JB1

EMPLOYMENT TRIBUNALS

Claimant: Ms S Hassan

Respondent: University College London Hospitals NHS Foundation Trust

Heard at: London Central **On:** 15, 16, 17, 18 and 19 May 2017

Before: Employment Judge Wade

Members: Ms P Hornby
Ms G Gillman

Representation

Claimant: Mr S Leira, Representative
Respondent: Mr T Cordrey, Counsel

JUDGMENT having been sent to the parties on 22 May 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

The claimant brings race and maternity discrimination claims. The full list of issues agreed between the parties is in the Schedule at the end of these reasons.

The evidence

1. We heard evidence from the claimant. For the respondent, we heard from Ms M Mutch, Service Manager for Theatres and Anaesthetics, Ms N Sabey, the claimant's line manager from July 2014 to December 2015, Ms M Irvine, the claimant's line manager from December 2015, Ms E O'Hara, Head of Workforce and Ms L Pettigrew Senior Employee Relations Adviser. We read the pages in the Bundle to which we were referred.

The facts

2. The Claimant began her employment with the Respondent as an administrative officer, Grade 4, on 11 February 2008. She worked in the theatres and anaesthetics service. There are a number of areas of work:-

    1. Surgical reception;
    2. Pre-assessment;
    3. Day surgery;
    4. Theatres reception; and
    5. Theatres back office.

Sickness absence issues

3. From the early months of her employment, she was absent from work on sickness absence for a considerable amount of time and in the first years the pattern was of short term sickness absence for a variety of reasons.

4. There were also some difficulties with her timekeeping and there was a management meeting in April 2009 to raise the problem.

Flexible working request

5. In June 2009, the Claimant asked for flexible working to enable her to travel to work at a slightly later time because found it frightening to travel so early and in the dark.

6. In August 2009, her manager Ms Mutch refused this request as there was no one available to cover the role in the early hours of the day. The Claimant does not allege that this refusal was discrimination.

7. The sickness absence continued during this period. The Claimant complained on 12 February 2010 that she had been victimised and "treated differently" about her sick pay. There was an issue about the sick pay running out. She threatened to take action "to the highest officers and other lawful bodies". She does not say that this complaint was a protected act for the purposes of a victimisation claim under the Equality Act section 27. The Tribunal explained the definition of a protected act clearly and gave Mr Leira, the claimant's husband and a qualified lawyer, time overnight to clarify both the issues and the alleged protected acts.

8. During her sickness absence there was a sickness management meeting, Stage One, on 5 March 2010.

Alleged racist clocking in and out procedure

9. On 9 March, Ms Mutch emailed her whole team to instruct them that they must sign in and out when they were at work by sending her emails. This instruction was sent to all the staff in the team and not just black colleagues. For the first time during her evidence, the Claimant alleged that she had been told to check in and out by Ms Mutch and that this instruction had been issued only to black staff. The Respondent then disclosed the relevant email, of course it was not known to be relevant before the hearing

because this allegation was not known. When faced with the very clear evidence that the instruction had been given to *all* staff whatever their colour the Claimant changed her position and said that it was the way the policy was enforced that was racist rather than the policy itself. Her reasoning was perhaps that the admin team was predominately black but that is not the same as saying that the instruction was focused only on black staff.

10. We were concerned about this allegation and the way that the Claimant tried to resile from it and consider this an example of a very serious allegation of discrimination which has no basis. This undermines the Claimant's credibility and shows a tendency to exaggerate and generalise especially as we were offered no evidence that the way the policy was enforced was racist.

Flexible working appeal succeeds

11. On 3 June 2010, the Claimant's flexible working appeal was agreed; this was an appeal following her request for flexible working back in June 2009. The Claimant was moved to a new role with effect from April 2010 which meant that she could start later in the morning, at 8.15. The Claimant said that she had simply been slotted into a new role rather than her appeal being granted, but the fact is that she was moved to a role where she could start later which is what she wanted. This is evidence of the Respondent accommodating the Claimant where possible.

12. During 2010, a pattern of absence for various reasons continued and, regrettably, in November 2010 the Claimant was spoken to about timekeeping issues as although she was now meant to start at the later time of 8.15 in the morning, she was still not arriving on time. She has no explanation for why she was being late.

13. Also in November 2010, Ms Nicholson became the Claimant's Line Manager and the pattern of sickness absence continued.

Complaint of 21 January 2012, a possible protected act

14. On 21 January 2012, the Claimant made a complaint. Its subject is not an issue in these proceedings, but it was a complaint that she had been subjected to racial abuse and that she had been treated differently. She alleges that this was a protected act for the purposes of a victimisation claim and we agree that this is possible. What we do not know is whether the managers who are alleged to have victimised the Claimant were aware of this complaint and the alleged protected act has not been raised by her as a motive for the alleged acts of victimisation. Therefore, whilst it may be a protected act, the causal link between it and the alleged detriments has not been made out.

Complaint about Ms Nicholson and issue 7

15. From 2012 onwards there were more absences and on 20 March 2013 Ms Nicholson told the Claimant that if her sickness absence continued she would have to start formal absence management given the amount of sick

leave that had accrued over the years. This was not surprising or unreasonable but on 27 March the Claimant raised a grievance about Ms Nicholson. She alleges that this was a protected act but we do not agree; whilst she alleges that the warning was not fair, she does not say that she was "treated differently" or explicitly allege that she was discriminated against for any reason, particularly her race. We have already seen that when she felt that she had been "treated differently" Claimant could say so and therefore it is no coincidence that on this occasion she did not allege difference in treatment which is potentially a lay person's expression of concern about discrimination.

16. From then onwards the Claimant was not happy to work close to or with Ms Nicholson ever again even though she did not progress her grievance (see paragraph 35). The Claimant's complaint is not that it was not acceptable to absence manage her but that Ms Nicholson was handling her in a race discriminatory way.

Secondment, 23 April 2013

17. The next event was that on 23 April 2013, the Claimant commenced a secondment to a different building where she worked on a particular project called "Liberating sisters to lead". She was temporarily seconded to a Grade 5 role, initially for a year, but it was then extended by a further six months. This meant that the Claimant was out of her department for a year and six months and managed by a different manager though the post was funded by the original team. We are told that the Claimant was in a unique position to have won such a long secondment.

Alleged loss of new jobs, issues 8(a), (d) and (e)

18. The Claimant says that during the period of her secondment she lost two jobs which she had applied for due to bad references from Ms Mutch and possibly her manager at the time, who is called Natalie. We have not seen sufficient evidence that the Claimant was actually offered these jobs and the more she was questioned the vaguer her responses. She finished her evidence saying that she had been told that the job was "as good as hers", which of course is not the same as an offer. All the witnesses deny that the Claimant was offered new jobs so her allegation is not upheld.

