EMPLOYMENT TRIBUNALS

Claimant: **Ms E Onigbanjo**

Respondent: **London Borough of Croydon**

Heard at: **Croydon** **On: 19 to 21 July 2017**

Before: **Employment Judge K Bryant**
Ms B C Leverton
Ms T Williams

Representation:

Claimant: In Person
Respondent: Mr S Crawford (of Counsel)

RESERVED JUDGMENT ON LIABILITY

1. The Claimant's claims of failure to make reasonable adjustments under sections 20 and 21 of the Equality Act 2010 succeed in part, namely her claim concerning a failure to implement Access to Work recommendations.

2. The Claimant's claims of pregnancy discrimination under section 18 of the Equality Act 2010 also succeed in part, namely her claims concerning a failure to carry out a pregnancy-specific risk assessment as required by regulation 16 the Management of Health and Safety at Work Regulations 1999 and a failure to reallocate a case as agreed at a meeting on 11 April 2016.

3. Other aspects of the Claimant's claims fail and are dismissed.

4. The tribunal will consider remedy at a hearing already listed for 8 September 2017 which is the subject of directions which will be issued separately.

REASONS

Claims and issues

1. The claims and issues arising in this case were discussed and agreed by the parties at the start of the hearing, and were again confirmed with the Claimant at the conclusion of her evidence.

2. The Claimant brings two types of claim, the first for alleged failures to make reasonable adjustments under section 20 of the Equality Act 2010 ('EqA') and the second for pregnancy discrimination under section 18 of the EqA (with an alternative direct sex discrimination claim but only in the event that the claim under section 18 fails).

3. The parties had prepared what amounted to an agreed list of issues; there were two versions in the bundle, one from the Claimant and one from the Respondent, but as far as the tribunal could tell the substantive contents were identical. Further clarification as to the detail of her allegations was given by the Claimant at the hearing.

4. With regard to her reasonable adjustments claim, the Claimant relies on fibromyalgia as giving rise to a disability within the meaning of the EqA. The Respondent accepts that the Claimant was disabled as a result of fibromyalgia from February 2016 onwards but does not expressly admit disability at any earlier time. The Respondent does not seek to rely on any lack of knowledge of the Claimant's disability, ie no defence under paragraph 20 of Schedule 8 to the EqA is raised.

5. The Claimant's allegations fall within section 20(3) and/or 20(5) of the EqA. For the purposes of section 20(3) the provisions, criteria or practices ('PCPs') relied on concern her working pattern and/or working practices.

6. The Claimant made six allegations of failure to make reasonable adjustments in the agreed list of issues which, as clarified during the hearing, are as follows:

   6.1 Recommendations made in an Access to Work report dated 14 January 2016 should have been implemented by the beginning of March 2016; she says that nothing was implemented for about 5 months and key elements were not in place even when she started annual and then maternity leave in July 2016;

   6.2 An appropriate referral to Occupational Health ('OH') should have been made; specifically C says (a) that there should not have been a delay between the completion of a referral form on 13 January 2016 and an OH appointment on 29 March 2016 and (b) that she should have been seen by a doctor not a nurse;

6.3 A risk assessment should have been carried out; the Claimant confirmed during the hearing that this in fact related to a pregnancy-specific risk assessment and so was in fact part of her pregnancy discrimination claim;

6.4 Agreed and documented flexible / altered working hours, including regular breaks, should have been agreed; the Claimant says that this relates to recommendations made by OH and by her GP and also what she herself asked for;

6.5 A designated work station should have been provided; the Claimant confirmed during the hearing that this was one of the Access to Work recommendations and so is already covered by the first allegation above;

6.6 Her caseload should have been adjusted to manage long distance travelling and long working hours; the Claimant confirmed during the hearing that this allegation is effectively the same as that relating to flexible / altered hours above.

7. Therefore, the substance of the Claimant's reasonable adjustments claim is as summarised in sub-paragraphs 6.1, 6.2 and 6.4 above, the other allegations already being covered or part of her pregnancy discrimination claim as outlined below.

8. The Claimant made six allegations of pregnancy discrimination in the agreed list of issues which, as again clarified during the hearing, are as follows:

8.1 A failure to carry out a pregnancy-specific risk assessment within a reasonable time contrary to regulations 3 and 16 of the Management of Health and Safety at Work Regulations 1999 ('the 1999 Regulations'); The Claimant says this should have been done as soon as she told the Respondent of her pregnancy but, in any event, no later than the end of March 2016;

8.2 A failure to adjust her work duties in line with GP advice contained in certificates dated 10 April and 10 May 2016;

8.3 A failure to move her to office-based work to avoid travelling and the risk of working with violent children; the Claimant has confirmed that this is in fact part of the GP recommendations and so is already covered by the previous allegation;

8.4 A failure to provide a suitable office environment from 16 June 2016; the Claimant has confirmed that this is a reference to the Access to Work recommendations and is part of her disability rather than pregnancy claim;

8.5 A failure to alter her hours to avoid commuting in the rush hour; the Claimant has confirmed that this is already covered by the second allegation above;

8.6 A failure to implement a phased return to work; again, the Claimant has confirmed that this is an aspect of the second allegation above.

9. The Claimant has also said during the course of the hearing that the events of 8 April 2016 amount to a further aspect of her pregnancy discrimination claim.

10. The substance of the Claimant's pregnancy discrimination claim is therefore as summarised in sub-paragraphs 8.1 and 8.2 above, the other aspects in paragraph 8 already being covered or part of her disability claim, together with the events of 8 April 2016.

11. The Claimant also says that if the above matters do not amount to pregnancy discrimination then in the alternative they were direct sex discrimination.

Evidence and findings of fact

12. The tribunal was provided with a trial bundle in two volumes. The contents of the bundle were agreed although the Claimant, without objection from the Respondent, provided a number of further documents to the tribunal at the start of Day 2 of the hearing.

13. The Respondent also provided a short written opening, including a chronology.

14. The Claimant gave evidence on her own behalf by reference to a written witness statement and supplemental witness statement.

