EMPLOYMENT TRIBUNALS

Claimant:	**Mrs Danielle Micallef**
Respondent:	**York and Scarborough Teaching Hospitals NHS Foundation Trust**
Heard at:	**Newcastle Employment Tribunal (via CVP)**
On:	**7-11 October 2024 (14 October 2024 in chambers)**
Before:	**Employment Judge L Robertson** **Mr G Gallagher** **Mr P de Chamont-Rambert**
Representation	
Claimant:	**Mr N Toms, counsel**
Respondent:	**Miss N Twine, counsel**

RESERVED JUDGMENT

1. The claimant's complaints that she was subjected to detriments because she took maternity leave pursuant to section 47C of the Employment Rights Act 1996 and regulation 19(2)(d) of the Maternity and Parental Leave etc Regulations 1999 are not well-founded and are dismissed.

2. The claimant's complaints of maternity discrimination pursuant to section 18 Equality Act 2010 are not well-founded and are dismissed.

REASONS

THE CLAIMANT'S CLAIMS

1. By a claim form dated 7 February 2024, the claimant, Mrs Micallef, brought the following claims:

   1.1. That she had been subjected to detriments because she took maternity leave pursuant to section 47C of the Employment Rights Act 1996 and regulation 19(2)(d) of the Maternity and Parental Leave etc Regulations 1999;

1.2. That she had been discriminated against pursuant to section 18 Equality Act 2010 because she had exercised her right to take maternity leave.

THE HEARING

2. The claimant was represented by Mr Toms at the hearing. The respondent was represented by Miss Twine.

3. The claimant gave evidence on her own behalf. She also submitted witness statements for two additional witnesses:

   3.1. Danielle Heselton (an employee of the respondent); and

   3.2. Benjamin Micallef (the claimant's husband).

4. The respondent called four witnesses:

   4.1. Victoria Clark (Community Midwives Team Leader);

   4.2. Gillian Locking (Outpatient Maternity Matron; Community Team Leader at the time of her involvement in the matters relating to this case);

   4.3. Alison Chorlton (Lead Nurse for Sexual Health);

   4.4. Lucy Brown (Director of Communications).

5. All of the above witnesses except Mr Micallef gave oral evidence.

6. The parties had prepared an agreed bundle of 413 pages. During the hearing, the respondent produced a spreadsheet showing the claimant's expense claims between November 2021 and October 2024. Given its relevance to the issues, this was admitted into evidence. In the interests of proportionality, the parties agreed facts based on this document and this meant that it was not necessary to review this document in detail.

7. There was a List of Relevant Persons and a Chronology. Mr Toms had also prepared an Opening Note.

8. The issues were agreed as follows:

   8.1. Time limits

   8.1.1. Has the Claimant presented her claim out of time in respect of any matter which occurred prior to 2 August 2023 or were these acts part of a continuous course of conduct?

   8.1.2. Discrimination: If so, would it be just and equitable to extend the time for presentation of the claim?

   8.1.3. Employment Rights Act Claim: If so, was it was "not reasonably practicable" for the complaint to be presented in time, and if so, was the claim was presented "within such further period as the tribunal considers reasonable"?

8.2. Detriment complaints pursuant to section 47C Employment Rights Act 1996 ("ERA"); regulation 19(2)(d) Maternity and Parental Leave Regulations 1999 ("MAPLE")

8.2.1. The Claimant alleges that the Respondent has subjected her to detriment because she has exercised her right to take maternity leave. In relation to this did the following occur?

8.2.1.1. Did the Respondent recruit a permanent employee to cover the Claimant's maternity leave leading to changes to her role (in respect of her caseload being reduced) and her unit at Whitby being over established?

8.2.1.2. Did the Respondent inform the Claimant during her maternity leave that she would be subject to a consultation regarding workloads on return?

8.2.1.3. Did the Claimant return to a reduced caseload?

8.2.1.4. Was the Claimant, upon her return to work, required to cover other bases outside of Whitby?

8.2.1.5. Did the Respondent deliberately fail to remedy this by its decisions on 14 July 2023, 1 August 2023, 23 October 2023, and 17 January 2024?

8.2.2. If so, did any of the above constitute a detriment for the Claimant?

8.2.3. If so, was the reason why the relevant detriment occurred because the Claimant had exercised her right to take maternity leave?

9. *Unfavourable Treatment pursuant to 18(4) Equality Act 2010 ("EQA"): Maternity Discrimination*

9.1. The Claimant alleges that the Respondent has treated her unfavourably because she has exercised her right to take maternity leave. In relation to this did the following occur?

9.1.1. Did the Respondent recruit a permanent employee to cover the Claimant's maternity leave, leading to changes to her role (in respect of her caseload being reduced) and her unit at Whitby being over established?

9.1.2. Did the Respondent inform the Claimant during her maternity leave that she would be subject to a consultation regarding workloads on return?

9.1.3. Did the Claimant return to a reduced caseload?

9.1.4. Was the Claimant upon her return to work required to cover other bases outside of Whitby?

9.1.5. Did the Respondent deliberately fail to remedy this by its decisions on 14 July 2023, 1 August 2023, 23 October 2023, and 17 January 2024?

9.2. If so, did the above amount to unfavourable treatment?

9.3. If so, was the reason why the relevant unfavourable treatment occurred because the Claimant had exercised her right to take maternity leave.

10. *Remedy*

10.1. The Claimant seeks compensation and:

10.1.1. a declaration that the Respondent caused her detriment because she was absent on maternity leave.

10.1.2. a declaration that the Respondent unlawfully discriminated against her because she exercised her right to ordinary and additional maternity leave.

10.1.3. An appropriate recommendation that the Respondent takes such action as the tribunal considers practicable to alleviate the effects of the discrimination on the Claimant.

11. Mr Toms confirmed that, for the purposes of the section 47C detriment claims, the claimant was arguing that the matters complained about could be detriments because they amounted to a breach of regulation 18 MAPLE or alternatively could be seen as detriments in their own right. Mr Toms also confirmed that the claimant was not seeking to pursue a freestanding claim pursuant to regulation 18 MAPLE (this remained unclear following the case management hearing before Ms Jeram) and accepted that there was no right to bring such a claim.

12. We heard issues of liability. At the end of the hearing, there was insufficient time for deliberations. Judgment was therefore reserved.

FINDINGS OF FACT

13. The claimant's employment with the respondent began on 7 September 2020 as a Band 6 Integrated Midwife. Her employment is continuing.

14. She was employed on a fixed term basis for up to 12 months, working 30 hours per week and her base being at Scarborough. She was employed pursuant to a contract entitled 'Statement of Principal Terms and Conditions of Employment' which remains in place.

15. Over the period since then, the respondent has operated two different models of midwifery care – the 'Continuity of Care' model and the traditional model. Between 2020 and around April 2022, the respondent operated the 'Continuity of Care' ("CoC") model. The CoC model required 12 hour shifts in hospital and, as midwives had longer shifts, they had fewer cases – recommended to be 36 per full time midwife in each year. This model led to each midwife holding a smaller caseload in comparison with the traditional model. It was common ground that this model involved the claimant working at Scarborough hospital.

We heard unchallenged evidence from Victoria Clark that the claimant was not, during this time, required to work in the community at Scarborough except for on call work which could be anywhere in the East Coast midwifery team's geographical area (as to which, see below).

16. In or around April 2022, the respondent reverted to the traditional model. The traditional model involves community midwives carrying out antenatal and postnatal clinics, home visits and no hospital work. This model enables midwives to carry a larger caseload. The respondent uses 'Birthrate Plus' to work out the recommended average annual caseload for each midwife: this is 97 cases for a full time midwife. This works out as 78 cases for a 30 hour working week and 58 cases for a 22.5 hour working week. Cases fluctuate over the course of a year.

17. Around the time that the respondent was reverting to the traditional model, Debbie Scott (who appeared to have been the community matron at the time) asked midwives for their working preferences. The claimant responded that she wanted to remain at Whitby. This was confirmed. This meant that, in practical terms, the claimant's allocated base was Whitby, and Whitby was her base for travel. Following this change in model, the claimant carried out the duties of a community midwife based in Whitby – doing antenatal and postnatal clinics and home-based visits – and had a Whitby caseload.

18. The claimant works within the East Coast Midwifery service (which covers Whitby, Scarborough, Malton and Bridlington).

19. The claimant's contract states that:

20. *"Your normal place of work will be any of the designated locations of the Trust where services are provided. You may be required to undertake your duties at or from any other premises owned by or used by the Trust. If you are requested to undertake duties at an alternative site on a regular basis, this will be after consultation with yourself ad with due consideration on individual circumstances."*

21. Community midwives do not have a permanent base. The claimant's agreement was not needed if her allocated base (Whitby) were to change to another location within the Trust. Before the claimant's allocated base could be changed, however, "appropriate consultation and discussion," with the claimant would have been needed. This was consistent with what happened in practice – when there was a need for someone from the Whitby team to take on a regular clinic or work outside of Whitby, everyone in the team was asked and consulted.

22. However, employees could be required to work, on an ad hoc basis, at another site within the East Coast Midwifery service without the need for consultation. The claimant accepted that occasionally there would be a need to work outside the Whitby area and she did that in practice, including before her maternity leave. However, it appears from the claimant's expense claims that, between April 2022 and start of her maternity leave in October 2022, she worked almost exclusively in the Whitby area and appeared only to have travelled to the Scarborough area once in that period. We note, however, that if the claimant had travelled using the work car, that would not appear in her expense claims

and so it is possible that she worked additional shifts outside Whitby on an ad hoc basis.

