



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Little

**Respondent:** AG Wade Limited

**Heard at:** North Shields Hearing Centre    **On:** Monday, Tuesday & Wednesday  
12<sup>th</sup>, 13<sup>th</sup> & 14<sup>th</sup> August 2019

**Before:** Employment Judge Johnson

**Members:** Mrs C Hunter  
Mr G Gallagher

## *Appearances*

**For the Claimant:** In Person  
**For the Respondent:** Mr Collins of Counsel

## WRITTEN REASONS

1. These are the written reasons requested by the claimant pursuant to the judgment promulgated on 29<sup>th</sup> August 2019 in which the claimant's complaints of unfair dismissal and unlawful sex discrimination for reasons related to pregnancy/maternity, were both dismissed.
2. The claimant attended in person and conducted the hearing herself. The claimant gave evidence, but did not call any other witnesses. The respondent was represented by Mr Collins of Counsel, who called to give evidence Ms Kirsty Jane Wade (Director), Mr Alistair Geoffrey Wade (Managing Director), Ms Margaret Shaw (Senior Optical Assistant) and Ms Kimberley Mason-Craig (Senior Optical Dispensing Assistant). The claimant and all 4 witnesses for the respondent had prepared formal witness statements, which were taken "as read" by the Tribunal, subject to questions in cross examination and questions from the Tribunal.
3. There was an agreed bundle of documents marked R1, comprising an A4 ring-binder containing 104 pages of documents.

4. By a claim form presented on 12<sup>th</sup> November 2018, the claimant brought complaints of automatic unfair dismissal for reasons related to pregnancy, childbirth or maternity contrary to S.99 of the Employment Rights Act 1996, and unlawful sex discrimination because of pregnancy and/or maternity leave, contrary to S.18 of the Equality Act 2010. The respondent defended the claims. The claims arise out of the claimant's relatively short period of employment with the respondent, which commenced on 12<sup>th</sup> June 2018 and ended with her dismissal at the end of a probationary period on 11<sup>th</sup> September 2018. The respondent's position is that the principal reason for the claimant's dismissal was her poor performance and attitude, together with the potential reputational damage to the respondent's business caused by the claimant's father's conviction and imprisonment for an offence of dishonesty. The claimant's position is that the real reason why she was dismissed was because she was pregnant.
5. Under S.108 of the Employment Rights Act 1996, the claimant had not acquired the right not to be unfairly dismissed, because she did not have two years' continuous employment with the respondent. Her complaint of unfair dismissal can therefore only succeed if she can persuade the Employment Tribunal that the reason or principal reason for her dismissal related to her pregnancy, childbirth or maternity. With regard to her complaint of unlawful sex discrimination contrary to S.18 of the Equality Act 2010, the claimant must show that the respondent treated her unfavourably (by dismissing her) because of her pregnancy or because of illness suffered by her as a result of that pregnancy. It is sufficient for the claimant to establish that her pregnancy or illness suffered by her as a result of her pregnancy, had a material influence on the respondent's decision to dismiss her.
6. The issues to be decided by the Tribunal were identified as:-
  - (i) What was the respondent's reason (or principal reason) for dismissing the claimant?
  - (ii) Was that reason because of the claimant's attitude/performance?
  - (iii) Was that reason because of the claimant's father's conviction?
  - (iv) Was that reason because of the claimant's pregnancy or illness related to it?
  - (v) Can the claimant prove facts from which, in the absence of an explanation from the respondent, the Tribunal could draw an inference that there was a discriminatory reason for the respondent's dismissal of her?

## **FINDINGS OF FACT**

7. Having heard the evidence of the claimant and the 4 witnesses for the respondent, having examined the documents to which it was referred and having carefully considered the closing submissions of the claimant and Mr Collins for the respondent, the Tribunal made the following findings of fact on a balance of probability.

