

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100163/2017 Hearing at Glasgow on 29 and 30 November 2017, and 5
March 2018

Employment Judge: M A Macleod
Members: Mr P McFarlane
Ms P McColl

Aleksandra Cielesz

Claimant
In Person

Motherwell & District Woman's Aid

Respondent
Represented by
Ms L McSporran
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Employment Tribunal is that the claimant's claim, that she was discriminated against on the grounds of pregnancy under section 18 of the Equality Act 2010, fails, and is dismissed.

REASONS

Introduction

1. The claimant presented a claim to the Employment Tribunal on 18 January 2017 in which she complained that the respondent had unlawfully discriminated against her on the grounds of sex.
2. The respondent submitted an ET3 in which the claimant's claims were resisted.
3. At a Preliminary Hearing on 16 August 2017, Employment Judge Robert Gall determined that the claim of indirect sex discrimination brought under section 19 of the Equality Act 2010 was dismissed, following its withdrawal,

and the application by the claimant to amend the claim by deletion of the final paragraph of the statement of claim of “sex discrimination” and the substitution of “discrimination on the grounds of pregnancy and maternity pursuant to section 18(2) of the Equality Act 2010” was allowed.

5 4. On 22 September 2017, a further Preliminary Hearing took place before Employment Judge Frances Eccles. Following that Preliminary Hearing, the Tribunal issued a Note setting out the issues to be determined by the Tribunal, as follows:

10 a. Did the respondent insist that the claimant clean a vermin-infested property during her pregnancy?

b. If so, did the respondent insist that the claimant clean a vermin-infested property because of her pregnancy?

c. Was the claimant dismissed because of her pregnancy? And

15 d. If the claimant was treated unfavourably because of her pregnancy amounting to unlawful discrimination what compensation should she be awarded by the Tribunal including injury to feelings?

20 5. By the date of commencement of the hearing on the merits, the claimant was no longer represented by a solicitor, having been informed by her previous representative that he would not be representing her at the hearing. She intimated at the outset of the hearing that she was ready to proceed and to represent herself.

25 6. The claimant requested that one of her work colleagues, Emma Christie, be called to give evidence at the hearing but indicated that she was unable to take time off from work. After discussion, the Tribunal refused to allow the claimant a witness order, or an adjournment, to enable her to call Ms Christie as a witness. As it turned out, however, the hearing did not conclude in the original dates set down, and in the adjournment, the claimant sought, and was granted, a witness order for the attendance of Ms Christie as a witness for her.

7. The claimant gave evidence on her own account, and called Ms Christie to give evidence for her.

8. The respondent called three witnesses: Margaret Ann Jones, manager; Christine Harris; and Marie Macdonald.

5 9. At the start of the hearing, Mr McFarlane, one of the lay judicial members of the Tribunal, declared that he had had a connection with the respondent's solicitors while an officer with the trade union Equity. Having confirmed this to the parties, both confirmed that they had no objection to the Tribunal continuing to hear the case as then constituted, with Mr McFarlane
10 continuing in place.

10. A joint bundle of documents was presented to the Tribunal and relied upon by each party in the course of the hearing.

11. Based on the evidence led and the information presented, the Tribunal was able to find the following facts admitted or proved.

15 **Findings in Fact**

12. The claimant, whose date of birth is 28 March 1982, commenced employment with the respondent on 21 July 2016.

13. The respondent is a not-for-profit organisation with charitable status which forms part of the Woman's Aid Network, supporting women, children and
20 young people who have experienced domestic abuse across Scotland. The respondent receives funding from North Lanarkshire Council and the Scottish Government.

14. The claimant was employed to work as a Children and Young Person Support Worker. Her main responsibility was to work with children and
25 young persons who had experienced domestic abuse, and to provide therapeutic support to them. Her line manager was Christine Harris.

15. Ms Jones wrote to the claimant on 12 July 2016, following her successful interview (conducted by Ms Jones and Ms Harris) to confirm the provisional offer of work as Children and Young Person Support Worker subject to

satisfactory references being received (55). The letter confirmed that her employment with the respondent was subject to her satisfactorily completing her probationary period, which would be detailed in her contract of employment. No contract of employment was subsequently provided to the claimant. The respondent believed that the probationary period applicable to the claimant's contract was 3 months.

16. When she commenced employment, the claimant was advised by Ms Harris that her role would be to work with children and young people from families touched by abuse, to provide support to service users of the respondent, and to clean properties owned by the respondent and used by service users. She was expected to work with children and young people to ensure that they were safe and able to understand what had happened to them.

17. The respondent stresses the difference between a worker who attends to the needs of the women in the service and one who attends to the children and young people. As Ms Harris explained it, it is necessary for the child or young person to understand that the worker is "there for them", and able to address issues confidentially with them which they may not be willing or able to discuss with their mother. The respondent allocates a worker to attend to the mother and a separate worker – such as the claimant – to attend to the children and young persons affected.

18. The claimant was provided with basic domestic abuse awareness training, and given an induction into the business. She attended a number of meetings and visits with Ms Harris for the purpose of observing how she handled particular situations, known as "shadowing". Ms Harris kept a note, for her own purposes and not shown to the claimant or other staff, in which she recorded the information which she had conveyed during induction. With regard to the claimant that note was produced at 58ff. It discloses that Ms Harris went through her introductions to the team and to the desk where the claimant would be located, to her computer and to the service user assessment process. In addition, she took the claimant through the booking in and preparations procedures, the stock procedures and details of how to submit expenses.

19. Ms Harris also maintained an induction checklist (62) for the claimant, noting the dates on which items on the checklist were addressed with her.

20. The respondent has access to a number of flats which are used for housing women and families who have been the subject of domestic abuse. When one service user leaves a flat, another will move in very shortly, there being a significant demand for the properties. As a result, it is necessary for all staff, including Ms Jones and Ms Harris, the most senior managers in the organisation, to participate in cleaning the properties.

21. Ms Harris formed a favourable impression of the claimant at the start of her employment. She found her to be "bright, bubbly, a nice manner with the children", and thought that she would make a good children and young person's worker.