15. The Respondent called three witnesses, each of whom gave evidence by reference to a written witness statement:

    15.1 Erin Morris, who left the Respondent's employment on 6 July 2017 to work for another local authority but who was the Claimant's immediate line manager at all material times;
    15.2 Dwynwen Stepien, who retired on 19 May 2017 but had been the Respondent's Head of Early Intervention Service and who heard stage 1 of the Claimant's grievance; and
    15.3 Wendy Tomlinson, who is now Head of the Looked after Children and Resources Service but before that was Service Delivery Manager and Erin Morris's line manager.

16. The tribunal wishes to say at this stage that the Claimant, although unrepresented, presented her case with clarity. Further, it seemed clear to the tribunal that, in giving their evidence, both the Claimant and Ms Morris, the Respondent's key witness, were for the most part doing their best to assist the tribunal to reach the truth.

17. In light of all the evidence seen and heard by the tribunal, it has made the following unanimous findings of fact:

17.1 The Claimant started employment with the Respondent on or about 14 October 2015 as a Newly Qualified Social Worker ('NQSW') in its Looked After Children and Resources service.

17.2 Ms Morris was the Claimant's line manager at all material times and Ms Tomlinson was Ms Morris's line manager.

17.3 NQSWs starting work for the Respondent are required to undertake an Assessed and Supported Year in Employment ('ASYE') programme which is, in effect, an induction year. The NQSW, the relevant manager and an ASYE Project Supervisor enter a formal written agreement. In the case of the Claimant this agreement was dated 12 November 2015 and was made between herself, Ms Morris (as her manager) and an external ASYE Project Supervisor based in Islington. The agreement sets out the responsibilities of the relevant parties to the agreement and what is expected of them. The agreement provides for discussion between the parties every 3 months or so.

17.4 As the tribunal understands it, the intention (as its name would suggest) is that an ASYE would ordinarily be completed in the first year or so of employment, but if that is not possible for some reason it is permitted to complete it within two years of the start of employment.

17.5 The tribunal notes that the ASYE agreement records, in the section referring to whether the NQSW has any special needs that require addressing to facilitate their participation in the induction year, that the Claimant *'has an on-going health assessment RE: Fibromyalgia which she has disclosed to Erin and Erin stated that she can contact OH if need be.'*

17.6 Ms Morris was responsible for a team of between 11 and 14 social workers including 3 NQSWs plus another who was about to finish his induction year. She was relatively new to this role; she had started acting up as manager in February 2015 and was in the substantive post from June 2015.

17.7 The ASYE induction year involves a greater degree of supervision and assessment than is the case with more experienced Social Workers. Amongst other things, it gives the NQSW an opportunity to become part of the relevant team and to learn from more experienced colleagues by discussing cases with them and observing them in the working environment. It also gives the NQSW's manager the opportunity to support and assess the NQSW as they develop in their new role.

17.8 During the induction year it is expected that the NQSW's case load will build up in terms of number and complexity of cases. After the first few months an NQSW would generally have an average of 10 cases and by the time they reach the end of the year that would have risen to about 12. A more experienced social worker working for the Respondent may have 16 or more cases.

17.9 After her first few months the Claimant had 9 cases in total, 3 of which could be described as more complex.

17.10 Each case assigned to a NQSW (or a more experienced social worker) involves a 'looked after child', ie a child in the care of the

Respondent, for example in a foster care placement. Some are placements in the borough, others are elsewhere in London but some may be a significant distance away. One of the Claimant's cases involved a placement in Manchester and then Wales.

17.11 A social worker assigned to a particular child's case needs to have regular contact with the child and/or parents and/or their foster carers and/or other relevant agencies. Such matters are subject to various statutory requirements.

17.12 The Claimant told Ms Morris on her first day at work in October 2015 that she had fibromyalgia. Ms Morris said something to the effect that she had some knowledge of the condition as a family member also suffered from the same condition.

17.13 As noted above, the ASYE agreement was entered in November 2015, but nothing else of particular relevance to the issues in this case occurred between October and December 2015.

17.14 Access to Work is a publicly funded programme, administered through the Department for Work and Pensions, which provides support (including funding) for those with long term medical conditions to assist them in obtaining and/or retaining work.

17.15 There is a dispute between the parties as to precisely when and how Access to Work were first contacted, but it is not necessary for the tribunal to resolve that dispute. In any event, the process of assessment in respect of the Claimant was underway by 4 January 2016 if not before; on that date Ms Tomlinson was asked for, and gave, approval to fund the first £1,000 of the cost of any adjustments recommended following the workplace assessment.

17.16 A formal Access to Work workplace assessment took place on 13 January 2016 and a report was prepared dated 14 January 2016. The report refers to *'chronic fibromyalgia'* and sets out a number of the symptoms associated with that condition and from which the Claimant suffered.

17.17 The report then made a number of recommendations which it will be helpful to summarise here; it was recommended that the Claimant be provided with:

- Dragon Professional voice activated software (which converts speech to type);
- 4.5 days' training in the use of that software;
- A Livescribe Echo Smart Pen (which converts handwriting to type);
- A lightweight laptop wheelie bag (to replace the shoulder bag she currently used);
- An Adapt 630 chair;
- A laptop pack for use whilst working from home, which would include a laptop stand and separate keyboard and mouse;
- A mobile smart phone with touch screen;
- A designated workstation at work, allowing her to leave her equipment set up for her needs;
- A footrest for use with her special chair;
- A separate monitor for use with her laptop at work which she could leave set up in the correct position for her needs.

17.18 The Claimant provided a copy of the Access to Work documents, including the recommended equipment and costings, to Ms Tomlinson on 20 January 2016 and Ms Tomlinson replied the same day saying that *'I'm agreeing to spend money on whatever Eni needs according to this assessment.'*

17.19 Meanwhile, an OH referral form was completed by the Claimant, at Ms Morris's request, on 13 January 2016. The form referred to fibromyalgia and a need for reasonable adjustments.

17.20 On 20 January 2016 the Claimant told Ms Tomlinson verbally that she was pregnant. She did not tell Ms Morris on that date because she was away, but told her on 1 February 2016 on her return to work.

17.21 The Claimant then provided formal written notification of her pregnancy on 7 March 2016 (by which time she was 12 weeks' pregnant) and asked what the next steps would be.

17.22 The first invitation from OH to attend an appointment following the referral of 13 January 2016 was by letter dated 21 March 2016, offering an appointment on 29 March 2016. No explanation for the delay from mid-January to late March has been provided by the Respondent.