8. The respondent is a family-owned and run opticians` business, with 4 premises in the north-east of England, namely Durham, Prudhoe, Lanchester and Ryton. The business is owned and managed by Mr Alistair Geoffrey Wade (Managing Director) and Ms Kirsty Jane Wade (Director). Ms Wade is primarily responsible for the day to day administration of the business, including all HR matters. Both Mr Wade and his daughter are qualified optometrists. In addition to its optometrists, the respondent employs optical dispensing assistants and optical assistants. The optometrists and dispensers travel between the 4 offices and generally only visit an office when a clinic is scheduled in that office. Clinics are run on a rota, which is tailored to the demand for each office.
9. The Lanchester practice is located in a relatively small village and is the respondent`s quietest office, which generally only operates a clinic one day each week. The office is closed on a Wednesday, Saturday and Sunday, which means that the office is only manned Monday, Tuesday, Thursday and Friday. The remaining 3 days when there is no clinic being operated are utilised for general client care and in preparing for the weekly clinic.
10. Preparing for the weekly clinic includes:-
  - Ensuring electronic patient records have been printed and placed on clipboards along with properly printed NHS forms.
  - Ensuring patients have been contacted on the day before the clinic to confirm their attendance of their appointment. The preferred method for this is by telephone, although SMS messages can be sent as a last resort.
  - Ensuring the practice is properly stocked with refreshments.
  - Preparation for a full clinic should not take any more than 2 hours for any reasonable member of staff. An efficient member of staff could prepare for a full clinic in less than an hour.
11. The respondent maintains what could be fairly described as exacting standards for its optometrists and dispensers. Anyone employed by the respondent is initially employed on a three-month probationary contract, at the end of which there are three possible outcomes:-
  - (i) the employee is offered a permanent contract;
  - (ii) the probationary period is extended;
  - (iii) the employment is terminated.
12. Between 12<sup>th</sup> March 2018 and 8<sup>th</sup> October 2018, 6 employees entered into three-month probationary contracts with the respondent. Of those, 3 failed to reach the necessary standards by the end of the probationary period and their employment was terminated. One failed to complete the three-month probationary period and left voluntarily and only one was offered a permanent contract after reaching the appropriate standard. However, that employee declined the offer of permanent employment. The sixth employee was the claimant, who commenced her three-month probationary period on 12<sup>th</sup> June 2018.
13. At page 53 in the bundle is a letter dated 23<sup>rd</sup> June 2018 in which the respondent is offered a three-month probationary contract as a “mobile optical assistant”. The

hours of work are stated to be three days (including every Saturday) on a rota basis, with hours of work 9.00am to 5.30pm Monday to Friday and 9.00am to 5.00pm on a Saturday. Whilst the letter states that the claimant would be based at the respondent's Durham practice, it was always understood that the claimant would work solely at the Lanchester office. Her employment would commence on 11<sup>th</sup> June 2018.

14. The respondent's standard practice is that an employee commencing the probationary period must first undergo the respondent's standard face-to-face induction programme. A copy of that programme is at page 38-45 in the bundle. In addition to preparing for the weekly clinic, the claimant's role included:-
- (a) housekeeping – ensuring the practice is clean and tidy. Full practice is done via a schedule but team members are all aware that their practices should be reasonably clean and free of rubbish immediately before a clinic is held;
  - (b) ensuring the practice takings (cash/NHS forms/card payments) have been properly reconciled with the respondent's computer system ("OPTIX") by the end of each day. Till discrepancies have to be rectified and must be completed at the end of the day so that the practice is ready to start as soon as it opens the next morning. This includes completing the banking records sheets for any cash or cheques that need to be taken to the bank;
  - (c) team members are required to have a basic grounding of knowledge of the clinical side of the business which includes the basic process of how an eye exam is conducted, from patients arriving at the office to them leaving. This includes how spectacles and contact lenses are ordered by the dispensers and their role in assisting with that process;
  - (d) team members have a series of daily/weekly/monthly check sheets to assist them with all their duties. They also have access to other members of staff who either regularly attend the office or who are available at the telephone to assist new members of staff;
  - (e) the respondent operates a dropbox on-line file storage facility which stores its training materials, guidance, templates, accounts information, stock information and other documents relevant to the running of the practice. All employees have access to that dropbox and receive training in its operation during the induction programme.
15. The claimant underwent the respondent's induction programme during her first week of employment. The respondent's evidence was that the claimant received 5 days of training, whereas the claimant insisted that she only received 3 days of training. Whilst little turns on that of itself, it is accepted that by the following week, the claimant was considered to be sufficiently trained so as to be able to work alone in the Lanchester office. The claimant accepted that she had access to other members of staff by telephone and access to the dropbox system. The claimant accepted that she was responsible for those duties set out above, including preparation for the weekly clinic at the Lanchester office.