The end of the secondment

19. Essentially, the Claimant's concern was that once the secondment ended she was expected to return to the department in which she was employed and which was paying her salary. She had been out for 18 months and we consider that her return in those circumstances was perfectly reasonable.

20. Towards the end of the secondment her manager, Natalie, told Ms Mutch that the Claimant was concerned about returning to the theatres and anaesthetics service because she would be working in the same team as Ms Nicholson. Ms Mutch went to great efforts to separate them and moved the Claimant teams to a different floor from Ms Nicholson, working in a different section of the team. Ms Mutch tried to reach the Claimant by telephone and when her voicemail message was not returned, she passed

a message through Natalie saying that she would not have to be working directly with Ms Nicholson and would be on a different floor. She correctly understood that by doing this, which was extremely helpful, she had dealt with the main concerns.

21. The Claimant says that she would still be having to have some contact with Ms Nicholson who would still be on the same team but the exact amount of contact was disputed. We find that these measures were more than adequate and reasonable; it was unrealistic to expect the Claimant to hermetically sealed away from Ms Nicholson. These were all professionals trying to run a service for the good of their patients and unfortunately in those circumstances they are expected to get on with their jobs.

22. In July 2014, Ms Sabey became the Claimant's Line Manager. She was to manage the Claimant once she returned to the team. She was told by Ms Mutch that she was to be the new manager and she was not involved in the discussion or the decisions around the end of the secondment and so she came into the relationship fresh. We found no evidence that Ms Sabey was involved in or affected by any negative views of the Claimant which may have existed.

Prince 2 training, issue 8(g)

23. The Claimant alleges that Ms Sabey prevented her from going on a course called "Prince 2" for which she had funding. The allegation appears to be incorrect in that Ms Sabey knows nothing about that course and if that was what happened, it was not Ms Sabey who made that decision. There was no documentary evidence of the withdrawal of funding.

Return from secondment, 28 July 2014, issues 8(b) and (c)

24. On 31 July 2014, just after the Claimant's secondment had ended on 28 July, Natalie, her manager in the seconded role, expressed concern that the Claimant may have been fraudulent in respect of use of her holiday. Ms Mutch was copied into the correspondence but the allegation was not progressed and it was not raised with the Claimant at the time. It is illogical for her to say now that this was part of the campaign of abuse because she was not aware of it until the disclosure process. This is evidence that the Respondent has not withheld disclosure and we assume that once this matter was investigated by the fraud team they found no case to answer.

25. The sickness absence continued during this time and the Claimant did not return to her team as expected.

26. When she returned she was given training because of course she had been out of the team for a very long time and she says that it was not appropriate for a junior member of staff to train her. We find that the member of staff who trained her was the one who was covering her role and so it was appropriate that she provided the training; the computer system was new and the Claimant needed to know about it.

27. The Claimant also alleges that she was not given a structured job description on her return and that arrangements were very disorganised.

The reason for that, or the reason why it may have seemed like that to her, was that she had been off sick and also on secondment for 18 months, there was a new system in place and she did need training. Also, there was always quite a bit of changing around of roles during the working week to cover various demands on the team and as a long serving member of staff, she should have known that and been able to fit in.

Sickness absence management and monitoring, issues 9 and 11(a)

28. On 14 August 2014, sickness absence management recommenced because the Claimant was still not back in the workplace after the end of the secondment and was signed off with stress. There were issues around her absences and also around her not keeping in touch when off. Ms Sabey pointed out to her that she should keep in touch and that if she did not this must result in her pay being suspended. The Claimant disputed this and says that it was vindictive to raise this with her because she was signed off sick. We find that it is acceptable for a manager to expect an employee to keep in touch whilst off sick and that absence management is crucial in an organisation, especially when the team are patient-facing. Contact is necessary for the wealthfare of the employee and indeed a manager would be criticised for not keeping in touch with a sick employee.

29. The absence unfortunately continued through August 2014 and into October. A Stage One absence management meeting was scheduled for 24 October. This was surprising because the Claimant had already had a Stage One meeting in March 2010 but in an act of leniency Ms Sabey had decided that Stage One was fair because the absence was long term this time rather than the previous pattern of short term absences. The reason that was given for the Claimant's absence was that despite the move to a different floor to avoid Ms Nicholson, she was still not happy about returning to the team and was suffering from stress.

30. The Claimant complains that she was constantly monitored during this time but as we have already said we see that as normal management practice and not sinister.

The claimant's miscarriage, November 2017, issues 14, 28 and 31

31. On 6 or 7 November 2014 the Claimant very unfortunately suffered from a miscarriage. Whilst she was on the bus on her way home from hospital Ms Sabey telephoned her as had been arranged. Ms Sabey did not know that the Claimant had suffered a miscarriage and cut the conversation short when she was told what had happened. The Claimant alleges that no empathy was shown by her manager and that she was told that she had to be back at work the next Monday. She implied that Ms Sabey knew or "would have known" about the miscarriage and she has even accused her of causing it. That accusation remains in her statement although Mr Leira accepted during his cross examination that there are many possible causes of a miscarriage and that Ms Sabey did not know about it when she telephoned. The allegation that she caused the miscarriage has

understandably upset Ms Sabey and although it is not within our jurisdiction, we wish to record that this allegation was not actually seriously pursued by the Claimant's side.

32. Mr Leira telephoned Ms Mutch to protest about the telephone call that Ms Sabey had made to his wife and Ms Mutch took this up with Ms Sabey. She concluded that Ms Sabey did not know about the miscarriage and that there was no misconduct particularly as it was reasonable to expect employees to keep in touch whilst off sick. At this point the Claimant was signed off for a further three weeks because of the miscarriage.

33. On 10 November 2014, Ms Sabey emailed the Claimant to say that she was so sorry to hear about what she called the "heartbreaking news" and this was a very empathetic email; confronted by the evidence the Claimant says it was just a tick box exercise and dismisses it.

34. Ms Sabey went on to say that they would speak on 28 November; again this was perfectly reasonable because it was more than three weeks away and therefore after the end of the three week sick note.

35. Then, on 19 November, Ms Sabey wrote to confirm the outcome of the absence management meeting on 24 October. The Claimant says that this letter was harassment, but it was a letter she had asked Ms Sabey to write which contained information she would have wanted to know and it was important that the absence management process was adhered to.

36. The letter said that the reason why the complaint against Ms Nicholson had not gone anywhere was that the Claimant had not progressed it. Ms Sabey had contacted HR for this information and told Mrs Hassan who, from 19 November 2014, knew the respondent's position but did not challenge it, complain or try to pursue reactivate the grievance. There is therefore strong contemporaneous evidence that the Claimant accepted the reason why her complaint had not been progressed.

