were immediately referred back to the respondent. For example, if an individual made initial contact with Citizens Advice and, before advice was provided, were informed by them that it would be prudent, in the first instance, to check whether the respondent could provide legal assistance. Other than that scenario, NP understood there to be a hard and fast rule that legal representation would not be provided by the respondent where an individual had taken independent legal advice. He understood that was the only basis upon which the stated discretion could/should be operated, and he had always made decisions in relation to whether legal support would be provided by the respondent on that basis. The decision he made in relation to the claimant's case was accordingly consistent with the decisions he had made in similar cases, over the past 18 years.

43. While NP made his decision relatively swiftly, he did not respond to the claimant immediately, as he wanted to mull over how best to respond to her. In particular, he was mulling over whether to highlight to the claimant that he disagreed with her stated decision to pursue the new complaint by way of a new claim to the Tribunal, rather than by amending the First Claim to include the new complaint. His view was based on a similar case he had dealt with a few years prior to that, and the legal advice given in relation to that case. His dilemma was that, having reached the decision that legal advice/representation could not be provided under the respondent's rules, he would be giving his view on strategy. He wanted to discuss that with the respondent's external legal advisors, who he was seeing on 17 January 2025, before responding to the claimant. His conclusion, ultimately, was that it was morally right to highlight his view to the claimant, despite the fact that the respondent had decided legal advice and representation would not be provided.

44. On 8 January 2025, MG emailed SF. Within her email she stated *'I would be grateful if the RCN could now forward Sandie a copy of their legal advice and assistance policy along with an application form as it is her intention to raise separate legal proceedings in relation to the alleged further detriments arising from the DIR and seeks the RCN's support in doing so. Due to the tight timescales in such claims can you please forward the documents requested to Sandie at your earliest convenience so that she can commence the process?'*

45. On 10 January 2025 SF and the claimant met, having arranged to do so by email exchange on 8 January 2025. SF informed the claimant that he had sent her request for legal support to NP and that, if NP approved the request, the next stage would be that her request would be sent to the respondent's external solicitors, for a merits assessment. He informed her that the solicitors would require to assess merits at over 50% for legal support to be provided.

46. NP replied to SF, in relation to the claimant's request for legal assistance, by email dated 17 January 2025. He stated:

    'I have reviewed this request. There are a number of issues which are problematic in relation to the RCN providing legal support in this instance.

    This issue is inextricably linked to her already scheduled employment tribunal. In her e-mail Sandie's solicitor states that they want the RCN to raise this as a separate ET as it is too late to add it to the existing case which is scheduled to be heard in February. Although I accept it will be inconvenient to reschedule her ET to allow time for this new element to be added, doing so feels like a logical action to ensure all linked elements of Sanie's [sic] case are heard together.

    I [sic] addition you will be aware that the RCN legal offer does not extend to covering issues on which a member has received legal advice from another party. It is clear from Margarets e-mail that Sandie has discussed this additional element with her solicitor and with Council [sic]. On that basis it is not within my discretion to go beyond our legal offer and offer legal support in this case.

    Can you therefore go back to the member and advise that we cannot provide legal support in this case. It will of course be important that you advise of the time bar issues which are in play and suggest that Sandie should discuss with her legal representatives either postponing her scheduled ET to allow this additional element to be added or alternatively for her current legal provider to raise the second action separately on her behalf as they suggested we might ddo [sic].'

47. On 20 January 2025, SF had a call with MG. SF advised MG of NP's decision and the reasons for this. MG asked for the decision and reasons for that to be

confirmed in writing. SF then forwarded NP's email dated 17 January 2025, confirming the decision and the reasons for that, to the claimant.

48. A final hearing in relation to the First Claim commenced in the Dundee Employment Tribunal on 3-14 February 2025. It did not conclude, and further dates were identified for the continued hearing. (It then continued in July and September 2025.)

49. On 14 February 2025, the claimant sent a letter to NP by email asking for written reasons for the respondent's refusal to represent her in her second claim against NHS Fife.

50. On 18 February 2025, SF proposed a Teams call with himself, NP and the claimant. The claimant declined, stating that she would prefer to see the respondent's full written response to her letter to NP of 14 February 2025, before any meeting.

51. On 24 February 2025, NP wrote to the claimant stating as follows:

'I have considered your request for legal assistance regarding your ongoing litigation with your employer NHS Fife. I understand your Employment Tribunal claim is part heard, and the hearing will resume in July 2025. In the meantime, you may have a new claim against your employer, and you have requested RCN legal assistance in relation to that claim.

In respect of your current proceedings, you sought independent legal representation. You did not seek the RCN's assistance prior to submitting your claim and therefore our solicitors could not assess the merits of that claim as is our standard practice.

I understand your legal team has advised that you submit a second Employment Tribunal claim because of additional acts by your employer that have taken place since your first claim was submitted. You have asked the RCN to assess and provide representation in respect of that new claim.

Unfortunately, we are unable to agree your request. On the Case attached provides that "we reserve the right to decide the nature and extent of the advice and guidance we can provide in each and every case, who will deliver this service and whether we need to appoint an individual or organisation external to the RCN to advise and represent you" and "if you choose to take independent legal or other advice on your case, the RCN may decide not to represent you."

As your Employment Tribunal claim is part heard and you chose independent legal representation, we must decline to intervene in any new claim as it would be impossible to separate that from the current proceedings as they will be

inextricably linked. You can of course continue with your independent legal representation at your own cost, and you are responsible for any time limits regarding submitting any fresh complaint you may wish to raise with the Employment Tribunal.

I am sure this will be disappointing. However, the RCN will continue to provide you with representation in respect of the internal disciplinary process. As previously indicated I am happy to meet with you and Stuart to discuss.'

52. On 3 March 2025, the claimant wrote to NP expressing (for the first time) dissatisfaction with the respondent's actions to date, and with his decision. She stated that she felt that the real reason the respondent refused her request for legal assistance was because of her sex and/or gender critical beliefs, and that the respondent had failed, and were failing, to properly stand up for women's rights.

53. On 16 April 2025, the Supreme Court issued its judgment in ***For Women Scotland Ltd v Scottish Ministers*** [2025] UKSC 16.

54. MG wrote to NP on 21 May 2025, referring to a letter sent by an RCN official to the County Durham and Darlington NHS Foundation Trust on behalf of the Darlington nurses. MG urged the respondent to write in similar terms to NHS Fife, on the claimant's behalf. NP responded, on 27 May 2025, stating that the matter had been raised at SWAG, so that the relevant 'Once for Scotland' policies could be updated. He highlighted that this was the appropriate course of action (rather than raising with NHS Fife) as, in Scotland, individual Health Boards do not produce their own policies, as they do in England.