16. Shortly after the claimant completed her induction programme and began work in the Lanchester office, other members of staff began to notice failings in the way in which the claimant was performing her duties. Ms Wade suspected that these were the usual minor errors caused by simple inexperience, which could easily be dealt with by the claimant's colleagues giving her advice and answering questions. However, there seemed to be a reluctance by the claimant to ask for help or advice.
17. On 27<sup>th</sup> June one of the optical assistants complained that ,following the claimant's shift on Friday 22<sup>nd</sup> June 2018, several things had not been done which ought to have been done. In particular, the practice had been left untidy and the claimant had missed a number of items which she had been expected to complete.
18. On 5<sup>th</sup> July, Ms Wade was contacted by a member of staff who had been to the Lanchester practice on 2<sup>nd</sup> July, following the claimant's shift on Friday 29<sup>th</sup> June. The claimant had failed to cash up the till, print the till reports and complete the banking records before leaving the office at the end of the day. As a result, the next person to open the practice the next working day was forced to rectify that. When that person had challenged the claimant about why she had failed to attend to the cashing-up and banking, the claimant was rude to that colleague. The claimant is alleged to have told her colleague that the respondent's systems were "crap" and had said so in what was described as an "aggressive" manner.
19. On 10<sup>th</sup> July the claimant had been working in the Lanchester practice but at the end of the day had again failed to cash-up. Cash had been taken that day but the claimant had not attended to the cashing-up procedure until her shift on 12<sup>th</sup> July. As a result, there was a two-day working period in which cash in the practice had not been accounted for.
20. On 12<sup>th</sup> July, Ms Wade was schedule to act as optometrist in the Lanchester clinic. The claimant was unavailable for work that day and as a result Kimberley Mason-Craig had accompanied Ms Wade to the Lanchester office. Both noticed that the claimant had failed to properly prepare for the clinic, with confirmation calls not having taken place and no patient records or NHS forms having been prepared. The floor had not been cleaned and the place was generally untidy with rubbish bins unemptied. Post from previous days had not been opened.
21. Ms Wade was concerned at the claimant's failure to complete these basic tasks before the clinic started, as it resulted in unnecessary pressure being placed on the people working in the clinic. It also gave an unprofessional appearance to the respondent's patients. On 12<sup>th</sup> July, Ms Mason-Craig left for the claimant on the Optrix diary for 13<sup>th</sup> July, a list of items which had not been completed. This was because the claimant was scheduled to work in the Lanchester office on 13<sup>th</sup> July.
22. On 16<sup>th</sup> July 2018 another member of staff working in the Lanchester practice had noticed that the claimant had failed to deal with a number of telephone calls and e-mails for a number of days. Again, a reminder was left for her on the Optrix system.