22. The claimant found out that she was pregnant approximately 3 weeks after commencing employment with the respondent, on about 15 August 2016. She approached Ms Jones in the office and asked to speak to her. Ms Jones said, in a light hearted manner, that she hoped that the claimant wasn't coming to tell her that she was leaving. The claimant laughed and said no. Ms Jones took her to a private area, where the claimant advised her that she was pregnant. She advised Ms Jones that she had not expected to become pregnant, and became emotional. She asked if Ms Jones was going to ask her to leave, to which Ms Jones replied, with some surprise, that she would not do so, and asked why she would do that. She congratulated the claimant and told her that if she wished to tell the other staff she could do so. She told the claimant not to worry, but to enjoy her pregnancy, and reassured that she did not want to let her go.

23. By September, the respondent began to find fault in the claimant's work. There followed a series of meetings between the claimant and Ms Harris, following which Ms Harris made a record of the meeting and retained it for her own file. The record was typed from bullet points noted by her during the meeting, within a short period after the end of the meeting.

24. The claimant alleged that these notes were not written at the time, but that they were created by the respondent in order to protect their own interests, at a much later date, and did not reflect the reality at all. For reasons which we will explain later, we did not accept this assertion by the claimant, and found that the notes were a helpful and accurate record of ongoing discussions between her and Ms Harris.

25. The first such meeting (headed in the note "Probationary Review Meeting – Christine and Lexi") took place on 16 September 2016 (64).

26. In the meeting, Ms Harris raised an incident which had taken place in the presence of a service user, named Clare. The note produced to us redacted the service user's surname. Ms Harris described Clare as "non engaging and slightly volatile which she displays on occasion". Ms Harris noted:

"This was due to me challenging her and reporting an incident to social work after our last meeting. I felt Clare was under the influence of drugs.

Lexi involved herself in the conversation using a raised voice and displaying judgemental views. Clare became volatile and raised her voice stating she didn't like the way Lexi was talking to her. I defused the situation.

When we left the service user I asked her to reflect on the situation and tell me her thoughts. Lexi was agitated, angry and told me she wouldn't back down on how she felt this time. She then asked why I had allowed Clare to bully me. She also advised she would not let this go with or without Woman's Aid.

I again reminded Lexi she was there in a shadowing capacity and if she had any concerns she should raise it afterwards and explained why I had handled it in that manner.

It took some time before Lexi calmed down and she eventually apologised for her behaviour. She said she would not interfere gain while shadowing but stated that she felt frustrated that a service user behaves like this towards her when we give them so much support.

I advised Lexi that she had a lot to learn about the service which is why she was shadowing and that she needed to empathise with the service users and she would not be working on her own until we felt she was up to the required standard.”

5 27. In the meeting, Ms Harris went on to discuss with the claimant another situation, involving a service user named Shona, whom they accompanied to court. Ms Harris noted:

10 *“Whilst in the café Lexi engaged with Shona laughing at a girl who was at another table talking to another person. I asked Lexi what she would have done if the girl challenged her, she said she had thought about it at the time and had been prepared to say they were laughing at something else. Lexi said she understood why I had asked her reflect and she apologised for putting us both in a volatile situation again.*

15 *I advised her that she had put a vulnerable service user at risk which was unprofessional. The service user was uptight having seen her ex-partner in the café and outside. I informed her that she had heightened her anxiety by speaking negatively about Shona’s ex-partner being present when in fact he had only entered the café for a coffee and was outside at the same time as Shona had been for a cigarette. I told her I was disappointed that I had to intervene and had told her to stop verbalising her negative views in front of*
20 *the service user.*

Lexi said she had thought about it and was sorry that she had been unprofessional. She also said she was made that Shona’s ex was there and felt he was trying to make her feel uncomfortable.

25 *Advised Lexi her comments are giving me cause for concern in that despite her apology she expressed the view that she was mad which calls into question her ability to act in a calm professional manner when dealing with stressful situations.*

30 *I again explained to Lexi the purpose of shadowing and that I was disappointed that I had to speak to her about her behaviour in front of the*

service user. Lexi again said she was sorry. I advised Lexi that she would still be shadowing as she was not at the required standard to work alone.

Lexi advised that she would be mindful of this and try not to let her feelings be known to service users in future.

5 *Lexi said she wanted to learn as much as she can because she really wants this job.”*

28. On 30 September, Ms Harris met with the claimant again. Again she made a note of the meeting (66). At the start of the note, she records that “Lexi was volatile and challenging in this meeting”. She told the claimant that the
10 purpose of the meeting was to discuss her performance in the previous period.

29. The claimant had been absent from work for 4 days the previous week due to an “undiagnosed allergy”, but had not provided any further detail about this. She complained that she was feeling frustrated in the job because she
15 was used to working independently. Ms Harris assured her that she would work independently once she was confident that the claimant was at the required standard but that was not the case at that time.

30. Ms Harris went on to record:

20 *“Lexi advised that she understood that she is a woman’s aid worker first then children’s worker. She said she had been cleaning a lot last week and said what I now a cleaner am. She said her skin had broken out and she had been using bleach all week.*

*I reminded Lexi that cleaning was an integral part of the job role. Also discussed there was a wide range of cleaning materials available that she
25 was aware of and also gloves and protective clothing if she felt she needed a particular cleaning material we would be able to supply this. I also explained that there was a service need to turn properties round due to the high demand by vulnerable people seeking secure safe accommodation...*

Lexi then went on to say that she felt there was an atmosphere since Margaret Ann (manager) had spoken to her about leaving a 13 year old child unsupervised and that she had to come looking for her as the child was ready to disclose information.

5 *Lexi then advised she was scared of Margaret Ann and I asked her to expand on her statement. She said she felt that Margaret Ann was questioning her on how she dealt with a disclosure. I asked her was it not the case that any manager is entitled to question how an employee carries out their role. She then stated that Margaret Ann had shouted at her, my response was that it is simply not true as I was present during this incident.*
10 *I advised her that Margaret Ann had not shouted and had never behaved in that manner to any other staff. I discussed with Lexi that given she had completed a degree Margaret Ann had questioned her on what processes she had been taught on how to handle disclosure.*

15 *Throughout our meeting Alexi was very challenging and I felt she was trying to intimidate me. I asked her to stay calm but she was very loud and aggressive. Adviser her that her attitude simply isn't behaviour that lends itself to working with vulnerable people..."*

31. The incident with the 13 year old child occurred some weeks before this
20 meeting. The claimant was working in a private room with a 13 year old child, in the company of Ms Harris. Ms Harris left the room, and shortly afterwards, the claimant came to Ms Jones in the general office. Ms Jones described her as "panicking", and saying that the child was making a disclosure (that is, a disclosure with child protection implications), and that
25 she needed someone with her while the child did so. Ms Jones told her to return to the room with the child, who was, for a short period, unsupervised.