55. GT is SF's line manager. GT first contacted the claimant on 17 June 2025. GT advised that she was taking over the case, as SF was absent from work. GT asked whether the claimant would like her to liaise with NHS Fife in relation to dates for the disciplinary hearing. MG responded to GT's email, stating that no assistance was required from the respondent, as written responses had been submitted by the claimant, with the assistance of her legal team. GT responded on 26 June 2025, recommending that the claimant attend the disciplinary hearing in person. She offered to discuss matters with the claimant, and to liaise with NHS Fife. She asked the claimant to confirm if she required any other workplace representation at that time. MG responded to that email, stating that the claimant did not require any workplace representation from the respondent at that time.

56. The claimant received the outcome of the disciplinary hearing from NHS Fife on 15 July 2025. No action was taken against the claimant.

57. On 23 July 2025, MG indicated to the respondent's solicitor that the claimant would now like workplace representation. GT contacted the claimant by email

dated 30 July 2025, in relation to that request. She sought to arrange a call to discuss the representation that the claimant required, and suggested a call on 5 August 2025 to do so. The claimant responded the following day indicating that she was not up to a call at that time.

58. GT responded to the claimant on 4 August 2025. She asked the claimant to let her know when she felt well enough to have a call, so that could be arranged. She stated '*As I currently understand matters you remain unfit for work but, one of the barriers to you returning to work, is to know that NHS Fife are going to comply with the requirement to provide single-sex changing facilities based on biological sex under The Workplace (Health, Safety and Welfare) Regulations 1992. I can certainly write to them, in the meantime, seeking confirmation of that. Would it be possible to check whom is your current manager that is supporting with your return to work to ensure I am writing to the appropriate manager?'* MG responded to GT that day, stating that she had been communicating with DM at NHS Fife. GT wrote to DM on 7 August 2025, copying her email to the claimant. GT chased DM for a response on 19 & 26 August 2025, copying her emails to the claimant. She then forwarded the substantive response received from DM (which stated that suitable facilities, including the provision of single sex changing and toilet facilities for use by biological women, would be in place ahead of the claimant's return to work) to the claimant on 28 August 2025.

59. On 29 August 2025, the claimant sent an email to GT. She stated that she remained anxious that NHS Fife had *'still not emphatically confirmed that no males will be permitted into workplace single sex facilities'*. Within her email she asked for the union to write to NHS Fife, as a matter of urgency, asking it to confirm the following, and to copy the letter to all members of the respondent employed by NHS Fife:

'(i) it understands and accepts that its staff have the right to discuss matters of common concern and organise to address them, and that this includes the use of female-only spaces by male staff, and there will be no disciplinary consequences for anyone who does so;

(ii) it understands and accepts that sex realist or gender-critical beliefs are protected under the Equality Act 2010, and that it must treat discrimination on this ground in the same way as it would treat discrimination because of any other protected characteristic; and

(iii) it acknowledges that in light of the Supreme Court's judgment in For Women Scotland, where it purports to provide single-sex facilities for women, it is not entitled to permit those facilities to be used by men, and that "men" for these purposes includes men who identify as women, irrespective of whether or not they hold a GRC.'

60. GT emailed the claimant on 5 September 2025, stating that she would send a further email to DM. She also stated *'As before, it would be good to speak as we've not had the chance to properly meet. Please let me know when would suit you to have a call.'* The claimant did not respond to this email.

61. GT sent an email to DM, copied to the claimant, on 5 September 2025. Within her email, she stated the following:

    'You have said that there will be provision of single-sex changing and toilet facilities for use by biological women.

    Can you please confirm that no males (including those who identify as women whether or not they have a gender recognition certificate) will be permitted into workplace single sex facilities? For the avoidance of doubt, can you please confirm that access to single-sex spaces will not be based on self-identification of gender? Sandie understands that usage is permitted based on self-identification at the moment.

    Please clarify this as I note that you have also said that 'suitable arrangements will be in place ahead of Sandie's return'. Please confirm when these will be in place (if not already).

    Sandie is concerned that employees/colleagues are being told not to discuss her case however, that others share her concerns around the provision of single-sex facilities and access being given based on self-identification. Understandably Sandie wants assurance that no disciplinary consequences will be taken against her for expressing these concerns and/or discussing these with others who share them. Please kindly confirm.

    As you will be aware, those with gender-critical beliefs are protected under the Equality Act 2010. Please confirm that the Board understand and accept that those with those views are protected from discrimination in the same way as other protected characteristics.'

62. The claimant raised no concerns with GT in relation to the letter GT had sent to DM on 5 September 2025, or the fact that it was not copied to all members of the respondent employed by NHS Fife. GT had not copied the letter to all of the respondent's members employed by NHS Fife, as she understood that her role was to support the claimant, individually, in relation to her return to work. As the letter related to a confidential process for an individual case, she felt that it would not be appropriate to copy the letter to anyone else. The only situation in which that would be done is if others had raised similar concerns, and everyone had consented to being part of a collective group and information being shared within that collective group. None of the respondent's other members in Scotland were however raising similar issues. GT framed the letter in the way she did because understood she was just representing the claimant,

in relation to the issues impacting her. If there were broader issues to be addressed, that would need to be done by others (more senior to GT), via SWAG.

63. DM responded to GT's email on 12 October 2025, copying his response to the claimant and referring to separate correspondence between DM and MG, which addressed some of the matters raised by GT. GT continued thereafter to seek clarification from DM regarding certain issues, as she was dissatisfied with some of his responses. She copied the claimant into all her emails to DM, and repeatedly sought to arrange a call with the claimant, to discuss matters and obtain clarity on certain issues. They did not, at any stage, have a conversation on the telephone, or in person.

Findings regarding other matters (In chronological order)

Fair care for trans patients - 2017

64. The RCN produces clinical guides to assist nurses with their practice. In 2017 they produced a clinical guide entitled 'Fair Care for trans patients', which extended to 15 pages. This stated that it was designed to help nurses respond to the needs of patients who identify as trans/transgender, and that it was introduced in response to a House of Commons Women and Equalities Select Committee report which found that *'the NHS is failing to ensure zero tolerance of transphobic behaviour'*. It stated that it was important for nurses to help to create a safe and welcoming environment for all patients and gave some recommended tips, including that nurses should avoid disclosing a patient's trans status to anyone who does not explicitly need to know. It stated that '*care should be taken to meet their needs for privacy and dignity while an inpatient'* and that *'Patient placement should be based on both asking the patient for their preference, and on gender presentation'.* It stated that nurses '*have a powerful role to play in affirming the true gender identity of trans people. This can be demonstrated by using pronouns of the patient's choosing when referring to them.'* It stated that children should be accorded the same respect for their gender identities as adults. In the glossary section, which was stated to provide a brief overview of some of the terms that may be encountered in their role, it stated *'Gender identity: a person's intrinsic sense of being male (boy or man), female (girl or woman) or an alternative gender, for example transgender, girlboy boygirl, eunuch, genderqueer.'* This guide was removed from the respondent's website in/around April 2025, following the Supreme Court judgment in ***For Women Scotland Ltd.***

65. There was no evidence before the Tribunal to suggest that that SF or GT had seen this guide. It was not put to them that they had, or may have, seen this. While the guide was put to NP, it was not clarified when he first saw this: whether he saw this at the time it was published, or in preparation for the

hearing. It was not put to him that he was aware of this at the time he made his decision that legal support should not be provided to the claimant.

