



EMPLOYMENT TRIBUNALS

Claimant: P Marsh

Respondent Manchester University NHS Foundation Trust

HELD AT: Manchester

ON: 5-8, 11-13 April 2022
9 + 10 June 2022
21-22, 26-27 + 29 July 2022
11 August 2022
[And in chambers:
23 + 26 August 2022
4 + 14 November 2022]

BEFORE: Employment Judge Batten
J Murdie
A Ramsden

REPRESENTATION:

For the Claimant: N Ginniff, Counsel
For the Respondent: L Gould, Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claimant was subject to detriment on grounds related to trade union activities in breach of s146 Trade Union & Labour Relations (Consolidation) Act 1992.;

2. The complaint of direct sex discrimination succeeds;
3. The complaint of harassment related to sex fails;
4. The complaint of direct disability discrimination and harassment fail; and
5. The complaint of discrimination arising from disability fails.

REASONS

1. By a claim form presented on 29 April 2020, the claimant presented a claim comprising complaints of trade union detriment, sex discrimination (direct discrimination and harassment), and disability discrimination (direct discrimination, harassment and discrimination arising from disability). On 29 May 2020, the respondent submitted a response to the claim.
2. A case management preliminary hearing took place on 16 November 2020 before Employment Judge Sharkett following which, on 7 December 2020, the claimant presented further particulars of his claim and the respondent thereafter filed an amended response. On 9 March 2021 and on 28 April 2021 the claimant supplied updated particulars of the claim and the respondent responded to such on 23 July 2021.

Evidence

3. A bundle of documents comprising 3 full lever arch files, running to 1370 pages, was presented at the commencement of the hearing in accordance with the case management Orders. A number of further documents were added to the bundle in the course of the hearing. References to page numbers in these Reasons are references to the page numbers in the bundle.
4. The claimant gave evidence himself by reference to a lengthy witness statement and also called: (a) Krisha Wilson, a former work colleague and Health Visitor; (b) Michelle Morris, a former work colleague and Community Nursery Nurse; (c) Sheila Cox, a former work colleague and Health Visitor; (d) Nayna Alonso, a former work colleague and Health

- Visitor; and (e) Elizabeth Holland, a Unite trade union official, to give evidence in support. In addition, the claimant tendered witness statements from 4 other former colleagues, namely Cathy Tarr, Sue Makin, Wendy King and Judy Hung. These individuals were not called to give evidence and therefore, whilst the Tribunal read their statements at the start of the hearing, little weight was attached to the contents in the absence of cross-examination.
5. The respondent called 5 witnesses to give oral evidence, being: Lisa Sanchez, Head of Service; Michelle Proudman, Lead Nurse; Nicola Marsden, Assistant Director; Caroline Greenhalgh, Associate Director of Quality Governance; and Tracey Williams, Community Nursery Nurse. In addition, the respondent tendered a witness statement from the claimant's line manager, Alison McCartney (nee McMahan), a practice assessor, who was not called to give evidence and, accordingly, whilst the Tribunal read this statement at the start of the hearing, little weight was attached to the contents in the absence of cross-examination.
 6. All of the witnesses who gave oral evidence did so from written witness statements and were subject to cross-examination.
 7. The Tribunal was also provided with a cast list and chronology.
 8. The oral evidence was completed on the afternoon of the thirteenth hearing day and submissions were delivered on a further day. The Tribunal then retired to deliberate, which required a further 4 days to complete.

Issues to be determined

9. A draft list of issues had been produced between the parties. At the outset of the hearing, the Tribunal discussed the draft list of issues with the parties.
10. At this point, the claimant made an application to amend his claim to include a complaint under section 44 of the Employment Rights Act 1996 ("ERA") of detriment for carrying out the activities of a health and safety representative. The Tribunal heard from both parties on the application, which was refused, applying the principles summarised in *Selkent Bus Co Limited v Moore [1996] ICR 836*. The Tribunal considered that the application was significantly out of time and sought to add an entirely new

cause of action whilst it did not appear to add anything to the claimant's case. In the circumstances, the Tribunal concluded that the balance of prejudice favoured refusing permission to amend.

11. After clarification of information required for the complaint under section 15 of the Equality Act 2010 ("EqA") it was agreed that the complaints and issues to be determined by the Tribunal were as set out in the Annex to this Judgment

Findings of fact

12. Having considered all the evidence, the Tribunal made the following findings of fact on the basis of the material before it, taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. The Tribunal resolved such conflicts of evidence as arose on the balance of probabilities. The Tribunal has taken into account its assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts.
13. Having made findings of primary fact, the Tribunal considered what inferences it should draw from them for the purpose of making further findings of fact. The Tribunal has not simply considered each particular allegation but has also stood back to look at the totality of the circumstances to consider whether, taken together, they may represent an ongoing regime of discrimination.
14. The findings of fact relevant to the issues which have been determined are as follows.
15. The claimant was employed by the respondent from 7 January 2013 as a student Health Visitor and subsequently qualified as a Health Visitor. He was a member of the Cheetham and Crumpsall health visiting team. Prior to working for the respondent, the claimant worked as a registered community mental health nurse, since qualification in 2003. The claimant has continuous service in the NHS from 1 November 2002 and he remains employed in the NHS. The claimant's contract of employment appears in the bundle at pages 130-139.
16. The claimant has the disabilities of PTSD and a back condition. The respondent concedes that the claimant is disabled by reason of these impairments.

17. In 2015, the claimant had a period of time off work with stress. On his return to work, in June 2015, there was a group of staff working out of the Cheetham office. The Health Visitor caseload was divided into 2 halves and Health Visitors were assigned to one area (Cheetham or Crumpsall) with the Nursery Nurses covering both areas and supporting both groups of Health Visitors. The Crumpsall Health Visitor work was allocated to a team comprising the claimant, Wendy King, Cathy Tarr and a student Health Visitor, Gemma Holt.
18. On 11 April 2016, a collective grievance was raised by the Crumpsall Health Visiting team about staffing and workload issues, and a failure by management to address caseloads. The collective grievance appears in the bundle at pages 1195-1198 and was signed by the claimant together with Wendy King, Gemma Edwards and Gemma Holt. However, at some point thereafter, the latter 2 individuals withdrew their support. The collective grievance asked for adequate staffing resources and provision for covering term-time-only contracts and for extended periods of leave such as maternity leave. The appendices to the grievance highlighted at least 2 vacancies in the team which were adding to the work pressures.
19. On 3 May 2016, the claimant became an accredited Unite trade union workplace representative.
20. On 3 November 2016, the grievance outcome was issued, turning down the team's requests. The outcome letter appears in the bundle at pages 206-210. The claimant and Wendy King appealed to Stage 2 of the grievance process.
21. On 14 February 2017, the Stage 2 appeal turned down the grievance appeal on all points. However, it made a recommendation that the respondent's Health Visitor service should "review options to support the Cheetham/Crumpsall team during holiday periods as a result of having 3 team members working to term-time-only contracts." The Stage 2 outcome letter appears in the bundle at pages 215-218.
22. The collective grievance had set out the staff view that there was a problem with work being covered during school holidays and particularly the summer holidays. However, the respondent's management interpreted and reported this as a problem with term-time-only contracts despite that this was specifically not how the grievance was framed. The tribunal

- considered that this interpretation and change of emphasis by managers, focussing on the fact that several Nursery Nurses worked on a term-time-only basis, was regrettable. It tainted the management view of and approach to the issue of covering work, which they then communicated to others as a problem with term-time-only working. For example, in the bundle at page 1199 is a report from Alison McMahon to Lisa Sanchez, which describes the issue in terms of Cheetham and Crumpsall having "... 3 term-time-only workers which already increases clinic attendance by other members of staff during the holiday period ..."
23. The focus on the 3 term-time-only workers was underlined by a number of the respondent's witnesses, who were at pains to point out that they had taken legal advice about changing the term-time-only contracts but that "nothing could be done". In fact, the Tribunal found that the grievance had never in fact complained about the existence of term-time-only working; rather the grievance issue was that management had a responsibility but failed to arrange cover for the periods when that particular team was (predictably) short-staffed.
 24. The Stage 2 outcome was appealed to Stage 3 of the grievance process.
 25. On 14 September 2017, at the Stage 3 appeal, the collective grievance about caseload numbers was upheld by a senior manager of the respondent appointed from outside of the Health Visitor service. The Stage 3 outcome letter appears in the bundle at pages 246-247. It acknowledged that the team's caseloads needed looking at in more detail and recommended that a working group be set up to review caseloads across the whole Health Visitor service and that the 'weighting tool' for caseloads be further refined. However, no effort was made by the respondent's Health Visiting management to address caseloads as directed, save that part of the team's caseload (circa 250 children in Harpurhey) was removed to another team.
 26. Despite the Stage 3 appeal outcome recommendations, the Tribunal found that no material changes were either considered or put into effect by the respondent's management who, in evidence, could point only to an eventual and much later decision to recruit an additional 10 Nursery Nurses. In any event, it was unclear how many of the 10 additional Nursery Nurses, if any, would be assigned to the Cheetham and Crumpsall team at all and, if so, what effect that might have on the workloads that had led to the grievance in the first place. The Tribunal also

- found that it took the respondent well over a year before the recruitment of the additional 10 Nursery Nurses was commenced. When it did commence, management sought to use the recruitment exercise to justify another review of staffing and then requested that the term-time-only Nursery Nurses move teams in any event.
27. On 15 May 2018, the claimant raised concerns which he had received from his union members about a proposal to introduce an Ages and Stages Questionnaire (the SEQ pilot) process to the workload. It was suggested that the ASQ would add an hour's work to each case and members opined whether the proposal would be successful and considered that clinics would overrun and that some families would have to be turned away. The claimant asked that the burden of this proposal be spread across other team rather than focus the impact on one team. The claimant also took issue with a recent suggestion by Ms Sanchez that the collective grievance had not been fully upheld at Stage 3.
 28. In May 2018, there was an altercation between the claimant and one of the Nursery Nurses, Emma Whittall, who had effectively ignored the claimant when he had asked her to assist with some work, and she had failed to help him. The claimant had to remind Ms Whittall that he was a band 6 and she was a band 4 and that she was needed to assist. He was entitled to call upon her to help. As a result of the altercation, both parties complained about the other to Ms Sanchez. Ms Whittall complained that she was being targeted because she was a term-time-only employee.
 29. On 21 May 2018, a mediation took place, about the issues between the claimant and Emma Whittall. It was conducted by Ms Sanchez with Ms McMahon observing. The respondent's witnesses maintained that the mediation took place on an informal basis because there were no notes taken and no record made of any agreed way forward. The claimant saw things differently and felt that Ms Sanchez sided with Ms Whittall against him. In evidence, Ms Sanchez said that she had thought at the time that the mediation had been successful and that she was surprised to receive an email from the claimant's shortly after, saying he was dissatisfied with the process.
 30. The next day, 22 May 2018, a regular team meeting took place. At the start of the meeting, Ms Sanchez asked for show of hands, to indicate "who's in Pete's Union and agrees with Pete?"- see her witness statement paragraph 33. This was in relation to the claimant's email raising concerns

that union members had about the SEQ pilot that was to be discussed – see paragraph 27 above. Under cross-examination, Ms Sanchez sought to resile from her comment about “Pete’s Union” and sought to suggest that she merely wanted to get an idea of the level of opposition to the SEQ framework. However, she did not make a general enquiry as to who present was opposed to the framework and she did not ask for an indication of the views of members of any other trade union, such as the RCN or Unison. The enquiry was aimed solely at the members of the claimant’s union and in a hostile manner. Ms Sanchez also sought to suggest that she had said “Unite” rather than a reference to the claimant. The Tribunal rejected this version of events and found that Ms Sanchez’s questioning was as recorded in her statement. Her approach was aggressive, confrontational and couched in terms of wanting to know about those in “Pete’s Union” because she believed they were likely to side with the claimant. The Tribunal considered that Ms Sanchez’ approach was intentionally divisive and intimidatory. The implication was that staff were to be seen as either in Pete’s Union or not, and became about taking sides. The Tribunal doubted that any member of staff present would have openly declared their views on the framework in the face of this approach.

31. Later that day, Ms Holland complained to Ms Sanchez, copying in the claimant, about Unite members being asked to raise their hands at the meeting. It was only when taken to this document in the bundle, that Ms Sanchez sought to resile from having said “Pete’s Union” and tried to assert that she had in fact mentioned Unite instead, in contradiction of her statement on the matter. The next day, 23 May 2018, Ms Sanchez sought to apologise for her approach in terms of “... if this caused upset yesterday ...”.
32. In June 2018, Krisha Wilson joined the Cheetham and Crumpsall team. She gave evidence, which the Tribunal accepted, that the team was welcoming and friendly until Ms Hill and Ms Williams returned to work. The team dynamics and relationships then changed, and an atmosphere developed. Ms Wilson gave evidence that the team was not adequately staffed during the school holidays, which created pressure. The respondent had acknowledged this in the grievance outcome in September 2017 but the respondent’s management had done little to address the situation.

33. On 19 June 2018 the claimant emailed Ms McMahon, having been unable to speak to her, to report that he had been blanked by a Nursery Nurse due to that Nursery Nurse having an issue with another Health Visitor. The claimant said that he felt the situation within the team was deteriorating and that management had done nothing. He asked for a manager to “step in and sort it out” before the situation escalated and/or resulted in complaints.
34. On 22 June 2018, a team member, Ms Tarr, had a conversation with Ms McMahon, following which she sent an email to Ms Sanchez seeking to distance herself from the claimant and the concerns raised.
35. On 3 July 2018, at the end of a Team meeting, Ms Sanchez departed saying “Goodbye ladies” in the presence of the claimant, thereby ignoring the claimant.
36. On 24 September 2018, Ms Sanchez emailed the team leads about flexible working or condensed hours, saying requests for such will be refused in future but that a move of base would be considered where there was a vacancy and if it would benefit the staff member. There is no mention of the respondent’s service users or patients. The Tribunal heard copious evidence from the respondent’s managers about how they could not move staff due to employees’ personal circumstances or childcare or location issues. Managers displayed little regard for the demands of the service and its delivery, or the needs of patients. The overall impression was of management being fixated on individual staff working arrangements being a problem, yet they seemed unable or unwilling to tackle the issue effectively or at all.
37. In November 2018, the respondent decided to appoint 10 new Community Nursery Nurses and started the recruitment process to do so.
38. On 21 November 2018, Wendy King emailed Ms McMahon to say that she agreed with the proposal to move one of the Nursery Nurses who worked on a term-time-only basis to another team and asking if this move would result in the team receiving a full-time Nursery Nurse to replace whoever was moving. Ms McMahon acknowledged Ms King’s email but gave no assurances, pointing to an overview of Nursery Nurses citywide and that a recruitment exercise which was underway, thereby failing to answer Ms King’s question.