32. After that, Ms Jones spoke to the claimant to ask her what she should do when a child protection disclosure is made, given that she had a degree. She advised her that she should not panic, nor leave the room, but write
30 down word for word what the child disclosed. No further discussion took place. Ms Harris was present during the discussion.

33. After Ms Harris had met with the claimant she spoke to Ms Jones about the claimant's conduct, which she regarded as intimidating and challenging.

34. Accordingly, on 3 October 2016, Ms Harris and Ms Jones met with the claimant. A note of that meeting was produced at 67. The note was taken
5 by Ms Jones.

35. The note records:

*"Discussed lexxi (sic) performance and the meaning of probationary period explained to lexxi that she is inducting through shadowing and that we currently don't feel she is ready to be unsupervised due to her performance
10 with service users.*

Discussed with lexxi that Christine is finding her behaviour challenging and intimidating while carrying out her weekly reviews and had reported this to me. I advised lexxi I have witnessed this.

*Lexxi advised this was due to frustration on her part, and apologised for her
15 behaviour, she advised that she feels like she doesn't know what she is doing at times and what is expected of her, I asked for example of this and she advised me that she had arrived at the office last week and no one was in and she started doing her care plans, she then advised that Christine had called her to say I thought you would have called me to say you had started
20 your shift.*

Explained to lexxi that I can see this from both sides and that she has a phone supplied and it would be normal process in any job to let employer know you are at work. Also advised lexxi that she need only ask if she is unsure of processes.

*Discussed cleaning as she advised Christine that she felt like the cleaner, she had cleaned 3 days out of 4 last week she advised Christine that bleach is breaking her out. She then went on to advise she did not have a problem
25 cleaning it was just the beasties in properties she did not like.*

Advised lexxi that cleaning is part of her role and that at times there is more cleaning than others and management will arrange equal amounts of cleaning where possible to staff.

5 *Advised lexxi that if there was a property that had beasties in the kitchen this was due to food hygiene and if she had an issue to contact an di will where possible send someone to assist her...*

Lexxi had also advised Christine she felt there was an atmosphere in the office after I had spoken to her a few weeks ago about an incident.

10 *Discussed this with lexxi and advised her I would never keep something going and once it raised its over she advised she is scared of me as I shout, talked through the scenario again with lexxi to see if she could reflect on the position of that day and she said she couldn't but she would not leave a child unattended again. Explained to Lexxi that this is where I see her contradicting herself as she was left to deal with a non-urgent matter with this child that she now says she needed a supervisor help.*

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Advised lexxi that she has absolutely no need to fear me as I am happy to discuss any issue with her. Christine did advise lexxi she has never seen me shout.

20 *Finished by explaining to lexxi we are trying to assist her by shadowing her to learn and expect her to follow the procedures we are showing her in order for her to continue and complete her probationary period."*

36. On 7 October 2016, a further meeting took place between the claimant and Ms Harris (69). Ms Harris raised with the claimant some concerns she had in her performance:

25 *"Whilst I was assisting service user Lisa to apply for benefits by phone Lexi arrived with a travel cot for her 3 month old baby. She cared for him and changed his nappy then returned to the room. She was making gestures and mouthing concerns that she had about the baby's belly button. Lexi was agitated and flapping.*

The baby has a hernia and is seen on a regular basis by the health visitor.

5 *Lexi agreed that she could have handled the situation differently, she could have upset the mum and her behaviour came across as panicked and unprofessional. Discussed with Lexi that we have discussed this kind of situation previously and she needs to take on board and apply what I am telling her as the correct processes.*

10 *I raised a concern that Lexi had spent 50 minutes with a mum who had low mood and feeling upset when she arrived to meet with one of her 5 children. On being asked to reflect on it Lexi felt she had no option but to comfort and listen to mum. I asked Lexi what the 5 children had been doing at this time. The 5 children had been sent to their room whilst mum monopolised her time.*

15 *I advised her that her role was as a CYP support worker and that she could not continually just decide what she was going to do. Lexi said that on reflection she shouldn't have spent so much time with mum neglecting the children's needs. Advised Lexi that I had given her responsibility to do this on her own and reminded her that she has a works mobile should she need advice.*

20 *Lexi advised that she had been trying very hard not to be challenging and to appear stressed. Lexi said she wanted to be a CYP worker in women's aid and she doesn't want to force me into forcing her out of a job. I found this comment very strange as it was out of context with our previous discussions.*

25 *I advised her that she had demonstrated that she was not ready to work alone and that there was an issue with her ability to accept and carry out instructions. Explained to Lexi I need to see improvements in her performance when working directly with service users."*

30 37. On 13 October 2016, when the claimant arrived for work, she was advised by Ms Jones and Ms Harris that her probation was not being extended, and that her employment would end that day, with her notice being paid. The

5 decision was based on their views of the claimant's performance over the previous 12 weeks or so, and they had reached the conclusion that the claimant was unable to perform the role to the standard which they expected. It was therefore decided by the respondent not to extend the claimant's contract, with the effect that her contract of employment was terminated with immediate effect.

38. The claimant was not issued with a letter of dismissal because she immediately lodged a grievance with the respondent.

10 39. On the same date (13 October 2016), the claimant submitted her written grievance to Ms Jones (70).

40. In her grievance, the claimant stated:

15 *"I was verbally notified on arriving to work by Christine that Woman's aid will not be extending my probation (6 months) and that I could go home today and would be paid my notice which neither of us was sure about but probably until the end of the week, 14/10/16.*

20 *She gave the reasons for my dismissal as being the fact I never called the day before 12/10/16 to inform them that a service user's child was asleep and I was talking with the service user. This is despite the fact that on the 12/10/16 you (Margaret Anne Jones) expressly informed myself to go to the said home and spend family time with the service user and child, and to wait for Christine to contact myself. I duly done what was asked of me and nothing more was said about it until today.*

25 *In addition I would like to re-address the issue I raised on the Friday (30/09/2016) about myself being told to clean a property that was infested by bugs and to use substances hazardous to health, and the fact that I felt uncomfortable doing this due to me being a pregnant woman.*

I was duly informed by yourself Margaret Anne that this was part of my job because we do not get funding for the appropriate cleaners to do this.