Lisa Mackenzie – 2019

66. LM was employed by the respondent as Policy Officer, on a job share basis, from October 2017 to September 2019. She worked from the respondent's Scottish HQ Office in Edinburgh.

67. As part of her role, LM required to engage with certain external agencies. The Scottish Prison Service (**SPS**) was included in her portfolio. Her contract of employment contained a provision stating that *'During the course of your employment, you must not write articles for or otherwise contribute to publications for any other organisation in which you express views which are or may be contrary to the views of the RCN and/or which could damage the RCN's reputation unless you obtain prior written permission from the Head of Department.'*

68. In June 2019, LM informed her manager that she had attended an event at Edinburgh University which involved the presentation of a paper she had co-authored (independent to her role with the respondent), which was about to be published. The respondent was not involved in the organisation of the event. There were protests outside the event. This had led LM to wonder whether the publication of the paper may be more incendiary than she had imagined. She stated that she would share the paper with her manager. She also stated that one of the protesters, who she believed may be an RCN member, had made violent threats to members online and that she was concerned that, if they were an RCN member, they may be able to find her. LM subsequently provided the article to her manager. She did not however identify the individual who she stated had made violent threats, provide her manager with copies of the posts she was referring to, ask for particular action to be taken, or refer to the matter again in discussion/correspondence with her manager, or with anyone else.

69. The article was entitled *'Losing sight of women's rights: The unregulated introduction of gender self-identification as a case study of policy capture in Scotland'*. The article was structured with reference to two case studies, the second being SPS policy on transgender prisoners, where critical conclusions were reached. LM's line manager was concerned that the article included direct criticism of SPS, which was within LM's portfolio of work, and this may impact the respondent's work and relationship with SPS.

70. Following receipt of the article, the respondent conducted an investigation to consider allegations that LM had failed to follow the respondent's Declaration of Interest Policy correctly, and/or that she had breached the terms of section 11 of her contract of employment. SF accompanied LM to the investigation meeting, as her trade union representative.

71. The investigation report was passed to NP for consideration of next steps, as the Assistant Director in LM's reporting line was unavailable. He determined that a letter of concern should be issued to LM, as he felt it was clear that LM had breached parts of the respondent's Declaration of Interest Policy, and section 11 of her employment contract, but that no formal disciplinary action should be taken, as he was not satisfied that she had received appropriate advice or guidance on what practical steps she could take to avoid the conflict. In relation to section 11 of LM's contract of employment, NP's concern was the reputational damage of LM being critical of a key stakeholder, and also publicly representing the respondent in that relationship. He made a number of recommendations, including that LM update her declaration of interest form quarterly, to ensure that there was a regular review of the work LM conducted outside of her employment, and that any actual, potential or perceived conflicts were declared. NP met with LM to explain his decision, and he provided her with a 5 page letter detailing his conclusions.

72. LM and NP maintained a good working relationship after his involvement in this matter, as they had prior to that. Whilst LM asserted, in evidence, that her manager made certain comments to her, this was after NP's involvement, and NP was not made aware of this by LM, or anyone else. There was no evidence before the Tribunal to suggest that that SF (as LM's trade union representative at the time) was aware of this. It was not put to him that he had, or may have, been made aware of this.

Legal update: Taylor v Jaguar Land Rover - 2020

73. In/around March 2020, an update was published on the respondent's website in relation to an Employment Tribunal judgment in the case of *Taylor v Jaguar Land Rover,* (the update was, by 21 February 2025, archived on the respondent's website). In the update JGM was quoted as stating that it was *'an important decision for members as it represents a widening of the protection afforded by the Equality Act'* and that it *'will be of assistance to RCN reps who are representing those who identify as non-binary or gender fluid in the workplace'*

74. There was no evidence before the Tribunal to suggest that that NP or GT had seen the article. It was not put to them that they had, or may have, seen this. While an extract from the article was put to SF, to ask if he could see a contrast in the framing of that article with another article, he was not asked if he had seen the article at the time it was published. There was accordingly no evidence before the Tribunal to suggest that he had.

Legal update: gender critical views and belief protection – July 2021

75. In/around July 2021, an article written by JGM, entitled *'Legal update: gender critical views and belief protection',* was published on the respondent's online

magazine/website. This discussed the EAT decision in ***Forstater v CGD Europe*** UKEAT/0105/20. The article quoted the conclusion of the EAT in the case, and then stated that *'This is an important decision, but it does not mean that trans people are not protected under the Equality Act 2010. The EAT pointed out that it does not mean that those with gender critical views can misgender trans people with impunity and it does not mean that employers will not be able to provide a safe environment for trans people. It does, however, demonstrate the extremity of beliefs that will be excluded from amounting to a belief under the Equality Act.'* (The latter point being a reference to the conclusion of the EAT stated in the article, namely beliefs that would be an affront to convention principles in a manner akin to that of pursuing totalitarianism, or advocating Nazism, or espousing violence and hatred in the gravest forms, are not protected beliefs).

76. SF read the article when it was published. GT had no recollection of doing so, and was not familiar with the content of the article. There was no evidence before the Tribunal to suggest that that NP had seen the article. It was not put to him that he had, or may have, seen this.

Article: Care for trans patients: what nursing staff need to know - 2022

77. In/around 2022, an article entitled *'Care for trans patients: what nursing staff need to know',* was published on the respondent's online magazine/website. This remains on the respondent website, but contains a disclaimer at the start stating: *'Please note, this article was written before the UK Supreme Court ruling on the legal definition of sex, in relation to the Equality Act 2010'*. It set out the accounts/views of a clinical nurse specialist *'working with transgender and non-binary patients accessing gender affirming care'*, and a gender specialist nurse, working in a hospital offering '*gender affirming surgeries'*.

78. GT had not seen the article before she gave evidence to the Tribunal. There was no evidence before the Tribunal to suggest that that SF or NP had seen the article. It was not put to them that they had, or may have, seen this.