39. On 3 December 2018, Ms Sanchez met with Emma Whittall and Tracey Williams, the 2 Nursery Nurses who worked on a term-time-only basis, to discuss one of them potentially moving teams. In the course of the meeting, Ms Sanchez indicated that their term-time-only working arrangements were a problem and she declared that one of them would have to move because of the grievance raised in September 2017.
40. The 2 Nursery Nurses had no idea of the content of the grievance and were not given a copy. They only knew what they were told by management and the clear message conveyed by Ms Sanchez was that the requirement to move was because of the grievance. Ms Sanchez then gave the 2 Nursery Nurses an opportunity to decide between themselves who would move.
41. Eventually, the 2 Nursery Nurses refused to choose and said that they would only agree to move together or not at all. As a result, management took no action to progress any move. The issue remained a source of disgruntlement and led to a further deterioration of the atmosphere in the team.
42. On 4 December 2018, Ms Sanchez attended a meeting of the Health Visiting team, to talk about the recruitment of 10 new Nursery Nurses and the possible reshuffle of Nursery Nurses. In the course of discussions, Ms Sanchez also told the team that part of the Harpurhey caseload would be returning to the team over the next few weeks thereby increasing the workload just before a school holiday period when the team would be short-staffed.
43. The next day, 5 December 2018, Emma Whittall emailed Ms Sanchez about the proposed move of a Nursery Nurse out of the team. The email confirms that she and Tracey Williams were very unhappy and felt targeted because of their term-time-only contracts and asked for a formal meeting with a view to “going forward with a grievance”.
44. On 6 December 2018, Ms Sanchez acknowledged the Nursery Nurses’ concerns about the proposed move and she convened a team meeting for 8 January 2019, to discuss matters.
45. Later that day, the claimant and also Wendy King emailed Ms Sanchez, to say that they would not attend the meeting on 8 January 2019 because they felt that the meeting subject was inappropriate, that the move of a

- Nursery Nurse was a decision for management. Wendy King emailed separately in her capacity as RCN Steward, to say that any discussion within the team would be divisive and would make things personal – bundle page 342.
46. Following a team meeting, on 12 December 2018, the claimant emailed Ms Sanchez to say that she did not have permission to state his views at the team meeting and he criticised what he considered to be chaotic management. The claimant was clear in his attempt to keep out of what he foresaw would be a difficult discussion about a matter which he considered to be inappropriate for the team to deal with itself. The claimant stated his view that the team was unable to sort things out, given the dynamics. The Tribunal considered this to be a reasonable view in the circumstances, but the claimant’s view was ignored by management.
 47. On 17 December 2018, Ms Marsden emailed the claimant to say that Nursery Nurse provision was being considered across the city and that the claimant’s view will be considered outside of the meeting. Ms Marsden was clearly aware of the issues within the team and staff relationships.
 48. On 27 December 2018 the claimant emailed Ms Sanchez to apologise for his emails about the Nursery Nurses.
 49. On 8 January 2019, the team meeting took place with Ms Sanchez, about the reshuffle of Nursery Nurses. 5 team members did not attend. Some of those in attendance expressed concerns about the reshuffle proposal. There was mention of “underlying reasons” for the move of the Nursery Nurses and reference to the grievance. None of this was countered or corrected by managers. The Nursery Nurses expressed concern about the impact on the team of union work being completed in casework time – by implication this was a reference to the claimant and Wendy King, neither of whom were present. Again, none of this was countered by managers and the meeting was allowed free reign to criticise. The record of the meeting appears in the bundle at pages 361-370. Ms Sanchez added a line into the record about the Nursery Nurses not feeling their voices were heard in relation to trade union meetings with management. There was no evidence that this matter was challenged or explained by management. It was apparent to the Tribunal that the Nursery Nurses’ trade union (Unison) was entitled to attend the union meetings, although it appeared that a Unison representative did not attend all the meetings in question.

50. The record of the meeting reads as a report of all the issues and niggles of those present, without any being countered by management and with no action plan to deal with such. In addition, under “Good news feedback”, bizarrely, Ms Sanchez informed the team that they were due to get 250 extra cases into the Crumpsall caseload, transferred from another team in the coming weeks, thereby increasing the workloads at a time when team members were complaining about the pressures they were under.
51. Ms Sanchez left the meeting whilst offering her support to whoever needed it for the rest of the afternoon. The 2 Nursery Nurses left to speak to Ms Sanchez and, upon their return, Ms McMahon simply abandoned the agenda and allowed the team “time to talk” thus ensuring that the niggles continued to be the subject of discussion. This meant that a number of important items regarding service delivery and performance were never addressed despite being on the agenda.
52. The next day, 9 January 2019, the claimant reported to Ms McMahon that he had come into work and received a “grilling” about the Nursery Nurse move.
53. That same day, Ms Sanchez decided to report on the team meeting by email to her managers, Ms Marsden, Ms Forster and Fishwick. Her account of the meeting (bundle pages 371-2) is delivered within 24 hours of the meeting ending and is very much a one-sided, personal view. It paints a picture detrimental to the claimant, and contains a number of matters which do not appear in the record of the meeting. For example, Ms Sanchez reports that team members felt there was not a problem with workloads over the holiday period(s) and that workloads had been covered in the past (this was despite the issue having caused problems leading to the grievance over several years and which had been upheld). The issue of term-time-working is played down and painted in terms of the 2 trade union representatives raising concerns to management. Ms Sanchez sought to suggest that all present felt there was a break down in relationships between the claimant and one Nursery Nurse. Ms Sanchez also relayed the issue of trade union duties having an impact on the team in terms of a “strong feeling of disgruntlement” about the claimant and Ms King as trade union representatives having “an audience [with management] while others do not” and suggested that the team see this as the union representatives having their own agenda and not representing the team. The Tribunal considered that Ms Sanchez

comments and evidence displayed a failure to appreciate the wider role of a trade union representative.

54. On 15 January 2019, a grievance about the re-allocation of the Harpurhey caseload was presented by the claimant and Wendy King. The grievance appears in the bundle at page 378. On 25 January 2019, Ms McMahon acknowledged the grievance; however, the grievance was put on hold by the respondent while caseloads were considered.
55. On 16 January 2019, 2 of the Health Visitors in the team emailed Ms McMahon and Ms Sanchez with their concerns about morale in the team and upset about the Nursery Nurses' moving.
56. On 5 February 2019, there was a leaving lunch for Ms McMahon, followed by a team meeting. Accounts of the meeting vary, and the minutes have not been disclosed by the respondent's managers. However, it was apparent that Krisha Wilson raised concerns about the office atmosphere towards the end of the meeting. The atmosphere in the meeting became tense. There was a 5-minute break after which the discussion got out of hand, with most team members involved. The claimant complained that he was being blanked, to which Ms Williams said, "There's blanking or ignoring and there's choosing not to speak to someone." Ms Sanchez declared that the behaviour of the team was "childish" and needed to stop and that the team needed to adopt professional behaviour and to respect Trust values. Ms Sanchez also said that people could only speak when spoken to. The claimant objected to this and went to leave the meeting, saying that Ms Sanchez needed to sort herself out. In reply, Ms Sanchez told the claimant, "You need to man up!" The Tribunal considered that her remark was said in heat of the moment and was unprofessional. Ms Sanchez lost her temper and should have closed the meeting rather than attack the claimant verbally as she did.
57. Immediately after the meeting, the claimant emailed Ms Forster about the meeting, to report what had happened and how he had been spoken to by Ms Sanchez. The claimant said he felt bullied by Ms Sanchez and by a Nursery Nurse. He also said that, as a lone male in the workplace, he felt that he took a lot of abuse that he would like to challenge but did not, but that he drew the line at being told that he could only speak when spoken to.

58. Later that afternoon, a number of team members, including the 2 Nursery Nurses who worked on a term-time-only basis, sent emails to Ms Sanchez, copied to Ms Forster, complaining about events during the meeting. Notably, the 2 Nursery Nurses did not mention the claimant at this stage, instead complaining about other team members. The Tribunal noted that there was little, if any, comment about the claimant in these early accounts.
59. The following day, 6 February 2019, Ms McMahon emailed her account of the meeting to Ms Forster.
60. Ms Sanchez later emailed her account of the meeting to her managers and she went around asking other team members to do so as well. Ms Sanchez's first account of the meeting confirms that she said, "Peter, you need to man up" to the claimant. However, in later accounts, Ms Sanchez sought to change this and described her comment as one which she suggested was directed at the whole team and she introduced the word "all" as in "You all need to man up". The Tribunal rejected Ms Sanchez's later version of events which did not tally with her witness statement which records her comment as "you need to man up". The Tribunal found, on a balance of probabilities, that Ms Sanchez's comment was directed at the claimant. In evidence, Ms Sanchez said that she regretted her comment. However, the Tribunal understood that she has never in fact apologised for it.
61. In the later statements/emails submitted by several team members at the request of Ms Sanchez and sent to her, comments about the claimant begin to appear – see bundle pages 402-410. It is apparent from the evidence that Ms Sanchez was canvassing support for her position and agitating against the claimant.
62. On 6 February 2019, the claimant was signed off work, sick, with stress. He returned to work for 1 day on 11 February 2019, but then was off sick for several weeks.
63. In the next few days, both Ms Williams and Ms Whittall, the 2 Nursery Nurses, submitted grievances about the claimant. Their letters of grievance are similar in many respects including the words and phrases used. A number of the matters raised were historic and had nothing to do with the meeting on 5 February 2019. The letters came to Ms Sanchez and she undertook to forward them to senior management.

64. On 19 February 2019, the claimant submitted a 'Dignity at Work' complaint to Ms Forster, about bullying and harassment by several staff including Ms Sanchez.
65. The Tribunal learned that the respondent had also received Dignity at Work complaints from 2 other team members in January 2019, which it had not yet addressed. The Tribunal did not have sight of these nor of any other formal Dignity at Work complaints made before the investigation commenced and these do not appear in the bundle.
66. In late February 2019, Ms Marsden decided to commission an investigation. A decision was made to put the Dignity at Work complaints together and to investigate everything arising from or within the team up to that date. The Tribunal considered this to be an error of judgment by management – the objective was to determine how and why the team had fallen out with each other but the reasons for that were multiple and complex and not so easily addressed. The respondent's main objective appeared to be to compel the team to behave, simply because they were under investigation.
67. The commissioning of an investigation led other team members to raise complaints to the investigation. Inevitably, this led some team members to complain about other team members and not about the claimant. Issues from several years ago were dragged up, matters about which the complainant had not complained at the time, and numerous general, undated and unspecified allegations were made (for example: "XXX ostracized me").
68. In March 2019, Ms Greenhalgh, a recently arrived Associate Director at the respondent was appointed to handle the investigation into all the team's concerns, issues grievances and complaints. As a new manager she had no knowledge of the team or its members.
69. On 11 March 2019, Ms Marsden sent each complainant a letter summarising their points of complaint against each of the team members they complained about.
70. At this time, Ms Sanchez went about collecting further complaints from other employees who had been present at the meeting on 5 February 2019 but who had not raised a complaint. Ms Sanchez forwarded these to

- her managers, having told those employees that it was “necessary” for them to put in a complaint.
71. On 19 March 2019, Wendy King wrote to Ms Marsden to express concerns about “where [the investigation] might lead given the current nature of the office environment ... and the tensions within it.” Ms King said that one issue she wants to pursue was “the failure of both Lisa Sanchez and Alison McMahon to appropriately deal with comments raised by 2 Nursery Nurses, and indeed others, in a team meeting ...[including] comments about my trade union activity and as an accredited RCN representative I should not be subjected to victimisation on those grounds,” – see bundle page 463. The respondent failed to include this grievance in the remit of the investigation and failed to acknowledge Ms King’s legitimate grievance, despite having asked for all issues to be aired and despite assuring team members that everything would be included.
B473-475 + B511-513
 72. On 15 April 2019, despite that she was not handling the investigation, Ms Marsden wrote to each of the complainants again, summarising their agreed points of complaint and against which team members they complained. In each letter, she also included a list of the allegations received against the individual addressee. In addition, those team members who had not put in complaints received a letter notifying them of complaints made against them. This served to increase and widen the scope of the investigation and it dragged more employees into the mix. Ultimately, 71 allegations and counter-allegations were made by 10 employees. The claimant raised 11 allegations and 19 allegations were made against him.
 73. The letter(s) also said “I recognise that this may be [our emphasis] a stressful time for you, please be assured that the purpose of the process is to provide you with an opportunity to respond to the allegations and provide relevant information which will assist the investigation.” – see bundle page 475.
 74. On 8 May 2019, the claimant replied to the allegations and raised trade union discrimination. He asked the investigation to meet with other individuals who had not, up to then, been involved in matters.
 75. Having received a letter outlining the allegations against them, several team members then requested that the investigation cover further

- allegations which they raised only after having sight of the allegations made against them. This led to Ms Marsden writing further letters to some individuals, to notify them of even more complaints having been made against them.
76. On 10 May 2019, National Nurses' day was celebrated at the respondent and, as in previous years, bags of "goodies" were given out to staff including the claimant. The Tribunal was shown a stereotypical image of a (female) nurse which was said to have been printed on the bags although this was disputed by some witnesses. It was an unfortunate image given that not all nurses are female. However, the Tribunal was unable to conclude from the evidence before it, that the claimant was in fact given a bag with a female nurse on it in 2019, or a bag designed for male nurses. He himself was unsure what he was given, and when, and he was confused as to which year the allegation related.
 77. In the period May to July 2019, investigatory interviews took place.
 78. On 13 May 2019, Ms Sanchez was interviewed. The interview notes appear in the bundle at pages 528-531. Ms Sanchez tendered a written statement in advance of her interview. This appears in the bundle at pages 387-390 and places considerable emphasis on the claimant's conduct. She was interviewed a second time on 26 June 2019 and the notes of the second interview appear in the bundle at pages 812-815.
 79. On 20 May 2019, Ms McMahon was interviewed. The interview notes appear in the bundle at pages 565-570.
 80. On 23 May 2019, Ms Williams was interviewed. The interview notes appear in the bundle at pages 593-599. Her statements also appear at pages 610-611 and 1171-1174.
 81. On 10 June 2019, Ms Sanchez wrote to the claimant about a possible move to another Health Visiting team base whilst the investigation was underway albeit that he would continue to work with Cheetham and Crumpsall caseloads, cover clinics and attend team meetings in any event.
 82. On 13 June 2019, the claimant was interviewed. The interview notes appear in the bundle at pages 675-692v.