I have cleaned several properties and I am happy to do so, however I am not happy about cleaning properties infested with bugs and the use of substances hazardous to health (bleach). So can I ask if this was a reason for my dismissal?

5 *I do not believe the reason given to me by Christine are grounds for immediate Dismissal.*

So I am wondering if the real reason for my immediate dismissal has more to do with the fact that I am pregnant.

10 *I would appreciate a written reply by letter or e-mail enjunia@gmail.com within 5 working days (24/10/16).*

Regards

Aleksandra Cielez”

15 41. In response, Ms Jones wrote to the claimant by letter dated 21 October 2016, acknowledging receipt of her grievance and summarising the process to be followed (71). She asked the claimant to provide further details either by way of a meeting with Ms Jones or through further written submissions by the claimant. The grievance would then be investigated.

20 42. The claimant replied on 8 November 2016 (72) to say that she would like a meeting with regard to her dismissal, and requesting that she be accompanied by her partner, Jonathan Mulholland, as a witness and for emotional support. She also asked that her grievance letter be treated as an appeal against her dismissal.

25 43. In reply, Ms Jones wrote to the claimant on 15 November 2016 (73). She confirmed that the meeting would take place on 22 November 2017 in the Argyle Room, The Clydesdale Bank, St Vincent Place, in Glasgow. She declined the claimant's request to be accompanied by her partner but confirmed that she could be accompanied by a fellow worker, a trade union representative or an official employed by a trade union, and asked if she wished to make such an arrangement.

44. She went on to say: *“As I was party to the decision to dismiss you, and your complaint is about my decision, it would not be appropriate for me to hear your grievance. I have arranged for Marie Macdonald of Miller Samuel Hill Brown solicitors to chair the hearing which shall also serve as your appeal against dismissal.”*

45. Ms Macdonald is a solicitor of some 31 years’ experience, a partner with the firm of Miller Samuel Hill Brown, solicitors, who has practised exclusively in the field of employment law for approximately 15 years. She was asked by Ms Jones to hear the grievance of the claimant as Ms Jones had some concerns that she should not be the person to hear it, since it was directed against her. Ms Macdonald confirmed her willingness to accept instructions to hear the grievance of the claimant. She did so on the basis that she had authority to make her decision independently, whatever that might be, and that she was to be completely impartial in considering the information placed before her. She stated in evidence that she would not have accepted the instructions had she not had complete freedom to make the decision which she thought appropriate. As she put it, she has a professional reputation which she requires to maintain.

46. The meeting, which was characterised as a grievance and appeal hearing, took place as scheduled on 22 November 2016. The claimant attended, unaccompanied, and Ms Macdonald was assisted by Stephanie Hands, a trainee solicitor, who took minutes of the hearing (74ff).

47. The hearing was conducted in a calm and friendly atmosphere. Ms Macdonald was concerned to ensure that the claimant felt that she had had the opportunity to put forward all the points she wished to make, and that those points had been heard. She was aware that the claimant may be feeling very nervous in such a situation, and tried to put her at her ease.

48. At the outset, Ms Macdonald confirmed with the claimant that she was content to proceed unaccompanied, and she said she did. She then asked the claimant to restate her grievance, and explain her account of the events of which she wished to complain.

49. The claimant narrated the circumstances of her employment with the respondent, confirming that she was employed as a children and young person's support worker, and that part of her role was to clean properties to which service users could go to find refuge from abusive situations.

5 50. The minutes record that the claimant went on:

"...Cleaning the properties being part of her job was never stated in any contract however she was happy doing it.

Margaret Anne provided her with all the cleaning equipment necessary. She made anything available they needed and she was also reimbursed for anything that she bought. Aleksandra wanted to make it clear that she was frustrated however she really did love the job and is 'gutted' that she has had to leave.

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Aleksandra found out she was pregnant and told Margaret Anne before her first scan. She explained that it was not her intention to get a job and then leave. Margaret Anne's first question was 'you are not leaving are you?' Margaret Anne said to Aleksandra everything was fine and Aleksandra confirmed that she would work as long as she could before the baby came.

15

Thereafter, a refugee home had to be 'turned over' (a phrase used by Christine to describe cleaning the house when a refugee family left it). When Aleksandra got there there were 'beasties' everywhere. Christine came round to the house and sprayed the entire property with bleach and then Aleksandra cleaned up the property. At a meeting on Friday 30th September she had told Christine that she did not think it was appropriate for her to be cleaning amongst the fumes from the bleach when pregnant. She asked to be excluded from cleaning a property like that one again when pregnant..."

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51. The claimant continued by explaining that she had told her managers on 3 October that it was unacceptable to clean properties in that condition, and asked that professional cleaners should be brought in to kill the bugs in the future. It was minuted that the claimant said *"...that Margaret Anne had to*

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plan ahead so that she did not have to work in those conditions and Margaret Anne said that was unacceptable, that she didn't know where there were going to go from here and that everyone had to clean flats in that condition even Margaret Anne."

5 52. The claimant went on to describe the events of 13 October, when she attended the house of a service user, to find the child asleep, and had spent 45 minutes engaging with the service user (Mabeen). Ms Harris told her that when she realised the child was asleep she should have telephoned her so that she could be sent to another family. When she returned to the office the claimant said she was dismissed by Ms Harris, but told her "I know it's not you". When Ms Macdonald asked her what she meant by this, 10 she responded by saying that "she thought it all related to the cleaning incident". The claimant felt that she had been asked to the house to spend time with the family, and that she was doing her job by speaking to her.

15 53. Ms Macdonald asked the claimant to explain how she would wish to see the grievance resolved. The minutes record that the claimant said:

"1. She would love her job back.

2. Probation with another women's aid.

3. Her lost earnings until maternity leave and for the records to say that she was not fired."

20 54. When Ms Macdonald explained to the claimant that notes had been taken from the weekly meetings with Ms Harris, she replied that no one had ever taken notes during the meetings. She was given time to read the notes. Ms Macdonald then went through the notes with the claimant, at some length, 25 focusing particularly on the meetings of 16 and 30 September, and 3 and 7 October. The claimant disagreed with the terms of the notes, and complained that many of the comments were taken out of context.

55. The claimant then had the opportunity to make a closing statement. It was recorded as follows:

“Aleksandra explained that she was not saying she hadn’t made mistakes but that she was on probation and the mistakes made were minor and that she would never put the service user or child at risk.