Carr Review – September 2022

79. In 2022, the Carr Review was published. Bruce Carr KC had been appointed by the respondent, in September 2021, to conduct an independent review into the respondent's culture, including in relation to equality and inclusion. This followed on from a report prepared by KPMG earlier that year, in relation to governance, which was taken into account in the Carr Review. The Carr Review focused primarily on the culture that existed at the level at which decisions were made that affected the membership, and considered evidence from 2018 onwards. The Carr Review highlighted a number of fundamental problems, such as: a focus on crisis management; lack of an overarching

strategy; division and lack of trust, most prominently between the Council and the Executive; the make-up of the respondent's Council (which was 60% male) not reflecting the membership (which was 90% female), leading to the Council *'being seen by many…as a misogynistic environment in which loud and abrasive male voices dominate the environment to the detriment of women'*; and that there was a level of expectation amongst a significant number of male attendees of Congress (the respondent's annual conference), that opportunities for sexual activity would present themselves at Congress, and there was a risk that the boundaries between consensual and potentially exploitative sexual activity would become blurred, if this had not already occurred.

80. The respondent created an action plan to implement the recommendations contained in the Carr Review and the KPMG report. That plan contained hundreds of action points, to be addressed internally as a matter of priority. A number of Council members were removed from their roles, or stood down, following the publication of the Carr Review, and NMC proceedings are ongoing in relation to some of those individuals. A separate workstream was created to focus on reviewing Congress.

Jennifer Melle - 2024

81. In 2024, JM, a nurse working in Surrey, raised complaints with the respondent that she had been racially abused by a trans patient, who she had referred to with reference to their biological sex. She later asserted that her local RCN representatives had not properly supported her in relation to her complaints.

82. There was no evidence before the Tribunal to suggest that that any of the relevant decision makers in this case were aware of JM's circumstances or complaints. None were involved, given that JF works in Surrey and they all work in Scotland. The circumstances of JM's case were not put to SF, NP or GT. (In any event, it is noted that, given the chronology, this could only be relevant to the asserted acts of direct discrimination by NP and GT).

Let's Talk Inclusion Toolkit – December 2024

83. The respondent published a document entitled *'Let's talk…inclusion. Being the Change'* in December 2024. It extended to 20 pages. On the first page, under the heading 'Purpose', it stated that it was *'designed as a starting point for ensuring that none of us remain neutral where there is bullying, discrimination or incivility. It is intended to support staff in every care setting with practical tools and techniques to build on and complement organisational work around equality and inclusion.'* It discussed the concepts of direct and indirect discrimination, as well as harassment and victimisation. It then considered

each of the protected characteristics. The page dedicated to religion and belief focused solely on religion, not philosophical belief.

84. While this document was put to SF, it was not clarified when he first saw this: whether he saw this at the time it was published, or in preparation for the hearing. There was no evidence before the Tribunal to suggest that that NP or GT had seen the document. It was not put to them that they had, or may have, seen this. (It is noted however that, given the chronology, this could only be relevant to the asserted acts of direct discrimination by NP and GT).

Engagement Sessions – June 2025

85. On 19 June 2025, the respondent posted on their website an invitation for members to attend 'engagement sessions' on the judgment of the Supreme Court in ***For Women Scotland***. The invite stated that the engagement sessions were to discuss *'the impact of the judgment on employment and clinical practice, and how to protect the privacy and dignity of patients'.* The invite contained a quote, purportedly from PM, stating *'We know this judgment has caused upset, worry, confusion and concern for many of our members. Let me be clear - the RCN stands in support with our LGBTQIA+ members. We've heard from many that it's led to lots of negativity towards trans people and some feel very unsafe. This is unacceptable, nobody should have to face discrimination and harassment. The RCN will continue to champion equality, inclusion and human rights across the profession. We're committed to supporting all our members and these sessions will be carefully facilitated to allow open, informed and respectful conversation.'*

86. The engagement sessions took place on 24 & 25 June 2025. The sessions were facilitated and, after introductions, a recorded video was played, in which JGM provided a summary of the judgment. JW and PF attended the engagement sessions. They have since raised Employment Tribunal proceedings in relation to what occurred at the engagement sessions, asserting complaints of direct & indirect philosophical belief discrimination, harassment related to philosophical belief and victimisation.

87. None of the relevant decision makers in this case saw the invite to the engagement sessions, or attended the engagement sessions. They accordingly did not see or hear JGM's recorded introduction to the session. There was no evidence before the Tribunal to suggest that that they were made aware of what reportedly occurred at the engagement sessions. It was not put to them that they had. (It is noted however that, given the chronology, this could only be relevant to the asserted acts of direct discrimination by GT).

Northern Pride Blog Post – 21 August 2025

88. On 21 August 2025, a blog post was published on the respondent's website about a member's experience attending Northern Pride on 19 July 2025.

89. There was no evidence before the Tribunal to suggest that that any of the relevant decision makers saw this blog when it was posted. It was not put to them that they had, or may have, seen this at the time it was posted. While the blog post was put to NP in cross examination, that was only to point to the fact that a photograph within the blog post contained the progress pride flag. While NP accepted that it did, it was not put to him that he had read this blog at the time it was published. (It is noted however that, given the chronology, this could only be relevant to the asserted acts of direct discrimination by GT).

Merchandise

90. The respondent has an online shop containing merchandise which can be purchased or provided. While most items are generic to nursing, some of the merchandise displays the progress pride flag, which incorporates the colours from the transgender pride flag. NP was aware of that association. GT was not. SF was simply asked what others may think about the merchandise available, and stated that he did not know.

Submissions

Claimant's submissions

91. The claimant lodged a written submission, extending to 6 pages, which was read out and supplemented orally. In summary, the claimant submitted that each of the three decisions challenged in these proceedings were influenced by the respondent's adoption of, or adherence to, what was described as gender identity belief or gender ideology, which was asserted to be fundamentally opposed to the claimant's protected sex realist or gender critical belief. The claimant did not contend that the relevant decision makers consciously intended to discriminate against her because of her belief. Rather, it was submitted that the respondent's institutional culture and beliefs had subconsciously influenced their decision making, and rendered them unwilling or unable properly to support a member whose difficulties arose from the manifestation of a gender critical belief. Reliance was placed on a range of documents, publications, policies, events and other evidence which, it was submitted, demonstrated the respondent's commitment to gender identity belief.

92. In relation to the three complaints, the claimant submitted, in summary, that:

    92.1. SF failed to recognise that the claimant's account potentially disclosed claims of discrimination, harassment and victimisation arising from her objection to the presence of a male colleague in female facilities, and failed to refer her for legal advice. This failure arose because SF approached the matter through the lens of gender identity belief and because of lack of training and guidance.

    92.2. NP's refusal to provide legal assistance in relation to the claimant's second claim was inconsistent with the respondent's own policies, inadequately explained.