83. In the course of the investigation interviews, interviewees were asked not only about the allegations they had made, or which concerned them, but also about further allegations made by other team members and not against them personally. This, unsurprisingly, led to even more allegations being made. There was no attempt by management to limit what the investigation would look at nor to define the remit. It was 'open season' and at least one individual expressed concerns about malicious allegations having been made. Consequently, the investigation became unwieldy and lacked focus simply because allegations were being added, however old, as it went along.
84. Throughout this period, the team had to continue to work alongside and with each other. The Tribunal were very concerned about the lack of management forethought or sensitivity, coupled with a lack of oversight of the team and the unreasonable expectations placed upon the team members during what was an incredibly difficult and stressful time for them all. The Tribunal noted for example that, in her interview on 5 June 2019, Sara Davenport says, "People in the team are breaking down at the minute due to this investigation" – see bundle page 648.
85. On 23 July 2019, the claimant submitted further information to Ms Marsden under the Dignity at Work policy, largely about the way the investigation, and his interview, had been conducted – see bundle pages 855-856. The claimant pointed to the fact that that the process had been drawn out and the allegations against him had increased out of all proportion to the issues he had originally raised. The Tribunal considered that, as the claimant rightly said, the investigation had become a platform for allegations of whatever nature to be made.
86. Despite the fact that the claimant specifically stated that his letter of 23 July 2019 was submitted as a grievance under the respondent's Dignity at Work policy, Ms Marsden failed to appreciate this and instead treated the letter as the claimant's response to allegations put to him in the investigation. As a result, on 12 August 2019, Marsden replied to the claimant, stating that she would ask the investigator to, amongst other things, "investigate whether there are management failings ...in respect of the ongoing investigation." – see bundle page 895.
87. On 1 September 2019, Ms Greenhalgh produced her Investigation Report which appears in the bundle at pages 906-955 with an updated version at pages 988-1023. The investigation's conclusions appear at pages 945-6

of the bundle. In the updated version, these conclusions are the same save for an additional sentence about “Behaviour exhibited by the main protagonists has at one point or another fell (sic) below the standard expected and is not in line with trust values and is of concern.” The main protagonists are not identified.

88. The report’s “conclusions” are inadequate and effectively seek to blame the team for a number of matters without setting out a definitive way forward nor any plan to repair the damage to relationships or rebuild the team. For example, the report says that, due to the size of the investigation and the addition of allegations made after the first letters were issued, there was a significant time between the initial allegations and the investigation’s conclusion, with no appreciation for the fact that the conduct of the investigation itself and the manner of communications with team members had encouraged further allegations to be tabled. The report acknowledged that the reason for the investigation being commissioned was an irreparable breakdown in personal relationships, and says this was fuelled by misinformation and rumours, yet it follows with a statement that the individuals concerned need to repair their personal relationships in order to work together as a team whilst also stating that the investigation was unable to ascertain who is actually responsible for the breakdown in relationships. Reference to misinformation, rumours and inaccuracies circulating implies that the team were at fault for in effect gossiping. One of the conclusions was that a lack of emotional resilience had been demonstrated by a number of individuals leading to poor interpersonal and professional relations. This is followed by a comment that strong emotional resilience is fundamental to the role of health visiting and the nursery nursing service and that such failings must be “rectified”. The report then “urge(s) all of those involved to take some time to consider their own emotional resilience and how to ensure that this is high”, as if it is up to individuals to assort things out for themselves.
89. There is no reference in the report to management failings having been investigated per se. However, the conclusions points to a failure in the management of the team at several levels of management, although it then states that “... this is not without surprise given some of the challenging personalities within the team” and goes on to suggest there has been a “flagrant disrespect for the roles of those in management.”

90. The conduct of the 2 trade union representatives, the claimant and Ms King, comes in for specific criticism by the respondent: "Their conduct as both workplace representatives and as NMC registrants is below the standard expected as evidenced in their email communication with the management team, regardless of the content that may be defensible the tone is not and as workplace representatives a higher standard of written communication is expected." There is no attempt to identify what the standard of written communication should be for workplace representatives and the Tribunal considered this to be an unsubstantiated and vague attempt to challenge the work of elected officials. It is to be noted that neither individual was referred to the NMC as a result, despite this statement by the respondent. None of the respondent's witnesses were able to satisfy the Tribunal as to why such a serious statement was made and yet not followed up with any regulatory referral.
91. The report's conclusions remark on the difficulties faced by the claimant as a male Health Visitor, accepting the evidence and information he provided on this aspect. It says that "These are issues which need to be addressed ... to prevent any discrimination" without actually reaching a conclusion as to whether discrimination had taken place or not.
92. The report's conclusions end with a statement that the team will not be able to function and should be relocated "if reasonably practicable." However, there is no alternative offered in the event that relocation cannot be achieved nor any timescale to achieve any form of resolution. After the conclusions, there is a list of recommendations which are numerous but generalised, without any timescale to commence or complete such and no indication of who would be responsible for their implementation nor how success would be measured.
93. In the circumstances, it remained unclear what the investigation hoped to achieve or did achieve beyond a supposed 'clearing of the air'. In any event, the animosity remained as was clear from the evidence given to the Tribunal hearing, some 2 years later, from several of the individuals involved.
94. Each complainant was sent a letter about the outcome of the investigation but nobody was given a copy of the full report. The letters consist of an individualised report on the findings in respect of the allegations which an individual had raised and the allegations brought against them.

95. On 11 October 2019, Ms Marsden wrote to the claimant summarising the investigation outcome insofar as it related to him and setting out the report's recommendations. The letter appears in the bundle at pages 962-970. It is inadequate in a number of respects. Allegation 9 was about the "man-up" comment. Despite that Ms Sanchez had admitted it, the Tribunal considered that Ms Greenhalgh ignored the context of the comment and ignored the fact that Ms Sanchez had lost control of the meeting and was telling people not to speak unless they were spoken to, a matter about which the claimant objected, instead focussing on the comment by the claimant as he was leaving, in an effort to play down the matter and attribute blame to the claimant.
96. In section 4 of the letter, headed 'Trade Union Duties', and despite the report's conclusion about the conduct of the trade union representatives – see paragraph 90 above - Ms Marsden brushes over the matter, suggesting that Ms Greenhalgh had found no evidence in support of victimisation nor any evidence to support the concerns raised by others about the claimant's behaviour and merely asks the claimant to reflect on his method of communication with management. The result was that the claimant's grievance was not upheld "due to limited evidence or other mitigating factors." Ms Marsden referred to other team members' perceptions of the claimant's conduct but said she did not intend to progress the matter formally. She also stated that the root cause of staff concerns overall was a breakdown in relationships. In light of the fact that the investigation was tasked to investigate the breakdown in relationships within the Cheetham and Crumpsall team, the Tribunal considered this comment to be meaningless.
97. On 21 October 2019, the claimant appealed the grievance outcome to Mark Edwards, the respondent's Chief Operating Officer. The letter of appeal appears in the bundle at pages 971-973. In particular, the claimant said that he did not consider that his grievance regarding the conduct of the investigation was given proper consideration – see also paragraphs 85 and 86 above.
98. In November 2019, the claimant moved to work in the respondent's Old Moat team.
99. On 9 December 2019, the claimant wrote again to Mr Edwards to convey his thoughts about the grievance outcome and to alert Mr Edwards to further documents which the claimant believed supported his position and

- to make the point that he considered that Ms Sanchez had taken against him because of his trade union activities.
100. On 20 December 2019, the claimant started early conciliation via ACAS which issued an early conciliation certificate on 10 January 2020. The claimant also submitted a Subject Access Request to Ms Marsden.
 101. The grievance appeal was to have been progressed in March 2020. However, the NHS had by then come under increasing service pressure due to the COVID-19 pandemic. On 23 March 2020, the UK Government announced a nationwide lockdown which prevented matters being progressed as NHS priorities changed.
 102. On 29 April 2020, the claimant presented his claim to the Employment Tribunal.
 103. On 1 February 2021, Mr Edwards concluded his consideration of the claimant's appeal, and rejected it. The appeal outcome letter appears in the bundle at pages 1355-1365.

The applicable law

104. A concise statement of the applicable law is as follows.

Detriment for trade union activities

105. Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA") provides:

(1) *A worker has the right not to be subjected to any detriment as an individual by any act, or deliberate failure to act, by his employer if the act or deliberate failure takes place for the sole or main purpose of –*

- (a) *preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so,*

- (b) *preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so,*
 - (ba) *preventing or deterring him from making use of trade union services at an appropriate time, or penalising him for doing so, or*
 - (c) *compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.*
- (2) *In subsection (1) “an appropriate time” means –*
- (a) *a time outside the worker's working hours, or*
 - (b) *a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union or (as the case may be) make use of trade union services;*

and for this purpose “working hours”, in relation to a worker, means any time when, in accordance with his contract of employment (or other contract personally to do work or perform services), he is required to be at work.

106. Section 148(1) TULRCA provides that it shall be for the employer to show what was the ‘sole or main purpose’ for which it acted or failed to act.
107. The term ‘detriment’ replaced ‘Action short of dismissal’ in TULRCA in 1999. The term “detriment” is to be given the same meaning as it has in the context of discrimination law, so its scope is wider than that which applied hitherto.
108. In Ministry of Defence v Jeremiah 1980 ICR 13 the Court of Appeal took a wide view of “detriment” in discrimination legislation. Brandon LJ said it meant simply “putting under a disadvantage”, while Brightman LJ stated that a detriment “exists if a reasonable worker would or might take the view that [the action of the employer] was in all the circumstances to his detriment”. Brightman LJ’s words, and the caveat that detriment should be

assessed from the viewpoint of the worker, were adopted by the House of Lords in Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337.

109. Subsequent cases have established that detriment covers such things as a refusal or reluctance to investigate grievances (see Bone v North Essex Partnership NHS Foundation Trust 2016 IRLR 295, CA), as well as general unfavourable treatment, and that the worker must have at least some reasonable sense of grievance. In Lyon v Mersey Care NHS Trust ET Case No:2408139/15 cancelling a management/trade union meeting and a senior management 'walkabout', which would have given union members direct access to management, was regarded as a detriment where one particular union representative would have been put in an awkward position with regard to his members as a result of the cancellation.
110. As to the burden of proof in a section 146 claim, in Serco Ltd v Dahou 2017 IRLR 81 the Court of Appeal accepted that the approach to the burden of proof in section 146 claims, is akin to that in section 152 claims. Where a claimant has established a prima facie case, in that there are issues which require explanation, it is for the respondent to prove its reason, albeit this does not prevent the Tribunal from finding the reason is something other than contended for by either party.

Sex and disability discrimination

111. The complaints of sex discrimination and disability discrimination were brought under the Equality Act 2010 ("EqA"). Sex is a relevant protected characteristic as set out in section 11 EqA. Disability is a relevant protected characteristic as set out in section 6 and schedule 1 EqA.
112. Section 39(2) EqA prohibits discrimination by an employer against an employee by subjecting him to a detriment. By section 109(1) EqA an employer is liable for the actions of its employees in the course of employment.
113. The EqA provides for a shifting burden of proof. Section 136(2) and (3) so far as is material provides as follows:

(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.*

114. Consequently, it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the EqA. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.
115. In *Hewage v Grampian Health Board [2012] IRLR 870* the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provision should apply. That guidance appears in *Igen Limited v Wong [2005] ICR 931* and was supplemented in *Madarassy v Nomura International plc [2007] ICR 867*. Although the concept of the shifting burden of proof involves a two-stage process, that analysis should only be conducted once the Tribunal has heard all the evidence, including any explanation offered by the employer for the treatment in question. However, if in practice the Tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material.

Direct discrimination

116. Section 13 EqA provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. The relevant protected characteristics include sex and disability.
117. Section 23 EqA provides that on a comparison for the purposes of establishing less favourable treatment between B and others in a direct discrimination claim, there must be no material difference between the circumstances of B and of the comparator(s).
118. The effect of section 23 EqA as a whole is to ensure that any comparison made must be between situations which are genuinely comparable. The case law, however, makes it clear that it is not necessary for a claimant to have an actual comparator to succeed. The comparison can be with a

hypothetical person not of the claimant's sex or disability. In analysing whether an act or decision is tainted by discrimination, an Employment Tribunal may avoid disputes about the appropriate comparator by concentrating primarily on why the claimant was treated as he was, known as the "reason why" approach, in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11. Addressing the "reason why" involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator, and it may be possible for the Tribunal to make a finding as to the reason why a person acted as he or she did without the need to concern itself with constructing a hypothetical comparator. If the protected characteristic (in this case, sex or disability) had any material influence on the decision, the treatment is "because of" that characteristic.

119. Very little direct discrimination is overt or even deliberate. In Anya v University of Oxford [2001] IRLR 377 CA guidance was given that Tribunals shall look for indicators from a time before or after the particular act which may demonstrate that an ostensibly fair-minded decision was or was not tainted by bias, in Anya racial bias. Discriminatory factors will, in general, emerge not from the act in question but from the surrounding circumstances and the previous history.

Harassment

120. Section 26 EqA provides:

- (1) *A person (A) harasses another (B) if-*
- (a) *A engages in unwanted conduct related to the relevant protected characteristic, and*
 - (b) *the conduct has the purpose or effect of –*
 - (i) *violating B's dignity, or*
 - (ii) *creating an intimidating, hostile, degrading, humiliating or offensive environment for B*
- (2) *A also harasses B if-*
- (a) *A engages in unwanted behaviour of a sexual nature, and*

(b) *the conduct has the purpose or effect referred to in subsection (1) (b).*

...

(4) *In deciding whether conduct has the effect referred to in subsection (1) (b), each of the following must be taken into account-*

(a) *the perception of B*

(b) *the other circumstances of the case*

(c) *whether it is reasonable for the conduct to have that effect.*

121. The concept of harassment under the previous equality legislation was the subject of judicial interpretation and guidance by Mr. Justice Underhill in *Richmond Pharmacology and Dhaliwal [2009] IRLR 336*. The Tribunal has applied that guidance, namely:

“There are three elements of liability (i) whether the employer engaged in unwanted conduct; (ii) whether the conduct either had (a) the purpose or (b) the effect of either violating the claimant's dignity or creating an adverse environment for her; and (iii) whether the conduct was on the grounds of the claimant's [protected characteristic].”