17.23 The Claimant attended the appointment on 29 March 2016 and was seen by an OH nurse. There is no evidence that the Claimant was seen by a nurse rather than a doctor as the result of any action by the Claimant or Ms Morris or Ms Tomlinson. The most likely explanation, the tribunal finds, is that OH themselves decided that the contents of the referral were such that it was appropriate for the Claimant to be seen by a nurse.

17.24 In a memo dated 29 March 2016 OH reported to Ms Morris in the following terms:

'She does appear to have fibromyalgia which is managed on medication and regular reviews with her rheumatologist. I understand she has had Access to Work input with recommended adjustments including offer of transport to and from work on the days where she feels her pains limit her driving to work in the morning.

In addition to the adjustment in place, Ms Onigbanjo also feels that being given the opportunity to work from home through the flexible working arrangements, will help ease stress on her. This obviously has to be risk-assessed and agreed by her manager.

Finally, I understand from your referral and her account that she is required to travel long distance to help a particular case, as you aware [sic]*, she is currently fourteen weeks pregnant, and therefore a combination of her pregnancy and existing medical condition could make this aspect of her role difficult and unsuitable. Obviously it can be revisited once she has had her baby.'*

17.25 The tribunal finds that the reference by OH to 'adjustment in place' was based on an assumption by the OH nurse that recommendations made in the Access to Work report of 14 January 2016 would have been implemented by 29 March 2016; as discussed further below, this assumption was incorrect.

17.26 One of the Claimant's cases concerned a child who was in a placement in Manchester. The Claimant visited Manchester from 3 to 5 April 2016 to visit the child and also to discuss matters with one or more relevant agencies. On this occasion she travelled to Manchester on Sunday 3 April, stayed in a hotel in Manchester for two nights, and then travelled back on Tuesday 5 April. There is a dispute between the parties as to why the trip was structured in that way. The Claimant says that it was because she had meetings on two consecutive days. The Respondent says that it was as an adjustment, in light of the Claimant's disability, so that she did not have to travel up and back in one day. The tribunal does not consider it necessary to resolve this dispute; whether or not it was intended at the time as a reasonable adjustment, the fact is, as accepted by the Claimant, that she did stay over for two nights and as a result was not required to make the journey there and back in one or even two days.

17.27 On 5 April 2016 Ms Morris attended a supervision meeting with her manager, Ms Tomlinson. The tribunal accepts that Ms Morris was concerned by this time that the Claimant seemed to be absent from the office quite a lot and that it was not always clear where she was when not in the office. Ms Morris expressed these concerns to Ms Tomlinson.

17.28 There is no suggestion that Ms Morris thought that the Claimant was not working the required hours or was neglecting her casework, rather that it made it difficult for her to supervise, support and assess the Claimant pursuant to the ASYE agreement. She also felt that the Claimant was missing out on team interaction and integration and was not maximising the opportunity to learn from seeing and hearing how others worked and from seeking the input of more experienced social workers.

17.29 There was also discussion between Ms Morris and Ms Tomlinson at the meeting on 5 April 2016 about the need formally to assess the Claimant's cases and her work more generally. The notes of the meeting record that Ms Morris was to undertake this assessment. This may have been prompted by the OH memo of a few days earlier, but the tribunal finds that it was at least in part specifically as a result of the Claimant's pregnancy. The tribunal finds that the Claimant's managers were aware, by this time if not before, that no sufficient risk assessment had yet been undertaken following their knowledge of the Claimant's pregnancy. It was agreed that Ms Morris would speak with HR about what was required and would undertake a formal risk assessment.

17.30 The notes of the meeting of 5 April 2016 record that *'Erin will have the flexible working agreement done by Friday.'* Again, this may have been prompted by the reference to flexible working in the OH memo of 29 March. The tribunal finds (a) that no flexible working agreement was ever produced by the Respondent in respect of the Claimant but (b) by this time, ie early April 2016, the Claimant was effectively already being allowed to work from home on occasions on an ad hoc basis as and when she wished to do so. Indeed, the

Claimant confirmed as much in writing in an email to the Respondent on 29 April 2016 in which she said *'I usually work from home once a week and a day for ASYE development.'* The Claimant said in evidence that she was mistaken when she wrote this, but the wording is clear, whether taken in isolation or in the context of the rest of the email, and the tribunal cannot see how she could have meant anything else by this.

17.31 As noted above, the Claimant relies on the events of 8 April 2016 as part of her pregnancy discrimination claim. There is a clear dispute of fact as to what happened on that day. The Claimant had been supervising a child and parent visit to the cinema. It had finished much later than anticipated. A placement had been found in one of her other cases and had to be implemented that day. The Claimant rang into the office to try to pass the placement to the duty team to deal with. Ultimately she was asked to come into the office to speak with the duty team in person. She then came into the office, but by the time she arrived the placement had already been passed to the duty team to implement.

17.32 The principal dispute between the parties is whether or not the Claimant told Ms Morris when they spoke on the telephone that she was feeling unwell but Ms Morris still insisted that she come into office to hand the case over to the duty team in person.

17.33 The tribunal accept that the Claimant may have been feeling unwell and that she may even have said as much to the duty team when she initially rang in. However, the tribunal does not accept that she said she was feeling unwell to Ms Morris when they spoke over the phone. The tribunal finds that if the Claimant had said to Ms Morris that she was feeling unwell then Ms Morris would not have called her into the office. This is, the tribunal finds, consistent with Ms Morris's response to the Claimant's health needs both before and after this date. For example, by 8 April 2016 the Claimant was already being given a considerable degree of flexibility by Ms Morris in her working pattern. It is also consistent with a comment made by Ms Morris in a meeting a few days later (a note of the meeting being agreed and signed by the Claimant) to the effect that if the Claimant was ever feeling unwell then she should ring in to discuss flexible working, and if she told Ms Morris what she was planning to do and was contactable it would not be a problem.

17.34 The tribunal also notes that when the Claimant raised a formal grievance on 18 April 2016 the events of 8 April 2016 were said to amount to 'discrimination arising from disability' (rather than anything to do with her pregnancy) which is a claim never raised in these proceedings.