5 *Marie then asked Aleksandra if she ever had to clean another property like the one in Bellshill... that had been sprayed entirely with bleach again after raising this point to Margaret Anne and Christine. She stated that she was then asked to clean Albion Refuge Flat 2 after Carrie, a refugee, had moved out. Marie asked if she had said anything and she replied that she hadn’t and just completed the job as usual. Aleksandra stated that the bathroom*
10 *and kitchen had already been completely sprayed with bleach upon entering it. The reason that she did not complain was because she had been told that it was unacceptable to complain.*

Aleksandra stressed that Margaret Anne had built women’s aid herself however that Aleksandra felt like a victim. Margaret Anne did not appreciate her as a worker because she had said no once. Aleksandra stated that she
15 *felt completely alone in the situation and referred to Margaret Anne as ‘god’.*

Marie then asked Aleksandra again what Margaret Anne had said about her pregnancy when she told her. Aleksandra stated that she was nice and allowed her to announce it to the office.

20 *Marie then asked Aleksandra if she had anything else to discuss or to add to which she replied no. Marie then advised Aleksandra that she would receive a letter confirming the outcome. Aleksandra explained that she had 3 months to take it to a tribunal with 3 months ending the 13th January. Marie advised her that she would receive the outcome within one week.*
25 *Aleksandra stressed that she does not want to take it to a tribunal as she is pregnant and this would only cause her undue stress.*

Aleksandra confirmed that her address has not changed from when she worked at Motherwell Women’s Aid.”

56. Following the hearing, a copy of the minutes was sent to the claimant asking for her comments or corrections, but despite a number of reminders (83-85), she did not reply.

5 57. Ms Macdonald proceeded to speak to Ms Harris and Ms Jones following the hearing, in order to obtain their views on whether the flat which the claimant had cleaned had been the subject of an infestation, and to find out what training the claimant had had.

10 58. Ms Harris and Ms Jones confirmed the training which the claimant had received and provided Ms Macdonald with copies of the induction documents and notes made by Ms Harris to demonstrate this. With regard to the question of infestation Ms Macdonald was advised that they did not believe there was an infestation in the flat. They said that when the cooker was pulled away from the wall it would sometimes reveal insects on the floor and wall behind, but “not that many of them”. They would use bleach down
15 the back of the cooker and also in the toilet. They said that they did not spray the walls with bleach, and did not clean the whole property with bleach, but only used it in the kitchen and the bathroom. Neither of them considered that there would be any bleach fumes, and in any event while the property was cleaned it would be aired. They also confirmed that if they
20 did find an infestation within any of the flats, they would call in professionals, from the Council (since the flats were Council flats) to attend to the problems. That was not required in this case.

25 59. Ms Macdonald gave careful consideration to the claimant’s grievance and appeal against dismissal. She wrote to the claimant by letter dated 21 December 2016 to provide her with a copy of the grievance outcome (88), confirming in the letter that the grievance had not been upheld. She advised the claimant that she had the right to appeal against the outcome, within 7 days, to Ms Jones, in writing.

30 60. The grievance outcome attached to the letter (89ff) set out the background and the decision, together with the reasons for that decision.

61. At 91ff, Ms Macdonald records her findings and the outcome:

- 5 • *“Ms Cielez stated that she never received a contact (sic) explaining her duties. From documentation produced it is clear that Ms Cielez had written documentation explaining what was expected of her and was trained in the relevant aspects of her job during her probationary period.*
- 10 • *In her grievance Ms Cielez states that the instance where she raised the matter about being exposed to hazardous bleach fumes in the course of cleaning occurred in the week ending 30th September. At the grievance hearing she confirmed that this was the one and only incident where she had complained that the bleach fumes were bad for her as she is pregnant. In the discussion of the probationary review meeting notes from 30th September, Ms Cielez indicated that she had told Christine that her skin had broken out because of the cleaning she had just been doing. On speaking with Christine Harris she denies that Ms Cielez mentioned the bleach and her position is*
15 *all that was mentioned were the ‘beasties’. It was confirmed that Ms Cielez would not be expected to deal with an infestation but all MDWA was talking about here were a few bugs...*
- 20 • *In connection with properties being sprayed all over every surface including walls with bleach, Margaret-Ann Jones and Christine Harris deny that this is the case. Bleach or flash would be sprayed behind the cooker and on the floor; with bleach being put down the toilet and the oven cleaned with an oven cleaner in a sealed bag. The walls were not sprayed with bleach. It was confirmed by them that Ms*
25 *Cielez had not mentioned the bleach in connection with her pregnancy until the grievance letter and it should also be pointed out that even if there were bleach sprayed (which is denied to the extent alleged by Ms Cielez) the windows and the doors in the property can be opened with upstairs windows being left open over night*
30 *before cleaning. In particular, Christine inspected the property which Ms Cielez cleaned where she alleged there were bleach fumes. She is able to confirm that when she visited the day before there*

were no fumes and there was no further cleaning product applied in the interim period.

- *When Ms Cielez announced she was pregnant, she stated that Margaret-Ann Jones first reaction was ‘you are not leaving are you?’. The organisation was keen to retain Ms Cielez which begs the question of why, following that, Margaret-Ann Jones would want to dismiss the Claimant (sic) because of her pregnancy?*
- *The issues which the organisation had with Ms Cielez is that during her probationary period she repeatedly failed to take instruction given to her and would overstep the mark...”*

62. Ms Macdonald then rehearsed the training which she was able to find that the claimant had attended.

63. Ms Macdonald then set out her summary findings and outcome:

“From the documentation that I have had sight of, together with interviews with Ms Cielez, Margaret-Ann Jones and Christine Harris, and on looking on the balance of probabilities as to what did occur and the reason for Ms Cielez being dismissed, I can find no evidence to support the grievance point that Ms Cielez was dismissed for a reason that had anything to do with pregnancy and the cleaning of properties. On the balance of probabilities, the reason for her dismissal was due to the behaviours exhibited by Ms Cielez which caused problems to the organisation during her probation period and which led to the organisation forming the view that she was not suitable for the role. For these reasons, the grievance is not upheld.”

64. The claimant did not submit an appeal against the outcome of her grievance.

65. The claimant, following her termination of employment, signed on for Job Seekers’ Allowance, and received £70 a week for a period of 13 weeks before her due date. On 29 January 2017, she commenced a period of maternity leave as required by the Job Centre, and received 36 weeks’

statutory maternity pay, in the sum of £284 each fortnight, which ended on 6 October 2017. Her baby was born on 25 April 2017.