Discrimination arising from disability

122. The prohibition of discrimination arising from disability is found in section 15 EqA. Section 15(1) provides:

(1) *A person (A) discriminates against a disabled person (B) if –*

(a) *A treats B unfavourably because of something arising in consequence of B's disability and*

(b) *A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

123. The proper approach to causation under section 15 was explained by the Employment Appeal Tribunal in paragraph 31 of Pnaiser v NHS England and Coventry City Council EAT /0137/15 as follows:

- (a) *A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.*
- (b) *The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The ‘something’ that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.*
- (c) *Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A’s motive in acting as he or she did is simply irrelevant*
- (d) *The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is “something arising in consequence of B’s disability”. That expression ‘arising in consequence of’ could describe a range of causal links ...[and] may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.*
- (e) *..... However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.*

- (f) *This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.*
- (g) *.....*
- (h) *Moreover, the statutory language of section 15(2) makes clear that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the ‘something’ leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so.*
124. In City of York Council v Grosset [2018] WLR(D) 296 the Court of Appeal confirmed the point made in paragraph (h) in the above extract from Pnaiser: there is no requirement in section 15(1)(a) that the alleged discriminator be aware that the “something” arises in consequence of the disability. That is an objective test.
- Time limits – trade union detriment*
125. Section 147 TULRCA provides that a complaint about trade union detriment must be brought:
- (a) *before the end of the period of three months beginning with the date of the act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures (or both) the last of them, or*
- (b) *where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.*
126. Two issues may therefore arise: whether it was not reasonably practicable for the claimant to present the complaint within time; and, if not, whether it was presented within such further period as is reasonable.
127. Something is “reasonably practicable” if it is “reasonably feasible” (see Palmer v Southend-on-Sea Borough Council [1984] ICR 372 Court of Appeal). Health issues can make it not reasonably practicable to present a claim (see Schultz v Esso Petroleum Co Ltd [1999] ICR 1202 Court of

Appeal). In University Hospitals Bristol NHS Foundation Trust v Williams UKEAT/0291/12 the EAT upheld a Tribunal decision that a late claim was within section 111(2) even though the medical evidence “did not entirely support the Judge’s findings about the Claimant’s mental health” (EAT judgment paragraph 12) and even though the claimant had been able to move home and find a new school for her child during the period when the Tribunal found it had not been reasonably practicable to have presented a claim.

128. In Marks and Spencer Plc v Williams-Ryan [2005] ICR 1293 the Court of Appeal reviewed some of the authorities and confirmed in paragraph 20 that a liberal approach in favour of the employee was still appropriate. What is reasonably practicable and what further period might be reasonable are ultimately questions of fact for the Tribunal.

Time limits – discrimination complaints

129. The time limit for presenting complaints of unlawful discrimination is found in section 123 EqA, which provides that such complaints may not be brought after the end of: -
- (a) *the period of three months starting with the date of the act to which the complaint relates, or*
 - (b) *such other period as the Employment Tribunal thinks just and equitable.*
130. Conduct extending over a period of time is to be treated as done at the end of that period and a failure to do something is to be treated as occurring when the person in question decided on it, or does an act inconsistent with doing it, or on the expiry of the period in which that person might reasonably have been expected to do it. A continuing course of conduct might amount to an act extending over a period, in which case time runs from the last act in question.
131. In British Coal Corporation –v- Keeble [1997] IRLR 336, the EAT confirmed that in considering the just and equitable extension, a Tribunal can have reference to the factors which appear in Section 33 of the Limitation Act 1980. As the matter was put in Keeble,

“... It requires the court to consider the prejudice which each party would suffer as a result of the decision to be made and also to have regard to all the circumstances and in particular, inter alia, to –

- (a) the length of and reasons for the delay;*
- (b) the extent to which the cogency of the evidence is likely to be affected by the delay;*
- (c) the extent to which the party sued had cooperated with any request for information;*
- (d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action;*
- (e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.”*

132. In Robertson –v- Bexley Community Centre (T/A Leisure Link) [2003] IRLR 434 the Court of Appeal considered the application of the “just and equitable” extension and the extent of the discretion and concluded that the Employment Tribunal has a “wide ambit”. Subsequently in Chief Constable of Lincolnshire –v- Caston [2010] IRLR 327 the Court of Appeal, in confirming the Robertson approach, held that there is no general principle which determines how liberally or sparingly the exercise of discretion under this provision should be applied.

133. In the course of submissions, the Tribunal was referred to a number of cases by the parties’ Counsel, as follows:

McCarthy v Somerset County Council [1980] UKEAT/454/80

Yewdall v Secretary of State for Work and Pensions [2005] UKEAT/0071/05

Hume v Secretary of State for Work and Pensions, ET case no. 2312473/2008

Dar v Royal Bank of Scotland, Coutts & Co, ET case no. 2201765/2008

Chandok v Tirkey [2014] UKEAT/0190/14

Adedji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23

The Tribunal took these cases as guidance but not in substitution for the relevant statutory provisions.

Submissions

134. Counsel for the claimant tendered written submissions which the Tribunal has considered with care but do not rehearse in full here. Due to ill health arising in the course of the hearing, Counsel for the claimant was unable to address the Tribunal orally. In essence it was asserted that:- the claimant's unique position as the only male in the Cheetham & Crumpsall team exposed him to different treatment by reason of sex amounting to discrimination; that it was apparent that Ms Sanchez had either encouraged or not discouraged the 2 Nursery Nurses from seeing the claimant and Ms King and/or their collective grievance in 2016 as the cause of the proposal to move one or both of them - Ms Williams saw the 2016 grievance at the Tribunal hearing and only then accepted that it did not say what she had been led to believe; that it was clear that Ms Sanchez unnecessarily involved herself in the management of the team; she displayed animosity to the claimant in response to him raising issues in his role as a trade union representative; the claimant's email following the meeting on 5 February 2019 should be accepted as the most accurate account of the matter; Ms Sanchez had involved herself in gathering evidence to put to the investigation and contributed her own allegations, despite not being a complainant, to the detriment of the claimant; allegations were aired with team members in the course of the investigation, in a manner that influenced their attitude to the claimant; Ms Greenhalgh's investigation went far beyond the original remit, reaching vague and unsubstantiated conclusions about professional conduct and/or matters of union discipline and so lacked credibility; the claimant's grievance of 23 July 2019, about the investigation, included complaints of sex discrimination, disability discrimination and detriment for trade union activities but was not addressed separately and so the issues raised went effectively unanswered; that the absence of Ms McMahon as a witness was telling – she could have assisted with a number of matters but was not called to give evidence; and that, where there was a conflict of evidence, the claimant's account should be preferred as more reliable than the recollection of the respondent's witnesses because he has kept a notebook in which he recorded events at the time.
135. Counsel for the respondent presented a written skeleton argument and made a number of detailed oral submissions which the Tribunal has considered with care but do not rehearse in full here. In essence it was asserted that:- the respondent was grappling with a difficult situation due to the breakdown of relationships in the Cheetham and Crumpsall team which has resulted in this and other Tribunal claims; the claimant's claim

should be seen as an attempt to shoehorn a grievance into complaints to the Tribunal; where there is a conflict of evidence about what was said, the respondent's witness(es) should be preferred as being more reliable than the claimant whose recollection was tainted by his perception of his treatment by the respondent; Ms Sanchez' emails after important meetings should be accepted as the truth of those matters; that Ms Sanchez was herself a member of a trade union and had done nothing to deter the claimant or penalise him for his trade union activities and never intended to upset him; her approach to the 2 Nursery Nurses was an appropriate way to ascertain who might move; everybody in the team was treated in the same way throughout the investigation process so there was no discrimination; the claimant was not treated less favourably because of sex or disability and the claimant's offense at matters claimed to be harassment is not made out; there is no link between the matters arising from disability and the unfair treatment complained of; and that many of the matters relied upon do not form a continuing course of conduct and so are out of time.

Conclusions (including where appropriate any additional findings of fact)

136. The Tribunal has applied its relevant findings of fact and the applicable law to determine the issues in the following way.

Factual allegations

137. The Tribunal first addressed the factual allegations as follows. The matters below are numbered so as to follow, where possible, the list of issues albeit that the Tribunal at times found the format and numbering of the list of issues made it a difficult document to navigate.
138. 1: On 4 July 2018 – the “Goodbye ladies” salutation, in the presence of the claimant: At best this might be a thoughtless comment but for a senior and experienced manager in the NHS, the Tribunal would expect better. In the context of Ms Sanchez's developing animus towards the claimant, the Tribunal found that she was well aware of his presence at the time of her comment. In those circumstances, the Tribunal considered on a balance of probabilities that Ms Sanchez had said “Ladies” and that it was deliberate. In reaching this conclusion, the Tribunal took into account that the incident came after the mediation, which Ms Sanchez believed had gone well. However, the claimant did not agree. He remained unhappy and had complained, which then irritated Ms Sanchez. She acted to the

claimant's detriment and treated him less favourably because of his gender, excluding him by her remark upon leaving.

139. 1.2.1: On 22 May 2018, Ms Sanchez asked for a show of hands concerning union membership: The evidence was that this happened and in a negative, menacing manner. It was said at the opening of a meeting and designed to set the tone in an intimidatory style, which was prejudicial to the claimant and related to his trade union activities. The Tribunal found that the claimant was present at the time the comment was made, despite Ms Sanchez' efforts, under cross-examination, to suggest that he was not there at all, and in the face of contemporaneous documents which show that the claimant reported the matter to his full-time trade union officer immediately after the meeting. A complaint was then raised by the union. and the Tribunal noted that Ms Sanchez was spoken to by higher management in the wake of this incident.
140. 1.2.2: Ms Sanchez proposed significant changes to a flexible working arrangement: The Tribunal found that Ms Sanchez proposed changes to the flexible working arrangements of 2 Nursery Nurses who working on a term-time-only basis. Concerns had also been raised about the condensed hours because not enough staff worked on Fridays. The proposed changes were not of themselves detrimental to the claimant. If they had resulted in change, this might have been to the claimant's benefit in terms of workloads and staffing levels during school holiday periods. However, the manner in which Ms Sanchez pursued such proposals was detrimental to the claimant because Ms Sanchez described the term-time working arrangements in terms of a problem and linked this to the collective grievance – see paragraphs 36, 39, 40, 41 and 43 above. As a result, the 2 Nursery Nurses became hostile to the claimant.
141. 1.2.3: On 3 July 2018, Ms Sanchez took a personal dislike to the claimant and would not acknowledge him in a room and openly made it clear that he was being excluded by her. The Tribunal understood this to be a repeat of the detriment above, at paragraph 138.
142. 1.2.4: The claimant being excluded by Ms Sanchez from ordinary social contact within an office, including from a manager, which humiliated the claimant, upset him and isolated him amongst the work force: The Tribunal did not understand this general allegation nor to what it related save as a repeat of 1 and 1.2.3 above.

143. 1.2.5: Ms Sanchez belittled the claimant and represented to colleagues that his actions were of no value: This is a general, unparticularised assertion and the Tribunal did not understand to what this related. The Tribunal noted that it was asserted in point 1.2.5 of the claimant's written submissions that this was about the "man-up" comment, on 5 February 2019. The Tribunal did not understand it to relate to that matter and so were unable to make specific findings on such a vague assertion. Despite this, the Tribunal found, in the course of her evidence, that Ms Sanchez was dismissive of the claimant and displayed a disdain for him, on several occasions suggesting that the claimant's account of events was a complete fabrication despite the surrounding evidence.
144. 2: The minutes of a team meeting held on 8 January 2019 were targeted at the claimant and RCN representative Wendy King, on the basis of trade union activities: The minutes in question appear in the bundle at pages 361-370. The Tribunal found that Ms Sanchez had, in previous closed Nursery Nurse meetings blamed the need for one of them to move on the collective grievance pursued by the claimant and Ms King, specifically she conveyed to the Nursery Nurses concerned that the proposal to move was as a result of the collective grievance brought in 2016. The records of the 8 January 2019 meeting show that Ms Sanchez came to the meeting specifically to because of the proposed move. In the course of discussion, Ms Sanchez failed to address the misunderstanding which she had created and failed to clarify the reason for the proposed move of term-time-only Nursery Nurses. The record shows that "staff were encouraged to voice their concerns and opinions" about the proposed move and the "underlying reasons" for the move includes reference to the previous grievance. Later in the record, this is underlined by reference to a concern from management and colleagues. The record goes on to cite other factors that impact on the team, namely that union work in caseload time is an issue along with colleagues concerns that team members were having regular meetings with senior managers. The latter point was added to the record by Ms Sanchez and the Tribunal found it to be a reference to the claimant and Ms King having meetings in their capacity as trade union workplace representatives – see paragraph 49 above. In light of the above, the Tribunal considered that the meeting record was compiled by management in such a way as to spotlight the claimant and document concerns about his trade union activities in a detrimental manner.
145. 2.1: The meeting on 8 January 2019 failed to address/clarify the reason for the base move of either of 2 Nursery Nurse staff: The Tribunal found

- this to be so and a detriment to the claimant see above, paragraphs 49 and 144.
146. 2.2: Ms McMahon and Ms Sanchez failed to challenge unfair criticism of the claimant: At the meeting, those present were encouraged to air their concerns. The meeting record shows this led to criticism of the claimant for his trade union activities. The Tribunal found that the conduct of the managers present in acquiescing in such, led to further criticism and put unreasonable pressure on the claimant. The Tribunal noted that, Ms Williams still held a negative view of the claimant when giving evidence to the Tribunal. It was only at the Tribunal hearing, when the collective grievance was read out to her, that she realised that the grievance was not about her personally. Her evidence was that she had been (mis)led to believe that it was. The Tribunal considered that Ms Sanchez was content, at the material time, that criticism was effectively being levelled elsewhere, i.e., at the claimant, and not at herself.
147. 2.3: The Claimant being criticised for not pulling his weight due to trade union activity: This relates to the fact that, during the meeting on 8 January 2019, team members raised the issue of trade union work apparently being done in caseload time. The meeting record states as a fact that this “compromises the caseload” and “requires a lot of clinic cover and goodwill from colleagues” without any examples given by way of substantiation. The Tribunal considered that the implication of the meeting record was that the claimant and Ms King were not pulling their weight in terms of the caseload. This was an unsubstantiated opinion presented as fact and the Tribunal were concerned that the managers present allowed a discussion of such to flow unchallenged and in the absence of those accused.
148. 3: In December 2018, Ms Sanchez held a series of closed meetings at which she described a proposed move of one or more Nursery Nurses from the team as being due to "the last tick in the grievance box": The Tribunal has found that Ms Sanchez alluded to the grievance being the “problem” and saw it as causative of the issue about the Nursery Nurses’ working arrangements, when the grievance is in fact about the lack of cover/contingency plans by management for when those working term-time-only are absent. The Tribunal considered her view, of the term-time-only contracts as the problem, to be a misunderstanding of the thrust of the grievance. Ms Sanchez’s attitude persisted at the hearing. She gave evidence that she had sought legal advice on changing the contracts of the Nursery

Nurses who worked on a term-time-only basis and had been told she could not do so which irked and frustrated her. In those circumstances, the Tribunal considered that Ms Sanchez perceived the grievance negatively and as a matter which caused her difficulties. This negativity was reflected in her subsequent dealings with the claimant.