    92.3. GT reframed the assurances which the claimant had asked her to seek from NHS Fife, and failed to communicate those requests publicly to the respondent's membership, because the respondent was unwilling publicly to endorse positions associated with the claimant's protected belief.

Respondent's submissions

93. The respondent lodged a written submission extending to 27 pages, which they read out and supplemented orally. In summary, they submitted that none of the relevant decisions were taken because of the claimant's protected belief. Each decision maker acted for legitimate reasons unrelated to belief, and the claimant has failed to establish facts from which an inference of discrimination could properly be drawn. The respondent does not hold an institutional gender identity belief and they do not have a culture hostile to gender critical beliefs. Rather, the evidence demonstrates a policy of neutrality and balancing competing views among members. The claimant's reliance on other disputes, publications, events and external cases provides no proper basis for concluding that the respondent adopted a belief system adverse to gender critical members, or that such a culture influenced the decisions challenged in this case. The evidence given by each witness was, in turn, discussed.

94. In relation to the three complaints, the respondent submitted, in summary, that:

    94.1. SF did not understand the claimant to be asserting a gender critical belief or requesting legal assistance for Tribunal proceedings. He was dealing with an early stage disciplinary matter and provided the workplace support ordinarily available. There was no detriment and no evidence that SF's actions were motivated by the claimant's beliefs.

    94.2. NP was the sole decision maker in relation to the second complaint. He refused legal support because the claimant had taken legal advice in relation to the nature, merits and tactics of advancing a second

claim, and it was inextricably linked to proceedings in which the claimant had already instructed her own legal team and obtained extensive legal advice. His decision was consistent with long standing union practice and policy, unrelated to the claimant's beliefs, and supported by clear written reasons.

94.3. GT conveyed each of the claimant's concerns to NHS Fife. While she did not copy correspondence to all of the respondent's members employed in NHS Fife, no detriment arose from that, and GT's decisions were explained.

Relevant Law

95. Section 57(7) of the Equality Act 2010 (**EqA**) defines a trade organisation as an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular trade or profession for the purposes of which the organisation exists.

96. Discrimination by trade organisations is made unlawful by Section 57(2) EqA, which states:

'A trade organisation (A) must not discriminate against a member (B)-

(a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;…

(d) by subjecting B to any other detriment.'

97. Section 109 EqA provides that anything done by a person in the course of their employment must be treated as also done by the employer.

98. Section 13(1) EqA states:

***'**A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'*

99. The basic question in a direct discrimination case is: what are the grounds or reasons for the treatment complained of? In some cases, the grounds or reason for the treatment complained of is inherent in the act itself (for example ***James v Eastleigh Borough Council*** [1990] IRLR 288). Where the treatment is not inherently discriminatory, or the reason for the treatment is not immediately apparent, it is necessary to explore the mental processes, conscious or subconscious, of the alleged discriminator to discover the facts that operated on their mind, and which caused them to act in the way that they did (***Nagarajan v London Regional Transport*** 1999 IRLR 572).

100. The protected characteristic requires to have a '*significant influence'* on the decision to act in the manner complained of, but need not be the sole ground for the decision. If the protected characteristic did significantly influence the thinking of the alleged discriminator, the motivation, intention or purpose for having done so is irrelevant *(**Nagarajan***).

101. In relation to subconscious motivation, Lord Nicholls in ***Nagarajan*** stated: *'All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. It is part of our make-up. Moreover, we do not always recognise our own prejudices. Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did… Members of racial groups need protection from conduct driven by unrecognised prejudice as much as from conscious and deliberate discrimination.'*

102. In ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** [2003] UKHL 11, Lord Nicholls stated the question whether there has been direct discrimination is *'essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others?'* He noted that a sequential analysis (considering first whether there was less favourable treatment, and then whether it was because of a protected characteristic) may give rise to needless problems and stated: *'Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined…employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will be usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others.'* It is accordingly not always necessary for a Tribunal construct a hypothetical comparator, and to ask whether the claimant was treated less favourably than that comparator would have been treated. The Tribunal can short circuit that step by focusing on the reason for the treatment. If the evidence establishes that the reason for the treatment was the protected characteristic, it will usually follow that the hypothetical comparator would not have been treated in the same way.

Burden of proof

103. Section 136 EqA states:

> *(1) This section applies to any proceedings relating to a 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 provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.'*

104. The burden of proof provisions apply where the facts relevant to determining discrimination are in doubt. The burden of proof provisions are not relevant where the facts are not disputed, or where the Tribunal is in a position to make positive findings on the evidence, one way or another, as to whether the claimant was discriminated against on the alleged protected ground (***Hewage v Grampian Health Board*** [2012] UKSC 37, SC).

105. As Mr Justice Elias, then President of the EAT, stated in ***Laing v Manchester City Council and anor*** *2006 ICR 1519, EAT*, *'If [the Tribunal] are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a Tribunal to say, in effect, "there is a nice question as to whether or not the burden has shifted, but we are satisfied here that even if it has, the Employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race".'*

106. In cases where the Tribunal is not in a position to make positive findings, s136(2) means that if there are facts from which the Tribunal *could* conclude, in the absence of any other explanation, that the respondent had directly discriminated, it must do so, unless the respondent satisfies it otherwise. In considering whether it could conclude this, the Tribunal must consider all the evidence adduced, other than the respondent's explanation for its conduct. That is the first stage - often referred to as the 'prima facie' case. The second stage is only reached if a prima facie case is established. At the second stage, it is for the respondent to show a non-discriminatory reason for the treatment in question (***Igen v Wong*** [2005] IRLR 258, and ***Madarassy v Nomura International Plc*** [2007] IRLR 246).

Discussion & Decision

Institutional Belief

107. A substantial amount of evidence was led by the claimant to seek to demonstrate that the respondent had, as an institution, adopted what was described as 'gender identity belief' or 'gender ideology', and that this institutional position should lead the Tribunal to conclude that the relevant decision makers were influenced, subconsciously, by that. (The claimant expressly stated in submissions that it was *'not suggested that any of those who took relevant decisions did so with a conscious determination to frustrate or punish the claimant because of her protected belief.')*

108. The respondent denied that there was any such institutional belief or culture, stating that it was not established from the disparate adminicles of evidence adduced by the claimant in support of the contention. They stated that the respondent instead adopts a position of neutrality, or plurality, in respect of matters of gender identity/sex realism, and the recognition that different perspectives exist within their membership does not demonstrate alignment with one perspective over another.