17.35 Ms Morris and the Claimant met on 11 April 2016 for a supervision meeting. As noted above, the notes of this meeting are signed by the Claimant and the tribunal finds that they are an accurate summary of the meeting. The Claimant told Ms Morris about one particular child who concerned her *'due to his unpredictable violent outburst that put her and her unborn at risk.'* The notes record that Ms Morris agreed to reassign the case.

17.36 Ms Morris also raised during the meeting of 11 April 2016 her concerns, as expressed to Ms Tomlinson a few days earlier, about the importance of keeping her informed as to her whereabouts during the working day so that she and others in the team would know where the Claimant was.

17.37 They also talked about the Claimant's pregnancy and her plans for maternity leave. The subject of a risk assessment was raised and Ms Morris agreed to speak with HR as soon as possible about it.

17.38 After the meeting, but also on 11 April 2016, the Claimant sent to Ms Morris a copy of a GP certificate dated 10 April 2016. This referred to *'Fibromyalgia and Pregnancy'* and recommended alternative duties for the next 4 weeks in these terms: *'Office based to avoid travelling and risk of working with violent children.'*

17.39 A further GP certificate dated 17 April 2016 signed the Claimant off work for 2 weeks; the reason being *'Pregnancy complications and Body aches.'*

17.40 The Claimant presented a formal written grievance on 18 April 2016. She said, amongst other things, that her sick leave had been caused by her working conditions, including the Respondent's failure to make reasonable adjustments and to protected her health and safety. In a 'Statement of Facts' appended to her grievance, she raised, in essence, three matters:

17.40.1 The fact that although she had chased a number of times, the recommendations made in the Access to Work report over three months earlier had not been implemented;

17.40.2 A complaint about things the OH nurse had said to her on 29 March 2016, in respect of which the Respondent apologised following an investigation and which are not part of the allegations in these proceedings;

17.40.3 The fact that a pregnancy-specific risk assessment had not yet been carried out.

17.41 The tribunal notes here that (a) the Claimant is not satisfied with the grievance process that then took place but (b) any dissatisfaction with the grievance process is not part of this claim and (c) her appeal against the grievance outcome has yet to be concluded; it seems that the parties have agreed to delay the appeal stage until the Claimant's return from maternity leave.

17.42 By the time of her formal grievance on 18 April 2016 the Claimant had chased a number of times as to when the Access to Work recommendations would be implemented. The tribunal also accepts that Ms Morris did also chase on occasions.

17.43 Ms Tomlinson relied on Ms Morris to progress matters, even though she was an inexperienced manager. Ms Tomlinson's attitude, as seemed clear to the tribunal from her evidence, was that it was not a matter with which she should become directly involved even when months had passed with no apparent progress. Ms Tomlinson said in evidence that a number of others for whom she was responsible had obtained equipment quicker than the Claimant because they had chased it up themselves. Ms Tomlinson did not accept this, but it seems to the tribunal that she was effectively washing her hands

of any direct responsibility in the matter and was putting the onus on a disabled employee in respect of whom reasonable adjustments had been recommended and an inexperienced manager to chase others in the Respondent's organisation repeatedly for as long as it took until something was done. In any event, as already noted above, the Claimant did chase on a number of occasions in the months following the Access to Work recommendations but to no avail.

17.44 A further supervision meeting took place between Ms Morris and Ms Tomlinson on 21 April 2016. Similar issues were discussed in relation to the Claimant as had been the subject of the meeting on 5 April 2016. With regard to contacting HR about a formal risk assessment it was noted that *'Erin has had a discussion about which cases were the most risky.'* It is not clear with whom Ms Morris had discussed the Claimant's cases but it appears that two or possibly three cases had been identified. However, it was also noted that *'Erin has not yet contacted HR but will do so ASAP.'* The formal risk assessment had not yet taken place.

17.45 On 27 April 2016 the Claimant was reassured by an HR adviser that the equipment recommended by Access to Work had been ordered and marked as a priority. She was asked to work from home until the equipment was in place, which was anticipated to be by 4 May. It seems that in fact the equipment, or at least major parts of it, had not been ordered.

17.46 The Claimant was then signed off sick for a further week from 2 to 6 May 2016 on the basis of *'pregnancy related complications'* and *'stress'*.

17.47 By 3 May 2016 it seems from email correspondence in the bundle that the Claimant and Ms Morris were chasing HR and they in turn were chasing other departments within the Respondent to find out when the recommended equipment would arrive. They appear to have been met with obfuscation at best.

17.48 On 8 May 2016 the Claimant's GP provided a certificate signing her as unfit for work for a further week. However, on 10 May 2016 a different GP from the same surgery provided a further certificate. The Claimant was now signed as fit to return to work if certain adjustments were made. It was said that the Claimant may benefit from a phased return, altered hours, amended duties and/or workplace adaptations (ie all of the relevant boxes were ticked on the form) and the GP commented that a risk assessment needed to be carried out, that she needed reasonable adjustments as recommended by Access to Work, that she needed altered hours to avoid rush hour commuting and that she also needed flexible working to allow regular hospital checks. The tribunal notes here that it has never been suggested that the Claimant was not permitted to attend hospital appointments during working hours whenever they occurred. The tribunal also notes, as it has already found above, that the Claimant was already being permitted to work flexibly in terms of her working pattern.

17.49 On the same day, 10 May 2016, HR advised the Claimant again to work from home until all the recommended equipment had arrived. This time no date was given for when this was anticipated.

17.50 On 16 May 2016 HR wrote to the Claimant telling her that 'most of the equipment' had arrived and that the rest was hoped to be there by the end of that week. The basis for this hope is unclear, but again it appears to have been misplaced.

17.51 On 20 May 2016 the Claimant made a formal application for flexible working. She referred to her current working pattern as fixed working hours and a mobile working style including *'working … from home when I am not out on a visit.'* She said later in the form, twice, that *'I am currently on a temporary flexible working arrangement as part of reasonable adjustment …'.* Again, the Claimant said in evidence that this did not reflect her actual working pattern at the time, but the tribunal finds that the meaning of these passages in the form is clear and this was how she had been working for some time. The new working pattern for which she now applied amounted to four set days per week, two of which would be working from home.