149. 3.1: Ms Sanchez asked the 2 Nursery Nurses to choose between them who would in fact move: The Tribunal questioned the wisdom of this approach from which the Nursery Nurses understood that they were the problem. It led to resentment and a feeling by them that the claimant's collective grievance GL has caused the problem and in turn led to the Nursery Nurses' resentment of the claimant. Such resentment came to a head at the team meeting in February 2019.
150. 3.2: The intention of Ms Sanchez was that the Nursery Nurses would be upset and behave badly towards the claimant and Ms King: The Tribunal considered that, even if not intended, the resultant animosity was an obvious consequence. A skilled and intelligent manager would have thought things through. Ms Sanchez sought to suggest that her actions had nothing to do with the grievance but that was not borne out by the evidence, and she was unable to explain why not. Indeed, the Tribunal noted the fact that Ms Sanchez had a number of opportunities to correct the Nursery Nurses view of the grievance as the problem, and so scotch their animosity towards the claimant, she was unwilling to do so or to accept any responsibility for the events which followed. Instead, Ms Sanchez encouraged the 2 Nursery Nurses, and indeed other members of the team, to submit grievances or allegations focussed on the claimant which fed into the remit of the investigation by Ms Greenhalgh.
151. 4: On an unknown date, an email which the claimant had sent to Ms McMahon, Health Visitor, dated 19 June 2018, was read out at a managers' meeting: The email appears in the bundle at pages 280-282. It concerned staff behaviour. There was no evidence of this being read out as alleged beyond the claimant's assertion that he had been told it happened. Ms Sanchez denied it. In any event, the Tribunal considered the email was written in a personal capacity and that management might reasonably be expected to raise such issues with fellow management and seek support about handling individual employees/issues. The email in question was not related to trade union activities and the claimant had not

proved that, if it was read out, was in any way because of his TU activities or his gender. No detriment was established.

152. 5: At the meeting on 5 February 2019, Ms Sanchez launched an attack aimed at the Claimant and Ms King regarding how the team was split from one large team into Cheetham and Crumpsall teams: The issue of the team split was raised at the start of the meeting. Ms Sanchez said there was no decision to split the team, but other witnesses confirmed that they were tasked in effect to operate as 2 teams. In the face of this conflict of evidence, the Tribunal preferred the evidence of a number of individual team members to that of Ms Sanchez. The Tribunal found that the respondent's management had directed that the team should work in 2 halves - one handling the Cheetham caseload and the other dealing with the Crumpsall caseload - and that each side of the team would help the other when either was short-handed. When challenged about this, Ms Sanchez sought to suggest that it had not been her decision when, effectively, it was a management decision for which she had a responsibility. The Tribunal found that Ms Sanchez sought to avoid personal responsibility for this and other matters that contributed to the team's dysfunction despite copious evidence that she involved herself in the management of the team.
153. The Tribunal was concerned that the respondent and its managers had failed to disclose the minutes of this significant meeting. Likewise, they had not disclosed any record of another significant meeting, on 22 May 2018, at which Ms Sanchez opened proceedings by asking "Who's in Pete's Union?" and seeking a show of hands. Instead of the minutes of 5 February 2019, the Tribunal was provided with Ms Sanchez's account, by email to HR, sent immediately after the meeting, setting out her version of events, supported by Ms McMahon, and which contrasted with the recollection of those present.
154. When challenged under cross-examination, the Tribunal found Ms Sanchez' recollection of events to be unreliable and, at times, self-serving. In this context, taking account of Ms Sanchez's approach, the Tribunal could well see how the Nursery Nurses had gained the impression that the collective grievance had been aimed at them and that one of them had to move workplaces because of the grievance, when that was not the substance of the grievance but was communicated as such by Ms Sanchez.

155. On the matter of an attack on the claimant, the Tribunal found that, in the meeting, Ms Wilson first raised issues with and about her colleagues which led to an animated discussion which got out of control. The claimant contributed to the discussion at a late stage. Ms Sanchez told off those present, describing them as behaving like children. This was crass and unprofessional and the claimant, and others present, rightly objected. Ms Sanchez reacted by turning to the claimant as he was leaving, singling him out and telling him to “Man-up”, in response to his objection to her likening those present to children, and his wish to leave. The Tribunal considered this to amount to a verbal attack by a manager on the claimant in front of his colleagues and was a detriment. A number of witnesses testified to the particular animosity displayed by Ms Sanchez towards the claimant and linked that to his trade union activities and the complaints pursued on behalf of union members about the ineffective management of the team. In reaching its conclusion about Ms Sanchez’ attitude to the claimant, the Tribunal took account of the fact that she actively engaged in collecting statements after the meeting on 5 February 2019. Initial statements given before her involvement make little if any reference to the claimant at the meeting. However, following Ms Sanchez’ involvement, the focus of the content of a number of statements changes and they start to include adverse comment on the claimant. In particular, the revised and extended statements of the 2 Nursery Nurses, Emma Whittall and Tracey Williams, which were sent to Ms Sanchez on 7 February 2019, which appear as bundle pages 405 and 406, are very similar in content and phraseology, suggestive of collusion – see also paragraph 63 above.
156. 6: On 5 February 2019 Tracey Williams, Community Nursery Nurse, admitted that she and her fellow Nursery Nurses had been blanking the claimant: The Tribunal found this to be what happened and considered it to be a direct consequence of the misinformation disseminated by Ms Sanchez which caused resentment of the claimant by the Nursery Nurses. Ms Sanchez took no action to counter the impression of the claimant which she generated. It was only at the Tribunal hearing, when the collective grievance was read to Ms Williams that she saw things differently.
157. 7: On an unknown date, false allegations were raised, which had the effect of harassing the claimant on the basis of his gender, disabilities and trade union activity: The Tribunal understood this allegation to relate to the content of an undated letter which appears in the bundle at pages 1162-1164, sent by Tracey Williams to Sara Davenport, who succeeded Ms

McMahon to lead the Cheetham and Crumpsall team, in February 2019. Ms Williams raises a grievance against the claimant about a number of historic matters going back to May 2018 despite that there had been no complaint(s) at the time about those matters either by herself or by anybody else present at the time. The Tribunal found that Ms Williams had been encouraged in her grievance by Ms Sanchez. In her letter, Ms Williams reports that the claimant had participated in gender/genitalia-related discussions. She did not similarly report 2 other female colleagues for a “gonad” discussion. The Tribunal noted that all such discussions took place within a healthcare setting when such matters would be likely to be discussed in any event. This view is supported by the evidence given by a number of interviewees in the course of the investigation with one colleague describing it as “...an everyday conversation in the office.” Despite this, allegations about such discussions were pursued only against the claimant, the only male in the team, a fact which was never explained by the respondent’s witnesses, coupled with the fact that such allegations, and others pursued against the claimant, were entirely unconnected to what happened at the meeting on 5 February 2019 – see bundle page 511.

158. It is apparent from Ms Williams’ letter that she has formed an opinion that the collective grievance was personal against her and her Nursery Nurse colleague. The Tribunal considered that opinion was formed as a direct result of the misinformation disseminated by Ms Sanchez which engendered a negative view of the claimant within the team and which led to the claimant being treated differently, and at times isolated, belittled, blanked and ignored by the Nursery Nurses. The claimant was singled out for criticism in the letter in such a way as to raise potential safeguarding issues, when no professional in the team, or present in the room at the time, had considered those discussions/incidents to be so, nor had anybody reported them on that basis or at all. On a balance of probabilities, the Tribunal found the complaints raised were either untrue or exaggerated and had been re-interpreted in such a way as to damage the claimant. It follows that the claimant would be likely to, and the Tribunal found that he did, suffer an increase in stress and anxiety, as a result of this and other allegations raised against him, especially in the context of professional registration and the fact that the claimant works with children.
159. 8: On an unknown date Emma Whittall, a Nursery Nurse, made false or misrepresented allegations which had the effect of harassing the claimant

based on his gender, disabilities and trade union activities: The Tribunal understood this allegation to relate to the content of an undated letter which appears in the bundle at pages 1166-1167, sent by Emma Whittall to Sara Davenport, Ms McMahon's successor, in February 2019. Ms Whittall raises a grievance against the claimant, about the same matters as Ms Williams and in similar terms, using the same words/phraseology as Ms Williams, about a number of historic matters going back to May 2018 despite that, as with Ms Williams' grievance, there had been no complaint(s) at the time about those matters either by herself or by anybody else present at the time. The Tribunal found that Ms Whittall had also been encouraged in her grievance by Ms Sanchez. In particular, Ms Whittall alleged that the claimant had breached confidentiality in how he talked about his trade union work. The Tribunal found that the particular allegation of a breach of confidentiality had previously been dealt with by Ms Sanchez and also by the claimant's union, but Ms Whittall was nevertheless allowed to pursue it all over again. In addition, the claimant's trade union was not told, at any time during the investigation, that such a serious allegation against the claimant, its workplace representative, about his trade union activities was being considered again as part of the investigation.

160. In light of the above, the Tribunal considered that the claimant was subjected to detriment in that an atmosphere developed, unchecked by management, and effectively encouraged, in which team members felt it was appropriate to be negative towards the claimant and his role/activities as a trade union workplace representative. Inappropriate allegations developed though what amounted to a whispering campaign. There was no request for details or evidence, nor for witnesses to what was alleged to have happened. The respondent's investigation simply asked anybody and everybody what they knew or wanted to say and then sought evidence in support without any balance nor consideration of the wider context in which allegations were raised. It became apparent that Ms Whittall was ignorant of the facts of the incident which she complained about in terms of the way the claimant carried out his trade union duties and activities. The employee whose confidentiality she alleged had been breached by the claimant was not a member of the trade union, but Ms Whittall's perception was that the individual was a member and the matter was allowed to develop as a way by which the claimant could be criticized for the way he carried out trade union duties.

161. As a result of all and any allegations being accepted by the respondent, without question, the Tribunal considered that the claimant was subject to a further investigation that was inappropriate. In any event, Ms Whittall's allegation should have also been re-referred to the trade union which has its own disciplinary process, given the nature of the allegation, but it was not. The claimant was therefore subject to a false allegation about his trade union activities breaching confidentiality. The Tribunal found there was a distinct lack of detail about the allegation and no findings were ever made by the respondent on it. Nevertheless, it was a very serious allegation. The Tribunal accepted the claimant's evidence that, if the matter had been put to him at the time, he could have explained and corrected the misunderstanding but, instead, the respondent received the allegation sometime later, notified the claimant of it and it was then another thing hanging over him for months. The Tribunal had no hesitation in concluding that allegations about the claimant's trade union duties and activities had the effect of making the claimant nervous about what he did and how he carried out those duties. The respondent bears responsibility for encouraging allegations to multiply, in the knowledge that such would likely cause the claimant and other team members to modify their behaviour. Indeed, the Tribunal considered that such was the aim of the respondent's managers. In that context and given the manner in which allegations about the claimant's trade union activities were handled, the claimant suffered detriment because of his trade union activities.
162. 9.1: On 21 May 2018, during a mediation with Ms Whittall, the claimant was scapegoated and bullied by Ms Sanchez and Ms Whittall, and this was observed by Ms McMahon: The Tribunal considered, on a balance of probabilities that the mediation happened as contended for by the claimant. When this allegation of detriment was put to Ms Sanchez in cross-examination, and she was asked about the hostility between Ms Whittall and the claimant which had led to the mediation, her answer was first that it was a confidential mediation and then that she could not remember the details. Later Ms Sanchez said the issue was about how the claimant spoke to Ms Whittall and, on the issue of delegation by a Health Visitor to a Nursery Nurse, Ms Sanchez described the issues in some detail, thus demonstrating she remembered more than she had been prepared to admit earlier. On this matter, the Tribunal considered the surrounding evidence carefully and preferred the testimony of the claimant to Ms Sanchez who, at times, demonstrated an animus to the claimant in the manner and content of her answers, focussing her explanations and justification on what the claimant did that she considered to be wrong rather than demonstrating an open mind.

163. 9.2 – 9.4: Ms Sanchez breached the respondent’s policy by acting as the mediator/facilitator: The Tribunal found that the claimant had agreed to a mediation meeting because he thought the meeting would be conducted by somebody independent. He was not told in advance that it would be Ms Sanchez. However, when the claimant arrived and found out that Ms Sanchez was going to facilitate the mediation, he did not object and, in those circumstances, there was no breach of policy. However, the Tribunal found that, during the mediation, the claimant was effectively bullied and harassed by Ms Whittall and that Ms Sanchez allowed this to happen. In evidence, Ms Sanchez would not say the claimant was wrong about the hierarchical relationship between Band 6 and Band 4 or the need to delegate or the requirement for Nursery Nurses to support the work of a Health Visitor but she sought to cast the claimant in the role of the bully for pointing this out. Ms Sanchez displayed little regard for the fact that the issue which led to the mediation in the first place was Ms Whittall’s insubordination. Ms Sanchez turned it around into an issue about the claimant’s behaviour and she acquiesced in the face of Ms Whittall’s continued disrespect for the claimant at the mediation. Unsurprisingly, the mediation did not resolve matters; the parties did not reach a mutually agreed way forward nor any resolution and, in this respect, Ms Sanchez was unable to explain how or why she thought it had been successful. In evidence, she continued to place blame on the claimant for being dissatisfied with the process and for complaining about it afterwards. In addition, Ms Sanchez had used the mediation as training for Ms McMahon after identifying a problem with the immediate management of the team. Ms Sanchez sought to justify her view of a successful mediation by suggesting that Ms McMahon had also thought the mediation had gone well. Weighing up the conflicting accounts of the matter, the Tribunal considered that the claimant was justified in feeling intimidated by the mediation process and that it was reasonable for him to perceive that Ms Sanchez had sided with Ms Whittall against him.
164. 10: On 22 May 2018, Ms Sanchez walked into a meeting held to discuss workloads and asked for a show of hands to the effect of “Who is in Pete’s union and supporting Pete”: The Tribunal considered this to have happened as described by Ms Sanchez in her witness statement and the Tribunal rejected her attempts in oral evidence to re-write that description of the event and to play matters down – see also paragraph 30 above. The Tribunal has found that Ms Sanchez showed disdain for the claimant. In effect, she sought to imply that the claimant’s actions did not reflect the views of union members, to humiliate the claimant and also to undermine the trade union’s position on the issue of the management of workloads. The Tribunal considered, on a balance of probabilities, that Ms Sanchez set out to intimidate the claimant who opposed her and to divide the team against the claimant because she presented things as a matter of taking sides.