23. As to midwives' caseloads, we accept Victoria Clark's evidence that the respondent's records of midwives' caseload numbers are not completely accurate and consistent; indeed, there was significant dispute between the parties. The inconsistency is partly due to some figures being based on bookings (that is, the number of women *booked in* with the midwife in question at the start of their pregnancy) and other figures being based on deliveries (that is, the number of women who have *delivered* their baby). As such, we have made findings in relation to caseload numbers as accurately as we could, on the information before us.

24. During 2021, we find that the claimant's caseload was around 47; we prefer the respondent's figures in this regard. This is a total annual figure, and the actual caseload at any one time fluctuated over the course of the year depending on bookings and deliveries of babies. At the time, the respondent was operating the CoC model of care which led to lower caseloads for each midwife.

25. The claimant was due to start her maternity leave in October 2022. Prior to the claimant's maternity leave, there were three community midwives in the Whitby team – the claimant, Caroline and Lou.

26. On 31 August 2022, Victoria Hardcastle (Community Midwives Team Leader at the time) emailed an invitation for expressions of interest for a full time post doing community hours in Whitby as a midwife, working alongside two other part time midwives. The email did not specify that the post was for maternity cover only.

27. The following day, the claimant queried the fact that the email did not refer to the post being maternity cover and asked, "please can I just check that this position is not replacing me but is an addition to our Whitby team/a stand in for the time whilst I am going to be off?"

28. Victoria Hardcastle responded the same day. Her email explained that she had not mentioned it being maternity leave cover because she had kept the claimant's pregnancy news confidential and the email had been sent to everyone on the Scarborough site – and therefore implicitly accepts that the post is maternity cover. Victoria Hardcastle emphasised in her response that, as with any maternity leave, the claimant would always be guaranteed to return to post but this unfortunately never guaranteed a return to the exact post she had left. The claimant took this as the confirmation she needed.

29. We accept the persuasive evidence of Gill Locking (Community Midwives Team Leader at the time of the interviews for the post) that the failure to specifically refer to the post as being a temporary, maternity cover post was an error. This is supported by the respondent's position in the grievance process.

30. The respondent received three expressions of interest.

31. One expression of interest came from JC, a midwife in the East Coast midwifery team working in Scarborough at the time. In her email, she said that she had wanted to be in Whitby for several years. She continued to say that she would really love the opportunity of not travelling from Whitby (where she lived) to

Scarborough, "for a while." It is implicit that she recognised that this was a maternity cover post at the time.

32. Another expression of interest came from Danielle Heselton. She too recognised that this was a maternity leave cover post, as she made reference to the post fitting in with the timescale for her forthcoming surgery.

33. A third candidate expressed interest, but withdrew from the process.

34. JC and Danielle Heselton were interviewed for the post. Interviews were held by Gemma Flood (HR Business Partner) and Gill Locking on 23 September 2022. The same questions were asked of both candidates and their answers were scored. Danielle Heselton was also asked how her work as a private midwife would affect her ability to work in this post. Although this specific question is not in the interview notes, we find this to be a legitimate question given that this was advertised as a full time post. We are satisfied that there was a fair process. JC scored higher than Danielle Heselton and was the successful candidate. Danielle Heselton accepted in her oral evidence that she does not interview well.

35. The same day, Gill Locking called JC as the successful candidate. During their discussion, they discussed that this was a full time post, with 30 hours each week to be worked in Whitby and the remaining 7.5 hours to be worked in Scarborough. We accept the evidence of the claimant and Gill Locking that JC was informed before she started in the post that it was a year's secondment and the post would be reviewed on the claimant's return to work in a year's time. As such, she was not told at the time that this was to be a permanent post.

36. Gill Locking conceded that, at that point in time, she should have sent written correspondence to JC confirming that this was a maternity leave cover post but that she had not done so. This compounded the error from the original email inviting expressions of interest.

37. Notwithstanding that the respondent's written correspondence relating to the post did not state that it is a maternity cover post, we find that in reality the candidates and everyone involved in the interview process knew that this post was to cover the claimant's maternity leave. The midwives worked in a small team who knew about the claimant's pregnancy, Danielle Heselton is the claimant's best friend, and JC and Danielle Heselton discussed the possibility of sharing the claimant's hours with each other. JC's subsequent email to Victoria Hardcastle and Debbie Scott recognised this too.

38. The claimant's maternity leave started on 10 October 2022.

39. In 2022 (prior to the claimant's maternity leave), we prefer the respondent's records and find on balance that the claimant's actual total caseload was around 33. Until around April of that year (when the respondent moved back to the traditional model of care), the respondent operated the CoC model with associated lower caseloads. Also, as the claimant approached her maternity leave, she reduced her caseload: that was because the importance of continuity of care from pregnancy to delivery was recognised by herself and her colleagues at the time.

40. Allowing for adjustment for around 2.5 months of that year on maternity leave, the claimant's caseload would likely have been in the mid 40s for the full 2022 year. This is below the average for a midwife working 30 hours per week on the traditional model of 78 per year.

41. JC started carrying out the role around the time that the claimant's maternity leave began, although the exact date was not clear. Evidence as to whether JC took over all of the claimant's outstanding caseload or whether some of her caseload went to the other two midwives in the Whitby team was not before us.

42. JC works 37.5 hours each week. At the start of the claimant's maternity leave, she worked 30 hours in Whitby (covering the claimant's 30 hour week). Her remaining 7.5 hours was worked at a clinic which she retained in Scarborough throughout the claimant's maternity leave.

43. Victoria Clark took over the role of Community Midwives Team Leader in March 2023. Louise Howgate took over the role of Community Maternity Matron in April 2023.

44. On 31 May 2023, JC emailed Victoria Clark in relation to the post she was carrying out in Whitby. She said in her email that this was to be a permanent post due to Caroline and Lou retiring, leaving 30 hours available and the claimant's maternity leave. She said that she had been told by Victoria Hardcastle and Debbie Scott that this was a permanent job. She also said in her email that HR had confirmed this as, when someone returned from maternity leave, "they are not guaranteed the same caseload or area." We emphasise that these are our findings about what JC said in that email – and not findings that what she said is an accurate reflection of what she had been told.

45. Later the same day, JC emailed Victoria Clark, saying that she had spoken to Gemma Flood about how she stood with her base being Whitby and that Gemma Flood had strongly advised her to fill out a carer's passport form.

46. Following receipt of this or these emails, Victoria Clark looked for an HR2 form (the form used by the respondent to document variations to contracts, the same as or similar to that which appears at page 58-60 of the bundle). She did not find one and thought at the time that there was an error because the form had not been completed (although was later informed by HR and the Finance Manager that an HR2 form did not need to be completed in these circumstances). She looked in JC's file to see whether there were any other documents to support the position that this was a maternity cover post, but did not find anything. We accept Victoria Clark's evidence that she had asked Victoria Hardcastle whether the post was a maternity cover or a permanent post, and Victoria Hardcastle had confirmed that it was a maternity cover post. Victoria Clark took the view that she could not investigate further with Debbie Scott because she had left the respondent's employment. There is no evidence that JC was challenged about the contents of her email at the time.

47. Notwithstanding Victoria Clark's doubts about the veracity of JC's email and what the recruitment error actually was, following those emails and investigations, Victoria Clark, Louise Howgate and someone from the respondent's HR team agreed that, as there was no document entitling the respondent to require JC to return to working exclusively in Scarborough, JC

needed to continue working in the Whitby team until they got to the bottom of what had happened. Victoria Clark took the view that JC had just as much of a right to continue working in Whitby as the others in the team. Victoria Clark also took into account that, because of JC's health and her caring responsibilities, it was better for JC to work partly in Whitby and she gave persuasive evidence that she had to consider JC's wellbeing. Victoria Clark was also mindful that the respondent needed to operate a 7 day home-based community midwifery service, which included home births. There followed a discussion between Victoria Clark and Gavin Lawrence (HR Business Partner) about the next steps (although the date of this further discussion was unclear).

48. On 1 June 2023, Victoria Clark informed the claimant that the midwife covering her post wanted to stay in Whitby, and asked the claimant to consider whether she would be willing to work in Scarborough one day each week with her remaining 22.5 hours in Whitby. We accept Victoria Clark's evidence that this request was made because, at the time, the respondent was short staffed at Scarborough which was causing a real issue and was a detriment to the pregnant women there; flexibility was part of the role; and to try to ease the pressure on the service. The claimant accepted in oral evidence that this explanation was discussed with her during this conversation, and Victoria Clark's evidence is supported by the bank staff schedule which shows a need for bank shifts due to sickness and vacancies during this period.

49. We also accept Victoria Clark's evidence that she asked the claimant if she would like to do a clinic at Brook Square (in the Scarborough area) as she thought that the claimant might like to work with her best friend Danielle Heselton, who also worked at that surgery. The claimant was also assured by Victoria Clark around this time that, if she were to travel to a location outside of Whitby, the clinic times would be adjusted so that she would travel during her working hours, either in the respondent's car or by claiming expenses for travelling in her own car (this was the same before her maternity leave).

50. Victoria Clark also informed the claimant that she would initially need to 'float' – that is, to work where she was needed – this was to be a transitional arrangement as she built up her caseload.

51. There was a dispute about whether the claimant was told that she needed to transfer her base to Scarborough or that she would need to take on a regular Scarborough clinic on her return. We find on balance that she was not. We prefer Victoria Clark's cogent evidence in this regard (which is consistent with the other correspondence which indicates that this was part of a discussion with the claimant in which she was asked to consider this as a possibility) and her wishes not to do so were taken into account by the respondent. Further, during the formal grievance meeting, the claimant's preference not to deliver ante-natal classes or travel to Scarborough was noted, which supports our finding that she was not being required to do either.