23. On 17<sup>th</sup> July, Ms Wade was contacted by one of the respondent's staff about a number of issues concerning the claimant. Ms Wade was told that the previous reminders left for the claimant to complete tasks had not been acknowledged and that the same issues were being repeated. Those included:-
- (a) cashing-up had not been completed properly on more than one occasion;
  - (b) banking tracking sheets had not been completed;
  - (c) patient enquiries not dealt with;
  - (d) NHS forms not completed properly;
  - (e) e-mails and missed calls/voicemails had not been checked;
  - (f) patient records had not been properly dealt with and paper records had not been properly filed
  - (g) spectacle displays had not been cleaned;
  - (h) recalls had not been processed.
24. Ms Wade decided to have an informal meeting with the claimant during the next clinic, which was scheduled at the Lanchester office on 20<sup>th</sup> July. Ms Wade set time aside from 10-11.30 on 20<sup>th</sup> July to deal with this and recorded that on the Optrix system. However, when Ms Wade and Ms Mason-Craig arrived at the Lanchester clinic, the claimant had already left, having been taken ill. Ms Wade therefore decided that she would have to make a special journey to Lanchester on 23<sup>rd</sup> July in order to have her discussion with the claimant. That discussion in fact never took place because the 20<sup>th</sup> July was the last day in which the claimant attended work.
25. On 20<sup>th</sup> July 2018, Ms Mason-Craig had arrived at the Lanchester office at 9.00am and discovered the claimant "retching into a bin". The claimant then informed Ms Mason-Craig that she was pregnant and felt too ill to work. The claimant left to go home before 10 o'clock. When Ms Wade arrived, Ms Mason-Craig did not inform her that the claimant had told her she was pregnant, considering that she had been told that in confidence by the claimant and that it was for the claimant to inform Ms Wade herself.
26. At 10.29 on 20<sup>th</sup> July the claimant sent an e-mail to Ms Wade stating as follows:-
- "I've just had to come home. I'm so sorry but I'm just so unwell and I found out I'm pregnant, have fell pregnant before starting. I'm very early but felt I should tell you. I feel so bad being poorly on you all. I've been trying my best to manage but today just feel so terrible. I know this may affect my job. I'm devastated but obviously wanted another child just didn't expect the timing of it."

Ms Wade replied within 15 minutes as follows:-

“Congratulations, hope you are ok. Can you give me an idea of how long you’ll be off for as I’m going to need to arrange cover? If it helps I was really ill when I was pregnant, hospital etc. I was so bad they gave me pills to stop me being sick and they really helped.”

Kirsty-X

27. Over the next few days, there followed an exchange of messages to the effect that the claimant remained too ill to attend work. The claimant’s last e-mail was dated 3<sup>rd</sup> September 2018, and was to do with her sick-note. The message states:-

“I can’t remember what date my doctor’s note said but I’m going to have to get it extended. I’m still really unwell. Had another hospital admission and still being sick a lot. I know with the others 16 weeks had been a turning point for me but it’s hard to predict. I’m on all the medication I can be and being monitored. I had a scan last week all was fine and I’m 14 weeks on Thursday. I’m sorry that I’ll be off a little longer, but will send doctors note asap.”

28. On 16<sup>th</sup> August 2018, Ms Wade learned of the claimant’s father’s conviction and imprisonment for an offence of fraud. Although no specific details were given to the Tribunal, the offence apparently related to funds misappropriated from the local cricket club and also from a number of the claimant’s father’s friends. The offences had taken place over a number of years.
29. Lanchester is a small, former mining village in north-west County Durham. It has what was described by the respondent’s witnesses as a “close-knit, family community”. Although the claimant did not live in Lanchester, her children attended the local village school, to where she would deliver them on a morning and then collect them on an afternoon. The claimant’s father’s arrest, trial and conviction attracted considerable publicity and generated an element of ill-will towards the claimant’s father. A number of clients began to express concern about the claimant working in the business and two specific clients stated that they intended to take their business elsewhere due to the claimant’s presence in the practice. Margaret Shaw who had been responsible for principally training the claimant, described to the Employment Tribunal how she was “shocked” when the claimant invited her father into the Lanchester office before accompanying him for lunch and then returning to the office.
30. Mr Wade and Ms Wade were genuinely concerned about the potential reputational damage to their practice as a result of the claimant’s family connections with a convicted fraudster. One of the reasons why the respondent insisted upon cash being banked daily was because they had themselves been the victims of the theft of monies by a member of staff some years beforehand.
31. As a result of their concerns, Mr Wade and Ms Wade took professional advice about the claimant’s position within the practice. Although advised by the Tribunal

that there was no requirement for them to disclose what that advice was, both confirmed that they were advised that they could terminate the claimant's employment because of the potential reputational damage to the business.