109. The issue before the Tribunal is not whether the respondent, viewed institutionally, held a particular belief. The issue is whether the treatment complained of occurred because of the claimant's protected belief. The Tribunal concluded that it was not necessary, in order to determine the issues before it, to make a finding on whether the respondent, as an organisation, held the asserted institutional belief. Even if the claimant's contention were established, that would not, of itself, establish that the relevant decision makers acted because of the claimant's protected belief. The Tribunal would still require to identify evidence capable of demonstrating that the minds of the relevant decision makers were influenced by the claimant's protected characteristic, when they made the decisions under challenge.

110. In reaching that conclusion, the Tribunal took into account that, in ***Chief Constable of West Yorkshire Police v Khan*** [2001] UKHL 48 Lord Nicholls framed the reason why question as: *'why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason?'* He pointed out that this is a subjective test, and a question of fact. The Tribunal was also mindful of the following:

    110.1. In ***Chief Constable of Greater Manchester Police v Bailey*** [2017] EWCA Civ 425, among the points the Court of Appeal required to consider was the Tribunal's reference to reports in the bundle *'which were relied upon as supporting a contention that the respondent was institutionally racist.'* LJ Underhill, giving the leading judgment, stated that he did not accept the submission made that material showing

discriminatory conduct or attitudes elsewhere in a particular institution is always inadmissible in considering the motivation of an individual alleged discriminator. He stated that *'Authoritative material showing that discriminatory conduct or attitudes are widespread in the institution may, depending on the case, make it more likely that the alleged conduct occurred, or that the alleged motivations were operative. Or there may be some more specific relevance…But such material must always be used with care, and the Tribunal must in any case identify with specificity the particular reason why it considers the material in question to have probative value as regards the motivation of the alleged discriminator(s) in any particular case: as Elisabeth Laing J put it, there is no "doctrine of transferred malice".'*

110.2. In ***Gould v St John's Downshire Hill***: [2020] IRLR 872, Mr Justice Linden stated, at paragraph 65 *'As Lord Nicholls said, in many cases of direct discrimination the influence of the protected characteristic is that it causes the discriminator to make, and then act on, assumptions about people who have that protected characteristic based on conscious or subconscious beliefs about, or attitudes to, such people. However, it is important to note that in this type of case, as in any other case of direct discrimination, the mind of the decision maker has been directly affected or influenced by the protected characteristic in deciding to act as they did…'*

110.3. Mr Justice Elias in the EAT, in ***The Law Society & others v Bahl*** [2003] IRLR 640, at paragraph 127, stated: *'If, however, the tribunal accepts that the reason given for the treatment is genuine, then unless there is evidence to warrant a finding of unconscious discrimination, such that the tribunal is really finding that the alleged discriminator has concealed the true reason even from himself, there will be no basis to infer unlawful discrimination at all. Tribunals can in a proper case make a finding of unconscious discrimination, but it is a significant finding for a tribunal to hold that they can read someone's mind better than the person himself, and they are not entitled to reach that conclusion merely by way of a hunch or speculation, but only where there is clear evidence to warrant it.'*

111. The relevant issues are whether the respondent treated the claimant less favourably than it would have treated others and, if so, whether that was because of a protected belief. In considering that, the Tribunal requires to consider the mental processes of the alleged discriminators, to identify what operated on their mind and caused them to decide to act as they did, and whether their decision was directly affected or influenced by the protected characteristic. The Tribunal has therefore considered the material relied upon

by the claimant, when asserting that the respondent held an institutional belief, but only insofar as required to ascertain whether this, consciously or subconsciously, influenced the actions of SF, NP and GT. The Tribunal's conclusions, in relation to the decisions of each individual, are set out below.

112. For the avoidance of doubt, given what is stated above, only matters which had occurred at the time relevant decisions were made were taken into account. Whilst a number of matters, which occurred after relevant decisions were taken, were relied on by the claimant, matters which occurred after those decisions were taken could not have influenced the minds of the relevant decision makers. The Tribunal also notes, that whilst the claimant relied upon the Carr Review, the respondent's unchallenged evidence was that the conclusions of the Carr Review were taken extremely seriously by the respondent: a separate action plan was established in relation to this, covering hundreds of items, which was then implemented under a separate project. This was well in advance of relevant decisions for the purposes of this case. The Tribunal accordingly concluded that, in the circumstances, the Carr Review had little, if any, probative value in relation to this case.

Direct Discrimination because of Respondent's Belief

113. In relation to the complaints set out at 3.1 & 3.2 above, while these were stated, in paragraph 24 of the claimant's ET1, to be acts of less favourable treatment because of *the claimant's* protected belief, the ET1 also contained assertions that these were because of *the respondent's* belief: namely that the respondent had adopted gender identity as its institutional belief. In particular:

    113.1. In paragraph 10 of the claimant's ET1 it was expressly stated that the reason why SF failed to advise her that she may have a claim against NHS Fife and/or BU, was *'that the respondent had adopted a gender identity belief as its institutional belief, and was therefore unwilling or unable to recognise that she was or might be entitled to insist on the maintenance of the female changing room as a single-sex space or that she was suffering discrimination and/or harassment at the hands of [NHS Fife] and [BU].'* and

    113.2. In paragraph 21 of the claimant's ET1 it was expressly stated that: *'Further or alternatively, the respondent's decision to decline assistance in the Claimant's second claim is causally linked to its institutional belief referred to at ¶10 above and its consequent failure to represent the claimant in the immediate aftermath of her suspension.'*

114. The Tribunal concluded that the complaints of direct discrimination, to the extent that they were framed as being because of an asserted belief of the

respondent, could not succeed. In ***Lee v Ashers Baking Co Ltd*** [2018] UKSC 49, it was held that a direct discrimination claim cannot arise out of treatment on grounds of the discriminator's religion or belief. Such a claim can only be made on the basis of the religion or belief or of someone other than the alleged discriminator, otherwise it would be contrary to the general principle that a discriminator's motive is immaterial. Lady Hale stated: *'The purpose of discrimination law is to protect a person (or a person or persons with whom he is associated) who has a protected characteristic from being treated less favourably because of that characteristic. The purpose is not to protect people without such a characteristic from being treated less favourably because of the protected characteristic of the alleged discriminator.'* Lady Hale explained that a direct discrimination claim advanced on the discriminator's religion or belief would be bound to fail, as less favourable treatment could not be established: a discriminator acting on grounds of their own religion or belief would act in the same way towards anyone.

115. Accordingly, to the extent that the claimant advances a free standing complaint based on the respondent's own beliefs, it cannot succeed for the reasons explained in ***Lee v Ashers Baking Co Ltd.*** However, the Tribunal accepted that evidence relied upon to establish an institutional culture remains relevant insofar as it is relied upon as evidential support for the allegation that the claimant was treated less favourably because of her own protected belief, and is considered below.