52. As will be seen below, the claimant did work in Scarborough on an ad hoc basis after returning from maternity leave. Given her preference to work all of her hours in Whitby, we find that her work in Scarborough was generally done as a reluctant volunteer. This is supported by the claimant's evidence that she had never refused to go to Scarborough.

53. On 16 June 2023, Victoria Clark sent an email to the Whitby team informing them that the claimant would be returning from maternity leave in October. She informed the team that, from October, they would be over-staffed in Whitby. She asked for a volunteer to join the Scarborough team on a permanent basis or, alternatively, to allocate two clinics to the Whitby team's caseload – as JC was keen to continue the Castle clinic in Scarborough, Victoria Clark was looking for a volunteer to take on the Brook Square surgery. Victoria Clark asked the team to have a think about this and informed them that she would arrange 1:1 meetings with each member of the team to discuss this further.

54. We accept VC's cogent evidence that, in June 2023, JC agreed to take on another clinic in Scarborough – and this meant that she was working 15 clinical hours at Whitby, 2 clinic days at Scarborough and a protected day on Wednesday relating to the Scarborough clinic days.

55. On or around 10 July 2023, the claimant raised an informal grievance. She did so by emailing Louise Howgate. She raised concerns that Victoria Clark had told her that there was the requirement for her to move to a different community team location upon her return from maternity leave because that would make her team (Whitby) overstaffed as her cover midwife wanted to stay; she had been advised that this amounted to maternity discrimination; and described the problems she had experienced in dealing with this. She said in conclusion, "in summary, my grievance is in relation to a lack of contact and a lack of clarification regarding my role for returning to work after maternity leave."

56. By email the same day, Louise Howgate gave her initial response. She thanked the claimant for raising her concerns, apologised for any distress that this had caused the claimant, and apologised for any delay, explaining that she (Louise Howgate) had just returned from sickness that day. Louise Howgate confirmed her understanding to the claimant as being that, "[she] <u>will</u> be returning to the Whitby Team as that's where [she was] working prior to starting maternity leave – this will not change as I understand that anyone going on maternity leave should return to the same role/banding."

57. Louise Howgate continued to say that she understood that the Whitby team would be over-established following the claimant's return to work and acknowledged the need for consideration of the options to mitigate this. Louise Howgate set out the options to be either to hold an additional clinic to increase caseload numbers (the location of the additional clinic is not stated but we find that this could have been in the Whitby area, as the alternative option is to take on a small Scarborough caseload) or take a small caseload in Scarborough. Louise Howgate noted her understanding that the claimant and another midwife were not happy to undertake either of those two options. She referred to Victoria Clark's plan to hold 1:1 meetings with all of her team members.

58. The claimant followed up with Victoria Clark in relation to her 1:1 meeting on 12 July 2023. In that email, she reiterated that she wished to return to her 30 hours within the Whitby team and did not wish to be moved to a Scarborough team/cover a Scarborough clinic. She noted that, if she were to remain in Whitby, her baby (who she was breastfeeding) could be brought to her for a feed on a meal break but she said this would not be feasible if she was 30+ minutes away and referred to her husband working away.

59. A meeting was arranged to discuss the claimant's informal grievance. That meeting took place on 14 July 2023. Louise Howgate, Victoria Clark and the claimant were present. Louise Howgate chaired the meeting.

60. At that meeting, there was discussion about the claimant's role prior to her maternity leave and the recruitment process for JC, her maternity cover (including consideration that there might have been a recruitment error). There was also reference to being unable to discuss JC in depth and there being ongoing HR processes relating to JC. The claimant indicated that her preferred outcome was to return to Whitby and undertake her role as she had previously, working 30 hours per week – one ante-natal clinic and three post-natal visit days each week. The claimant expressed disappointment that the covering midwife wanted to stay in Whitby and not go back to her previous role.

61. The claimant was assured that she would return to her post at Whitby. It was reiterated to the claimant that, on her return, the Whitby team would be over-established for the number of women caseloaded. It was noted that, if the claimant were to return to working 30 hours per week, her caseload should be 78 women (as noted above, this is an annual figure). At that point in time, JC had a Whitby caseload of 30 but her additional Scarborough caseload brought her up to the required number. The minutes state that, to mitigate and justify the over-establishment of midwives, an additional clinic needed to be taken by the team.

62. Victoria Clark set out some of the options for when the claimant returned from maternity leave, as follows:

    62.1. Whitby only with no other caseload;
    62.2. Split Whitby caseload with the other midwife 50/50;
    62.3. Take Brook Square and Whitby to give required caseload numbers;
    62.4. Whitby as before maternity leave plus antenatal classes;
    62.5. Offer Brook Square and Castle to other two midwives in the team but this would increase their caseloads above their required numbers for their hours (they do 22.5 hours each).

63. The options included looking at other midwives' caseloads and, as option 5 above would take the two midwives over their caseload numbers, this was said to be unequitable on them. Caroline and Lou had retired and returned to a 22.5 hour working week. The additional options mentioned were in Whitby and Scarborough; this is consistent with our findings above and Louise Howgate's position as set out in the subsequent formal grievance meeting. There was reference to 1:1 meetings with the team to discuss the way forward. Victoria Clark informed the claimant that she could not guarantee that any midwife on the team, including the claimant, would not be asked to work at the other East Coast midwifery locations – Bridlington, Malton and Scarborough. Staffing shortages had become an issue outside of Whitby by this time.

64. Victoria Clark assured the claimant that she would not be used as a 'floater' or 'spare part' and that she would have her own caseload.

65. On 26 July 2023, Louise Howgate responded in writing to the claimant's informal grievance. Louise Howgate set out the outcome as being that the claimant would return to the Whitby community midwives team but with an additional caseload comprising of an additional clinic to be confirmed. Taking

into account also the minutes of the subsequent grievance meeting, we find this to mean that the location was to be confirmed, and that it could have been in Whitby or Scarborough. Louise Howgate also informed the claimant that a consultation would be undertaken with the Whitby team, including the claimant, to, "to look at the team's way of working and to find working solutions which are fair and equitable for all." Louise Howgate recognised that this was not the outcome the claimant was hoping for and explained how she could raise a formal grievance. The claimant received this letter on 1 August 2023.

66. The 1:1 meetings with the Whitby team appear to have taken place in or around June, July and August 2023. Victoria Clark had spoken to Caroline and Lou about undertaking different work and they had said that they were happy doing what they were doing. Victoria Clark had also spoken to JC, who had said that she was happy to share her caseload: the claimant had not wanted this.

67. On 14 August 2023, the claimant raised a formal grievance. In her grievance, the claimant described the impact that she believed JC's continued presence in the Whitby team would have on her. She complained that, when speaking with Victoria Clark to arrange some KIT days, Victoria Clark told her that there was the requirement for the claimant to move to a different community team location on her return from maternity leave as her return would make her team (Whitby) over-staffed as her cover midwife wanted to stay.

68. The claimant described the discussions that followed, raised concerns about a lack of contact with those involved, and referred to the informal grievance process. The claimant stated that, during the 14 July informal grievance meeting, she had been told verbally during that meeting that she would be returning to her position in Whitby, however (due to recruitment errors) the respondent was unable to move the covering midwife and the claimant's return would make the team over-established. She complained that she had been told that she would be expected to share her caseload in Whitby with the covering midwife, meaning she would have a huge deficit in her caseload numbers which she would have to make up from a clinic in Scarborough. The claimant complained that this was maternity discrimination as her position was still available. She also noted that Whitby caseload numbers were roughly correct for one midwife working 30 hours per week and two midwives working 22.5 hours per week. The claimant queried the purpose of further consultation, stating, "I am already being told that I am the only member of the team who will be taking on an additional caseload."

69. Alison Chorlton was appointed to deal with the formal grievance, and she was supported by Sarah Vignaux (HR Business Partner). A grievance meeting took place on 19 September 2023. It was adjourned and resumed on 16 October 2023 for the decision to be given. The minutes of the meeting appear in the bundle. During the meeting, the claimant outlined her concerns, including that she felt she was being blamed for the Whitby team being over-established. There was a discussion about a recruitment issue in relation to the maternity cover post which JC had been undertaking, and the email of 31 August 2022 was referred to in this context.

70. It is clear from the minutes that there was an acknowledgment that upon the claimant's return from maternity leave, the team would be over-established; consequently, Louise Howgate believed that there was a need for the whole (Whitby) team to take additional workload so all have a substantial workload,

and the plan was to do this via consultation with the team. There was a discussion about the caseloads of the Whitby team and the wider East Coast midwifery team. As noted above, vacancies in the wider East Coast team (outside of Whitby) had become an issue: by the end of 2023, the team was three midwives short in Scarborough, Malton or Bridlington.

71. Louise Howgate described the informal grievance process to have identified that they could consider the Whitby team taking on additional caseload from Scarborough, other clinics and ante-natal classes. This was accepted by Alison Chorlton who stated that Louise Howgate advised that, in addition to a smaller Whitby caseload, it might be an antenatal clinic in Scarborough or Whitby or leading antenatal classes in Whitby. As above, we find that these other clinics and ante-natal classes could have been in Whitby, and would not necessarily have been in Scarborough. The claimant said that she did not wish to substitute caseload for other activity such as antenatal classes, and did not want to retain her Whitby base but be required to travel to Scarborough. The claimant never suggested that ante-natal classes were not part of the job, which is not surprising because of the very close association with the ante-natal clinics she was doing.