37. Ms Sabey's letter also offered access to staff welfare services; the Claimant specifically complains that she was not offered access to counselling, but the letter contradicts that in black and white.

38. The Claimant objected to being contacted by letter and said she felt hounded, however, the letters were relevant and few and far between; we know of no telephone calls which matched the Claimant's description of having been hounded. Ms Sabey's manager Ms Mutch also thought that the contact was appropriate. It was important that the Claimant knew where she was in relation to sick pay because under the sickness policy full pay ended after a certain amount of absence.

39. So, all in all we find that the level of contact was appropriate, it was not intrusive or hounding or, in the Claimant's words, "depraved".

Return to work after sick leave

40. The sick leave continued for another period and on 19th December 2014, the Claimant returned to work after five months' sickness absence. She

says that the lack of empathy was continued by the Respondent expecting her to work in a department where women who came to the operating theatre had sometimes suffered miscarriages and that this was inhuman and degrading.

41. The evidence of Ms Sabey and Ms Mutch was that admin staff did not know why patients were coming to theatre, this was not a miscarriage department and patients came for many reasons so it could not be said that the Claimant met other women who she knew had suffered miscarriages frequently. However, the main point is that unfortunately in a clinical environment some contact is unavoidable; it is necessary for professionals who have experienced the same pain as their patients to find a way of coping with the experience of other people's tragedies. We accept this evidence as common sense and conclude that the Claimant was not treated without empathy and that there was not a failure to offer her counselling.

The claimant's pregnancy, issues 15, 19, 26, 27

42. Happily, on 12 January 2015, the Claimant notified Ms Sabey that she was again pregnant and there followed a referral by Ms Sabey to Occupational Health for advice and support during her pregnancy.

43. When the Claimant returned to work after another period of sickness absence on 4 February 2015, Ms Sabey was supportive and rather than being critical gave her the opportunity to start later on in the morning due to the problem that she was having with morning sickness.

44. A pregnancy risk assessment was conducted without any delay the next day, 5 February. Ms Mutch went through the basic statutory health and safety risk assessment and recorded that one of the few risks which the Claimant faced in her role was in relation to heavy lifting. Ms Mutch recorded that the Claimant should use a trolley and seek help where appropriate.

45. The Claimant objects to the fact that the risk assessment took place in a room where a man was present and also says that intimate female matters were discussed. Ms Mutch agrees that there was a man (a doctor) in the room but denies that intimate female issues were discussed because she just followed the health and safety assessment form. This is an assessment of specific risks listed in the EU Pregnant Workers' Directive, such as chemical hazards, so there is no evidence that intimate female matters arose. However, Ms Mutch accepts that as a learning point it is better practice to conduct such a risk assessment in private and she would do that in the future. She does point out however that the Claimant did not ask to move to another room and did not show signs of being uncomfortable when the risk assessment was conducted.

46. When asked why she did not object the Claimant said that she was frightened of being bullied by Ms Mutch if she had raised a problem because she had a reputation for taking revenge if people stood up to her. Having heard Ms Mutch give evidence, we would be very surprised if she had such a fearsome reputation or would react badly to what would have been a perfectly reasonable request. The Claimant has of course shown

herself well able to complain about her superiors in the past and we do not accept that she was worried at the time. The Claimant says that this was an act of discrimination, Ms Mutch's explanation is far more mundane: there is a lack of private office space in her team and this was the best that she could offer. We accept her explanation.

47. The Claimant says that she was forced to do heavy lifting as her duties required that she carry heavy patient notes. What in fact happened was that at the first Occupational Health meeting on 6th February they recorded what measures were in place and said that the Claimant had confirmed this. On 27th February, following a letter from the Claimant's GP, there was another assessment. This focused more specifically on the definition of a heavy load and Occupational Health said that 2.5 kilos, or a ream of paper, would be the limit for the Claimant to lift and recommended a specific manual handling risk assessment. They did *not* say that there was a particular problem when they provided this guidance.

48. Ms Sabey then followed with the manual handling risk assessment and she also concluded that the Claimant was to use a trolley and asked for help if needed. It is true that the Claimant's job at times included the lifting of heavy loads, although Ms Sabey says that most patient notes are not as heavy as 2.5 kilos, but it is not the job as set out in the job description that is relevant here but the job as adjusted by the health and safety assessment. The Claimant says that she was so busy she was not able to implement the health and safety measures and she was not able to ask her colleagues to help her. However, we cannot criticise the Respondent for this process, the evidence is that they acted promptly and appropriately to protect the Claimant from a pregnancy related risk.

Issue 18

49. The Claimant complains that she was moved around the department unfairly by Ms Sabey. Ms Sabey explains that people were moved around due to leave and sickness and the Claimant was perhaps sometimes moved in a surprising way because it was necessary to avoid moving her to the first floor where Ms Nicholson was working. Ms Sabey described the way that team worked and demonstrated that the Claimant was not being asked to move around anymore than the rest of her colleagues. Most of the team are Band 4 Administrators, there are no favours due to seniority and whilst the Claimant has protested that her 10 years' service ought to have been recognised, she was required to work as a team and muck in to cover the needs of the job.

Management of the claimant, including sickness management, issues 10, 11(b),(c), (d), 12, 13, 16, 17, 18, 29 and 30

50. There followed several further periods of sickness absence, the certificates were for various things such as asthma, migraine, diarrhoea and we find that they did not show that the Claimant was mainly suffering from pregnancy related ill health. Therefore, we are not surprised that in April the absence management process began again. The Claimant alleges that Ms Sabey was checking up on her and sent her colleague Richard Corbill to check up on her too, but we observe firstly that the term "check up" is not

necessarily malign and secondly that Ms Sabey does not recall this event. The Claimant also alleges that she was telephoned by Ms Sabey to see if she was at lunch. Ms Sabey denies that this was an act that demonstrated that she was suspicious of the Claimant.

51. On 23 May, the Claimant complained about the proposed absence management meeting and was very upset that Ms Sabey was progressing it because she was pregnant. Of course, it is perfectly acceptable to progress absence management during pregnancy as the process exists for the benefit of employees as well as employers. The Claimant was, however, given the benefit of the doubt again as, having taken some advice, Ms Sabey decided that she would accept Mrs Hassan's assertion that all the various absences *were* pregnancy related so absence management was suspended.

52. The Claimant says that it was a detriment to be required to produce the originals of her many sickness certificates, but she did agree in her evidence that this was a standard requirement in her team. She also alleges that no one intervened to protect her during this time, but given our findings we do not find that any further intervention was needed.