165. 11: The investigation undertaken in 2019 and concluding in September 2019, was a fishing exercise looking for a reason to discredit the claimant rather than address long term, ongoing and repeatedly reported behaviour of certain staff in the team: The Tribunal reviewed the various interview notes carefully and found that the claimant was asked an inordinate number of questions about every allegation regardless of whether the investigation had been given details by the complainants and regardless of whether matters had been raised at the time they were alleged to have happened. There was no filter. Management were prepared to delve into everything. The Tribunal considered the approach to be one of investigate whatever and see what comes up. In those circumstances it was a fishing expedition.
166. The claimant's investigation interview appears in the bundle at pages 692e – v. It reads like an interrogation of the claimant who was questioned at length on every matter raised. Having reviewed the interview record as a whole, the Tribunal gained the impression that the respondent's managers set out from a position of having accepted the allegations had substance (despite being largely unsubstantiated) and they were therefore seeking answers from the claimant, exploring the context rather than approaching each allegation in terms of whether it stood up to proof. As above at paragraphs 159 – 161, the Tribunal found that the allegation of a breach of confidentiality was put to the claimant once again for him to explain, despite that there had been a complaint at the time which was referred to the claimant's trade union to deal with, which it did. The previous handling of that matter was entirely ignored and the trade union was not even notified that a complaint against its official, about his conduct of a union matter had been raised. Management were simply not interested in engaging with the union on such and, when questioned about this, appeared confused about why it might be appropriate to involve the union in any event. No action was taken in respect of the complainant who is in effect given a second go at the claimant.
167. 12: The investigation by Ms Greenhalgh, into an alleged trade union confidentiality breach went beyond the respondent's remit: The Tribunal has dealt with this at paragraphs 159-161 above.
168. 13.1: During the 2019 investigation the claimant put forward direct questions to management about harassment and discrimination, many of which were not answered: The Tribunal noted that the claimant had raised a grievance which the investigation was supposed to address. He also raised questions about harassment and discrimination in the course of the investigation. However, when Ms Marsden wrote to the claimant on 11 October 2019 about the investigation outcome, in her letter she dismissed

his grievance almost out of hand, saying “My assessment of the findings from Caroline Greenhalgh’s investigation is that your grievance is not upheld due to limited evidence or other mitigating factors.” This is immediately followed by a loaded, throwaway comment about being concerned about other team member’s “perceptions” of the claimant’s “conduct” towards Ms Sanchez and the 2 Nursery Nurses (such perceptions never being identified or explained) coupled with a statement that she “do[es] not intend to progress this matter formally” thereby turning matters back onto the claimant. On the issue of acknowledging management failings, Ms Marsden wrote to say that such were “not surprising” given the “... challenging personalities in the team and the lack of respect ...” for managers, the implication being that any failings were as much the fault of the team itself. In relation to the Nursery Nurses, there is an acknowledgement that they had stepped outside their remit and boundaries. However, at best, Ms Marsden merely indicated that “consideration [would] be given to how we support the Nursery Nurses to develop in their role ...” This implies the matter may not be tackled any time soon, nor how, if at all. The claimant’s questions to management about harassment and discrimination, went unanswered.

169. The investigation’s recommendations, as conveyed to the claimant, amount to “... a number of interventions to remind team members of the standards expected and offer support to the team”. These included for example an offer of training, including emotional and resilience training, a review of responsibilities including time off for trade union duties and a review of the format for team minutes, and increased visibility of the HV Team Lead. The respondent’s witnesses were largely unable to help the Tribunal with an understanding of such vague notions, leaving the Tribunal with an impression of a management who had simply not got a grip nor an understanding of the team situation/dynamics and an investigation which was entirely ineffective after a lengthy and damaging process. The evidence, which the Tribunal accepted, showed that the Nursery Nurses were difficult to manage and the source of a number of the issues raised, not only by the claimant in his grievance. Within the investigation interviews, team members comment on this and one expressed a view that the claimant was being targeted. Nevertheless, such a view does not make it into the investigation report. In those circumstances, the Tribunal considered that the claimant suffered detriment in the way in which his grievance and the issues he raised were handled. The evidence was that the claimant’s grievance was simply not properly addressed, if at all.
170. 13.2: The claimant was informed that “no one is being punished due to the investigation as everyone has suffered enough”: The Tribunal found this to be the case, as stated by Ms Marsden. The Tribunal considered that such an approach failed to address the serious work situation

which the investigation had been commissioned to address and which the claimant and team members had endured for a long time - a situation about which the whole team had been encouraged to complain. This was of particular concern, given the time it took for Ms Greenhalgh's investigation to conclude, thereby leaving the matter hanging over the heads of the team even longer, whilst they were expected to work together, despite the respondent having acknowledged at the outset that there was "an irreparable breakdown in personal relationship in [the] team". Ms Marsden, in her statement at paragraph 14, seeks to blame the team for contributing to the delay, tellingly naming only the claimant, and describing some of the delay being "due to back and forth with Pete and others regarding ... the terms of reference" when the Tribunal found that it was the respondent which had encouraged additional complaints and further complaints, regardless of any timescale and thereby dragged out the setting up of the investigation – see paragraphs 66, 67, 70, 72 and 75 above.

171. In relation to the comment that no one is being "punished" the Tribunal found that the claimant reasonably formed a view that the investigation process led to the allegations against him increasing out of all proportion to the issues he had originally raised. Serious allegations were left hanging because what was a non-committal investigation outcome failed to address matters and, by this failure, the Tribunal considered that it made matters worse and thereby constituted a further detriment. The investigation report made no or no effective findings about anybody's behaviour. It did not say in terms that any allegation has been proven or not; it never identified who might have been responsible for the breakdown in relationships in the team and, on this particular aspect, little regard was had to the weak and, at time, non-existent management input when issues arose. Instead, the report's conclusions, on many aspects, amount to a general plea to draw a line under events and move on, with the possibility of some self-reflection and/or training for the team along the way. The investigation report was effectively a cop-out. Management's view had been that the team's inter-personal relationships were irreparably damaged - and the witness evidence heard by the Tribunal confirmed so. It was therefore clear that one obvious option was for the team to be disbanded, but management appeared incapable of conceiving that, let alone carrying it out. The Tribunal heard on several occasions that it was either not possible, or highly problematic, for them to move staff – see paragraph 36 above. The investigation report ends with a number of vague recommendations, none of which appear to have been implemented to any or any good effect. The team has ultimately broken up more by accident than design, in that several members, including the claimant, sought transfers of their own volition. The point of the investigation had been to find the cause of the breakdown in relationships and to repair such. In that regard, the Tribunal considered that it failed to

- address the situation grieved by the claimant and indeed served to make matters worse.
172. 17: On 5 February 2019, Lisa Sanchez told the claimant to ‘man-up’ in a room of over 10 women: The Tribunal has found that this happened as contended – see paragraph 56 above.
 173. 18: On Nurses’ Day in 2019, the claimant was given a bag with a stereotypical image of a female nurse and was told there were no male bags: The Tribunal were unable to make any findings as to when, if at all, this occurred or as contended for – see paragraph 76 above.
 174. 19.1: On an unknown date, Barbara Hindley asked the claimant about his collection of World War II weaponry in an attempt to discredit the claimant: The Tribunal found no evidence to corroborate that Ms Hindley asked the claimant about this as a result of the matter having been mentioned by Ms Greenhalgh, during the course of the investigation as suggested. The matter was never put to Ms Greenhalgh. In any event, there was no evidence to suggest that any such discussion may have been in an attempt to discredit the claimant.
 175. 19.2: The claimant was denied access to the investigation notes: The respondent accepted that this was the case.
 176. 20: A false allegation was made that the claimant had made sexually derogatory comments in response to a picture of a colleague’s daughter: The claimant was first made aware of this allegation in the course of the investigation and he denied it. The respondent found nothing to substantiate what was alleged against the claimant in terms of a date or witnesses and the matter had not been reported at the time it happened. The Tribunal considered that it was a false allegation. The investigation questioned Ms Higgs, whose daughter it was in the photograph, and she said it was untrue and flatly denied that anything untoward had happened. Nevertheless, other interviewees were told about this very serious allegation against the claimant. Interview notes in the bundle show that the allegation was shared by management as if it had the ring of truth about it. Questions asked about the allegation persisted and were accusatory, even though Ms Higgs had confirmed that the allegation was untrue. The Tribunal considered this to be a further adverse product of the respondent’s approach to the investigation. It was open season and any allegations against the claimant were accepted without question, providing material to be investigated regardless of any evidence or substantiation, and such matters were then pursued in a determined way which the Tribunal found to be unwarranted. In those circumstances, the Tribunal considered it detrimental for the claimant to be subjected to such an

allegation without any thought or question by the managers. In addition, the Tribunal were concerned that the respondent's witnesses did not appear to appreciate that raising allegations of inappropriate sexual behaviour, without foundation, is of itself discriminatory.

177. 21: On an unknown date, an unknown colleague contacted management with concerns for the claimant and that he had been portrayed as a 'pervert': The Tribunal found that the claimant had been very stressed and worried by the allegations against him and he said to a new colleague that he felt branded as a pervert. The employee was shocked and reported what the claimant had said about how he felt, to management. By this time, the claimant had moved teams. Nevertheless, it was Ms Sanchez who ensured that the matter was passed on to Ms Marsden and not the claimant's line manager – see bundle page 103. Ms Sanchez's email is couched in terms of the claimant having breached confidentiality and "... Someone took it as he was referring to his genitals", and "Carol felt uncomfortable [but] ... does not want to take this further in case she works with him permanently." The Tribunal considered this to be a further attempt by Ms Sanchez to besmirch the claimant with vague and unsubstantiated allegations. Further and despite that the colleague made it clear that she did not want any official action taken, Ms Sanchez ignored her wishes and the claimant was spoken to about it. He explained that he had been telling Carol why he had moved teams. As a result, the claimant was informally warned to think about what he was saying. The claimant offered to apologise for any offence but then, confusingly, he was told not to apologise by Ms Marsden. The Tribunal considered that this episode amounted to 'tittle-tattle' being passed on and found that, once again, management focussed on the claimant being in the wrong without any regard for the colleague's express wishes nor the effect of the investigation and without appreciating that the claimant was considerably upset by the investigation in light of a number of the allegations made and the fact that they had been pursued against him without foundation.
178. 30.1: Allegations were raised against the claimant and he was subject to an investigation leading to findings related to the allegations: the Tribunal understood this to be an allegation about the grievances raised first by Ms Williams and Ms Whittall and also the investigation conducted by Ms Greenhalgh and overseen by Ms Marsden. The Tribunal here repeats its findings on allegations 7 and 8, at paragraphs 157 – 161 above.
179. Further, the Tribunal considered the approach of management to the investigation of the claimant's grievance of 15 January 2019, the team meeting of 5 February 2019 and the resulting grievances and accounts which led to numerous complaints, with more invited along the way, was

incomprehensible and of significant concern. It demonstrated that, although the respondent's managers were aware there was a problem, they had not pinned down what the problem was or how it has arisen and made no effort to do so. Because issues within the team had been allowed to go unchallenged for so long, numerous grievances had arisen and festered over many months without the situation in the team being managed or addressed either effectively or at all.

180. Management then failed to define the remit of the investigation, and instead allowed the team members to do so by inviting 'open season' on any complaints that individuals wanted to raise or which were outstanding. Several members of the team used the opportunity to try to settle scores by raising things which they had never complained about at the time, and complaints which were undated, unsubstantiated and which it was therefore almost impossible to investigate with any precision or focus. The Tribunal found in this regard that several of the team, including the 2 Nursery Nurses, had been encouraged to submit complaints about the claimant in particular.
181. The matter was made worse by the fact that, when team members were each informed of the complaints made against them, many proceeded to add to their original complaints. Management consciously allowed this to happen with the result that, rather than addressing and improving relationships in the team, the investigatory approach was detrimental and damaging. The number of complaints resulting was in the order of 71 allegations and counter-allegations made by 10 employees. The claimant raised 11 allegations and 19 allegations were made against him. In consequence, an inordinate amount of management time was spent in gathering, collating and cross-referencing the allegations and then investigating each and every one of them.
182. Astonishingly to the Tribunal, at the end of the process, every allegation raised was effectively dismissed. The Tribunal found that management took the view that the team members had been given an opportunity to vent their feelings and should thereafter move on. The Tribunal found the whole investigation process to be damaging of the team members and the outcome incredible, particularly as management then genuinely expected the team to pull together after such an episode. The Tribunal failed to comprehend the logic, if any, behind that expectation and the Tribunal was not surprised to learn that the simple dismissal of all complaints and allegations, led to further complaints. It was apparent to the Tribunal, from

the evidence, that a number of team members, and also the team managers, continued to see the claimant as the chief protagonist of the collective grievance and thereby responsible for the difficulties in the team which continued. In addition, despite the fact that many allegations against the claimant were never substantiated, Ms Marsden confirmed in her evidence that the allegations nevertheless were placed on and remained on the claimant's personal employment history file.

183. 30.2: The allegations and subsequent investigation/process involved false material being provided concerning the claimant and how he referred to his back: The Tribunal understood this to be an allegation arising from the lack of any evidence or substantiation to a number of the allegations made about the claimant. All and any allegations were accepted for consideration by the investigation and there were no sanctions imposed on any individual where an allegation did not come up to proof. Many allegations against the claimant were never substantiated. However, the Tribunal found no evidence that "false material" was given to the investigation either deliberately or inadvertently or at all.
184. However, the evidence showed that the investigation took little or no action to verify unsubstantiated allegations. In those circumstances, the Tribunal considered that there was a potential for false allegations to be made.

Conclusions on each complaint: -

Trade Union detriment

185. This complaint relates to the factual allegations numbered 1 to 13 in the list of issues – dealt with in paragraphs 138 to 171 above. The Tribunal has found that only the allegations 1.2.4 and 4 were not detriments and has found the rest to be made out.
186. Taking the case as a whole or overall, and also taking the detriments individually, upon a review of the history of the conduct of the respondent, through its managers, towards the claimant, the Tribunal considered that the detriments complained of and found were because of the claimant's trade union membership and/or activities.
187. The respondent, through its witnesses, has sought to paint this case as a clash of personalities and as nothing to do with the claimant's trade union activities and/or as about the way in which the claimant carried out his trade union duties and activities. The Tribunal rejected that contention in all the circumstances of the case.