72. Taking into account the Birthrate Plus recommended average annual caseloads, the recommended Whitby team caseload for the claimant, Caroline and Lou would be 194. The Whitby caseload around this time was broadly appropriate for a team with one midwife working 30 hours and two midwives working 22.5 hours. Adding in JC's clinical hours in Whitby would make the recommended team caseload higher and would make the team 'over-established'. However, we accept Victoria Clark's evidence that that was to look at the issue too simply and it was necessary to adjust the number of midwives to ensure that the team could cover sickness and annual leave, the 7 day home based service and on call arrangements. A Whitby team of 3 could not cover all of these services. In the past, other teams (Bridlington, Scarborough and Malton) could cover these services when the Whitby team was short; however, due to the number of vacancies in the wider East Coast team this was no longer possible.

73. The grievance outcome was confirmed to the claimant verbally and later in writing. In summary, the claimant was informed that her grievance was upheld in respect of the process up to that point. Alison Chorlton confirmed that she considered it reasonable for the claimant to be offered a different caseload number, but was clear that the claimant should return from maternity leave to her base at Whitby, with a Whitby caseload.

74. Alison Chorlton noted that caseloads would change over time due to the nature of the patient cohort, but that changes to the requirements of the role – whether that be the need to deliver classes or cover other Trust areas due to capacity and demand – must be following consultation with everyone, and that would not happen until the New Year. Alison Chorlton later clarified that the team were all engaged on the same contract, no one was given a specific caseload or a defined base of clinical care, but that any requirement for the team to regularly support with other work or locations would be taken following consultation. Given the used of the word "regularly," we find that Alison Chorlton was not saying that team consultation would be required before midwives were asked on an ad hoc basis to carry out different clinics or work. Alison Chorlton recognised that there were pressures in the wider East Coast

community midwife team, particularly in Scarborough. We find that what was being proposed was a consultation involving the Whitby team and other members of the East Coast midwifery team; this is also supported by Victoria Clark's evidence. Alison Chorlton assured the claimant that she had looked into the recruitment of JC.

75. AC encouraged the claimant to take time to complete any outstanding statutory and mandatory training and updates in clinical practice on her return to work whilst she built up a caseload. This included 'Badgernet', an electronic notes and referral app which had been introduced during the claimant's maternity leave. Alison Chorlton acknowledged that the claimant's caseload would be smaller than her pre-maternity caseload.

76. Alison Chorlton's decision was taken on the basis that JC would remain in the Whitby team. She investigated the recruitment process and came to the view that there had been a recruitment error which led to the post becoming permanent. She went a step further than that and investigated the possibility of returning JC to her previous duties. We accept her persuasive oral evidence that, because of JC's health and caring responsibilities, she took the view that it was not for her to move JC out of the Whitby team and require her to return to working exclusively in Scarborough. Alison Chorlton acknowledged in the grievance outcome letter that this was not entirely the resolution the claimant hoped for.

77. On 25 October 2023, the claimant had a discussion with Alison Chorlton about the grievance outcome. The discussion is summarised at page 200. It was noted that the claimant considered that the supernumerary time after her return may be sufficient to bring herself up to date, and that she had concerns that reduced caseload numbers would make her more vulnerable to being moved to other areas to support clinics. In the email correspondence which follows between the claimant and Alison Chorlton, the claimant clarified that she was concerned that, although she had been reassured that she would have her own caseload (not a shared caseload) after returning, the caseload numbers would be lower as there were more staff in the Whitby team. On 6 November 2023, Alison Chorlton stated that:

    77.1. The grievance was upheld and that meant that Alison Chorlton supported the claimant to return to her community midwifery post with a base in Whitby on 30 hours per week. She asked why the claimant considered this to be a return to different terms and conditions;

    77.2. They had discussed the claimant having a small reduction in caseload numbers to support her return to work and enable her to bring herself up to date. Alison Chorlton stated that she had not realised that the claimant would not find this a supportive measure until they had spoken on 25 October. Alison Chorlton was content to support further discussions between the claimant and Louise Howgate about caseloads.

78. It appears that this was not taken further as the claimant appealed. The claimant's appeal letter is dated 3 November 2023. In her appeal, the claimant acknowledged that she had been told that she would return to a Whitby base and caseload. However, she complained that, because JC had remained in post, she (the claimant) would have a smaller caseload in Whitby and would be expected to make up her caseload elsewhere, and that she would be subject

to a consultation process. In her letter, the claimant stated, "I would like to return to my pre-maternity leave role with my full case load based in Whitby. My 'backfill' should be the one picking up a caseload in another area, not me. I would like the arrangements to be reviewed now, whilst I am protected by law, and for the one employee affected (my 'backfill') to be consulted to suit the staffing requirements now."

79. The management statement of case relating to the appeal included a recap of the process up to that point. It was noted that, "It quickly became evident that a recruitment error had been made in DMs maternity leave backfill. The email requesting cover for Whitby community midwifery team did not overtly state it was a temporary cover or that it was maternity cover."

80. In that document, Alison Chorlton referred to the grievance outcome and emphasised:

81. "A supportive approach to return to work was discussed including a slightly smaller case load initially to facilitate statutory and mandatory training time and to allow a phased return approach from maternity. A specific number of cases was not discussed, and it was not anticipated that this would be significantly lower that DM's pre maternity leave caseload patient numbers. DM was focused on returning to her previous case load, which the hearing determined would be likely to be changeable following a period of absence as patient cohorts will change over time. At the time of the hearing LH stated that the case load numbers remained unchanged, however it should be noted that the numbers pre and post DM's maternity leave were not provided to the panel and therefore LH's statement in respect of this was not verified….ACH was clear that should any consultation be required this would be with the whole team and that DM was not responsible for the over establishment. ACH was also clear that DM's caseload would be Whitby based." The claimant's position that she did not wish to substitute caseload for other activity such as antenatal classes, and her concerns about lack of clarity and the proposal to delay formal consultation until the New Year were noted.

82. There is reference to the discussions and emails which followed the grievance outcome. It is noted that the claimant felt that, by having lower caseload numbers, she would be vulnerable to be moved to cover other areas and that Alison Chorlton had offered to support a discussion with Louise Howgate and the claimant in relation to this. There is reference to the proposed formal consultation for caseload management. The concluding paragraph states:

83. "At the time of the discussions, ACH could not identify an alternative solution given the position of current over establishment in the team and the need for additional support to be provided for cover for antenatal classes and supporting Scarborough which would have been required anyway."

84. The claimant took annual leave following the end of her maternity leave and returned to work as a Band 6 Integrated Midwife on 20 November 2023. She worked the first four weeks on a 'supernumary' basis, to ease her back into the workplace and refresh and update her training and skills, including learning 'Badgernet'.

85. There were discussions to facilitate the claimant, once her supernumary period had ended, starting to pick up a caseload. Initially, the claimant was given a

Whitby caseload of 9 women. These cases came from JC, who had 20 women on her Whitby caseload at the time. JC retained 11 of those women, having explained to Victoria Clark that some were high risk due to safeguarding or mental health concerns, several were at the end of their pregnancy and one was receiving care at Scarborough hospital for particular medical reasons. JC's rationale for retaining these cases was later questioned by the claimant but the handover and retention of cases took place on that basis. The handover is confirmed in an email from Victoria Clark on 27 November 2023 and by the claimant on 9 May 2024. It appears that JC had not handed these cases voluntarily to the claimant but Victoria Clark had taken steps to ensure that the claimant picked up a caseload of appropriate cases at an early stage.

86. Victoria Clark gave instructions to JC that new bookings should predominantly be taken by the claimant. Victoria Clark informed the claimant that JC still wished to hold a small caseload in Whitby alongside Castle Health in Scarborough, and so she would take some of the bookings, "now and then."

87. Although the claimant's position was that the covering midwife (JC) should have simply handed over her caseload to the claimant at the point of her return to work and returned to working exclusively in Scarborough, in oral evidence the claimant seemed unsure as to what would usually happen in that situation. Clearly, the claimant could not be given her pre-maternity leave caseload back because those women would have delivered their babies. We prefer Victoria Clark's evidence that there would not be a sudden handover of cases and the claimant would in any event have needed to pick up her caseload gradually. This was because (and this was common ground) the continuity of care is very important such that, in general, a pregnant woman will have the same community midwife throughout her pregnancy and post-natal period. Although some of JC's cases were handed over to the claimant, these were the lowest risk cases – JC retained those who were close to their delivery date or had mental health or safeguarding concerns.

88. From approximately the beginning of January 2024, another midwife had begun maternity leave which added to the staffing issues in the East Coast midwifery service at the time.

89. By 2 January 2024, the claimant reported having 20 cases and JC had 11 cases. Although we heard in oral evidence that the claimant thought on reflection that it was 12 or 13, based on her analysis of the respondent's documents, and that 20 had been an error on her part, we do not accept this. We find that the claimant would not have overstated the number of cases she had at the time, and her contemporaneous email is more likely to be accurate.

90. Lucy Brown, Jenny Flinton (Head of Employee Relations and Engagement) and Gordon McCluskey (Unite Union) were appointed as the panel for the claimant's grievance appeal. The grievance appeal meeting took place on 10 January 2024. The minutes of the meeting were before us. The claimant set out her position during that meeting. The claimant accepted that her principal points of appeal were, in summary: returning to a smaller caseload because her maternity cover was remaining in post in Whitby; and being subject to a consultation process due to there being too many midwives employed in Whitby following the permanent recruitment of her maternity leave cover. Lucy Brown also noted, in relation to those points, that the claimant felt that these two

matters were in breach of legislation regarding her the claimant's maternity leave and rights.

91. The appeal was not to re-investigate the claimant's grievance, but to review the conclusions reached and whether they were reasonable.