32. By this time, the claimant's probationary period was coming to an end. Ms Wade's evidence to the Tribunal was that she and her other staff had genuine concerns about the claimant's ability to perform the role of an optical assistant, particularly bearing in mind the claimant's failure to implement the training which she had been given and her recalcitrant attitude when challenged about her failings. Ms Wade discussed the matter with her father and both decided that the claimant should not be offered a permanent position at the end of her three-month probationary period. However, they also agreed that they would not mention to the claimant the impact on their decision caused by the claimant's father's conviction. That decision was, they said, based upon their reluctance to cause the claimant any further embarrassment or distress at the decision to terminate her employment.
33. The claimant's evidence to the Tribunal may be summarised as follows:-
  - (i) she had not failed to complete those tasks which the respondent's staff had described. Furthermore, she had not displayed any aggression or rudeness in her dealings with other members of staff;
  - (ii) that her father's conviction had nothing to do with her and should never have been taken into account in considering her future employment;
  - (iii) that the only meaningful explanation for the decision to dismiss her was because of her pregnancy and/or absence from work due to the illness related to her pregnancy.
34. The claimant was referred to what were described by the respondent's witnesses as contemporaneous notes, taken at the times when complaints had been raised about the claimant's poor performance. The claimant flatly denied any such failings and insisted that those members of the respondent's staff who had reported these matters were simply telling lies. It was put to the claimant that these complaints had been made and the notes recorded before any of those members of staff were aware that the claimant was pregnant. The claimant maintained her denial and insisted that the staff responsible were fabricating this information and that the respondent's witnesses were telling lies to the Tribunal. When asked what motive those people could possibly have for being untruthful, the claimant was unable to provide any kind of motive.
35. It was put to the claimant in cross examination that Ms Wade in particular had been supportive when told by the claimant of her pregnancy, to which the claimant agreed. The claimant accepted that she had been congratulated by Ms Wade, who offered to share her own personal experiences with the claimant. The claimant accepted that she had never been told anything by Ms Wade or any other member of the respondent's staff to the effect that her pregnancy may adversely affect her job.



36. The evidence of the respondent's witnesses was that a number of members of staff over the years had become pregnant, taken maternity leave and then returned to work. Mr Wade described how the respondent had supported many employees through pregnancy for a number of years and how they as a business regarded it as a "joyous and wonderful time".
37. The claimant did not challenge any of the respondent's evidence about the number of employees who had returned to work after taking maternity leave. The claimant also did not challenge the respondent's evidence about the potential impact on the respondent's business reputation caused by the conviction of the claimant's father. The claimant insisted that this was a matter which should never have been taken into account considering her future employment with the respondent.
38. The claimant's evidence to the tribunal and her questioning of the respondent's witnesses was focussed to a large extent on the respondent's failure to follow any kind of fair procedure before deciding to dismiss her. The claimant referred to the fact that her alleged failings in performance and attitude were never put to her formerly, either in writing or in any kind of meeting. Similarly, the respondent's alleged concerns about her father's conviction were never put to her, which meant that she was never able to give any kind of explanation or opinion as to how or why it should not impact on her employability. Mr Collins for the respondent acknowledged that, had the claimant acquired the right not to be unfairly dismissed by having two years continuous service, then the respondent would have been obliged to deal with those concerns relating to a fair procedure. However, there was no need for the respondent to do so in this case because the claimant had only worked for the respondent for three months.
39. Having considered all the evidence, the Tribunal was satisfied that members of the respondent's staff had reasonably and properly recorded and expressed their concerns about the standard of the claimant's performance. They had also reasonably recorded their concerns at the claimant's response when she was challenged about that. The Tribunal preferred the evidence of the respondent's witnesses in this regard and was satisfied that the respondent's witnesses held a genuine belief that the claimant was failing to measure-up to the exacting standards which they required of their staff. The Tribunal accepted the evidence of the respondent's witnesses about the claimant's attitude when challenged about those failings. However, it was specifically stated by Ms Wade that she would probably not have dismissed the claimant at the meeting which had been arranged for 20<sup>th</sup> July, but which had not taken place due to the claimant's absence due to illness. Ms Wade's explanation to the Tribunal was that she would probably have spoken to the claimant and tried to arrange a further programme of additional training before the end of the claimant's probationary period. Ms Wade went on to say that the intervening factor which caused her and her father to decide not to extend the claimant's employment, was the potential for reputational damage to the business caused by the claimant's father's conviction. The Tribunal accepted the evidence of Ms Wade and Mr Wade to the extent that they genuinely believed that the claimant's presence in the business, taking into account the close-knit village community in which the office was located, was likely to have an adverse effect on the respondent's reputation and business.