5 66. The claimant was successful in securing new employment, as a Senior Support Worker, on the night shift, with Silverburn Care Home. She works 33 hours per week, and is paid £9.15 per hour before tax. Her gross salary is £16,000 per year, and each month she estimates her take home pay to £900. She is currently earning more than she did with the respondent.

10 67. Following her dismissal, the claimant said, she was deeply depressed. As a foreigner without roots in this country, she said, her name is everything for her, and she considers that her name has a stain on it which she does not deserve. She felt humiliated having to attend the Job Centre, and she was frequently asked what had happened to her. She found it difficult to explain to her family what had happened.

15 68. Although her baby was born healthy, she was anxious during her pregnancy, and she was not able to receive medication because of the pregnancy. She finds her current work situation, where she works all night and then has to care for her baby during the day, to be very difficult but manageable, but it has only arisen, she says, because she was dismissed by the respondent.

20 69. The respondent does not seek to argue that the claimant failed to mitigate her losses in her attempts to find alternative employment.

Submissions

25 70. For the respondent, Ms McSporran submitted that the claim which the respondent requires to defend in this case is a claim under section 18 of the 2010 Act, in respect of pregnancy discrimination.

30 71. She invited the Tribunal to find that the claimant, in giving evidence, accepted that she had said to Ms Jones words to the effect of “you’ll be asking me to leave because I’m pregnant”. The claimant’s reputation is of the utmost importance to her, and so it is essential, argued Ms McSporran, that she would not have a mark against her name. While giving evidence,

she could interrupt, she was argumentative, and her behaviour in general highlighted the kind of traits which the respondent had identified. The claimant lacked insight into her own behaviour and the impact which it could have in the workplace. Ms McSporran submitted that the claimant became evasive in her evidence, especially when the probationary review notes were put to her, and attempted to deflect points made to her.

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72. The claimant, she said, now claims that the probationary review meetings never took place, but she did not say that in her grievance nor in the meeting with Ms Macdonald to deal with the grievance. She did accept that she had made mistakes but sought to suggest that they were minor in nature. The respondent's witnesses gave evidence that the claimant was spending so much time with mothers that there could be a negative effect upon her relationship with the children of the same family, but, she said, the claimant did not understand that.

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73. Ms McSporran observed that during her evidence the claimant was now suggesting that the probationary review notes had been fabricated by the respondent, but again this was a new allegation not made in the grievance.

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74. She submitted that the evidence of the respondent's witnesses should be preferred where it diverged from that of the claimant. There was a conflict between the evidence of the claimant, and her witness Emma Christie, on the one hand, and the respondent's witnesses on the other, as to whether the claimant had told the respondent that she was having difficulties with bleach fumes as a result of her pregnancy. That conflict should be resolved in the respondent's favour.

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75. For the respondent, the Tribunal heard evidence from Ms Jones, who confirmed that the claimant's role was that of children and young people's worker, and that this was important because there could be matters told to her which the children or young people did not want disclosed to their mother. The claimant, said Ms Jones, "wanted to fix the world", but that was simply not possible. In addition, her behaviour could be challenging, and loud, towards her managers.

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76. Ms McSporrán referred to the evidence of Ms Harris. She conducted the probationary review meetings with the claimant because she and Ms Jones were unhappy with her performance. Both the managers should be found to have been credible and reliable witnesses.

5 77. Ms Macdonald was also, she submitted, a credible and reliable witness, demonstrating a clear independent mind and remit. She found that the claimant's performance was the reason for her dismissal.

10 78. Ms McSporrán then made submissions as to the findings of fact and law to which the Tribunal should come, and referred the Tribunal to a number of cases, including **R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS and others [2009] UKSC 15**, in which guidance is set out for Tribunals in discrimination claims.

15 79. In this case, she submitted, the dismissal was unconnected to the pregnancy but was clearly related to the claimant's performance of her duties, and her conduct.

20 80. With regard to the cleaning products, of which the claimant complained, there was no evidence provided that a pregnant woman cannot be permitted to use normal household cleaning products. She seems to be claiming, said Ms McSporrán, that her dismissal was caused by raising the issue of bleach, but the respondent does not accept that the incident with insects happened the way the claimant alleges it did. The claimant never raised the issue of bleach or cleaning in relation to her pregnancy, but complained about cleaning in more general terms.

25 81. There was no unfavourable treatment as alleged, and if there were, it has not been proved to be on the basis of the claimant's pregnancy.

30 82. Ms McSporrán submitted that there was no unconscious bias operating on the managers in this case. Both are working mothers, and have no reason to be prejudiced against a pregnant woman. The exchanges between them at the time of informing the respondent of her pregnancy were entirely sympathetic on the part of Ms Jones.

83. The decision to dismiss was independently reviewed. There was no obligation on the respondent to hear the grievance, but they did so anyway. Ms Macdonald spent considerable time hearing and determining the grievance, and did so fairly.

5 84. The claimant has failed to discharge the burden of proof upon her, but Ms McSporran argued that if she had discharged the burden, then the respondent has proved a reason for dismissal unrelated to pregnancy or discrimination.

85. Accordingly, Ms McSporran argued that the claim should be dismissed.

10 86. She then made short submissions about remedy.

87. The claimant made a short submission on her own behalf. She said that there was no issue in relation to her work until the day she was asked to clean the property with the insects in it. She was not aware of any concerns which her manager had about her conduct or performance.

15 88. The main reason she was dismissed, she said, was that she could not clean the properties to the standard required because she was pregnant. She asked the Tribunal to take no account of the probationary review meetings notes, as no notes were taken during the meetings, and there is no evidence that they were written while she was still employed. The notes
20 have been manipulated, she said. For example, the situation involving Clare records that she refused to work with her, but does not mention that Clare refused to work with a number of other workers.

89. She asked the Tribunal to take account of and accept the evidence of Ms Christie, who knew how she did her job and did a very similar job herself.

25 90. She said that the reason why the claimant had raised the claim was that she now has to explain to new employers why she was fired, and so she should not have to pay the consequences of something for which she was not responsible. She had never previously had any problems with her performance in any job she had done, and her new employer has no issues
30 with her performance.