17.52 Ms Morris and Ms Tomlinson met again for a supervision meeting on 24 May 2016. The subject of a risk assessment was raised again. The notes of the meeting record that *'Erin will do a risk assessment.'* As before, there was no suggestion that any form of risk assessment had already been done.

17.53 The Claimant wrote to HR on 25 May 2016 saying, amongst other things, that she understood that they were still waiting for the equipment. HR replied the same day saying that all of the equipment had arrived and a full work station assessment was scheduled for 7 June 2016.

17.54 At a meeting the next day, 26 May 2016, with Ms Morris, the Claimant was told again that HR had confirmed that all equipment had arrived but that until it was all 'up and running' the Claimant should continue to work from home. The Claimant asked if she could have at least some of the equipment, such as the mobile phone, scribe pen and laptop bag, as they would help her whilst working from home. Ms Morris also confirmed in this meeting that *'she would be reallocating 3 cases from Eniola's caseload due to risk.'* These were presumably the cases already identified by Ms Morris by the time of her meeting with Ms Tomlinson on 21 April 2016, ie over a month earlier.

17.55 The tribunal notes that the Respondent was saying to the Claimant that all of the recommended equipment had arrived, but the evidence shows, and the Respondent now accepts, that the recommended chair, mobile phone and Dragon training had not even been ordered by this time.

17.56 The Claimant took a trip to Wales over the second May bank holiday 2016. She went to visit a child in one of her cases who had been moved to a placement there. She travelled down and stayed one night in a hotel. There is a dispute as to whether the Claimant was asked by Ms Morris to go or whether the Claimant volunteered.

The tribunal finds that the Claimant felt that she had to go but that this was out of a sense of duty to the child and because the visit was already overdue. However, the tribunal does not accept that Ms Morris instructed the Claimant to travel to Wales or that she put her under any pressure to do so.

17.57 The Claimant attended work for her full workstation assessment as arranged on 7 June 2016. She wrote to HR, copied to Ms Morris, that day saying that the assessment had not taken place because the equipment had not arrived, that a pregnancy-specific risk assessment had still not taken place, that her GP's recommendations had not been implemented and asking what she should do.

17.58 Ms Morris completed a generic risk assessment form on 13 June 2016. This was the first time any substantive risk assessment had been undertaken since the Claimant told her managers that she was pregnant in January 2016 (confirmed in writing in early March 2016) and even now it was not, on its face, pregnancy-specific.

17.59 On 15 June 2016 a formal review of the Claimant's progress with her ASYE took place. It was agreed that she would need an extra 3-4 months to complete the induction and that she would do this after returning from maternity leave. It was noted that all parties were satisfied with this plan. Ms Morris said during this review meeting that she would like the Claimant to be more visible in building relationships with team members. She noted that the Claimant worked from home quite a lot and she felt that the Claimant needed to develop skills within a team context.

17.60 The Claimant took what was said at the review meeting as effectively an instruction to work exclusively from the office rather than from home thereafter. However, the tribunal finds that Ms Morris's intention was no more than to point out to the Claimant that it would be better for her, in seeking to build relationships with the team and develop sufficiently to complete her ASYE, if she could have more contact with the team. There was clearly something of a tension between the need to develop and demonstrate skills sufficient to pass the requirements of the ASYE and the need for adjustments to be made in light of the Claimant's disability. This put the Claimant on the one hand and Ms Morris on the other in difficult positions. The Claimant wanted to pass her ASYE before she went on maternity leave but she was also requesting, reasonably, that certain adjustments be made the result of which was likely to delay the completion of her ASYE to some extent. The tribunal finds that the Claimant did resume office work from this time but this was not as a result of any instruction from Ms Morris. The Claimant would have been able to continue with, or to resume, her previous flexible working pattern had she chosen to do so.

17.61 The tribunal also notes from the notes of the ASYE review meeting that there appears to have been no suggestion that the Claimant was not on track to pass, just that she would not pass quite yet. This was, after all, only a six month review as part of a year long programme.

17.62 It seems that Ms Morris sent the generic risk assessment, that she had completed on 13 June 2016, to the Claimant under cover of an email on 16 June. The Claimant made some amendments 'to personalise it', ie to make it more specific to her disability and pregnancy. She sent the amended version to Ms Morris who accepted the changes.

17.63 The Claimant revised her formal flexible working application on 16 June 2016, changing the days on which she was proposing to work each week and now suggesting that she work only one day at home. She asked that the new arrangement come into effect on her return from maternity leave. The tribunal understands that the intention is for the Claimant, and presumably her new manager following Ms Morris's departure, to discuss the application prior to the end of her maternity leave.

17.64 However, even though no formal flexible working arrangement has yet been agreed, throughout the relevant period the Claimant had a large degree of control over her own working pattern and diary.

17.65 By 22 June 2016 the Claimant had still not been provided with all of the equipment recommended by Access to Work. Some equipment had been provided in early June but the chair, footrest and mobile phone remained outstanding, and nor had she been given training in the Dragon software. Of these outstanding items only the phone was provided before she started her annual and then maternity leave in July 2016.

17.66 It seems that the chair had still not been ordered by 5 July 2016; it had certainly not arrived even if it had been ordered.

17.67 The Claimant was signed off sick for two weeks from 12 July 2016. She then started a period of annual leave and then her maternity leave started. At the time of the tribunal hearing the Claimant remained on maternity leave; originally she had planned to return in May 2017 but this has been extended to some time in August 2017.

17.68 As noted above, the Claimant's appeal against the outcome of her grievance is still outstanding and the intention is that this will be dealt with on her return to work.

17.69 Her flexible working application is also still outstanding and the stated intention is to deal with it before she returns to work.

17.70 Her ASYE has not yet been completed but the agreement between the parties before the Claimant went on maternity leave was that she was on track to complete it with a 3-4 month extension and she would resume on her return to work.