92. Lucy Brown confirmed the outcome of the appeal in a letter. Lucy Brown noted that, by the time of the grievance appeal, the claimant had returned to same post with a Whitby base. It appears from her letter that this had been accepted during the meeting. Lucy Brown also noted Alison Chorlton's determination (as part of the formal grievance) that there may need to be a consultation with the whole team in 2024.

93. We accept Lucy Brown's cogent evidence that she took the view that there had been a recruitment error in recruiting JC to the Whitby team such that it was not fair to move JC out of the role in Whitby. She also took the view that it was not appropriate to move JC out of the Whitby team because of JC's caring responsibilities; to require JC to move would not be in line with the Trust's values and she was concerned that it would expose the respondent to litigation. We accept Lucy Brown's evidence that, although the pressures outside Whitby had, by the time of the Tribunal hearing, become worse, they were problematic at the time as evidenced by the need for cover in Scarborough.

94. Lucy Brown confirmed the outcome of the appeal to be as follows, and noted that this meant that this element of the claimant's appeal had been upheld:

    94.1. There would be no consultation regarding the current number of midwives based in Whitby as a direct result of the recruitment exercise that took place for the claimant's maternity leave cover.

    94.2. As had previously been confirmed, the claimant had the right to return to her role based in Whitby.

95. Lucy Brown stated: "By the very nature of your role, there will be fluctuations within caseload. This cannot be avoided and we cannot make any confirmations regarding future numbers. However I will communicate with Sascha [Director of Midwifery] to ensure there is clear understanding within your team that you should be returning to the same role which you did prior to maternity leave."

96. A meeting took place between Victoria Clark and JC (and possibly also Vicky Powell, HR Adviser) on 26 March 2024. This post-dates the claim form. By that time, JC's personal circumstances (which included health and care responsibilities) had become the main issue. Victoria Clark took the view that, because of those circumstances, JC needed to remain in the Whitby team – continuing to work 15 clinical hours at Whitby, 2 clinic days at Scarborough and a protected day on Wednesday relating to the Scarborough clinic days. The outcome of that meeting was confirmed in a letter.

97. The claimant's expense claims show that, between 11 December 2023 and 3 October 2024 (which postdates the claim form), the claimant travelled to Scarborough on 26 occasions. There is no evidence that the claimant had been allocated a clinic outside of the Whitby area on a permanent or regular basis, but rather that she had carried out clinics, visits or other work on an ad

hoc basis more than she had before her maternity leave. The claimant is mentioned little in Whatsapp messages between the Whitby team and Victoria Clark seeking cover for ad hoc clinics outside Whitby, and those messages did not indicate that the claimant has been singled out to travel more than other midwives. Although there was no specific evidence as to the frequency with which the other midwives were travelling outside Whitby, we accept Victoria Clark's evidence that the claimant was not doing so more than anyone else, taking into account working hours.

98. We also accept Victoria Clark's evidence that the claimant was not required to work on call shifts for a year after returning from maternity leave, in line with the respondent's practice of supporting women to breastfeed their children after returning to work.

99. As to JC's caseload in Whitby, she had 20 women when the claimant returned from maternity leave. After handing 9 of those women to the claimant, by 2 January 2024 she had a Whitby caseload of 11. As set out above, JC also had a caseload in Scarborough.

100. On 9 May 2024, the claimant informed Victoria Clark that she had 14 cases between October (2023) and May 2024 and 33 cases between November 2023 and October 2024. It was unclear whether these figures needed to be added together but it is clear that by this point the claimant's caseload was at least 33.

101. The claimant's caseload for 2024 (up to early October 2024, when the hearing started) was in the mid-40s. The respondent's figures stated that the claimant's caseload was 46 up to that point in 2024. The claimant's written evidence stated that she had been assigned 44 cases for 2024, and that she had a total of 34 cases between November 2023 and October 2024. It was likely that this figure would increase in the remaining part of 2024. The claimant's caseload for 2024 was therefore similar to that before her maternity leave, and below the recommended caseload of 78.

102. In 2021, the Whitby team's caseload was around 226. In 2022, it was around 151. Between June 2022 to June 2023, the Whitby caseload was around 174. In 2023, the Whitby caseload was around 219. In 2024, up to August 2024, it was around 154. It is not possible to make accurate findings about the caseload for 2024 as numbers will change in the remaining part of the year. However, taking into account that the figures for September to December 2023 were around 87, we find that the Whitby caseload for 2024 is likely to be over 200 – and, in any event, will be higher than the year in which the claimant started maternity leave.

103. During the grievance meeting, there was reference to the Whitby caseload not having changed so as to require a change in the needs of the service. However, it is clear from our findings above that there are fluctuations in the Whitby caseload from one year to the next. These fluctuations are due in part to birth rate fluctuations, and also due to moving geographical boundaries between the different teams within the East Coast midwifery service from time to time.

104. JC had started sickness absence by 7 September 2024. By that time, JC's Whitby caseload had reduced to 8 women. Due to her sickness absence,

four women were added to the claimant's caseload and the remaining four women were taken by Caroline, another midwife in the Whitby team.

105. We accept Victoria Clark's clarification that, by the time of the hearing, there were 6 full time equivalent vacancies in the East Coast team, two midwives were on maternity leave, one was on long term sick leave and another was on sabbatical – all of which were uncovered – and the team is on the risk register.

RELEVANT LAW

Detriment complaints

106. The ERA and MAPLE set out the relevant law in relation to the claimant's detriment claim. The relevant provisions are as follows:

Section 47C ERA Leave for family and domestic reasons

47C (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.

(2) A prescribed reason…relates to –

(b) ordinary, compulsory or additional maternity leave

…

Regulation 19 MAPLE Protection from detriment

19 (1) An employee is entitled under section 47C of the 1996 Act not to be subjected to any detriment by any act, or any deliberate failure to act, by her employer done for any of the reasons specified in paragraph (2).

(2) The reasons referred to in paragraph (1) are that the employee—

(d) took, sought to take or availed herself of the benefits of, ordinary maternity leave or additional maternity leave;

…

Regulation 18 MAPLE Right to return after maternity or parental leave

18 (2) An employee who returns to work after—

(a) a period of additional maternity leave, or a period of parental leave of more than four weeks, whether or not preceded by another period of statutory leave, or

(b) a period of ordinary maternity leave, or a period of parental leave of four weeks or less, not falling within the description in paragraph (1)(a) or (b) above,

is entitled to return from leave to the job in which she was employed before her absence or, if it is not reasonably practicable for the employer to permit her to

return to that job, to another job which is both suitable for her and appropriate for her to do in the circumstances.

18A (1) An employee's right to return under regulation 18(1) or (2) is a right to return—

(a) with her seniority, pension rights and similar rights as they would have been if she had not been absent, and

(b) on terms and conditions not less favourable than those which would have applied if she had not been absent.

Regulation 2 defines job as follows:

"job", in relation to an employee returning after …maternity leave or parental leave, means the nature of the work which she is employed to do in accordance with her contract and the capacity and place in which she is so employed;

107. In interpreting the meaning of 'job', the EAT in Blundell v Governing Body of St Andrew's Roman Catholic Primary Church [2007] ICR 1451 held that:

107.1. In determining whether a job is the 'job in which she was employed before her absence', the contract is not definitive;

107.2. The phrase 'in accordance with her contract' qualifies only the nature of the work and not capacity and place;

107.3. "Capacity" is more than "status", though it may encompass it. This is a factual label, descriptive of the function which the employee serves in doing work of the nature she does.

107.4. "place" is not purely contractual, for it too is not subject to the qualification ("in accordance with her contract") which applies to "nature". The EAT observed at paragraph 53:

"This makes sense in the context of the Regulations, for if (for example) a contract had a mobility clause by virtue of which the returnee could be assigned to a different workplace, and if it was permissible for her to be so assigned, she would suffer the dislocation and unsettling need to familiarise herself with that workplace at a time when she was vulnerable, and still learning to accommodate the needs of her newborn alongside those of work. The Regulations aim, as we see it, to provide that a returnee comes back to a work situation as near as possible to that she left. Continuity, avoiding dislocation, is the aim."

107.5. At paragraph 57 the EAT held, *"it seems plain to us that, where a precise position is variable, a tribunal is not obliged to freeze time at the precise moment its occupant takes maternity leave, but may have regard to the normal range within which variation has previously occurred."*

108. Detriment is not defined in the ERA. Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL held (para 35): "Is the treatment of such a kind that a reasonable worker would or might take the view that in all

the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to 'detriment'. This test in Shamoon is relevant to a detriment claim under MAPLE: see Slee v Secretary of State for Justice UKEAT/0349/06 (EAT, unreported).

109. For a claim to succeed, there must be a causal connection between the employer's act or deliberate failure to act and the employee's protected status.

110. "A reason for [an act or omission] is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to [act or refrain from acting]' (Abernethy v Mott Hay and Anderson [1974] IRLR 213, per Cairns LJ).'

111. In determining the grounds upon which a particular act was done it is necessary to consider the mental processes both conscious and unconscious of the employer. It is not sufficient to simply apply a 'but for' test to the facts (see Harrow London Borough v Knight [2003] IRLR 140, EAT).

112. It was common ground before us that the test set out in Fecitt and ors v NHS Manchester (Public Concern at Work intervening) 2012 ICR 372 (a whistleblowing case) is applicable in the context of a section 47C complaint. That case held (para 45) "section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower."

113. The burden of proof provisions are set out below:

48 ERA Complaints to employment tribunals.

(1) An employee may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section …47C(1)…

…

(2) On a complaint under subsection (1), it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

114. It is for the claimant to prove (on the balance of probabilities) that the respondent subjected her to a detriment. Once she has done that, it is for the respondent to prove (on the balance of probabilities) that the claimant was not subjected to a detriment on the proscribed ground.