91. The claimant said that she sincerely hoped that she had persuaded the Tribunal to find that the real reason for her dismissal was her pregnancy. She wanted to stress that she felt that the woman's aid organisation was a great organisation but was speaking as a person who had been badly treated by her employer.

92. She invited the Tribunal to uphold her claim and award compensation and injury to feelings as she sought.

Observations on the Evidence

93. In this case, there were some important divergences in the evidence given by both parties. As a result, the Tribunal requires to consider the credibility and reliability of the witnesses who appeared in this case.

94. For the respondent, we heard from three witnesses. Margaret-Ann Jones, the respondent's manager, emerged as an impressive witness who sought to give clear and straightforward answers to the questions put to her. We were prepared to accept her evidence as entirely truthful, not simply because her position is one in which it would be quite inconsistent to discriminate against a pregnant woman, but also because it is clear that Ms Jones is a person of considerable integrity. The claimant's allegation that Ms Jones had shouted at her, thereby rendering her scared of Ms Jones, was unsupported by any other witness, and indeed denied both by Ms Jones and by Ms Harris who witnessed it. We accepted the evidence of Ms Jones as credible and reliable throughout.

95. Ms Harris gave her evidence, again, in a candid and helpful manner, and in our judgment was honest and straightforward in both her evidence and her dealings with the claimant. We were not prepared to accept that Ms Harris manipulated or fabricated the notes of the meetings with which we were presented, and it was clear that this allegation, made perhaps in anger by the claimant, was baseless in fact. We found her evidence to be credible and reliable throughout.

96. Ms Macdonald's evidence was less factually contentious. She was, however, required to address the claimant's assertion that she felt intimidated during the grievance hearing, and we were satisfied with her calm and clear evidence about that hearing and her approach to it. Ms Macdonald made plain that she would not have accepted the instructions to hear the grievance and appeal had she not had complete independence and impartiality to take the decision she considered correct. Although the Tribunal is familiar with the reputation of Ms Macdonald as a highly experienced and professional legal representative, our conclusion, that her evidence was completely credible and reliable, was based upon our own observations of her as a witness before this Tribunal.

97. For the claimant, Ms Christie gave evidence. Her evidence conflicted with the respondents' in one significant regard, namely that she maintained that she had witnessed a conversation in which the claimant had told the respondent's managers that the bleach was causing her difficulties in relation to her pregnancy. We did not accept this evidence to be correct, but nor did we find that Ms Christie was in any way seeking deliberately to mislead the Tribunal. We preferred the evidence of Ms Harris on this point because it was consistent with the entirety of her evidence and that of Ms Jones, and were left to conclude that Ms Christie was mistaken in her recollection. She emerged as a loyal friend to the claimant, which perhaps influenced her recollection of the matter.

98. The claimant is clearly an intelligent and articulate person, who was able to express, with a degree of sincerity, her strong feelings about the way in which she had been treated by the respondent. However, we did find ourselves unable to accept all of her evidence, especially where it conflicted with that of Ms Jones and Ms Harris. Her accusation that Ms Harris had fabricated evidence before this Tribunal was an extremely serious allegation to make, but it was without any basis in fact.

99. There were inconsistencies between the claimant's testimony and that of the respondent's managers, primarily in relation to her assertion that she had told them that she could not clean houses because the bleach had an

adverse effect upon her in her pregnant condition. We did not accept that the claimant had told them this, until the grievance was lodged. As a result, we were forced to the conclusion that the claimant's evidence on this point was not credible, and was given in order to advance her case before the Tribunal. We were reinforced in that conclusion by the fact that she made other accusations before the Tribunal – such as that Ms Harris had fabricated the notes of meetings – which she did not make when she was presenting her grievance.

100. We reached the conclusion that the claimant did not have to deal with an infestation in the flat which she cleaned, and that she has exaggerated both what she found and its effect upon her. We found the evidence of the respondent's witnesses to be more credible in this regard, and that they had made clear to her that if she did meet with an infestation she would not be expected to deal with it or continue to work in that setting.

101. Accordingly, where there was a conflict between the evidence of the claimant and that of the respondent's witnesses, we were prepared to prefer the evidence of the respondent's witnesses.

The Relevant Law

102. Section 18 of the Equality Act 2010 provides as follows:

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

(2) A person (A) discriminated against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably –

(a) because of the pregnancy, or

(b) because of illness suffered by her as a result of it.

(3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

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

5 (5) *For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).*

(6) *The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends –*

10 (a) *if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;*

(b) *if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy..."*

15 103. The Tribunal also took account of the submissions made by each party insofar as they directed us to the law and authorities.

Discussion and Decision

104. As was noted above, the issues for determination in this case are as follows:

20 a. Did the respondent insist that the claimant clean a vermin-infested property during her pregnancy?

b. If so, did the respondent insist that the claimant clean a vermin-infested property because of her pregnancy?

c. Was the claimant dismissed because of her pregnancy? And

25 d. If the claimant was treated unfavourably because of her pregnancy amounting to unlawful discrimination what compensation should she be awarded by the Tribunal including injury to feelings?

105. The Tribunal therefore addressed these in turn.

a. Did the respondent insist that the claimant clean a vermin-infested property during her pregnancy?

5 106. On the evidence we heard, and standing our findings in relation to the relative reliability of the witnesses in this case, we have found that the respondent did not insist that the claimant clean a vermin-infested property during her pregnancy.

10 107. The claimant was required, as part of her ordinary duties, to carry out cleaning of properties when one service user moved out and another was due to move in. All staff, including Ms Jones and Ms Harris, were required to do so, and the claimant did not appear to disagree with the suggestion that it was part of her duties. It is plain that she felt, towards the end of her employment, that she was having to spend a large proportion of her time cleaning flats – at one point she said to her manager, “what am I now, a cleaner?” – but she did not refuse to carry out cleaning of any property.
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20 108. Ms Harris confirmed that the property which the claimant was asked to clean had suffered from localised areas affected by insects, or bugs. This mainly related to the area behind and under the cooker, when the cooker was moved. The evidence we have is that there were a number of insects, but that that number fell far short of an infestation. Ms Harris’s view seemed to be that this was not an unusual occurrence when looking behind or under a cooker, and dealt with it by spraying the bugs.

25 109. We did not find, and we were not persuaded, that there was an infestation of insects in the property, and we accepted that had there been such an infestation, none of the respondent’s staff would have been expected to deal with it. The properties used by them for service users are owned by North Lanarkshire Council, and accordingly the responsibility for attending to an infestation, and paying for any costs of doing so, would lie with the Council.