Submissions

18. At the conclusion of the evidence both parties made oral submissions in support of their respective cases.

19. The Respondent's counsel dealt first with the pregnancy / sex discrimination claim. With regard to the alleged failure to conduct a risk assessment in accordance with the 1999 Regulations he referred the tribunal to the cases of *Hardman v Mallon* ([2002] IRLR 516, EAT) and

O'Neill v Buckinghamshire County Council ([2010] IRLR 384, EAT). He said that the proper approach was that set out in *O'Neill*. The question is whether there was unfavourable treatment because of pregnancy and this includes whether the lateness of a formal risk assessment was unfavourable. He said that in *O'Neill* the failure was not per se unfavourable. The obligation was only triggered if three conditions were met: (a) notification of pregnancy by the employee, (b) their work is of a kind which could involve a risk of harm or danger to the health and safety of a new or expectant mother and (c) that risk arose from any processes or working conditions. It was said that the Claimant's evidence of potentially violent children and the risk to her and her unborn child was not the same as saying that there was a threat of violence. It was acknowledged that the Claimant had given evidence of a threat of violence and that the Respondent could not put forward a positive case that it had never happened, but Ms Morris denies being told about it and said that the Claimant raised a more general concern that there was a potential for violence. It was said that there was insufficient evidence from which the tribunal could conclude that the conditions to trigger an obligation under the 1999 Regulations were met.

20. The Respondent contended that if the tribunal found that an obligation under the 1999 Regulations did arise then assessment was done by the Respondent, albeit not in writing or in any formal sense. It was submitted that a formal assessment had been done in June 2016 and that its lateness does not detract from its effectiveness. This was a new process for Ms Morris. She eventually found a generic risk assessment form which she completed. She then asked the Claimant for input and the Claimant was then satisfied with the end result.

21. With regard to the other allegations of pregnancy discrimination, the Respondent said that adjustments were made to the Claimant's work, including avoiding long travel and working from home. It was said that the Claimant was told that if she had to travel a long distance then she should take sufficient breaks and could stay in a hotel. It was said that the trip to Wales was undertaken of the Claimant's own volition. The Respondent had not asked her to go but the Claimant had insisted because she wanted to say goodbye to the child. The Respondent said that what the Claimant saw as problematic cases were reallocated.

22. Turning to the disability case, the Respondent concedes disability with effect from February 2016 at the latest. It was also conceded during closing submissions that a duty to make reasonable adjustments arose and that the Access to Work recommendations were all reasonable and were adjustments that the Respondent was therefore obliged to make. The Respondent accepted that the obligation to make those reasonable adjustments arose by 20 January 2016 when funding was approved.

23. The question, the Respondent said, is when the obligation should have been met. The Employment Judge asked when the Respondent said that the Access to Work recommendations should reasonably have been

implemented. The response was that there were a number of administrative procedures that needed to be addressed and that no particular date could be given.

24. With regard to the other adjustments for which the Claimant contended, the Respondent said that Ms Morris had been a truthful witness. She was managing a team of professionals who had a significant degree of autonomy. Significant trust is placed in social workers, including the Claimant. The expectation is that they will deal with their caseloads in such way as suits their requirements. If the Claimant was in the office and indicated that she felt tired then she was allowed to go home even if such an arrangement was never written down or formalised. Ms Morris dealt with the Claimant's needs on an ad hoc basis as they were brought to her attention. That this was accepted and appreciated by the Claimant as a good way of working is clear from what she said in her formal flexible working application.

25. The Claimant then made oral closing submissions. She too dealt with the pregnancy / sex discrimination claim first. She said that the delay in carrying out a pregnancy-specific risk assessment amounted to unlawful detriment, relying on *Hardman*. She said that she had made Ms Morris aware in February 2016 of threats of violence and that Ms Morris had been aware even before then of concerns about the Claimant's cases. She said that Ms Morris had been observing her in the office on 7 March 2016 when some parents were present and became violent. She said that she had raised the need for a risk assessment but Ms Morris kept saying that she would speak with HR. She said that if Ms Morris did carry out an informal risk assessment then she was not made aware of that at any time. The first risk assessment was when she received it from Ms Morris on 16 June 2016.

26. The Claimant said that the occasion when she stayed in a hotel for two nights was a one-off and was only because she had two days of meetings. After that she did another long trip to Wales and only stayed in a hotel for one night. She says that Ms Morris asked her to go to Wales. It was a statutory requirement that a visit be undertaken and there is no evidence that the case had already been reallocated to someone else. She said that when she was asked by Ms Morris she was not aware that she could say no. On another occasion when she was asked to go on another trip she did say no having been advised to do so by her union.

27. With regard to the reallocation of risky cases, the Claimant said that at least two were identified but were still allocated to her when she started sick absence on 12 July 2016. She said that she and Ms Morris had agreed as part of the risk assessment that actions were needed to implement it but this had never been done.

28. The Claimant said that she was never aware she could work flexibly. She says that although the Respondent says that things were arranged informally, there are formal policies and there is no evidence these were

ever complied with. She said that her grievance had still not been fully resolved. She said that she did not bring this claim lightly but the Respondent's failures had resulted in unlawful discrimination.

The law

29. As well as considering the cases referred to by the parties in their submissions, the tribunal has reminded itself of the relevant statutory provisions that arise in this case.

30. Pregnancy discrimination in the context of work is defined in section 18 of the EqA as follows:

*'**18 Pregnancy and maternity discrimination: work cases***
(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably—
(a) because of the pregnancy, or
(b) because of illness suffered by her as a result of it.
…
(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—
(a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
(b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.
(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—
(a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or
(b) it is for a reason mentioned in subsection (3) or (4).'

31. The circumstances in which a duty to make reasonable adjustments will arise are set out in section 20 of the EqA, the most relevant provisions of which are as follows:

*'**20 Duty to make adjustments***
(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
(2) The duty comprises the following three requirements.
(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with

persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

…'

32. It is also worth setting out here the most relevant provisions of the 1999 Regulations, which are these:

'3 Risk assessment

(1) Every employer shall make a suitable and sufficient assessment of—

(a) the risks to the health and safety of his employees to which they are exposed whilst they are at work; and

(b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.

…

(3) Any assessment such as is referred to in paragraph (1) or (2) shall be reviewed by the employer or [relevant self-employed person] [3] who made it if—

(a) there is reason to suspect that it is no longer valid; or

(b) there has been a significant change in the matters to which it relates;

and where as a result of any such review changes to an assessment are required, the employer or [relevant self-employed person] [3] concerned shall make them.