Equality Act Complaints

115. Claims of discrimination related to pregnancy and maternity are governed by the EQA. Section 39(2) states that it is unlawful for employers to discriminate against their employees, including in relation to the terms of their employment and by subjecting them to a detriment.

116. Pregnancy and maternity discrimination is defined by the EQA as follows:

Section 18 Pregnancy and maternity discrimination: work cases

(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.

…

(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave or a right to equivalent maternity leave.

117. Unfavourable treatment is not defined. 'Unfavourable' treatment is to be measured against an objective sense of that which is adverse as compared with that which is beneficial: see Williams v Trustees of Swansea University Pension & Assurance Scheme [2018] UKSC 65. The EAT in Williams held that, "treatment which is advantageous cannot be said to be "unfavourable" merely because it is thought it could have been more advantageous … Persons may be said to have been treated unfavourably if they are not in as good a position as others generally would be."

118. No comparator is needed.

119. For the claim to succeed, the reason for the unfavourable treatment has to correspond to pregnancy or maternity; it is not sufficient for pregnancy or maternity to simply be part of the background context: Commissioner of Police of the Metropolis v Keohone UKEAT/0463/12/RN.

120. The protected characteristic need not be the only or main reason for the unfavourable treatment but must have a "significant influence" on the outcome: Nagarajan v London Regional Transport [1999] IRLR 572, HL. The EHRC Employment Code, paragraph 3.11, notes that 'the [protected] characteristic needs to be a cause of the less favourable treatment, but does not need to be the only or even the main cause'.

121. Interserve FM v Tuleikyte [2017] IRLR 615, the EAT held (para 21): "it is necessary to show that the reason or grounds for the treatment — whether conscious or subconscious — must be absence on maternity leave and the mere fact that a woman happens to be on maternity leave when unfavourable treatment occurs is not enough to establish unlawful direct discrimination under section 18 ." It was held that, because that was not a case where the (then) respondent applied the unfavourable treatment because of a blanket policy or criterion that was inherently based on or necessarily linked to pregnancy or maternity, an enquiry into the mental processes of the alleged discriminator is required.

122. The burden of proof for all of the claimant's claims under the EQA is set out at section 136 EQA, as follows:

136 Burden of proof

…

(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.

123. The Court of Appeal in Igen Ltd v Wong [2005] ICR 931 gave guidance as to the application of the burden of proof provisions. That guidance remains applicable: see Ayodele v Citylink Ltd [2017] EWCA Civ 1913. The guidance outlines a two stage process:

123.1. First, the claimant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed an unlawful act of discrimination against the complainant. That means that a reasonable tribunal could properly so conclude, from all the evidence before it. A mere difference in status and a difference of treatment is not sufficient by itself: see Madarassy v Nomura International plc [2007] ICR 867, CA.

123.2. The second stage, which only applies when the first is satisfied, requires the respondent to prove that it did not commit the unlawful act.

124. The Supreme Court in Hewage v Grampian Health Board [2012] ICR 1054 made clear that it is important not to make too much of the role of the burden of proof provisions. Those provisions will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they are not required where the Tribunal is able to make positive findings on the evidence one way or the other.

DISCUSSION AND CONCLUSIONS

125. We considered the legal principles set out in both representatives' helpful written and oral submissions. We have not reproduced the contents of those submissions in this Judgment in the interests of brevity. Suffice it to say that we fully considered all the submissions made, together with the statutory and case-law referred to, and the parties can be assured that they were all taken into account in coming to our decision.

Section 47C Complaints

Did the respondent recruit a permanent employee to cover the claimant's maternity leave leading to changes to her role (in respect of her caseload being reduced) and her unit at Whitby being over-established? If so, did any of the above constitute a detriment for the Claimant? If so, was the reason why the relevant detriment occurred because the Claimant had exercised her right to take maternity leave?

126. We have found that, prior to the claimant's maternity leave, the respondent recruited JC to a temporary maternity cover post, with 30 hours being worked in Whitby to cover the claimant's maternity leave and the remaining 7.5 hours being worked in Scarborough.

127. Following JC's emails on 31 May 2023 (and until the meeting on 26 March 2024 which post-dates the claim form), we have found that JC was retained in the Whitby team while the respondent got to the bottom of what had happened in the recruitment exercise and having taken into account her health

issues and care responsibilities and staffing pressures in the wider East Coast midwifery service. The issue was not resolved substantively until the meeting on 26 March 2024.

128. We found that, in June 2023, JC had agreed to take on another clinic day in Scarborough such that she was working 15 clinical hours at Whitby, 2 clinic days at Scarborough and a protected day on Wednesday relating to the Scarborough clinic days each week.

129. In retaining JC in the Whitby team when the claimant returned to work, JC was essentially working in an additional post in Whitby – additional to the posts of the claimant, Caroline and Lou. It was only when the claimant returned from maternity leave that the practical consequences of JC remaining in post arose. At that stage, there were more midwives than needed when the Whitby caseload was viewed in isolation such that the team was 'over-established'.

130. However, we found that, taking into account the need for the Whitby team to provide a 7 day home-based service including home births and on call arrangements, as well as cover for study leave, sickness and annual leave, the respondent needed more than three midwives in the Whitby team (with one working 30 hours and the other two working 22.5 hours). It was no longer possible for other teams in the East Coast midwifery service to provide cover to the Whitby team as there were significant pressures from vacancies elsewhere.

131. We have considered whether the claimant returned to the same job within the meaning of Regulation 18 of the MAPLE Regulations. We conclude that the claimant did return to the same job:

132. "job", in relation to an employee returning after …maternity leave or parental leave, means the nature of the work which she is employed to do in accordance with her contract and the capacity and place in which she is so employed.

133. As to the nature of the work which the claimant is employed to do in accordance with her contract, the claimant's role is one of a band 6 integrated midwife. We found that, both before and after her maternity leave, the claimant was carrying out the duties of a community midwife – doing antenatal and postnatal clinics and home-based visits. The claimant was asked to consider delivering ante-natal classes: she never suggested that they were not part of the job, which is not surprising because of the very close association with the ante-natal clinics she was doing.

134. As to the capacity in which she is employed, the claimant was engaged as a community midwife as part of the East Coast midwifery service both before and after her maternity leave.

135. As to the place in which she was so employed, we take into account that this is not purely contractual. We found that the claimant had an allocated base of Whitby, with Whitby as her base for travel, and a Whitby caseload, both before and after her maternity leave. We found that there was - both before and after her maternity leave - a need for community midwives, including the claimant, to be flexible and work in other areas of the East Coast midwifery team on an ad hoc basis to fulfil the needs of the service.

136. We found that (regardless of whether JC had remained in post) the claimant would have gradually built up her caseload on her return to work because of the importance of continuity of care for pregnant women. Although JC retaining hours in Whitby did contribute to a lower Whitby caseload for the claimant, we found that community midwives' caseloads are always subject to variation, including because of fluctuations at particular times of the year and if a woman's care is transferred in or out of a particular location. In and of itself, a reduced (or increased) caseload does not change the job; the nature of the duties remains the same although the midwife might not be as busy. We found that the claimant reduced her caseload as she approached her maternity leave as she and her colleagues recognised the importance of continuity of care from pregnancy to delivery at that time.

137. While she built up her caseload, and in part because the claimant had confirmed that she did not want to deliver ante-natal classes in Whitby, she would have had a greater capacity to take on other work on an ad hoc and transitional basis. Travelling to areas outside of Whitby for ad hoc clinics during her working hours and expensed or in the work car infrequently (albeit more frequently than she did before her maternity leave) did not change the nature, capacity or place of work. As paragraph 57 of Blundell contemplates, where a precise position is variable, a Tribunal is not obliged to freeze time at the precise moment its occupant takes maternity leave, but may have regard to the normal range within which variation has previously occurred. It was common ground that, while the respondent operated the CoC model, the claimant had worked at Scarborough hospital. Having returned from maternity leave, the claimant worked most of her shifts in Whitby. She was not required to work on call shifts at this time which could have required travel anywhere in the East Coast midwifery service's geographical area – and would not be so required for the year after her return from maternity leave.

138. For these reasons, we have concluded that the claimant returned to the same job and that the respondent did not breach regulation 18 MAPLE.

139. Taking all of these conclusions into account (both specifically in relation to MAPLE and more generally, recognising that there does not need to be a breach of regulation 18 MAPLE for there to be a detriment), we conclude that this was not treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to her detriment. The claimant has a sense of grievance in relation to this issue but we conclude that it is unjustified. We conclude that this did not constitute a detriment for the claimant and as such that she was not subjected to a detriment by any act, or any deliberate failure to act, by the respondent.

140. This complaint therefore fails and is dismissed. Although it is not relevant to the claim, we were heartened to hear that the claimant's caseload had returned to a similar level to that before her maternity leave by the time of the hearing.

141. Although it is not necessary for us to reach conclusions as to the reason for treatment, we have gone on to do so in case we are wrong on our earlier conclusion. We are mindful that in this context we are required to consider the mental processes of the employer and determine whether the claimant's

maternity leave 'materially influenced' the employer's conscious or sub-conscious decision making.

142. Although JC's recruitment (and subsequent retention) into the Whitby team would, on the balance of probabilities, not have happened 'but for' the claimant's maternity leave, we conclude that the claimant's maternity leave was part of the background context, but did not materially influence the respondent's decisions.

143. We found that JC's recruitment into the Whitby team was to a temporary maternity cover post for 30 hours per week and all those involved in the process knew that. We accepted Gill Locking's evidence that the email of 31 August 2022 ought to have stated it was a maternity cover post and that she ought to have sent written correspondence to JC confirming that this was a maternity leave cover post but had not done so.