53. The Claimant said that she applied for annual leave and was refused it by Ms Sabey in May 2015 but we were not able to decide in her favour because there is no sign of the holiday booking form in the bundle and we cannot speculate without more information. Moreover, Ms Sabey described to us how she assisted the Claimant by sitting down with her and helping her to plan her leave, for example programming days of leave into the middle of the week, so that the Claimant would not have to work the full five days in the later stages of her pregnancy.

54. The Claimant also alleges that she was discriminated against when told by Ms Sabey that she could not take leave before it was accrued in the holiday year. She challenged Ms Sabey, again illustrating that she is perfectly capable of challenging her managers, who asked HR for advice and they clarified that the Claimant was indeed allowed to take it before she had accrued it. Ms Sabey communicated and implemented that advice straight away.

55. Given Ms Sabey's response to the challenge, we conclude that it was a simple mistake and not an act of hostility towards the Claimant. The Claimant says that she believes that if somebody who looked like her (ie a white person) had asked for leave then Ms Sabey would have behaved differently, but this is denied and there is no evidence.

Maternity leave, issue 8(f)

56. The Claimant began her maternity leave on 23 July 2015. During December 2015 Ms Irvine took over line management of the Claimant and her colleagues from Ms Sabey. Also during maternity leave, the Claimant applied for a job as a deputy service manager and she says that it was a detriment that she was not given the job. The practice of the Respondent, as is quite common now, was to consider the application anonymously, so whilst Ms Mutch knew that the applicant was internal she did not know who

it was, therefore it would not be possible for this to be an act of discrimination against the Claimant personally.

57. It is also not surprising that the Claimant was not shortlisted as this was Grade 7 role and she was only a Grade 4.

58. The Claimant also complains that an admin manager role, Grade, 6 was not made available to her; in fact that is the role that Ms Irvine secured. Again, this was a role two grades above the Claimant's grade. She did not apply, but the role was available on the NHS Website which clearly she was able to access because she applied for the Deputy Service Manager role, so she knew where to look. Also, during her maternity leave she maintained very little, or almost no, contact with her managers and had not asked to be kept in touch with developments in the team or vacancies.

Flexible working and return to work, issues 20-24 and 32

59. Towards the end of her maternity leave, the Claimant submitted what we call a demand for flexible working on 22 May 2016. The Claimant announced that she "will exercise both flexi time and reduced hours over two days a week". When questioned, she agreed that what flexible pattern an employee can expect depends on the needs of the service, but did not seem to realise then, or really now, that flexible working is a two-way street in that it is not the absolute right of an employee to prescribe the pattern.

60. Also on 22 May, the Claimant submitted an ML3 form. This a payroll form giving the date a mother is going to be returning to work so that she reinstated onto the payroll system. Her manager, Ms Irvine, did not see the form and therefore the Claimant was incorrectly not on the July payroll.

61. We find that this was a simple mistake. The reason for this finding is firstly that Ms Irvine was clearly embarrassed by what had happened and explained to us that she regretted making the mistake. Second, there is contemporaneous correspondence which shows that she genuinely believed that the Claimant had not submitted the ML3 form. Third, the email trail shows that both before and after she found out her mistake, she and Ms Pettigrew were trying extremely hard to accommodate her and make sure that she was paid.

62. On 26 May, the Claimant submitted the correct flexible working form which had been supplied by Ms Irvine. We should say at this stage that the form clearly states that a successful application will result in a permanent variation to a contract. Ms Irvine invited the Claimant to a meeting to discuss the flexible working proposal, but Mrs Hassan said that she could not attend due to childcare and "I will deal with this when I come back to work". Of course, that was not possible because an agreement had to be reached before the Claimant returned, not least because she wanted to work only two days a week and to start at 9am and not 8am.

63. Ms Irvine agreed to try to deal with this application by email and telephone. We consider that that was beyond the call for Ms Irvine as it is much more difficult to provide a nuanced and personalised outcome in that way. We

also consider that, taking appropriate advice along the way, Ms Irvine went to huge lengths to try to accommodate the Claimant.

64. She discussed the request with Ms Mutch and they both looked at options to support her, but realised that although they could accommodate the reduction from five days to two days by using the funding from the three days to recruit another post, they had a problem with allowing the Claimant to start after 8am. This was because in theatre reception her role was critical at the start of the day, which was at 8am. It was one of the busiest times of day and a prompt start was crucial to the smooth running of the operating theatre that day. Also, not only was it not possible to recruit somebody to cover the post for one hour a day, the claimant did not want to work a short day so the Respondent would have to have found extra money to pay for that extra hour.

65. The Claimant's position is that if she could not be accommodated in her current role, she could have been sent elsewhere. We were concerned to see that the Claimant believed that her circumstances required priority and that she had an absolute right to be accommodated. She should have understood that the constraints of the service required careful exploration by Ms Irvine who could not simply say yes rather and had to balance the her needs with the needs of the patients and indeed her colleagues.

66. Ms Irvine did several things. First, she approached somebody else in the team, whose name is "AA", also Black African, who works a 9-5 day which would have been perfect for the Claimant, but she said that due to her own childcare needs she was unable to swap. Therefore unfortunately that idea could not be progressed. It was a good thing that Ms Irvine had been happy to explore.

67. Ms Irvine then ran the problem past HR and they were not able to give her any ideas other than the ones she was already exploring. Thirdly, she researched the possibility of jobs elsewhere and in fact a redeployment opportunity was available in another team, but the Claimant did not apply for this and seems to have found it offensive that Ms Irvine should suggest it. Again, this illustrates that the Claimant fundamentally misunderstood that the process was to try to accommodate her subject to the needs of the service. The Claimant was also offended that the Respondent considered cost at this time, but this was due to her misconception that the Respondent should not be mindful of its budget as well as of her needs. Our finding is that Ms Irvine was very thorough and careful and would have accommodated the Claimant if she could have done.

68. Ms Irvine is criticised for the way she dealt with the process, but given that she had to do it by email and telephone she worked effectively and delivered her decision in accordance with the policy and within a reasonable timeframe. There was no sign of a motive to discriminate against the Claimant because she had taken maternity leave and to punish her, as is suggested, by not being helpful about her flexible working application.

69. The Claimant was a valuable member of the team, she had issues around sickness absence but her performance was considered to be good when she was there. Also, Ms Irvine had not met her and so had no

preconceptions and she was looking forward to having a permanent member of the team back at work because several temps were finishing their contracts at that time and staff were in short supply.