…

(6) Where the employer employs five or more employees, he shall record—

(a) the significant findings of the assessment; and

(b) any group of his employees identified by it as being especially at risk.

…

16 Risk assessment in respect of new or expectant mothers

(1) Where—

(a) the persons working in an undertaking include women of child-bearing age; and

(b) the work is of a kind which could involve risk, by reason of her condition, to the health and safety of a new or expectant mother, or to that of her baby, from any processes or working conditions, or physical, biological or chemical agents, including those specified in Annexes I and II of Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, as amended by Directive 2014/27/EU,

the assessment required by regulation 3(1) shall also include an assessment of such risk.

…'

Discussion

33. **Disability discrimination**

The Respondent has expressly conceded that the Claimant has been disabled within the meaning of the EqA as a result of fibromyalgia since February 2016. It has also not raised any issue concerning knowledge of disability. Given the further express concession that a duty to make reasonable adjustments arose by 20 January 2016 this effectively amounts to a concession that the Claimant must have been disabled from no later than that date; if she was not disabled then no duty can have arisen under section 20 of the EqA.

34. It seems to the tribunal that it is likely that the Claimant was disabled from the start of her employment, even if a formal diagnosis of her condition was not confirmed until some time later. However, it is not necessary for the purpose of this claim to decide whether the Claimant was disabled at any time before 20 January 2016.

35. As mentioned above, the Respondent has conceded that a duty to make reasonable adjustments arose in this case from 20 January 2016 and that all of the recommendations made in the Access to Work report dated 14 January 2016 were reasonable in the circumstances.

36. The question is, then, whether the Respondent complied with that duty. The tribunal has had no hesitation in concluding that it did not.

37. The recommendations were made on 14 January 2016. The Respondent was aware of them soon thereafter and had approved funding by 20 January 2016. The Claimant contends that all of the recommendations should have been implemented fully by the start of March 2016. The tribunal accepts the Respondent's contention that a number of administrative steps were required to implement the recommendations and that achieving full implementation by the start of March was therefore somewhat optimistic. However, the tribunal has concluded that in order to

comply with the duty that had arisen under section 20 the Respondent should have completed implementation by the end of March 2016 at the latest.

38. In fact, it seems that implementation had not in practical terms even started by the end of March 2016. The precise dates on which items of equipment were made available to the Claimant are still not entirely clear, but nothing was provided to her until early June 2016 and even by the time she left on sick leave which then led into annual leave and maternity leave, starting on 12 July 2016, key items were still not available, in particular the chair, foot rest and training in the Dragon software had not been provided. As a result, a designated workstation had also not been provided to her. It was, by this time, nearly 6 months since the duty had arisen and funding had been approved.

39. The cause of this extraordinary delay is unclear, but on any view, as the Respondent accepted in the course of the hearing, whichever individual or individuals in the Respondent's organisation was responsible, liability ultimately rests with the Respondent.

40. The claim under paragraph 6.1 is therefore well-founded. The Respondent failed to comply with its duty to make reasonable adjustments which amounts to an unlawful breach of section 39(5) of the EqA.

41. The second reasonable adjustment for which the Claimant contends is as set out in paragraph 6.2 above, ie that there should not have been a delay between the completion of a referral form on 13 January 2016 and an OH appointment on 29 March 2016 and the Claimant should have been seen by a doctor rather than a nurse.

42. The Claimant has not enunciated how this aspect of her claim fits into section 20 of the EqA, but recognising that the Claimant is unrepresented the tribunal has attempted to analyse the claim as best it can. If it is to come within section 20 at all, it could only be under section 20(3); this is not an allegation concerning physical features or auxiliary aids. The question is, then, whether a provision, criterion or practice ('PCP') put the Claimant at a substantial disadvantage in comparison with non-disabled people. It is difficult to see how a PCP could be formulated to support this aspect of the case, and the Claimant has not sought to do so. It is also difficult to see how the necessary substantial disadvantage could be established such that a duty would arise. In the circumstances, the tribunal finds that this aspect of the claim is not well-founded.

43. The third and final aspect of the reasonable adjustments claim is as set out in paragraph 6.4 above, which is the contention that a reasonable adjustment should have been made such that there were agreed and documented flexible working arrangements as recommended by OH and by her GP.

44. In so far as flexible working had been recommended in the sense of working from home and/or flexibility in terms of working hours, the tribunal has already found that the Claimant already had the ability to work in this manner from early April 2016 at the latest. Another recommendation concerned long distance travel, but the only long distance travel undertaken after the OH memo of 29 March 2016 was one trip to Manchester which involved travelling up on Sunday, staying two nights, and then travelling back on the Tuesday (which, whether or not it was the motivation for the arrangement, amounted to a reasonable adjustment) and the trip to Wales in late May 2016 which the tribunal has already found was a trip for which the Claimant effectively volunteered.

45. The GP certificate dated 10 April 2016 recommended office based work to avoid travelling and the risk of working with violent children. If this was intended to mean that the Claimant should work exclusively in the office, then the tribunal finds that would have been unrealistic, and therefore not a reasonable adjustment, for a social worker, especially in her ASYE induction period given the need to develop and demonstrate relevant skills in social work, but it has never been suggested by the Claimant that that is what the GP was recommending. Rather, the emphasis was on avoiding long distance travel and working with violent children. The only long distance travel after this was one trip to Wales, for which the Claimant effectively volunteered, and the recommendation to avoid working with violent children was concerned with her pregnancy rather than her disability.

46. The second GP certificate on which the Claimant relies is dated 10 May 2016 and it recommends a number of flexibilities in working pattern, but each of those was effectively in place already as a result of the ad hoc flexible working arrangement that had been adopted by the Claimant for some time before this.

47. In the circumstances, if a duty to make reasonable adjustments arose in respect of flexible working arrangements, the tribunal finds that it was complied with by the Respondent. The Claimant has contended that the arrangement should have been documented, but the tribunal does not find that the failure to document the arrangement that was in place put the Claimant at any substantial disadvantage or that it amounted to a failure to make a reasonable adjustment.

48. Therefore, the Respondent's failure to implement the Access to Work recommendations before the end of March 2016 was an unlawful failure to make reasonable adjustments. The remaining aspects of the reasonable adjustments claim are not well-founded.