144. We accepted the evidence of Victoria Clark, Alison Chorlton and Lucy Brown that JC was retained in the Whitby team because: JC had indicated that individuals within the respondent had told her that the post was permanent and, through the respondent's recruitment errors, the respondent was unable to produce any documentation to the contrary and because JC had health issues and caring responsibilities. Victoria Clark could have investigated further – in particular she could have spoken to JC directly and challenged her on the contents of her email (which Victoria Clark did not believe to be entirely correct) but she did not do so. However, we conclude that her failure to do so was not because of the claimant's maternity leave, but because she knew from her investigations that, whilst everyone involved in the recruitment knew that JC was recruited to a temporary maternity cover post, the respondent was unable to produce any documentation to show that it was a temporary post and she was mindful of JC's health and caring responsibilities and had JC's wellbeing to consider.

145. We also accepted Victoria Clark's evidence that the respondent was no longer able to provide cover to the Whitby team for the 7 day home based service from other teams within the East Coast midwifery service, because of the increased vacancies and employees on long-term leave outside of Whitby. That needed to be staffed principally from within the Whitby team. A team comprising the claimant's 30 hours, and Caroline and Lou's 22.5 hours per week, could not provide that service and Victoria Clark was mindful that the presence of JC as an additional team member could help to deliver that service.

146. Although we did not hear from everyone involved in the recruitment exercise, for these reasons we are entirely satisfied that the claimant's maternity leave was not a material influence for JC's retention. The claimant's return from maternity leave was the point at which the retention of JC became an issue, but that was an issue of timing and not why it happened. In particular, we did not accept that someone within the respondent deliberately used the opportunity presented by the claimant's maternity leave to retain JC in the claimant's role permanently. Because of the importance of continuity of care, the claimant would not have returned to a full caseload even if JC had not been retained in the Whitby team. The claimant would have gradually built up her caseload. JC's retention did contribute to a lower caseload for the claimant but, as above, we are entirely satisfied that the claimant's maternity leave did not materially influence her retention.

147. As such, we are entirely satisfied that the claimant was not subjected to a detriment because she took maternity leave.

Did the respondent inform the claimant during her maternity leave that she would be subject to a consultation regarding workloads on return? If so, did any of the above constitute a detriment for the Claimant? If so, was the reason why the relevant detriment occurred because the Claimant had exercised her right to take maternity leave?

148. The respondent conceded this happened. We found that the consultation to take place after the claimant's return was to involve all midwives in the Whitby team and other members of the East Coast midwifery team. The consultation was to consult about workloads and duties, in recognition of the over-establishment in the Whitby team (based on caseload numbers) and the staffing shortages in the wider East Coast team, particularly in Scarborough, which the respondent was experiencing at the time.

149. We conclude that this did not amount to a detriment. The consultation did not only involve the claimant; as above, it was a consultation with the team. It was specifically provided for by the claimant's contract and was required whenever a change in regular clinic locations was being considered. What was being contemplated did not involve a change to her job or to her terms and conditions. This was not treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to her detriment. A failure to consult the claimant, or to inform the claimant of a proposed consultation, about possible changes to working arrangements would likely be a detriment: we do not accept that doing so (or planning to do so) is a detriment. As such, we conclude that the claimant was not subjected to a detriment by any act, or any deliberate failure to act, by the respondent.

150. This complaint therefore fails and is dismissed.

151. Although we have concluded that this did not amount to a detriment, in the event that we are wrong on that conclusion we have reached conclusions as to why the respondent acted in the way it did. Because JC had remained in the Whitby team, at the point the claimant returned, the Whitby team would be over-established for the Whitby caseload numbers. We have already concluded that the claimant's maternity leave was not a material influence for JC's retention in the Whitby team. The claimant's maternity leave merely provided the background context and timing to the Whitby team becoming over-established once the claimant returned from maternity leave.

152. There were also staffing shortages outside of Whitby, which meant that midwives from the other East Coast teams could not fill gaps left by sickness and holidays within the Whitby team, or sustain the 7 day home-based service and on call arrangements, as they had before the claimant's maternity leave. We found that the consultation was proposed to address the over-establishment (on caseload numbers) in Whitby and staffing shortages elsewhere, so that staff could be consulted about the way forward, to address fairly the need for the service to be delivered across the East Coast midwifery service and to comply with midwives' contracts of employment. At the appeal stage, Lucy Brown confirmed that there would be no consultation regarding the current number of midwives based in Whitby as a direct result of the recruitment

exercise that took place for the claimant's maternity leave cover. The plan to consult the Whitby team and other members of the wider East Coast team was not materially influenced by the claimant's maternity leave. It was not suggested that, by not hearing from Louise Howgate directly, that added anything to the claimant's complaint. In any event, for the above reasons, we are entirely satisfied that the plan to consult was not because of the claimant's maternity leave.

153. As such, we are entirely satisfied that the claimant was not subjected to a detriment because she took maternity leave.

Did the claimant return to a reduced caseload? If so, did any of the above constitute a detriment for the Claimant? If so, was the reason why the relevant detriment occurred because the Claimant had exercised her right to take maternity leave?

154. We found that the claimant's actual total caseload in 2022 (prior to her maternity leave) was around 33. On her return to work, the claimant was allocated a caseload of 9 following the supernumary period. By 2 January 2024, she had 20 cases. We found that the claimant's caseload had continued to build after that point in time.

155. We recognise that comparisons between the claimant's caseload before and after her maternity leave are not straightforward because the respondent was using a different model of care until around April 2022 and the claimant reduced her caseload as she approached her maternity leave.

156. However, we found on balance that, initially, the claimant returned to a reduced caseload. We accepted Victoria Clark's evidence that, because the respondent prioritises continuity of care to pregnant women, a midwife returning from maternity leave would need to build up their caseload gradually and would not be allocated a full caseload on her return. The claimant's caseload was also affected by JC's retention in the Whitby team which, as we have concluded, was not because the claimant had taken maternity leave. We have also concluded that the claimant returned to the same job.

157. For the same reasons as set out at paragraphs 126-139 above, this was not treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to her detriment. As such, we conclude that the claimant was not subjected to a detriment by any act, or any deliberate failure to act, by the respondent. This complaint therefore fails and is dismissed.

158. Although we have concluded that this did not amount to a detriment, in the event that we are wrong on that conclusion we have reached conclusions as to the reason the respondent acted in the way it did.

159. The claimant returned to a reduced caseload initially because all of the women she had looked after before her maternity leave had delivered their babies by the time of her return. Victoria Clark prioritised continuity of care and took the view that it was not appropriate to hand over the care of women unless the risk in doing so was low (for example, if the woman was early in her pregnancy and the pregnancy was otherwise low risk). No matter when the claimant had returned, or whether JC had returned to Scarborough full-time, she would not have assumed a full caseload initially. She would have built up

her caseload gradually. That is what she did. As above, this was a transitional arrangement which she would have faced temporarily on her return from any lengthy period of absence. The claimant's caseload was also affected by JC's retention in the Whitby team.

160. We are satisfied that the reason why she returned to a reduced caseload initially was not because she had taken maternity leave, but was because of the importance of continuity of care for pregnant women. Although JC's retention did contribute to a lower caseload for the claimant, as above, we concluded that the claimant's maternity leave did not materially influence her retention.

161. As such, we are entirely satisfied that the claimant was not subjected to a detriment because she took maternity leave.

Was the claimant, upon her return to work, required to cover other bases outside of Whitby? If so, did any of the above constitute a detriment for the Claimant? If so, was the reason why the relevant detriment occurred because the Claimant had exercised her right to take maternity leave?

162. The claimant returned to the Whitby team, with an allocated base of Whitby and a Whitby caseload. We found that the claimant was not allocated a regular clinic outside of Whitby. During the first year after returning from maternity leave, she has not been required to do on-call work.

163. The claimant was, both before her maternity leave and on her return to work, required to work on an ad hoc basis at clinics outside of the Whitby area. Since her return, she has done ad hoc clinics outside the Whitby area infrequently, albeit more frequently than she did before her maternity leave. Initially, this was a transitional arrangement while she built up her caseload gradually, and as she did not want to do antenatal classes in Whitby. This has also reflected the need for cover in the Scarborough area because of absences.

164. The claimant's base for travel has remained Whitby. This means that, when she travelled to a location outside of Whitby, the clinic times were adjusted so that she travelled during her working hours, either in the respondent's car or by claiming expenses for travelling in her own car. We accepted Victoria Clark's evidence that the claimant had not been required to travel outside of Whitby more than other midwives, taking into account working hours.

165. We conclude that this was not a detriment. The claimant had previously worked at Scarborough hospital under the CoC model. Although midwives have an 'allocated base' (the claimant's is Whitby), they work flexibly such that they work in other locations to ensure that the East Coast midwifery service is delivered. The Whitby team had been the beneficiaries of this flexibility before the claimant's maternity leave such that she was rarely asked to work outside the Whitby area. By the time of her return from maternity leave, however, the balance had tipped and the Whitby team was being asked to cover other, short-staffed areas more frequently than before but this was still infrequent.

166. The claimant was not asked to carry out ad hoc clinics outside Whitby more than other midwives were travelling, taking into account working hours. Whenever the claimant carries out an ad hoc clinic outside Whitby, she travels

during her working time and claims travel expenses or travels in the work car. During this period, she was not working on call shifts which could have required her to work anywhere in the East Coast midwifery service's geographical area. We concluded that the claimant returned to the same job. This was not treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to her detriment. Although the claimant's position was that it was not feasible for her baby to be brought to her on a meal break if she was 30+ minutes away (as opposed to 10 minutes away), there was no evidence as to why and for whom this was not feasible and therefore to conclude that these personal circumstances could amount to a detriment for the claimant. As such, we conclude that the claimant was not subjected to a detriment by any act, or any deliberate failure to act, by the respondent.