70. The Claimant complains about the intrusive nature of the questions asked. This is partly based upon her misconception about Ms Irvine's role which was to look at how to accommodate the Claimant which of course required her knowing more about her personal situation. We do not find that what was asked was intrusive as opposed to being necessary to do her best for the Claimant. Ms Irvine discovered some important information, for example that there was a possibility of the Claimant's husband being able to care for the child on the two days that she worked, thus allowing greater flexibility in her timings.

71. On 4 July, the Claimant was sent the outcome saying that she could work for two days but had to start at 8am due to the needs of the service.

The flexible working appeal: issues 22 and 23

72. The Claimant accuses the respondent of delaying the appeal process, but the delay actually lies with her in that she delayed for nine days before appealing.

73. She also complains that her contract was being changed permanently although that was not part of the appeal. The policy set out that the change would be permanent and this accords with the Flexible Working Regulations as it is a statutory provision. The Claimant said she did not request a permanent change but her flexible working application shows that she did not agree to a trial period and she did not ask Ms Irvine verbally for a temporary change. She was unhappy that the change meant that the Respondent was going to reduce her salary and full time benefits. It seems that the Claimant felt that as an "act of humanity" the Respondent should have kept her benefits and salary as they were, which was of course not feasible, particularly in a cash strapped National Health Service.

74. The flexible working appeal, which was submitted on 15 July, was considered by Ms Sabey, who was Ms Irvine's manager and so appropriate to hear the appeal. Again, the Claimant accuses Ms Sabey of lack of empathy. Ms Sabey is also accused of delay, but she delivered the appeal outcome within seven days which was well within the policy objective of ten. By this time the Claimant was due back to work in the next few days, she says that the decision arrived at the close of business on Friday 22 but in fact it was just after 9am which was very close to the return to work date, but not the Respondent's fault.

75. Ms Sabey upheld Ms Irvine's decision but after thinking about it some more and taking advice from HR, she offered the Claimant the chance to settle into her role post maternity leave, by taking annual leave of one hour a day for eight weeks. This meant that she could come to work at 9am for a period while she settled in.

76. The Claimant says that this was very unfair and that it is obvious that if she *could* start work at 9am whilst being forced to use her annual leave, that

proves that she could have started work at 9am in the long term. Firstly, if she started work at 9am she would have lost an hour's pay and taking annual leave was a way of being paid the same. Secondly, and more importantly, the Claimant does not recognise that the Respondent had to make extreme efforts to cover that crucial period from 8am to 9am. The importance of that start time is not diminished at all but in order to help Ms Sabey thought that over a limited period managers, including herself, could sit at the reception desk and provide cover and they could also use some temps.

77. When Ms Sabey was asked why the employer did not just let the Claimant come in late but pay her the same, rather than require her to take holiday, Ms Sabey was incredulous and we cannot blame her for that. Of course other staff would have found that very unacceptable given their own domestic needs.

78. We were impressed that as well as talking to HR, Ms Sabey had talked to her line manager, Ms Mutch, and they had all worked together to try to offer the Claimant something that would help ease her way back into work. In fact, due to a combination of the Respondent providing cover and the Claimant taking holiday, she never did start at 8am. Instead she was transferred in October on temporary secondment to role that allowed her to start at 9am. We see no sign that Ms Sabey or Ms Irvine were punitive or racist in coming to the conclusions that they did, indeed we found them to have been very helpful.

Grievance and protected act

79. Once the appeal outcome was received there was obviously no further line of appeal and the Claimant started an employee-led grievance against Ms Sabey instead. This was the first time that the Claimant explicitly raised a concern that she was being discriminated against and we find it to have been a protected act for the purposes of a victimisation claim. A range of complaints were made, including about the flexible working decision and this was going to be investigated by Ms Pettigrew from HR.

Return to work after maternity leave, 25 July, issue 30

80. The Claimant returned to work on 25 July and having tried a nursery she found that this did not work for her son so she and her husband have been caring for him between them since then.

81. In August 2016, unknown to the Claimant, Mr Leira contacted the Respondent about his concerns about his wife's working arrangements. Mr Leira required action to remove the Claimant from a "hostile and degrading environment". Ms O'Hara picked up this communication from Mr Leira, but she did not know whether the Claimant had authorised him to act and in fact he said that he was making this contact without his wife's knowledge.

82. It was not clarified until October that the Claimant was content for Mr Leira to get involved. We consider it to be perfectly reasonable that the Claimant's managers and HR could not act on Mr Leira's request without

the Claimant's knowledge and consent because of course she was the employee.

Training on return to work, issue 25

83. On 5 August, having returned from maternity leave of a year, the Claimant had to do some training to catch up with things that had changed. She was put at a computer in Ms Irvine's office and complains that she was constantly monitored and that Ms Irvine was sitting behind her observing her. Firstly, we do not see anything inherently wrong with the Claimant's manager observing her as she did some training, but as a matter of fact Ms Irvine was not watching the Claimant because although she sat in that office her desk did not face the claimant. The Claimant eventually agreed with this during cross examination. Also, Ms Irvine says that she checked her diary and found that she was out of the office for most of the afternoon in question; we have no reason to suspect that Ms Irvine is not telling us the truth. We cannot see why the Claimant complains; after a year away on maternity leave she should have been trained and Ms Irvine's office was a perfectly reasonable place for that to take place.

Annual leave, issue 25A

84. The Claimant says that in the early weeks of her return to work Ms Irvine forced her to take annual leave and on 8 August told her to go home to "sort stuff out". Ms Irvine agrees that she had misunderstood the rules around annual leave accrued during maternity leave and thought that the Claimant needed to stay off work to take the leave that she had accrued. When challenged by the Claimant (again demonstrating that the Claimant can challenge her managers), Ms Irvine checked with HR and discovered that that was wrong and immediately withdrew her instructions. In evidence, she denied that she would ever have taken the step of telling the Claimant to go home that day and thought that it would not have been possible to take a day's annual leave once the Claimant had actually arrived at work.

85. So, Ms Irvine made two mistakes, one in relation to the ML3 and the other in relation to her understanding of when the Claimant was to take her annual leave. Partly because she freely admitted her mistakes, we consider these to be innocent and not part of a pattern. We would not expect a manager in this technical error of maternity/ pregnancy leave to get it right all the time.

86. We also think that it is inherently unlikely that Ms Irvine, who was new to the team, was affected by a discriminatory trend, fashion or habit of the other managers. It would be surprising in the extreme if these managers, all of whom had had exposure to equal opportunities training, all of whom work with teams from a wide range of different backgrounds, shared the same discriminatory intent.

ET1

87. On 14 September 2016, the ET1 was issued. The number of issues are alleged to have arisen after that date and we are making findings even

though the Claimant has not applied for an amendment to include these in her claims. They had been identified in the agreed List of Issues.