Direct Discrimination because of Claimant's Belief

116. As Lord Nicholls explained in ***Shamoon***, the question of less favourable treatment than an appropriate comparator, and the question whether that treatment was on the relevant prohibited ground, may be so intertwined that one cannot be resolved without, at the same time, deciding the other. There is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others? The answer to that question will usually determine how a hypothetical comparator would have been treated. Parties invited the Tribunal to adopt this approach, and focus, initially, on the reason why the claimant was treated as she was. The Tribunal was content to do so, and reached the conclusions set out below in relation to each asserted act of direct discrimination.

Failing to advise the claimant, during the conversation with SF on 31 December 2023, or 1 or 2 January 2024…that she might have a claim against her employer and/or BU, or to refer the matter to its solicitors for advice.

117. Parties were in agreement that a conversation between SF and the claimant took place. They agreed that that discussion took place on either 5 or 8 January 2024. The precise date is immaterial because the complaint relates to the

conversation itself, not the date upon which it occurred. The first asserted act of direct discrimination relates solely to that conversation, and the actions of SF. Parties were also in agreement that SF did not advise the claimant that she may have a claim against NHS Fife and/or BU, and did not take steps to refer the matter for legal support.

118. The Tribunal's findings in fact in relation to this conversation are recorded in paragraphs 17-22 above.

119. The Tribunal concluded that SF did not understand the claimant to be asserting or manifesting a protected sex realist/gender critical belief, and did not perceive her views as anything more than disagreement about the use of changing facilities. The only information available to him was the brief note of the claimant's previous discussion with RCN Direct, and what she told him during their discussion. The claimant did not tell RCN Direct, or SF, that she had a philosophical belief that biological sex is real, important, immutable and not to be conflated with gender identity. She did not refer to holding gender critical or sex realist beliefs (as she was unaware of these terms at the time). She simply stated that she felt uncomfortable that a trans doctor, BU, was using the female changing area and did not feel that BU should do so, referring to a recent news story about Isla Bryson when doing so. The information provided to SF did not convey that the claimant held a philosophical belief, rather than simply an opinion or viewpoint, based on a recent news story. In cases of direct discrimination, which involve consideration of the mental processes of the alleged discriminator, it is a prerequisite that the alleged discriminator was aware of the protected characteristic. The protected characteristic cannot be the grounds for the treatment if the alleged discriminator is not aware of it (***McClintock v Department for Constitutional Affairs*** *2008 IRLR 29, EAT)*. As stated by Lord Justice Underhill in ***Maistry v British Broadcasting Corporation*** [2014] EWCA Civ 1116: *'The starting point is that since this is a claim based on discrimination what matters is what motivated the various individual colleagues and managers who were responsible for the acts complained of… The Tribunal was, therefore, unquestionably right that if the individuals in question were unaware that the Applicant held the philosophical belief in question they could not be motivated by that fact or, therefore, be guilty of discrimination; nor could the [respondent] be so guilty as their employer.'*

120. For this reason alone, the Tribunal concluded that the claimant's complaint in relation the first asserted act of direct discrimination does not succeed. Even if the Tribunal had not reached this conclusion however, the Tribunal would have concluded as follows:

    120.1. **Failing to advise the claimant that she might have a claim against her employer and/or BU.** It was asserted for the claimant that SF ought to have advised the claimant, during their initial call, that she

may have complaints of discrimination, harassment or victimisation against NHS Fife and/or BU. The Tribunal considered why SF did not do so. What, consciously or subconsciously, were his reasons? The Tribunal concluded that SF did not advise the claimant that she may have those complaints as his focus, during the initial call, was on the fact the claimant had been suspended. He saw the purpose of that call as being to advise the claimant in relation to the immediate implications of her suspension, as well as in relation to the investigation and disciplinary process which would follow. He envisaged providing more detailed advice to her at a later date, once he had obtained further information and had investigated certain matters, so he was able to do so in an informed manner, having the full picture. He did not however consider it appropriate to do that, without that information, in the initial call. From his evidence, the Tribunal noted that he was aware that there was a period of 3 months to lodge a Tribunal claim, which could be extended by a further 6 weeks through early conciliation, and concluded that he did not consider there was any urgency to provide advice during the initial call, in early January 2024, in relation to matters which had occurred 2 weeks ago. That was the reason why SF did not inform the claimant she may have a claim.

120.2. The Tribunal concluded that SF's actions were not, consciously or subconsciously, influenced by the claimant's protected belief. SF did not know that the claimant had a protected gender critical/sex realist belief, and did not understand or believe that the respondent had adopted a position in line with gender ideology. It was not asserted that SF had previously displayed any bias, for example when he acted as trade union representative for LM. Of the matters relied upon by the claimant to demonstrate that SF was subconsciously influenced by the claimant's protected belief (see paragraphs 64-90 above), the only matters put to him, which occurred prior to January 2024 (and so could have subconsciously impacted SF's decision making), were the legal updates in 2020 and 2021 (paragraphs 73-76), and his use of the word 'she' (rather than 'he') in his note of the call he had with the claimant (see paragraph 18 above). While he accepted he read one of the articles when it was published, that contained a fair summary of the judgment and demonstrated attempts to balance competing interests. His use of the word 'she' was explained by him as one of a number of errors/typos in the short note, which he typed as he had the call, and did not subsequently review. The claimant also asserted that SF acted as he did because he had received no training or guidance from the respondent, to help him notice that the claimant's objection to BU's use of the women's changing room was (or might be) a manifestation of a protected belief. If however SF was unaware of particular issues

(whether due to lack of training or otherwise) those issues could not have operated on his mind, consciously or subconsciously, when he acted as he did. As noted in ***Bailey***, there is no doctrine of transferred malice.

120.3. Given the conclusions above, the Tribunal also concluded that SF would have adopted the same approach with anyone who had recently been suspended. Any hypothetical comparator would accordingly have been treated in the same way.

120.4. **Failing to refer the matter to the respondent's solicitors for advice.** SF did not refer the matter to the respondent's solicitors for advice during, or immediately after, the call. The reason why he did not do so is that he understood that further information was required, beyond the claimant's oral account, prior to doing so. For the same reasons as are set out in paragraph 120.2 above, the Tribunal concluded that SF's actions in relation to this were not, consciously or subconsciously, influenced by the claimant's protected belief. The Tribunal accepted that SF acted in accordance with his standard approach in all cases, and he would not refer matters to the respondent's solicitors for advice solely on the basis of an initial call. Any hypothetical comparator would accordingly have been treated in the same way.

121. Given that the Tribunal was in a position to make positive findings as to the reasons for SF's actions, which did not disclose either conscious or subconscious discrimination because of the claimant's protected belief, there was no requirement to consider the burden of proof. Even if the burden of proof had transferred to the respondent, it was discharged.

122. In light of the Tribunal's conclusions on the substantive merits of this asserted act of direct discrimination, it was unnecessary to determine the time bar point raised by the respondent in relation to this.