40. The Tribunal also accepted the explanation of both Ms and Mr Wade about why they did not mention the claimant's father's conviction, in their letter informing the claimant that her probationary period would not be extended. That letter appears at page 65. It is dated 6<sup>th</sup> September and states that the claimant's last day of employment will be 8<sup>th</sup> September. The letter states:-

"Your three-month trial period of employment is now at an end. You received one-to-one training and were also informed at regular intervals concerning our procedures and where to access such information, along with checklists and reference of which members of staff you should turn to for guidance. Several of your senior colleagues reviewed your progress every day that you were not rostered into Lanchester. They expressed concerns over the quality of your work and adherence to the procedures and checklists. Their feedback was collected and showed that our standards were not being maintained. On the last day of your employment and there was a clinic the following day, there were no less than 17 items that had not been attended to, many of which could have been done days beforehand, all of these tasks you had been trained on and were expected to fulfil. This lack of adherence is unacceptable and could challenge our contract with the health service that requires strict adherence to their regulations. In the light of this, with regret, we are not able to offer you a full contract for part-time position you applied for."

41. No mention is made in that letter of the claimant's father's conviction. The explanation given to the Tribunal by Ms Wade and Mr Wade, was that they had not wished to impose any further distress on the claimant at a time when she was losing her job, at a time when she was pregnant at a time when her father's conviction and imprisonment would undoubtedly have been having a serious effect upon her. It was again accepted by Mr Collins on behalf of the respondent that, had the claimant acquired the right not to be unfairly dismissed, then the respondent may have had some difficulty in explaining why their letter of dismissal did not set out the full reasons for that dismissal. The Tribunal accepted the unchallenged evidence of both Ms and Mr Wade that they did in fact have genuine humanitarian reasons for not including in the letter that the conviction of her father was a material factor in their decision not to dismiss the claimant.

## **THE LAW**

42. The statutory provisions engaged by the claims brought by the claimant are contained in section 99 of the Employment Rights Act 1996 (with regard to automatic unfair dismissal) and section 18 of the Equality Act 2010 (with regard to discrimination on the grounds of pregnancy/maternity).

### **Employment Rights Act 1996**

#### **Section 99** Leave for family reasons

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if--

- (a) the reason or principal reason for the dismissal is of a prescribed kind, or
  - (b) the dismissal takes place in prescribed circumstances.
- (2) In this section "prescribed" means prescribed by regulations made by the Secretary of State.
- (3) A reason or set of circumstances prescribed under this section must relate to--
- (a) pregnancy, childbirth or maternity,
  - (b) ordinary, compulsory or additional maternity leave,
  - (ba) ordinary or additional adoption leave,
  - (c) parental leave,
  - (ca) ordinary or additional paternity leave, or
  - (d) time off under section 57A;
- and it may also relate to redundancy or other factors.