167. This complaint therefore fails and is dismissed.

168. Although we have concluded that this did not amount to a detriment, in the event that we are wrong on that conclusion we have reached conclusions as to the reason the respondent acted in the way it did. The claimant had a reduced workload initially as part of her transition back to work, during which time she needed to build up her caseload gradually. JC's retention also contributed to a lower caseload for the claimant. By the end of 2023, the East Coast midwifery team had three vacancies and another member of staff was about to start maternity leave. The respondent needed to resolve those wider staffing issues and, because the claimant had a reduced caseload and had confirmed that she did not want to do ante-natal classes (which could have kept her in Whitby), she had some availability to carry out clinics on an ad hoc basis. We accepted Victoria Clark's evidence that the claimant was not asked to do so more than anyone else, taking into account working hours. We are entirely satisfied that the claimant's maternity leave provided the context, but did not materially influence what happened.

169. As such, we are entirely satisfied that the claimant was not subjected to a detriment because she took maternity leave.

Did the respondent deliberately fail to remedy this by its decisions on 14 July 2023, 1 August 2023, 23 October 2023, and 17 January 2024? If so, did any of the above constitute a detriment for the Claimant? If so, was the reason why the relevant detriment occurred because the Claimant had exercised her right to take maternity leave?

170. The first issue is to determine what the respondent needed to remedy. 14 July 2023 was the informal grievance meeting; 1 August 2023 was the date the claimant received the outcome of the informal grievance; 23 October 2023 was the date the claimant received the outcome of the formal grievance and 17 January 2024 was the date she received the outcome of the appeal meeting.

171. This issue is expressed in a convoluted way but, in essence, what the claimant is complaining about is that she did not get the outcome she wanted.

172. At each of these stages, the respondent confirmed to the claimant that she would return to the Whitby team as a community midwife, with a Whitby caseload and Whitby as her base for travel. The respondent discussed with her other possibilities such as ante-natal classes in Whitby as well as other clinics outside of the Whitby area. It was confirmed to the claimant that she

could be asked to carry out ad hoc clinics, as would others in the Whitby team. By the time of the appeal, she had returned to work on this basis. For the above reasons, we concluded that she returned to the same job and we do not accept that these are matters which needed to be 'remedied'.

173. The respondent confirmed that there would be a consultation with the Whitby team and other members of the East Coast team to consider how the service was to be delivered as we have set out above. At the appeal, it was confirmed that there would be no consultation arising directly as a result of the recruitment exercise for the claimant's maternity cover.

174. At each of these stages, the respondent made a conscious (and therefore deliberate) decision to take the course of action it took. Taking into account our earlier conclusions, however, we do not accept that the respondent needed to remedy any of the earlier issues. That being the case, we conclude that these do not amount to a detriment or detriments. This was not treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to her detriment. As such, we conclude that the claimant was not subjected to a detriment by any act, or any deliberate failure to act, by the respondent.

175. This complaint therefore fails and is dismissed.

176. Although we have concluded that this did not amount to a detriment, in the event that we are wrong on that conclusion we have reached conclusions as to the reason the respondent acted in the way it did. We heard from Victoria Clark, Alison Chorlton and Lucy Brown and accepted their evidence that the factors which influenced their decisions were that: they took the view (and continued to take the view) that it was not appropriate to 'send' JC back to work exclusively in Scarborough for the above reasons; that left the Whitby team over-established when looking solely at caseload numbers; the prioritisation of continuity of care such that the claimant would be required to build up her caseload gradually; and the East Coast midwifery team had to provide a 7 day home-based service including home births but had several vacancies. It was never suggested that, by not hearing from Louise Howgate directly, that added anything to the complaint. In any event, for these reasons, we are entirely satisfied that the decisions were not taken because of the claimant's maternity leave.

177. As such, we are entirely satisfied that the claimant was not subjected to a detriment because she took maternity leave.

Section 18 EQA Complaints

Did the respondent recruit a permanent employee to cover the claimant's maternity leave leading to changes to her role (in respect of her caseload being reduced) and her unit at Whitby being over-established? If so, did the above amount to unfavourable treatment? If so, was the reason why the relevant unfavourable treatment occurred because the Claimant had exercised her right to take maternity leave?

178. We have reached conclusions at paragraphs 126-138 in relation to this issue.

179. As to whether this was unfavourable treatment, we note that unfavourable treatment is to be measured against an objective sense of what is adverse and not whether it could have been more beneficial. No comparator is needed.

180. For the same reasons as set out in relation to this issue at paragraphs 126-139 above (although we accept that regulation 18 MAPLE is not directly relevant) we do not consider that objectively this was adverse for the claimant. We conclude that the claimant was not treated unfavourably.

181. This complaint therefore fails and is dismissed.

182. Having reached that conclusion, we are not required to reach conclusions as to the reason for that treatment. However, in the event that we are wrong on that conclusion we have reached conclusions as to the reason the respondent acted in the way it did.

183. In this context we are required to carry out a subjective enquiry into the mind of the alleged discriminator and determine whether the claimant's maternity leave 'materially influenced' the employer's conscious or sub-conscious decision making. For the same reasons as set out at paragraphs 142-146 in relation to this issue above, we conclude that the claimant's maternity leave provided the context, but did not materially influence the respondent's treatment of the claimant.

184. As such, we are entirely satisfied that the claimant was not treated unfavourably because she had exercised her right to take maternity leave.

Did the respondent inform the claimant during her maternity leave that she would be subject to a consultation regarding workloads on return? If so, did the above amount to unfavourable treatment? If so, was the reason why the relevant unfavourable treatment occurred because the Claimant had exercised her right to take maternity leave?

185. We have reached conclusions at paragraph 148 in relation to this issue.

186. For the same reasons as set out in relation to this issue at paragraphs 148-149 above, we do not consider that objectively this was adverse for the claimant. We conclude that the claimant was not treated unfavourably.

187. This complaint therefore fails and is dismissed.

188. Having reached that conclusion, we are not required to reach conclusions as to the reason for that treatment. However, in the event that we are wrong on that conclusion we have reached conclusions as to the reason the respondent acted in the way it did. For the same reasons as set out at paragraphs 151-152 above, we conclude that the claimant's maternity leave provided the context, but did not materially influence the respondent's treatment of the claimant.

189. As such, we are entirely satisfied that the claimant was not treated unfavourably because she had exercised her right to take maternity leave.

Did the claimant return to a reduced caseload? If so, did the above amount to unfavourable treatment? If so, was the reason why the relevant unfavourable treatment occurred because the Claimant had exercised her right to take maternity leave?

190. We have reached conclusions at paragraphs 126-138 and 154-156 in relation to this issue.

191. For the same reasons as set out in relation to this issue at paragraphs 126-139 and 154-156 above we do not consider that objectively this was adverse for the claimant. We conclude that the claimant was not treated unfavourably.

192. This complaint therefore fails and is dismissed.

193. Having reached that conclusion, we are not required to reach conclusions as to the reason for that treatment. However, in the event that we are wrong on that conclusion we have reached conclusions as to the reason the respondent acted in the way it did. For the same reasons as set out in paragraphs 159-160 above, we conclude that the claimant's maternity leave provided the context, but did not materially influence the respondent's treatment of the claimant.

194. As such, we are entirely satisfied that the claimant was not treated unfavourably because she had exercised her right to take maternity leave.

Was the claimant, upon her return to work, required to cover other bases outside of Whitby? If so, did the above amount to unfavourable treatment? If so, was the reason why the relevant unfavourable treatment occurred because the Claimant had exercised her right to take maternity leave?

195. We have reached conclusions at paragraphs 162-164 in relation to this issue.

196. For the same reasons as set out in relation to this issue at paragraphs 162-166 above we do not consider that objectively this was adverse for the claimant. We conclude that the claimant was not treated unfavourably.

197. This complaint therefore fails and is dismissed.

198. Having reached that conclusion, we are not required to reach conclusions as to the reason for that treatment. However, in the event that we are wrong on that conclusion we have reached conclusions as to the reason the respondent acted in the way it did. For the same reasons as set out in paragraph 168 above, we conclude that the claimant's maternity leave provided the context, but did not materially influence the respondent's treatment of the claimant.

199. As such, we are entirely satisfied that the claimant was not treated unfavourably because she had exercised her right to take maternity leave.

Did the respondent deliberately fail to remedy this by its decisions on 14 July 2023, 1 August 2023, 23 October 2023, and 17 January 2024? If so, did the above amount to unfavourable treatment? If so, was the reason why the relevant

unfavourable treatment occurred because the Claimant had exercised her right to take maternity leave?

200. We have reached conclusions at paragraphs 170-173 in relation to this issue.

201. For the same reasons as set out in relation to this issue at paragraphs 170-174 above we do not consider that objectively this was adverse for the claimant. We conclude that the claimant was not treated unfavourably.

202. This complaint therefore fails and is dismissed.

203. Having reached that conclusion, we are not required to reach conclusions as to the reason for that treatment. However, in the event that we are wrong on that conclusion we have reached conclusions as to the reason the respondent acted in the way it did. For the same reasons as set out in paragraph 176 above, we conclude that the claimant's maternity leave provided the context, but did not materially influence the respondent's treatment of the claimant.

204. As such, we are entirely satisfied that the claimant was not treated unfavourably because she had exercised her right to take maternity leave.

Conclusions

205. Given our findings, it is not necessary for us to determine whether the complaints were brought in time.

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Employment Judge L Robertson

_____

Date 29 November 2024