110. There was no evidence that there was any property affected by “vermin”, which we understand to mean, in particular, rodents such as rats and mice. The claimant made reference to having seen a cockroach, but this evidence was not supported by any other witness, and we accepted that the respondent was entitled to take the view that the situation was not as serious as she portrayed, and that there was no basis for finding that there was any cockroaches in the flat referred to. In any event, the evidence we heard led us to the conclusion that the property was affected by insects, to a restricted degree, and that that was dealt with by Ms Harris who had been in on the previous day to carry out a check of the property. We did not find that there was an infestation within the property – which we interpret as meaning that the property was affected throughout by the presence of insects – nor that there was any sign of “vermin” there either.

111. Accordingly, we do not find that the respondent insisted that the claimant clean a vermin infested property. Further, we accepted the evidence of Ms Harris and Ms Jones that if a worker for the respondent came across an infestation, they would not be expected to deal with it themselves but seek specialist help.

b. If so, did the respondent insist that the claimant clean a vermin-infested property because of her pregnancy?

112. In light of our answer to the first issue, this issue may be dealt with briefly. We did not find that the respondent insisted that the claimant clean a vermin-infested property, and accordingly we did not find that they insisted that she do so because of her pregnancy.

c. Was the claimant dismissed because of her pregnancy?

113. This, we considered, was the primary issue in this case. The respondent say that the claimant was dismissed due to her conduct and her performance of her duties; the claimant does not believe that, and thinks that there must have been an underlying reason.

114. The claimant considers that the underlying reason was that she indicated her concern about having to clean a property while pregnant, given the exposure to bleach which, she said, was sprayed widely across the property and subjected her to unpleasant fumes. She was particularly concerned about the potential impact upon her pregnancy of her exposure to such fumes, and maintained that she raised this matter with the respondent at an early stage. She argues that the timing of the subsequent events which led, quickly, to her dismissal, was more than coincidental, and clearly points to the respondent having become unhappy with the claimant being pregnant – and thus going off on maternity leave in due course – and having suggested that she was concerned about carrying out cleaning duties.

115. The respondent denied that the dismissal was in any way related to the claimant's pregnancy, or that her attitude towards the cleaning of the property had anything to do with their decision to dismiss her.

116. In our judgment, the evidence in this case leads to the following conclusions:

- When the claimant informed Ms Jones that she was pregnant, anticipating a negative response, Ms Jones was very positive, congratulating her on her news, and inviting her to tell the staff. The claimant accepted this in her own evidence. This was important in defining Ms Jones', and thereby the respondent's, attitude to the claimant's pregnancy.
- The claimant appears to have expected that the respondent would be unhappy at the prospect of a new employee having announced that she was pregnant, but the evidence suggests not only that this was not the case, but that the respondent, and particularly Ms Jones, the manager, was happy to hear the news and was entirely supportive to her in her pregnancy.
- The claimant did raise concerns about the effect which the bleach was having upon her, but, importantly, said nothing about the impact

upon her pregnancy until she raised her grievance, which followed the termination of her employment. She said to both Ms Harris and Ms Jones, at the meeting of 3 October 2016 (67) that “bleach is breaking her out”, and that she did not have a problem with cleaning, but she did not like the “beasties” (or insects) in the properties. She made no reference to having any concerns about the effect of the cleaning materials upon her pregnancy, but did complain that her skin was being affected. The respondent advised her that she could use whichever cleaning materials she preferred to use, and it was known to the claimant that there was a cupboard with a wide variety of materials available to her and the other staff.

- On the basis of the evidence we heard, we accepted the respondent’s position that the reason for the dismissal was related to a number of incidents which had taken place during the claimant’s probationary period, and which are recorded in the minutes of the probationary review meetings conducted by Ms Harris with the claimant. Ms Harris had come, over time, to the conclusion that the claimant was not prepared to accept the direction given to her by the respondent, to restrict herself to matters concerning children and young persons, and to behave in such a way as to maintain calm and control around service users. The incidents set out in the probationary review meetings involving Clare, Shona and others demonstrated to the respondent that the claimant would intervene in circumstances where it was not appropriate or prudent to do so. On several occasions, the claimant is recorded as having apologised for her actions. Ms Harris and Ms Jones were left with the conclusion that she was unable or unwilling to conduct herself in the manner expected of her. They required her to behave in a highly discreet and sensitive manner around the service users, and found that there were examples in which she failed to do so. They were also very concerned about her manner when confronted with concerns, and found her to be loud and occasionally intimidating in her behaviour towards them.

117. It is not for the Tribunal to analyse the process leading to the dismissal as if this were an unfair dismissal claim, nor for us to act as if we were the employer and set out what we might have done in the same circumstances. What we require to do is decide whether, on the evidence, the claimant was dismissed for a reason relating to her pregnancy. In our judgment, she was not. The respondent has demonstrated that not only was the dismissal not related to pregnancy, but it was also clear that it was related to the concerns which they had had with her performance and conduct from an early stage in her employment.

118. As a result, it is our unanimous conclusion that the claimant was not dismissed for a reason relating to her pregnancy, but that she was dismissed for her performance and conduct, during a probationary period in which she had been spoken to on a number of occasions about the way in which she handled this matter.

If the claimant was treated unfavourably because of her pregnancy amounting to unlawful discrimination what compensation should she be awarded by the Tribunal including injury to feelings?

119. Given our previous conclusions, it is not necessary for the Tribunal to consider this issue.

120. Accordingly, it is our conclusion that the claimant's claim of discrimination on the grounds of pregnancy fails, and must be dismissed.

121. While we appreciate that this is not the outcome which the claimant was seeking, and that she will inevitably be disappointed by our decision, it may be of small comfort to her to know that we found her approach in the Tribunal hearing to be very helpful. She focused on the relevant issues, and she asked pointed and well-thought out questions of the witnesses. We noted that both she and the respondent were excited at her appointment, and it is clear that she was keen to make a success of a job which was important to her and to the respondent, using her undoubted intelligence and skills to care for children and young people at a time of great need. That this has not ended well is most unfortunate, but it is to be hoped that

the claimant will now be able to move forward to her next assignment at the conclusion of these proceedings.

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Employment Judge: M MacLeod
Date of Judgment: 26 March 2018
Entered in the Register: 29 March 2018
and copied to parties

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