### **Equality Act 2010**

#### **Section 18** Pregnancy and maternity discrimination: work cases E+W+S

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
- (2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably —
  - (a) because of the pregnancy, or
  - (b) because of illness suffered by her as a result of it.
- (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) 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—
  - (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
  - (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.
- (7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—

- (a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or
- (b) it is for a reason mentioned in subsection (3) or (4).

**Section 136 Burden of proof**

- (1) This section applies to any proceedings relating to a contravention of this Act.
  - (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.
    - (2) The regulations may prescribe circumstances in which a person who has a disability is to be treated as no longer having the disability.
    - (3) This paragraph does not affect the other provisions of this Schedule.
43. It is trite law that the reason for the dismissal of an employee is a set of facts known to an employer, or it may be a set of beliefs held by him, which causes him to dismiss the employee. Where the claimant disputes whether the reason proffered by the respondent employer is the real reason for her dismissal, then the claimant must put forward another reason and have some evidence to support that this alternative was, in fact, the real reason. The evidential burden rests upon the claimant to produce some evidence that casts doubt upon the employer's reasons. The more grave the allegation by the claimant, the heavier will be the burden. Once that evidential burden is discharged by the claimant, the onus remains upon the employer to prove the real reason for the dismissal. It is insufficient for the claimant to simply to maintain a bare denial of any allegations raised by the respondent and go on to say that, in the absence of any evidence to support the respondent's contention, then the only possible "real reason" is the fact that she was pregnant. In the absence of any evidence to support the claimant's position, she is simply asserting that she was dismissed when she was pregnant and therefore must have been dismissed because she was pregnant. That is insufficient. The claimant must establish some form of cause or connection between her pregnancy and her dismissal. That would initially involve casting sufficient doubt on the reasons given by the respondent. The claimant's evidence to the Tribunal in this case was simply that the respondent's witnesses were lying and that allegations of poor performance were entirely untrue, as were those relating to her attitude when challenged. Of particular significance to the Tribunal's findings was that some of the complaints were raised and recorded weeks before any of the respondent's staff were aware that the claimant was pregnant. The Tribunal found this to be a particularly persuasive piece of evidence. The Tribunal found that there were genuine concerns within the respondent's organisation about both the claimant's standard of performance and her attitude when challenged.
44. The claimant's position with regard to her father's conviction was simply that it should never have been taken into account at all. The claimant refused to accept

her father's conviction could possibly have the impact upon her position within the respondent's organisation. However, the claimant did not challenge the respondent's evidence about the potential impact it may have upon the reputation of the business. Again, the Tribunal accepted the evidence of the respondent's witnesses in this regard, particularly when the offences themselves involved the local village cricket club and a number of people within the local community.

45. The Tribunal accepted the respondent's evidence as to its real reasons for dismissing the claimant. Whilst the claimant would not have been dismissed immediately for her poor performance, the ill-will caused by her father's conviction was accepted by the Tribunal as being the "tipping-point" in the respondent's decision not to offer the claimant a permanent contract at the end of her probationary period. The Tribunal found that the claimant had failed to prove any facts, (other than she was pregnant) which may have proven the absence of an explanation from the respondent that the unfavourable treatment (dismissal) was related to her pregnancy or illness related to that pregnancy. The Tribunal accepted the respondent's explanation that the claimant had failed to meet its exacting standards by the time she went on the sick with her pregnancy-related illness and that her father's conviction was something which led the respondent to conclude that they should not extend her employment beyond the probationary period. The Tribunal found that the claimant's pregnancy was not the real reason or the principal reason for her dismissal, nor did it have any material influence in the respondent's decision to dismiss the claimant.
46. For those reasons the claimant's complaints of unfair dismissal and unlawful sex discrimination on the grounds of pregnancy/maternity are not well-founded and are dismissed.

**EMPLOYMENT JUDGE JOHNSON**

**REASONS SIGNED BY EMPLOYMENT  
JUDGE ON 1 NOVEMBER 2019**