188. It was apparent to the Tribunal that the detriments complained of had their origin in the collective grievance presented by the claimant and Ms King, the 2 union officers in the Cheetham and Crumpsall team, with the support of other union members in the team. The Tribunal considered that it was legitimate to raise the issue of being short-staffed over the summer and school holiday periods by way of a grievance in the absence of any informal resolution. Once the grievance was upheld by a manager from outside of the Health Visiting structure, at Stage 3, the local management who were tasked to address the staffing issues appeared incapable of doing so. In evidence to the Tribunal, Ms Sanchez sought to suggest that she had legal advice from HR to the effect that it was not possible to do what the grievance outcome directed, and that existing contractual arrangements would not allow for change. No such legal advice nor example contracts formed part of the respondent's evidence, as they so easily could have. These explanations for inaction were considered and rejected by the Tribunal which took them as an example of weak and ineffective management hiding behind excuses.
189. Instead of addressing the issues upheld in the collective grievance process, the Tribunal found a pattern of behaviour wherein management turned against the trade union representatives. Both the claimant and Ms King came in for criticism, at times directly and also behind their backs. This was underlined by Ms Sanchez at one point suggesting that the grievance had only been upheld on a couple of points, when she knew that was not the case. In addition, the Tribunal was concerned that Ms Sanchez did not actually grasp what the collective grievance was about. Even at the Tribunal hearing, in evidence, it was apparent that she saw the grievance as creating a problem for management which she saw in terms of removing the term time only contracts from the team or moving one or other of the 2 Nursery Nurses. However, from a reading of the collective grievance, the Tribunal found that was not what was grieved nor the outcome. Rather, the grievance was about the fact that, at certain times of the year, the team was under resourced and required assistance with the workload. There was no complaint about term-time working per se nor was anything directed at the individuals working under those arrangements. Team members were asking for help with workloads and/or extra resource.
190. The Tribunal found that Ms Sanchez started to target the claimant and Ms King, the 2 union representatives responsible for the grievance in subtle and not so subtle ways. She perceived them both, and the claimant in particular, as challenging, anti-management and disruptive of the team. At one point a complaint was raised about having 2 trade union workplace representatives in one team even though they were from different unions –

the claimant being Unite and Ms King being RCN. As the Tribunal has found at paragraph 30, it became about taking sides, with the claimant and Ms King painted as difficult if they raised any matter of concern or questioned management's approach on behalf of their members or indeed anything raised by them. It was no coincidence that Ms Sanchez came into the meeting on 22 May 2018 and demanded a show of hands for "Who's in Pete's union?" The Tribunal considered that this behaviour served to personalise matters and was designed to deter team members from siding with the claimant, to isolate him and thereby reduce challenges to management decisions; in effect also to deter the claimant from trade union activities.

191. It was either Ms Sanchez' lack of understanding of the grievance or her dissatisfaction at the fact that it had been upheld, which led her to tell the 2 Nursery Nurses that their proposed move of one of them was "the last tick in the grievance box". This served to feed information to the Nursery Nurse which prompted them to take against the claimant and Ms King, and they started to ostracise them in the office. The Nursery Nurses were never shown the grievance itself. Indeed, at the Hearing, Ms Williams saw the collective grievance for the first time, read it and her reaction was telling.
192. There was no evidence that either Ms McMahon or Ms Sanchez did anything to stem this tide. Instances of insubordination went unchallenged by management and, in the failed mediation on 21 May 2018 – see paragraph 29 above, Ms Sanchez took over from Ms McMahon and effectively supported such behaviour against the claimant, instead of remaining impartial. The Tribunal also noted that the mediation came shortly after the claimant and Ms King had raised issues about the respondent's SEQ pilot on behalf of union members, about which Ms Sanchez was not pleased.
193. At the team meeting in January 2019, no effort was made to counter comments about trade union work being done within the team/work time – see paragraph 49 above. The Tribunal considered this to be wholly inappropriate discussion in the absence of the 2 team members being talked about and served no purpose save to increase hostility towards them. The respondent has NHS collective agreements in place which cover time for trade union duties. If the respondent's managers believed there was an issue with such and/or if it adversely impacted the team, there were a number of channels through which this could have been addressed. But no action was taken whilst criticism and ill-feeling within the team continued to fester and was allowed to do so.

194. In those circumstances, the Tribunal was unsurprised to find that the meeting of 5 February 2019 became completely out of control. It was apparent to the Tribunal from the various accounts that the claimant was not the source of or catalyst for the arguments which ensued. The Tribunal found that he said very little until the end of the meeting – see paragraph 56 above. However, when Ms Sanchez lost her temper, she directed her ire at the claimant in an aggressive and highly unprofessional manner which the Tribunal has found was an act of sex discrimination – see allegation 17 and paragraphs 172 and 205 below. Whilst not included as an act of detriment on trade union grounds, the Tribunal considered the “Man-up” comment to be demonstrative of Ms Sanchez’ approach to the claimant.
195. The Tribunal also noted with concern that, unlike other team meetings, the respondent has never disclosed the notes of the 2 important meetings so far as the trade union detriment claim is concerned, namely the meeting of 22 May 2018, at which Ms Sanchez asked for a show of hands of trade union members (paragraph 30 above) and the meeting of 5 February 2019. It was apparent to the Tribunal from the evidence heard, that notes of these meetings had existed and, in the absence of disclosure, coupled with suggestions that such may have been “overlooked” or “lost”, the Tribunal drew inferences from the respondent’s lack of disclosure that managers had something to hide on these matters.
196. The Tribunal was concerned to find that, almost immediately after the meetings on 8 January and 5 February 2019, Ms Sanchez took it upon herself to email her managers with her version of events. She knew the meetings had not gone well. Shortly after the meeting of 5 February 2019, the Tribunal found that Ms Sanchez started to “collect” complaints from those present. The Tribunal has found that the original complaints, put in immediately after the meeting only rarely mention the claimant – see paragraph 58. However, as the situation develops and an investigation is mooted, Ms Sanchez turns her attention to encouraging for example the 2 Nursery Nurses, and others, to direct their complaints to the claimant’s behaviour and later, to include all and any historic matters they wish to raise – see paragraphs 62, 63 and 70. As the Tribunal has found, as a result of the actions of the respondent’s managers, the investigation’s remit was widened – see paragraphs 72 and 75.
197. In all the circumstances, the Tribunal considered that the claimant’s immediate managers were behind this shift in focus and encouraged complaints against the claimant. Ms Sanchez in particular made sure numerous complaints made their way into the investigation. This action was taken in the full knowledge of the claimant’s vulnerabilities and without regard for them, for example when Ms Sanchez sought to include

an entirely unsubstantiated allegation about the claimant referring to his genitals, into the mix.

198. In light of all the above, the Tribunal considered that Ms Sanchez, the respondent's manager had developed an animus to the claimant because of his trade union activities. Her sole or main purpose in collecting complaints about him was to steer the focus of the investigation, such that it would deter the claimant from trade union activities including challenges to her management. The investigation had not been about the claimant initially but it soon became so. The claimant felt he was being targeted and that view was shared by several witnesses and interviewees. The Tribunal found that, in the wake of the meeting on 5 February 2019, management intended that, with an investigation hanging over the team, its members including the claimant would "behave professionally" towards one another. Ms Sanchez' purpose was to temper the claimant's approach to the raising of concerns.
199. The conduct of the investigation also called into question its impartiality. The Tribunal did not doubt that Ms Sanchez had spoken at length to Ms Marsden and Ms Greenhalgh about the claimant. The Tribunal has made findings about the conduct of the investigation at paragraphs 178-184. The outcome was inadequate when considering that many team members had endured allegations and complaints. The respondent submitted that this meant it was not about the claimant and his trade union activities but the Tribunal disagreed. The effect on the wider team and personal and/or professional relationships became collateral damage in an investigation focussed on the claimant. Ms Sanchez orchestrated such for the purpose of preventing or deterring the claimant from trade union activities. Interview notes show that the claimant was questioned more extensively and for longer than other witnesses and allegations about him were put to all and sundry – the Tribunal has found the investigation to be a fishing expedition in any event – see paragraph 165.
200. Counsel for the respondent contended that Ms Sanchez was not against trade unions and so could not have acted to the claimant's detriment on trade union grounds because she herself is a member of the RCN. The Tribunal considered this point with care but disagreed. In Ms Sanchez' case, the Tribunal considered that she was content for the RCN to represent her personal interests, as demonstrated by the fact that she submitted a letter from her RCN representative to her, dated 21 May 2019, into the investigation. The letter is critical of "... behaviours and conduct within the team especially the two individuals raising the concern who just happen to be trade union representatives" and sets out the view that Ms Sanchez has been exposed to unprofessional behaviours. The Tribunal considered this letter to be based on what Ms Sanchez had told her trade

union representative who, on a balance of probabilities, could not have been aware that one of the 2 trade union representatives was Ms King, herself an RCN official – bundle page 581. The Tribunal considered that, if the author of the RCN letter had been aware that she was engaging in criticism of another RCN official, the letter may have been crafted very differently. In contrast to her personal interests being represented and protected by her union, the Tribunal considered that Ms Sanchez' view of the trade unions, in her capacity as a manager was very different. The Tribunal found that she did not appreciate being challenged or criticised as a manager. She saw the claimant, in his capacity as a workplace representative of Unite, and to a degree also Ms King, as anti-management, making her life difficult by raising concerns, for example, questioning the SEQ pilot project that she was keen to promote. The Tribunal also considered that Ms Sanchez did not like or understand the collective grievance and saw the Stage 3 outcome as creating difficulties for management. It was this view that coloured her judgment where the claimant was concerned. In turn, the claimant did not let go of the matter precisely because management did not address staffing issues as directed. Ms Sanchez then sought to personalise things and turn team members against the claimant, in an effort to punish him and deter him from trade union activities in the future.

201. In light of the Tribunal's findings on the allegations 1 – 13 in the list of issues and the conclusions above, the Tribunal considered that the claimant had been subject to detriment on grounds related to trade union activities in that the respondent's main purpose, through the actions of Ms Sanchez and the conduct of the investigation, had been to prevent or deter the claimant from trade union activities.
202. The respondent has contended in its response that the complaint of detriment on trade union grounds is out of time for having been presented to the Tribunal on 29 April 2020. However, on the Tribunal file is a letter from the claimant dated 28 April 2020 in which he sends a copy of his Tribunal form, with a delivery receipt dated 10 February 2020. The Tribunal understand that the claim form was received at the central office of Employment Tribunals in Leicester and then lost in transit to the Manchester Employment Tribunal.
203. The last act complained of by the claimant is on 11 October 2019 when he was sent the respondent's investigation outcome summary. He entered ACAS early conciliation on 20 December 2019, within the primary limitation period, and an early conciliation certificate was issued on 10 January 2020. Early conciliation therefore paused the limitation clock for 21 days. However, limitation is extended by a minimum of a month from the certificate date, thereby expiring on 10 February 2020, being the date

that the claim form was received by the Employment Tribunals central office. In those circumstances, the claim was presented in time.

204. In addition, given the Tribunal's findings as to the actions of Ms Sanchez and other managers, and the detriments contended for, the Tribunal considered that such amounted to a continuing course of detrimental conduct by the respondent on trade union grounds, starting with the reaction to the Stage 3 grievance outcome from which events flowed.

Direct Sex discrimination

205. This complaint relates to the factual allegations numbered 1, 4, 7, 8, 11, 13, 17, 18, 19, 20 and 21 in the list of issues and the findings on the factual allegations above.
206. The Tribunal considered, from its findings, that the following allegations amounted to less favourable treatment of the claimant because of sex: allegation 1, the "Goodbye Ladies" comment – at paragraph 138 above; allegations 7 and 8, about the grievances submitted by Ms Williams and Ms Whittall raising complaints only about the claimant when it was apparent that female colleagues had been involved in the conduct complained of – paragraphs 157-161 above; allegation 17 about the "Man-up" comment – paragraph 172 above; allegation 20 about the allegation that the claimant had made sexually derogatory comments about a colleague's daughter- paragraph 176 Above; and allegation 21, which arose from Ms Sanchez's email propounding inappropriate behaviour by the claimant through her vague and insidious remark "...Someone took it as he was referring to his genitals" at best an expression of the opinion of an unnamed third party about a matter which Ms Sanchez had not witnessed herself – paragraph 177 above.
207. On allegations 4, 11, 13, 18 and 19, the Tribunal either was unable to make any findings of fact in the absence of evidence or found no evidence that the treatment of the claimant was because of sex.
208. In respect of the allegations upheld, the Tribunal considered these to be less-favourable treatment of the claimant over a period of time. A number of the allegations were brought into the scope of the investigation and served to widen its remit beyond the meeting of 5 February 2019 and the team dynamics per se. The Tribunal accepted the claimant's evidence that he had often been the butt of jokes or remarks about being the only man in the team or about his sex. He gave evidence that such comments were at time innocuous but he had grown tired of them and was on occasion irritated by the fact that his sex was highlighted unnecessarily. The

Tribunal found that this culture, and approach to the claimant was tolerated by his immediate management who took no steps to deter the claimant's colleagues and Ms Sanchez herself has been shown to have participated in such commentary. In those circumstances, the Tribunal considered that less favourable treatment of the claimant because of sex had gone on, akin to a course of conduct over a period of time. This including during the investigation process where serious allegations made against the claimant of inappropriate sexual behaviour, without foundation and disputed by witnesses, were nevertheless pursued.

209. The claimant learned of the investigation outcome when he was sent the summary of the investigation report on 11 October 2019. Whilst the Tribunal did not consider that event to be the end of less favourable treatment, it brings the complaint in time. In any event, if out of time, the Tribunal would have considered it just and equitable to extend time in circumstances whereby the claimant had reasonably awaited the outcome of the investigation before considering his position.