49. **Pregnancy / sex discrimination**
In respect of each aspect of the Claimant's pregnancy discrimination claim the question is whether she was treated unfavourably because of her pregnancy or pregnancy-related illness. There is no issue as to whether any alleged acts or omissions took place during the protected period within

the meaning of section 18(6) of the EqA, since they all took place whilst the Claimant was pregnant. Pursuant to section 18(7) of the EqA, the Claimant's sex discrimination claim can only arise if her pregnancy discrimination claim fails.

50. Dealing first with the allegation set out in paragraph 9 above, ie that the events of 8 April 2016 amount to unlawful pregnancy (or sex) discrimination, the Claimant's claim is based on an assertion that she was called into the office by Ms Morris when she knew that the Claimant was feeling unwell and, presumably, the Claimant says that she was unwell because of her pregnancy. Even if being called into the office amounts to unfavourable treatment, it was not, the tribunal finds, because of the Claimant's pregnancy or any pregnancy-related illness. The tribunal has already found that the Claimant did not tell Ms Morris that she was feeling unwell, and that if she had done so Ms Morris would not have called her into the office. The tribunal has also considered the alternative case that this was an act of sex discrimination, but there is no evidence whatsoever to suggest that Ms Morris called the Claimant into the office because of her, or anyone else's, sex.

51. The tribunal turns next to the allegation at sub-paragraph 8.1 above, ie that the Respondent failed to carry out a pregnancy-specific risk assessment as required by the 1999 Regulations. If there was a requirement under the 1999 Regulations and the Respondent failed to comply with that requirement then it would follow, and the Respondent did not contend to the contrary, that this would amount to unlawful pregnancy discrimination under section 18 of the EqA (or, if not, direct sex discrimination under section 13): see *Hardman* and *O'Neill*.

52. The obligation to undertake a pregnancy-specific risk assessment under regulation 16 of the 1999 Regulations can only arise once an employee has notified her employer in writing that she is pregnant: see regulation 18(1). This the Claimant did in early March 2016.

53. The next question is whether the Claimant's work was of a kind that could involve risk, by reason of her pregnancy, to her health and safety or that of her unborn child. The tribunal notes that regulation 16(1)(b) refers to work that 'could' involve risk rather than work that did in fact involve risk. The tribunal finds that the Claimant's work did meet this condition. The tribunal has heard evidence from the Claimant as to potentially violent children, such as one child whose case was assigned to her and who regularly caused the school bus to have to stop because he had threatened the driver. There is also evidence from the meetings between the Claimant and Ms Morris and between Ms Morris and Ms Tomlinson concerning risk relating to the Claimant's cases. Ms Morris gave evidence as to how the Claimant could manage such risk, for example by holding meetings by telephone or being accompanied on visits, but this seems to the tribunal to amount to an effective acknowledgment that although the risk could be managed, the work could nevertheless involve risk to the Claimant and to her unborn child.

54. The final part of the formulation under regulation 16 of the 1999 Regulation is whether any risk that could arise would do so from any processes or working conditions. In the circumstances, the tribunal has concluded that such risk as could arise would clearly arise from the Claimant's working conditions.

55. That being so, the tribunal has concluded that an obligation to undertake a pregnancy-specific risk assessment did arise under regulation 16 of the 1999 Regulation. The final question is whether the Respondent failed to comply with that obligation. The tribunal finds that it did. The obligation arose in early March 2016 when the Claimant informed the Respondent in writing that she was pregnant. The tribunal accepts that there were some discussions about managing risk and reallocating cases, and that eventually a risk assessment was undertaken by Ms Morris in mid-June 2016, but this was too little too late. The tribunal notes that there were repeated references to the need for Ms Morris to undertake a formal assessment; there was no suggestion that she had in fact already done an informal assessment but had just not written down the results. A proper risk assessment should have been undertaken within a month or so of the Claimant informing her managers in writing that she was pregnant. It should certainly have been done before the supervision meeting on 11 April 2016. That it was not amounts to unfavourable treatment because of pregnancy and, the tribunal finds, unlawful pregnancy discrimination.

56. Finally, the tribunal turns to the allegation at sub-paragraph 8.2 above concerning an alleged failure to adjust the Claimant's work in line with recommendations made in GP certificates on 10 April and 10 May 2016.

57. The recommendations made in the certificate dated 10 May 2016 were, the tribunal finds, either implemented or relate to the Claimant's disability rather than her pregnancy.

58. The recommendation in the 10 April 2016 certificate was that she should be office-based to avoid travelling and the risk of working with violent children. The recommendation that she should avoid travelling long distances (which is what the tribunal finds this was intended to mean) fails on the facts as set out above: the only long distance journey after this was to Wales and the Claimant was not instructed or put under any pressure to go by the Respondent.

59. With regard to the recommendation to avoid the risk of working with violent children, however, this was specifically related to the Claimant's pregnancy and although Ms Morris had agreed to reassign a particular case even before the she had seen the GP certificate (as is clear from the notes of the meeting on 11 April 2016) the Claimant's evidence is that the case was not in fact reallocated until July when all her cases were being reallocated in preparation for her imminent departure on maternity leave. There is effectively no evidence to contradict what the Claimant says in this regard. There are, presumably, records as to when particular cases

are reassigned from one social worker to another but no such records have been produced. The tribunal accepts the Claimant's evidence on this point. Even if, which is unclear, the Claimant did not in fact have to visit this particular child after 11 April 2016, there would always have been the possibility that she may have to do so. The tribunal finds that the failure to reallocate that case was unfavourable treatment and that there is a sufficiently close link to her pregnancy for it to amount to pregnancy discrimination for the purposes of section 18 of the EqA.

60. In the circumstances, the failure to carry out a pregnancy-specific risk assessment as required by the 1999 Regulations and the failure to reallocate a case as agreed at the meeting on 11 April 2016 amount to unlawful pregnancy discrimination. The remaining aspects of her pregnancy and sex discrimination claims are not well-founded.

Conclusion

61. For the reasons set out above, the Claimant's claims for disability and pregnancy discrimination succeed in part and the remedy hearing already listed for 8 September 2017 will therefore proceed. Directions concerning that hearing have been issued separately.

Employment Judge Bryant

Date: 5 August 2017