Absence from work, issue 33

88. The Claimant says that Ms Irvine falsely accused her of taking unauthorised absence and started a formal process. Unfortunately, this is another example of the Claimant exaggerating the situation and departing rather worryingly from the documentary evidence. The evidence is that the Claimant had taken her son to the GP; of course she was worried and upset that he was unwell, but she failed to telephone Ms Irvine to tell her where she was. Ms Irvine telephoned her at 9.40am, so she had waited 40 minutes after her start time before she made the call. After talking to her Ms Irvine wrote the Claimant a letter recording that she accepted that she had not rung in because she had forgotten and that she was sorry that it had slipped her mind. Ms Irvine reminded her of how important it was to tell her managers where she was.

89. In her evidence, however, the Claimant said that Ms Irvine was making all this up, that she did not breach policy, did not admit to having done so at the time and had done everything that she needed to do. She also said that the policy was that she should ring in between 9am and 10am, so that Ms Irvine had jumped the gun.

90. Ms Irvine says that of course the staff member needs to ring in the hour before their shift begins rather than afterwards and we find that to be much more credible. It is also clear from Ms Irvine's letter that she was not starting a formal absence management process but simply warning the Claimant about the future consequences. Mr Leira rang the employer at this point to complain about the *threat* but not the commencement of formal action. We conclude that Ms Irvine's version of events, which is corroborated by the contemporaneous letter, is the one that is credible and it is disappointing that in her evidence the Claimant departed so dramatically from the more credible line.

91. On 21 October, the Claimant was redeployed to the role of Pathway Coordinator in a different building in a team called GI. This was due to the good offices of Ms O'Hara from HR, who said she worked really hard to support her when she felt she could not continue in the team because of the ongoing grievance. Ms O'Hara said that the Claimant had not in fact been pressing her for a transfer but that Mr Leira had asked for one and, having clarified the position with the Claimant, that is what she managed to organise.

92. Again, this was going beyond the call and that the Respondent behaved very reasonably in organising this move. The team in which the Claimant is actually employed continues to pay her salary and this was a temporary move while the grievance is continuing.

Contact with Ms Irvine, issue 34

93. The Claimant complains that despite her move she was forced to have some contact with her original manager, Ms Irvine. This appears to be

limited to a number of fairly anodyne administrative emails as actual permission to take holiday, for example, was dealt with by the new team. We find this level of contact to have been perfectly reasonable. However, because the Claimant objected to her original team even having control over the electronic holiday booking records, the Respondent again went the extra mile and removed even that from their control. Therefore, if there is any contact now it is extremely minimal. We find it extraordinary that the Respondent went to such lengths and actually question whether this was a proportionate use of resources as it would have been perfectly reasonable for the theatres and anaesthetics team to retain the electronic records.

Mr Leira's complaint to Ms O'Hara, issues 35 and 36

94. On 18 and 22 November Ms O'Hara had been contacted by Mr Leira and was concerned to check that the Claimant was content with her husband making representations to her employer on her behalf. She had an informal meeting with the Claimant who complains about this and says that a neutral third party or representative should have been present and that Ms O'Hara should not have questioned her about correspondence which she described as aggressive. We find firstly that there was no reason to doubt Ms O'Hara's perception that the contact by Mr Leira was aggressive, but secondly it was reasonable to check whether the Claimant was happy for her husband to be involved. It is an unusual thing for a husband to become involved to this extent and indeed at the Preliminary Hearing on 18 November, which I conducted, I also asked the Claimant to confirm that she was happy for her husband to represent her.

Contact by Ms Pettigrew, issue 37

95. The final issue is a complaint about repeated contact by Ms Pettigrew, asking about Mr Leira's complaint about Ms O'Hara contacting his wife. We find that Ms Pettigrew's contact was not repeated; rather it was necessary because there had been complaint about Ms O'Hara's behaviour. When the Claimant said that she did not want to say anything about her husband's complaint, Ms Pettigrew then got on with the matter without input from her which was the only thing she could do, and the opposite of repeated contact.

96. To finish the chronology, on 1 December 2016 Ms Pettigrew wrote to the Claimant confirming the outcome of her investigation into the complaint, about Ms O'Hara. She had investigated but referred her findings to Lee Brown, Head of Workforce, who made the decision that there was no case to answer. We note in passing that Ms Pettigrew would probably describe herself as black.

97. Ms Pettigrew's view was that it would have had a serious impact on the Claimant if the contact with Mr Leira had been unauthorised by her and she makes the point that the Trust does not tolerate discriminatory behaviour. Ms Pettigrew is also investigating the employee led grievance. She completed her report on 24 November 2016 and the grievance investigation was completed in February 2017 and is still under appeal. Ms Pettigrew's conclusion was that she saw no pattern of discriminatory or victimising

behaviour. This was partly because, due to the great number of different managers who were accused and who had been involved over a period of time, it would be very unlikely that they were all tarnished with a discriminatory or victimising intent.

Conclusions

98. The conclusions can be brief because the findings of fact have dealt, we believe, with all of the issues. As will be clear, we have not found any detriments and therefore no race or maternity discrimination or victimisation. We have a few overarching observations however, not least because it is important to stand back from the considerable detail with which we have grappled and look at the case as a whole.

99. This was a troubling case for us as we recall the phrase that the Claimant used in her statement about Ms Sabey that she found her behaviour to be "shocking and devious, depraved and intentional". Those comments have in fact been applied by the Claimant's side to all the individuals involved in this saga and, unfortunately, she continued to make these arguments in the face of what we found to be compelling contrary evidence. Her characterisation of the Respondent's witnesses' conduct is far from ours and we regret to say that we think that the Claimant has been labouring under a series of serious misapprehensions.

100. In terms of the claim, we found no specific evidence of race or maternity discrimination. As the law says, in order for the burden of proof to pass there must be more than a difference in characteristic and a difference in treatment. We have not found any unfavourable/ detrimental treatment, but even if there was some we have not found any evidence that the conduct of the individuals involved was motivated by discriminatory intent (conscious or subconscious) or by victimisation.

101. The Claimant has made only two points as to why we should find that there was discriminatory intent as opposed to unfair behaviour. The first is that the Respondents were responding to stereotypes of black women being meek and of black men being aggressive, or at times black woman being aggressive because we did experience the Claimant losing her temper during this hearing on a couple of occasions. We have no reason to doubt the Respondent's witnesses' personal perception, have found that they had good reasons for their decisions and so there is no room to conclude that they were responding to stereotypes.