Harassment because of sex

210. This complaint relates to the factual allegations numbered 1, 7, 8, 17, 18, 20 and 21 in the list of issues. All of these allegations have been found to be less favourable treatment because of the claimant's sex – see paragraph 206 above.
211. The Tribunal considered carefully the wording of the harassment provisions in the EqA, section 26. Weighing the evidence and the circumstances of each allegation, the Tribunal did not consider that the harassment allegations met the 'purpose or effect' test required in section 26(1)(b) so as to constitute unlawful harassment. The claimant did not, in the Tribunal's view perceive such matters to amount to harassment in the circumstances of the case and, given how the claimant described the culture of the workplace in terms of occasional jibes relating to his sex and the fact that he was, at best, irritated by such, the Tribunal considered that it was not reasonable for the conduct to have the effect of unlawful harassment. In reaching this conclusion, the Tribunal also had regard to section 212(1) EqA which provides that "detriment" does not include conduct that amounts to harassment, thereby establishing a higher bar for such.

Direct disability discrimination and harassment

212. The direct disability discrimination complaint relates to the factual allegations above numbered 7, 8, 11, 13 and 17 in the list of issues. The harassment because of disability complaint relates only to factual

allegation number 7 in the list of issues. Counsel for the claimant submitted that the reference to allegation 7 for the harassment complaint should in fact be a reference to allegation 17 but the Tribunal rejected this assertion which was only made in closing submissions.

213. In any event, the Tribunal considered, from its findings above, that there was no evidence that any of the treatment complained of under any of the 5 allegations was because of disability. In the circumstances, the complaints of direct disability discrimination and harassment must fail.
214. Counsel for the claimant submitted that the allegations made in the grievances of Ms Williams and Ms Whittall (allegations 7 and 8) were made in the knowledge of the claimant's disability. It is correct to say that these individuals were aware of the claimant's disability. However, the Tribunal found that they did not have the claimant's disability in mind when they raised their grievances. Rather, the Tribunal found that these 2 individuals were motivated by what Ms Sanchez had told them about the collective grievance, with the claimant being portrayed as the chief protagonist, and they were encouraged by Ms Sanchez' to complain about the claimant. This had nothing to do with his disability.
215. In reaching its conclusion that these claims must fail, the Tribunal acknowledged that the treatment complained of, and the effect of being under investigation for a lengthy period will have exacerbated the claimant's stress and PTSD, noting for example that after the meeting on 5 February 2019, the claimant was signed off work, sick, with stress.

Discrimination arising from disability

216. This complaint relates only to factual allegation number 30 in the list of issues.
217. At the start of the hearing, the claimant confirmed that the "something(s)" arising from his disability were chronic pain, emotional vulnerability and his time off sick. However, in closing submissions, Counsel contended that the "something arising" was subjecting the claimant to the investigation and grievance in the manner carried out and their outcomes. The Tribunal were confused by this. The Tribunal considered that the latter suggestion was not something arising in consequence of disability and sounds more like the unfavourable treatment contended for in allegation 30, which is about the conduct of the investigation and the allegations raised therein.
218. In any event the Tribunal considered that the conduct of the investigation and its outcome was not because of the claimant's disability nor was it because of something arising in consequence of disability. As set out

above, the Tribunal has found that the conduct of the investigation targeted the claimant - management sought to modify the claimant's trade union activities by deterring him from such and that this was orchestrated in large part by Ms Sanchez. The claimant's disability played no part in such. In those circumstances, this complaint also fails.

Remedy

219. In light of the above successful complaints, a remedy hearing shall be listed on a date to be notified in due course.

Employment Judge Batten
Date: 28 July 2023

JUDGMENT SENT TO THE PARTIES ON

2 August 2023

FOR THE TRIBUNAL OFFICE

ANNEX - LIST OF ISSUES

Detriment on grounds related to trade union activities Section 146 TULRCA

1992

Factual Issues

1. On 4 July 2018, did Head of Service Lisa Sanchez attend the office and on entering say hello to every female staff member by name and on leaving say goodbye ladies?

Did Ms Sanchez completely ignore the Claimant, the only male present?

(Complaint raised against Lisa Sanchez).

- 1.1. Trade Union activities: representation of members at various meetings.
- 1.2. Was the Claimant subjected to the following detriments:
 - 1.2.1. On 22 May 2018 did Ms Sanchez enter a room and ask for a show of hands concerning union membership?
 - 1.2.2. Did Ms Sanchez propose significant changes to a flexible working arrangement?
 - 1.2.3. Did Ms Sanchez take a personal dislike to the Claimant and would not acknowledge him in a room and openly made it clear that he was being excluded by her, one such incident documented by the Claimant on 03/07/2018?
 - 1.2.4. Was the Claimant excluded by Ms Sanchez from ordinary social contact within an office, including from a manager, which humiliated the Claimant, upset him and isolated him amongst the work force?

1.2.5. Did Ms Sanchez belittle the Claimant and represent to colleagues that his actions were of no value?

2. Were the minutes of a team meeting held on 8 January 2019 targeted at the Claimant and RCN representative Wendy King, Health Visitor, on the basis of union activities? Did the meeting “fail to address either this nor did it clarify the reason for the base move of either of 2 nursery nurse staff” which Lisa Sanchez, Head of Service, had in previous closed CNN meetings blamed on the Claimant and Ms King?

(Complaint raised against those present).

- 2.1. Trade Union activities: the activity of being a Trade Union representative and performing the role.
- 2.2. Was the Claimant subjected to a detriment by Ms McMahon and Ms Sanchez failing to challenge unfair criticism? What was the unfair criticism? Did this facilitate the humiliation of the Claimant and a course of conduct which put unreasonable pressure on him?
- 2.3. Was the Claimant subjected to a detriment by being criticised for not pulling his weight due to trade union activity? Who made this criticism?
3. In December 2018 did Ms Sanchez hold a series of closed meetings at which she described a proposed move of one or more community nursery nurses from the team as being due to “the last tick in the grievance box”? Did Ms Sanchez ask two nursery nurses to choose between them who would in fact move? Was the implication of this that the nursery nurses would then be upset and behave badly towards the

Claimant and Ms King and thereby cause the Claimant to suffer a detriment?

(Complaint raised against Lisa Sanchez).

3.1. Trade Union activities: representing members at various types of hearings.

4. Unknown date: Was an email the Claimant had sent to Alison McMahon, Health Visitor, dated 19 June 2018 read out at a managers' meeting? The email concerned staff behaviours.

(Complaint raised against: Alison McMahon, Lisa Sanchez and any and all managers present at the meeting).

4.1. Trade union activities: submission of the email dated 19 June 2018.

5. At a meeting on 5 February 2019, did Ms Sanchez launch an attack aimed at the Claimant and Ms King regarding how the team was split from one large team to Cheetham and Crumpsall teams? Did Ms Sanchez tell blatant outright lies?

(Discriminator: Lisa Sanchez).

5.1. Trade Union activities: role as a union representative.

5.2. What were the lies Ms Sanchez told?

5.3. Was the Claimant subjected to a detriment of negativity towards him?

6. On 5 February 2019 did Tracey Williams, Community Nursery Nurse (CNN), admit that she and her fellow CNNs had been blanking the Claimant? Was this as a direct consequence of misinformation by Ms Sanchez?

(Complaint raised against: Tracey Williams).

6.1. Trade Union activities: general union and ~~health and safety~~ activity.

7. On unknown date were false allegations raised harassing the Claimant on the basis of his gender, disabilities and trade union activity? Was the information used to produce the allegations solicited by Ms Williams?

(Complaint raised against: Tracey Williams).

7.1. Trade Union activities: Claimant's trade union and ~~health and safety~~ roles.

7.2. What were the allegations?

7.3. What was the misinformation?

7.4. Was this behaviour a direct consequence of misinformation by Ms Sanchez?

7.5. Did Ms Williams report the Claimant for gender genitalia related incidents but did not report Jenny Rowlands or Jayne Cooke for a "gonad" discussion?

7.6. Was the Claimant subjected to the following detriments:

7.6.1. A negative view being formed of him?

7.6.2. An increase in stress and anxiety?

7.6.3. Being treated differently, isolated, belittled, blanked and ignored?

8. On unknown date did Emma Whittall, CNN, make false or misrepresented allegations harassing the Claimant based on his gender, disabilities and trade union activities?

(Complaint raised against: Emma Whittall)

- 8.1. Trade Union activities: Claimant's union ~~and health and safety~~ status/activity.
 - 8.2. What were the allegations?
 - 8.3. What was the misinformation?
 - 8.4. Was this as a direct consequence of misinformation by Ms Sanchez?
 - 8.5. Was the Claimant subjected to the following detriments:
 - 8.5.1. Others being encouraged to believe that it was appropriate to be negative towards the Claimant over various matters?
 - 8.5.2. Being subject to an investigation that was inappropriate?
 - 8.5.3. Being subject to false allegations about breach of confidentiality?
 - 8.5.4. The Respondent failing to report the issue to Unite?
 - 8.5.5. The Respondent directing criticism against the Claimant on a personal capacity?
9. On 21 May 2018 during a mediation with Ms Whittall:
- 9.1. Was the Claimant scapegoated and bullied by Ms Sanchez and Ms Whittall and was this observed by Ms McMahon?
 - 9.2. Was it a breach of policy for Ms Sanchez to act as mediator?
 - 9.3. Was the Claimant bullied and harassed throughout the process by Ms Whittall?
 - 9.4. Did Ms Sanchez facilitate this to humiliate the Claimant?
 - 9.5. Trade Union activities: over a period of time the Claimant conducted union ~~and safety~~ activities.

(Complaint raised against: Emma Whittall and Lisa Sanchez).

10. On 22 May 2018 date did Ms Sanchez walk into a meeting held to discuss a pilot study in Cheetham for increasing the workload of clinics with no increase in time and said to the effect of “*a show of hands who is in Pete’s union supporting Pete*”? Was this to show disdain for the Claimant and imply he was not acting for his members, to undermine Unite and to humiliate the Claimant?

(Complaint raised against: Lisa Sanchez).

11. In 2019 was an investigation undertaken (concluding in September 2019) that was a fishing exercise looking for a reason to discredit the Claimant rather than address long term, ongoing and repeatedly reported behaviour of certain staff?

(Complaint raised against: Caroline Greenhalgh).

12. In 2019 was the investigation by Caroline Greenhalgh, Associate Director of Quality Governance, into an alleged trade union confidentiality breach beyond the Respondent’s remit?

(Complaint raised against: Caroline Greenhalgh).

13. During the 2019 investigation:

13.1. Did the Claimant put forward direct questions to management about harassment and discrimination, many of which were not answered?

13.2. Was the Claimant informed “*no one is being punished due to the investigation as everyone has suffered enough*”? If so, by

whom? Did this fail to address the serious and lengthy situation the Claimant faced and did he seek help with no effect?

(Complaint raised against: Caroline Greenhalgh).

Legal Issues

14. In respect of points 1-13, has the Claimant been subjected to a detriment pursuant to section 146(1)(b) TULRCA 1992?
15. Has the Claimant's claim that he has been subjected to detriments on grounds related to trade union activities been brought within the prescribed time limits in section 147(1) (a) or (b) TULRCA 1992?

Direct Sex Discrimination Section 13 EA 2010

Factual issues

16. Please refer to points 1, 4, 7, 8, 11 and 13 above.
17. On 5 February 2019, did Lisa Sanchez look directly at the Claimant and tell him to "*man up*" in a room of over ten women?

(Discriminator: Lisa Sanchez).

18. On Nurses Day in 2019 the Claimant was given a bag with a drawing of a stereotypical female nurse, which was not inclusive. Further, did Michelle Proudman say "*there are no male bags, you will have to have a female one*"?

(Discriminator: Michelle Proudman).

19. On unknown date:

19.1. Did Caroline Greenhalgh ask Barbara Hindley about the Claimant about his collection of deactivated World War Two weaponry, in an attempt to discredit the Claimant?

19.2. Was the Claimant denied access to the investigation notes?

(Discriminators: unknown staff member and Caroline Greenhalgh).

20. On unknown date was a false allegation made that the Claimant had viewed pictures of a certain staff member's daughter and made sexually derogatory comments about her?

20.1. In comparison, Ms McMahon had previously shown pictures on her mobile phone of her daughter in a swimming costume and this was not reported.

(Discriminator: Caroline Greenhalgh).

21. On an unknown date an unnamed member of staff reportedly contacted management with concerns for the Claimant and that he had been portrayed as a "*pervert*".

(Discriminator: Caroline Greenhalgh).

Legal Issues

22. In relation to points 16-21 above, has the Respondent, because of the Claimant's sex, treated him less favourably than it treats or would treat others?
23. Has the Claimant's claim that because of his sex, the Respondent has treated him less favourably than it treats or would treat others been brought within the prescribed time limits in section 123 (1) (a) or (b) EA 2010?

Direct Disability Discrimination section 13 EA 2010

24. In relation to points 7, 8, 11, 13 and 17 above, has the Respondent, because of the Claimant's disability, treated him less favourably than it treats or would treat others?
25. Has the Claimant's claim that because of his disability, the Respondent has treated him less favourably than it treats or would treat others been brought within the prescribed time limits in section 123 (1) (a) or (b) EA 2010?

Harassment Section 26 EA 2010 (Sex)

26. In relation to points 1, 7, 8, 17, 18, 20 and 21, did the Respondent engage in unwanted conduct related to sex that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
27. If so, was it reasonable for the conduct to have that effect?

Harassment Section 26 EA 2010 (Disability)

28. In relation to point 7 above, did the Respondent engage in unwanted conduct related to disability that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

29. If so, was it reasonable for the conduct to have that effect?

Discrimination Arising from Disability Section 15 EA 2010

Factual Issues

30. Was the Claimant treated unfavourably as follows:

30.1. Allegations raised against the Claimant and being subject to an investigation leading to findings related to the allegation?

30.2. The allegations and subsequent investigation/process involved false material being provided concerning the Claimant and how he referred to his back?

Legal Issues

31. What is the "something arising"?

32. Is the "something arising" in consequence of the Claimant's disability?

33. Was the unfavourable treatment because of the something arising in consequence of the Claimant's disability?

34. If so, was it a proportionate means of achieving a legitimate aim?
35. Has the Claimant's claim that he has been treated unfavourably because of something arising in consequence of his disability been brought within the prescribed time limits in section 123 (1)(a) or (b) EA 2010?

Detriment Section 44 ERA 1996

- ~~36. Has the claim been amended to include this head of claim? NO~~
- ~~37. If it has been amended, in relation to points 1, 4 and 9 above, has the Claimant been subjected to a detriment on one of the grounds detailed at sections 44(1) (a) to (e) ERA 1996?~~
- ~~38. Has this head of claim been brought within the prescribed time limits in section 48(3) (a) or (b) Employment Rights Act 1996?~~

Remedy

39. In the event the Claimant is successful in his claims:
- 39.1. What, if any, financial loss is attributable to the detriments and/or discrimination the Claimant has suffered?

39.2. Should an award for injury to feelings be made?