Refusing the claimant's request for legal assistance with her second claim without giving any, or any serious or sufficient, consideration to the merits of the claim, the reasons why she had had to take external legal advice on her first claim or the practicalities of supporting her in her second claim.

123. Parties were in agreement that NP refused the claimant's request for legal assistance in January 2025. The second asserted act of direct discrimination relates solely to that decision, taken by NP.

124. The Tribunal considered why NP decided to refuse the claimant's request. What, consciously or subconsciously, were his reasons? The Tribunal accepted that NP made his decision for the reasons set out in paragraph 41

and found that evidence credible and reliable. In cross examination and submissions for the claimant it was submitted that it was preposterous for NP to suggest that he could make a better assessment than the claimant's existing legal advisers of whether her new complaint should be advanced by amending her existing claim (less than 3 weeks before it was due to be heard), or by presenting a fresh claim. That however underlines NP's position that the claimant had taken legal advice on the new complaint: they had made an assessment on how that new complaint should be brought, and were in a better position than NP to do so. The new complaint was clearly linked to the First Claim, or there would have been no consideration of whether it should be added by way of an amendment to that claim, but discounted given the proximity of the hearing.

125. The Tribunal concluded that the claimant's protected belief did not, consciously or subconsciously, influence NP's decision. The Tribunal accepted NP's evidence regarding the reasons for his decision. Those reasons were case specific, consistent with his long-standing practice, and unrelated to the claimant's protected belief. NP was aware, when he made his decision, of the claimant's protected belief. He was aware that, amongst the respondent's membership, there were strongly held views on both sides of the debate, but did not understand or believe that the respondent had adopted any position which would prefer one view over the other. Of the particular matters relied upon by the claimant to demonstrate that NP was subconsciously influenced by the claimant's protected belief (see paragraphs 64-90 above), the matters put to NP, which occurred prior to January 2025 (and so could have subconsciously impacted NP's decision making), were the Fair care for trans patients clinical guide, his interactions with LM and the progress pride flag being contained in articles, on emails sent by certain individuals and in merchandise available on the respondent's website. The Tribunal concluded that there was nothing in NP's dealings with LM which could justify any inference of subconscious discrimination. He was aware that she held gender critical beliefs: this was clear from the content of her article. That was however irrelevant to his decision, and he acted properly and impartially towards LM, taking into account the information he was provided with. He was not involved in the creation of the Fair care for trans patients clinical guide, and there was no evidence before the Tribunal to suggest that he had seen this prior to making the decision not to provide legal support. Even if he had, his evidence was that this was a clinical guide only, to inform (but not dictate) clinical practice and assist members to treat trans patients with dignity and respect, based on circumstances at the time of publication. He accepted, when it was put to him, that the progress pride flag was associated with gender ideology, but stated that he could see no reason why the respondent would not stock merchandise supporting different beliefs, if these were available, or to support networks of individuals holding different beliefs.

126. The Tribunal concluded that NP would have made the same decision in relation to any individual who requested legal advice in these circumstances, including where their circumstances were the same in all respects, other than that they did not share the claimant's protected belief. NP gave unchallenged evidence that he had acted in this way, and made decisions on this basis, for 18 years. Any hypothetical comparator would accordingly have been treated in the same way.

127. Given that the Tribunal was in a position to make positive findings as to the reasons for NP's decision, which did not disclose either conscious or subconscious discrimination because of the claimant's protected belief, there was no requirement to consider the burden of proof. Even if the burden of proof had transferred to the respondent, it was discharged.

Failing to seek in full the assurances from NHS Fife, requested by the claimant in her email of 29 August, or to copy its membership employed by the Board, or to make any alternative proposal for assuring the claimant and her colleagues that they would have their union's support in asserting their rights: to single sex toilet, washing and changing facilities; not to suffer discrimination because of sex realist (or gender critical) belief including manifestation of that belief; and to discuss amongst themselves and if necessary organise to assert those rights

128. This asserted act of direct discrimination relates solely to the actions of GT, in the period from 29 August to 5 September 2025. The Tribunal's finding in relation to the terms of the claimant's request of 29 August 2025, and GT's actions in response to that, are set out in paragraphs 59-62. GT addressed the points made by the claimant in her email dated 5 September 2025. The second paragraph of the quote from her email (as set out in paragraph 61 above) seeks confirmation that no males (including those who identify as women, whether or not they have a gender recognition certificate) will be permitted to access single sex facilities. The final paragraph of the quote from her email seeks confirmation that NHS Fife understands that those holding gender critical beliefs are protected from discrimination under the Equality Act 2010. In relation to those points, the Tribunal concluded that the treatment asserted was not established: The assurances which the claimant had requested were sought by GT in her email. The claimant's complaint in relation to these points cannot, accordingly, succeed.

129. The penultimate paragraph of the quote from GT's email (set out in paragraph 61 above), is expressed as the claimant being concerned that employees/ colleagues are being told not to discuss her case and concerns about the provision of single sex facilities, and that the claimant wants an assurance that there will be no disciplinary consequences for her, if she expresses or discusses those concerns. This does not accord with her request (that an

assurance be provided that *staff* have the right to discuss matters of common concern and organise to address them, there will be no disciplinary consequences for *anyone* who does so). In addition, GT did not copy the email to all of the respondent's members employed at NHS Fife, as the claimant had requested.

130. The Tribunal considered why GT framed the penultimate paragraph of her email as she did, and why she did not copy this to all of the respondent's members employed at NHS Fife, as the claimant had requested. What, consciously or subconsciously, were her reasons? The Tribunal concluded that the reasons why GT acted as she did are as set out in paragraph 62. The Tribunal accepted that GT understood her role to be support of an individual member only, and she acted accordingly. The Tribunal concluded that the claimant's protected belief, which GT was aware of, did not consciously or subconsciously influence GT's actions. She did not believe or understand that the respondent had adopted gender ideology, or that it was opposed to those with gender critical beliefs or views (which she also held). She was unfamiliar with the progress pride flag, and was unaware that this incorporated colours from the trans pride flag. She did not recall seeing or reading any of the articles relied upon which were put to her.

131. The Tribunal concluded that GT would have acted in the same way if the same request had been made by someone not holding the same protected belief as the claimant. Any hypothetical comparator would accordingly have been treated in the same way.

132. Given that the Tribunal was in a position to make positive findings as to the reasons for GT's actions, which did not disclose either conscious or subconscious discrimination because of the claimant's protected belief, there was no requirement to consider the burden of proof. Even if the burden of proof had transferred to the respondent, it was discharged.

Conclusion

133. For these reasons, the claimant's complaints of direct discrimination do not succeed and are dismissed.

Date sent to parties **02 November 2026**