102. Secondly, it has been argued that the managers in the Claimant's team were white and so were prone to discrimination because they had no lived experience of the Claimant's race. It is the case that the Claimant's managers were white and a number of the members of the Claimant's team were black but we note that there has been no evidence from the Claimant of white admin team members on her grade being treated better than her. It is simply not enough to say that there was a division in the team between white managers and black staff. It is also very important to realise that whilst there may be discriminatory undertones in any organisation we have to look at the specifics in order to decide whether these particular managers

should be accused of this heinous thing, discrimination, towards this claimant.

103. The sad conclusion that we have come to is that the Claimant has not understood that even bad treatment may not be discrimination unless a causal link is established and she has misconceived ideas about how her managers should deal with:-

(a) Sickness absence;
(b) Pregnancy and maternity leave; and
(c) Return to work.

Even to the extent, it seems, of thinking that it would be inhumane not to pay her full time when working part time.

104. We have found the Respondent's approach to be reasonable and necessary. We found the mistakes to be innocent and unsurprising and there is no scope for an inference to be drawn that there was discriminatory behaviour.

105. We have also found the Claimant's credibility to be fatally flawed; we have given some examples in our findings of fact. We have also pointed out that in order to win her case, citing many issues spread over a large number of managers and a large number of years, she would have to have shown that every manager involved was infected by the discriminatory intent, or a desire to victimise.

106. We would like to reassure the Respondent's witnesses that their behaviour was reasonable and we do not want them to leave here with their confidence undermined. We would like to ask the Claimant, and we are sorry that she is not here to hear this because she is outside the Tribunal room with her son, to think hard about what is reasonable for her to demand from her managers and also what is reasonable for her managers to ask of her.

Time limits

107. In terms of the jurisdictional point, we find that events which occurred before, and did not continue into, the third week of May 2016 were out of time. Although we have not been specifically asked to do so, it would be open to us to conclude that it was just and equitable to extend the time limit, but we do not think that it would be just and equitable in the circumstances.

108. We set out now some of the reasons why an extension would not be just and equitable. The Claimant has established time and again that she was capable of complaining about her managers at the time that the complaint arose, and indeed she did so. She also filed an ET1 during the time that she was working for the employer and in fact still in the theatres and anaesthetics team, so she was perfectly capable of doing that, but did not do so before September 2016. We also know that her husband, whose email address is "Legal" and "Counsel", is a trained and qualified lawyer. Whilst not being an employment lawyer, he was in a position to navigate her

through the legal process and was clearly deeply involved because of his interventions during the years so she had the resources she needed.

Procedure

109. In terms of procedure, we make a few short points. The Claimant has complained of a failure to comply with a freedom of information request, but freedom of information is not directly relevant to our processes and the Respondents is firmly saying that it is not in breach.

110. The Claimant has complained that disclosure was inadequate but we disagree. We have 4,600 pages of disclosure in relation to this matter, the Respondent knows its duty to disclose and is represented by a reputable and experienced firm of solicitors and therefore our starting point must be that disclosure has been adequate. When points have been raised during the course of the hearing, the Respondent's witness have explained that there is no documentary evidence because matters were done verbally which is perfectly understandable.

111. Had we identified important gaps in the evidence and where we thought documents probably did exist we would have acted, but we did not do that because that question did not arise.

112. The Claimant has also argued that witnesses should have been called who were not called; of course, it is the Respondent's choice who it calls and the Claimant did not apply for any witness orders. The witnesses who were called where those who were directly involved with the issues as understood by the Respondent and so it does not surprise us that other witnesses were not called.

113. In terms of the pleadings, unfortunately there has been a pattern of Mr Leira saying that he has not been copied in when he should have been. The amended grounds of resistance were referred to in the order of the 18th November and they were served with the Respondent's disclosure on the date in that order, 20 February. They were also with the bundle and the Claimant's side had been alerted to them.

114. The List of Issues was provided on 10 May, which was an extremely helpful document and we are very grateful to Mr Cordrey for preparing it. It was agreed by the Claimant's side during the first couple of days of the hearing and amended at the Claimant's request by Mr Cordrey, so the Claimant was aware of the issues and indeed agreed with them.

115. It was unfortunate today, when the closing submissions were provided to Mr Leira as ordered at 10am, he came to us and told us that he had only received them at about 10.20am, with only about 10 minutes to go before the hearing began. It was clear from his reaction when challenged that this was not the case and it is a shame that he made that complaint. When we nonetheless offered him more time to consider the written submissions he said that he wished to continue.

116. We did not allow the Claimant to re-examine witnesses whose evidence had concluded the day before, but we did allow on one occasion Mr Leira to

ask questions after the evidence had concluded when he had forgotten to raise a particular issue with a particular witness.

Final points

117. On 18 November, I specified to the Claimant the types of discrimination that she might wish to argue and those were translated in her amended particulars of claim and the list of issues. She did not argue indirect discrimination. Had indirect discrimination been argued, we would have found that the Respondent's decision was justified as described above.

118. Finally, we think we have dealt with all of the allegations that are in the List of Issues. Some of them fail simply because they are extremely vague and it is not been possible to come to more detailed conclusions about them. Some of them fail because the Claimant's credibility has unfortunately been undermined and we have preferred the evidence of the Respondent's witnesses which is often supported by documentary evidence whilst the Claimant's evidence was not. We have been able to discuss most of the issues in a great deal of detail, but if there are issues that have not been specifically dealt with in the findings of fact we would find in favour of the Respondent and against the Claimant for all the reasons given above.

Employment Judge Wade
27June 2017

SCHEDULE

LIST OF ISSUES AND ALLEGED DETRIMENTS

LIST OF ISSUES

1. What is the protected act and when did it take place?
2. What acts/omissions of R does C allege are detriments (see List of Detriments below)?
3. Did the alleged acts/omissions take place?
4. What is the reason for any such act/omissions by R?
5. Do the alleged acts/omissions amount to unlawful discrimination
    a. on grounds of:

i. Race?

ii. Maternity leave?

b. By victimisation of C?

6. Should any of C's complaints be struck out and/or dismissed for lack of jurisdiction?

LIST OF ALLEGED DETRIMENTS

Race discrimination

Olivia Nicholson

7. R refused to investigate a complaint against Olivia Nicholson, C's line manager prior to C's secondment in April 2013 (**[184] para 10 - 11**).

Obstructing C's career development

8. C's "development was obstructed" after her return from secondment in 2014 (**[184] para 13**):

   a. Insistence that C was "returned to the same team" where she had made a complaint about Olivia Nicholson and was "subjected to further abuse" (**[185] para 20**);

   b. NS did not give C a "proper, structured and specified job description or role" from her return from secondment in July 2014 to her commencement of maternity leave in July 2015 (**[185] para 17 & [184] para 16**);

   c. NS told C to report to junior agency staff (**[185] para 18 & 19 & [189] para 52**);

   d. C was never promoted (**[189] para 53**);

   e. Two job offers were reversed after C was given bad references (**[185] para 21]**);

   f. C was not informed of a new Admin Manager Role or Service Manager Role during maternity leave (**[184] para 14**); and

   g. A grant to study the Prince 2 project management training course was withdrawn on return from secondment in July 2014 / C was denied the training course (**[184] para 15** & **[189] para 54**). *ALSO ALLEGED AS VICTIMISATION (**[193] para 80**).*

Attendance Management

9. From July 2014 NS threatened C with disciplinary action and called meetings with her regarding her attendance levels (**[185] para 22]**).

10. In April 2015 NS threatened that C was going to face a disciplinary hearing about her attendance and in May 2015 repeatedly invited her to a disciplinary hearing (**[186] para 29, 30 & 34]**). *ALSO ALLEGED AS VICTIMISATION (**[193] para 81**) AND MATERNITY LEAVE DISCRIMINATION (**[190] para 64**).*

Monitoring by NS

11. NS monitored C:

    a. From July 2014 for several months NS "constantly monitored" C (**[185] para 22**);

    b. NS subjected C to "monitoring in relation to attendance" around the beginning of 2015 to April 2015, when the absences were pregnancy related, while C was in the early stages of pregnancy (**[186] para 27]**);

    c. In April 2015 NS sent Richard Corbill to "check up" on C and her whereabouts (**[187] para 36**); and

    d. C was "spied on to see" whether she was at lunch" (**[189] para 61**).

Inappropriate conduct by NS

12. NS insisted that C provide original GP certificates rather than scanned copies (**[187] para 35 & [page 189] para 57**).

13. From July 2014 for several months NS subjected C to "work related abuse" (**[185] para 22**).

14. NS repeatedly contacted C, despite her being signed of sick while grieving, about work issues during a period where C was grieving, in November 2014, following a miscarriage ((**[185] para 25, [186] para 26 & [188] para 49**). *ALSO ALLEGED AS VICTIMISATION (**[192] para 78**).*

15. NS subjected C to "constant criticism" around the beginning of 2015 to April 2015, while C was in the early stages of pregnancy (**[186] para 27]**).

16. In May 2015 NS refused C's annual leave request, contrary to policy (**[186] para 31 & [189] para 58**).

17. In June 2015 NS refused C's annual leave and start of maternity leave request (**[186] para 32 & [187] para 40**). She was required to accrue annual leave before she took it, contrary to policy (**[189] para 59**).

18. Prior to commencing maternity leave in July 2015 C, unusually and disproportionately, was "constantly being moved from place to place for no good reason" (**[187] para 37**).

Manual handling and standing

19. Around February 2015 NS included as part of C's duties, to undertake lifting of notes and extended hours of standing, contrary to medical advice (**[186] para 28**) *ALSO PURSUED AS MATERNITY LEAVE DISCRIMINATION (**[190] para 67**).*

Flexible working

20. C's flexible working application to begin work at 9am rather than 8am in order to facilitate breastfeeding was rejected (**[189] para 55 [188] para 51**) *ALSO PURSUED AS MATERNITY LEAVE DISCRIMINATION (**[190] para 69**).*

21. In August 2016 NS told C to use her annual leave to "accommodate my domestic arrangements" by which NS meant that C should use annual leave to start work at 9am (an hour later than usual), for a period of 8 weeks, to facilitate breastfeeding (**[187] para 41**). This was repeated by MI in October 2016 (**[190] para 70 & [189] para 56 & [187] para 42-43**). *ALSO PURSUED AS MATERNITY LEAVE DISCRIMINATION (**[191] para 72 & [190] para 70]**) SEX DISCRIMINATION (**[191] para 73**) AND VICTIMISATION (**[193] para 82-84**).*

22. *ALLEGED AS MATERNITY LEAVE DISCRIMINATION ONLY: MI and NS delayed responding to a request for flexi time or part time until on or around Friday 22nd July 2016 before C returned on the Monday (**[191] para 71**).*

23. *ALLEGED AS MATERNITY LEAVE DISCRIMINATION ONLY: MI and NS stated that they would unilaterally change C's contract and hours, without any mutual discussion, following her return from maternity leave (**[190] para 68**).*

Inappropriate conduct by MI

24. In June 2016 MI subjected C to "intrusive questions about my personal life" in a phone call (**[187] para 38 & [189] para 60**).

25. On 5 August 2016 MI subjected C to unfair monitoring by making C work in her office and sitting behind her (**[187] para 39**).

25A MI forced C to go on annual leave to "sort stuff out" on 8th August 2016 (**[187] para 42]**).

Inappropriate conduct by MM

26. C was "forced to discuss intimate female pregnancy related medical issues in an office with other strangers and men" by MM during her pregnancy risk assessment (**[188] para 50]**).

27. *ALLEGED AS MATERNITY LEAVE DISCRIMINATION ONLY: In February 2015 MM's pregnancy risk assessment for C involved discussion of sensitive topics in the presence of Damien Kamming and Nula McHugh (**[190] para 65 & 66**).*

Other

28. C was not shown empathy or provided with counselling after her miscarriage (**[188] para 49]**).

29. No senior managers intervened to prevent the treatment C received from NS (**[185] para 22]**).

30. *ALLEGED AS VICTIMISATION ONLY: "Line management failed or did not take remedial action throughout my pregnancy in 2015 until the time I left" and no action was taken to protect C's wellbeing until her husband's intervention in August 2016 (**[198] para 106 & 108**).*

31. *ALLEGED AS VICTIMISATION ONLY: "Failure inaction or omission" by R when C's husband called MM and informed her of NS's call to C shortly after her miscarriage in November 2014 (**[198] para 107**).*

Victimisation

32. R did not process C’s ML3a on 22 May 2016 (**[193] para 86**).

33. In October 2016, in a meeting and by letter, MI mischaracterised the events and started a formal process in relation to missing work without notifying R (**[194] para 88, 89 & 90**).

34. LO and Roopa insisted (see LO’s e-mail of 4 November 2016) that previous line management should be involved in administration of her leave / absences (**[194] para 92, 93 & 94**).

35. On 18 & 22 November 2016 LP and LO contacted C without C having any neutral third party or representative present (**[196] para 99**).

36. On 18 November 2016 LO questioned C about correspondence from C’s husband which LO described as aggressive (**[197] para 101 & 102**).

37. LP repeatedly contacted C to ask about C’s husband’s complaint concerning LO’s "aggressive labelling" (**[197] para 104**).

38. Were the following protected acts:

    a. The employee led complaint on 27 July 2016;

    b. The employee led complaint on 22 March 2013;

    c. The complaint at pages [1005-1009].