



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms J Wilcox

**Respondent:** Elevate EBP Limited

**Heard at:** Remotely by CVP                      **On:** 4 , 5 May 2021  
3 August 2021

**Before:** Employment Judge Holmes (sitting alone)  
Ms C Gallagher  
Mr B Rowen

## Representatives

For the claimant: Mr J Halson, Solicitor

For the respondent: Mr Demeza – Wilkinson, Consultant (4 and 5 May 2021)

Mr J Ellison, Consultant (3 August 2021)

## RESERVED JUDGMENT

It is the judgment of the Tribunal that the respondent did not discriminate against the claimant on the grounds of her pregnancy, and this claim is dismissed.

## REASONS

1. By a claim form presented on 26 February 2020 the claimant brought claims of wrongful dismissal (for notice pay) , and discrimination on the grounds of pregnancy or maternity. The claimant subsequently withdrew her claim for notice pay, which was dismissed. Her claim proceeded, therefore, solely on the basis of discrimination

2. The claimant was represented by Mr Halson, solicitor. The respondent was initially represented by Mr Demeza – Wilkinson, consultant, until the resumed hearing on 3 August 2021, when Mr Ellison then appeared for the respondent.

3. The Employment Judge did raise this change of representation with Mr Ellison, and the respondent. Whilst the choice of representative is a matter solely for a party, and the Tribunal has no power to compel or prohibit representation by any particular representative , the Employment Judge was concerned at the late change in representation. He was, however, satisfied that the respondent , which always had the right to continue to be represented by the advocate of its choice, even if he has

changed employer, had made an informed and considered choice about this, and the hearing would proceed with this new representative for the respondent.

4. The issues in the claims had been agreed as follows:

The claimant brings claims of pregnancy or maternity discrimination (the claimant's claim for wrongful dismissal was withdrawn, and there was no claim of automatically unfair dismissal).

Legal Issues

Was the Claimant treated unfavourably by being dismissed?

If so, was the Claimant treated unfavourably because of her pregnancy?

Factual Issues

The claimant relies upon the following allegations which together constitute the individual events leading up to and confirming the dismissal:

- 1.1. Inviting the Claimant to a Performance Review Meeting on 4 November 2019;
- 1.2. In that performance review meeting, raising concerns with the Claimant that she did not 'gel' with the client's culture and not providing specific examples of the Claimant's alleged performance shortfalls;
- 1.3. Suspending the claimant by text message on 10th November 2019;
- 1.4. Inviting the Claimant to an Employment Review meeting on 1th November 2019;
- 1.5. Instructing Ms Ody not to accompany the Claimant at her Employment Review meeting;
- 1.6. Not providing sufficient detail of their concerns to the claimant during her Employment Review meeting;
- 1.7. dismissing the claimant; and
- 1.8. Upholding the decision to dismiss the claimant following her appeal.

5. The Tribunal considered, by agreement, liability only, The claimant gave evidence , and the respondent called Sadie Ody , Lead Career Coach, Joanne Huddart, Head of Employability, Gill Ditchburn, Chief Executive and Roy Williams , Chair of the Board of Trustees, gave evidence. There was an agreed bundle. In the course of the hearing a supplemental bundle was provided, much of it comprising of unredacted versions of redacted documents in the original bundle. Some documents, however, were new. Where they are, they will be referred to by pages numbers in the format "SB..." The evidence and submissions were concluded on 3 August 2021 , and the Tribunal reserved its judgment. The Tribunal apologises for the delay in

promulgation of its judgment, occasioned by a combination of pressure of judicial business and technical issues .

6. Both parties were in breach of the Tribunal's orders for exchange of witness statements. They applied for, and were granted , permission to adduce witness evidence which had been exchanged in breach of the Tribunal orders. The Tribunal reminds parties , and representatives, that they cannot unilaterally agree to vary Tribunal orders. Having heard the evidence, read the relevant documents in the bundle , and considered the submissions of the parties the Tribunal finds the following relevant facts:

6.1 The claimant was employed by the respondent from 26 November 2018 until 12 November 2019. Her job title at the relevant time was Career Coach. The respondent is a "not for profit" organisation largely financed through grant funding such as CEC (the Careers & Enterprise Company) which works in careers and education.

6.2 The claimant's original contract was set to run until 31 July 2020, but was extended to 30 November 2021.

6.3 During her employment the claimant was responsible for running a number of separate projects which were scheduled to run for set periods, they were:

What's your Emergency (up to August 2019)

Business Mentoring (up to October 2019)

Virtual Wallet (up to July 2020)

6.4 From March 2019 the claimant was part of the employability team delivered by Elevate staff working on the project called, "Talent Match". This was a team of 4 Project Officers together with a Project Lead who were assigned to work on a programme which was planned to last up to November 2021. The team worked from the address of Merseyside Youth Association ("MYA"), 65 Hanover Street. The claimant was part of a team from Elevate, who were all based on the ground floor which was known as "the pods." From about March to June 2019 the claimant was not there all the time as the claimant was finishing on other projects, but from July 2019 she was on the project full time. Sadie Ody was the Team Leader and had the most contact with the team. She held weekly team meetings with the Coordinators, Anita Cheetham, Ann Edwards, Hayely Moore and the claimant . Sadie Ody had previously worked on "Talent Match" with another employer.

6.5 Each Project Coordinator was assigned a particular geographical area. They worked with MYA's Mentors who were based on other floors in the building. The Mentors' jobs were to help develop the participants who were not ready for employment or education. They helped them deal with personal and social issues that were barriers to engagement in employment and education. When their development had reached a point where the mentors thought they were ready for employment, they would be assigned to Project Coordinators and the claimant and her colleagues would assist them in accessing employment opportunities. The claimant was required to work closely with the Mentors particularly at the stage where Participants were being referred.

6.6 The claimant was due to be assessed as to whether or not she had passed her probationary period on March 2019, but it was explained to her at her monthly performance review that as she was only just beginning the Talent Match programme they were not able to measure her against the KPIs until she had been on that project for 3 months [page 134 of the bundle]. She received notification on 23 May 2019 that she had passed her probation [page 68 of the bundle]. She attended monthly Performance Review meetings. Gill Ditchburn began managing the claimant more closely around May 2019 as she became more heavily involved in the Talent Match project for which she was responsible. She had been told by Laura Grigsby, the Line Manager at the time that the claimant had engaged in some inappropriate behaviour during her working hours, such as returning to the office after an event and making a comment about a male teacher, saying he was 'fit' whilst representing the respondent at a school event, and oversharing information with her colleagues regarding her personal life , which had made them feel uncomfortable.

6.7 Sadie Ody her immediate line manager, found following the claimant's employment beginning that there were issues with her performance, in particular her competencies and behaviour. There were issues with her oversharing information with people that she should not have , in a professional environment. It was reported to her that in the first week of her employment she informed her team about an affair she had had with a teacher in a school and also about the unfortunate loss of her daughter.

6.8 Sadie Ody , firstly, and then Joanne Huddart, held monthly Performance Review meetings with the claimant . The records of those which were held on 20 December 2018, 24 January 2019, 28 March 2019, 24 April 2019, 2 May 2019 , 15 July 2019, 23 September 2019 and 4 November 2019 are in the bundle at pages 132 to 142 of he bundle.

6.9 In the review held on 28 March 2019 [pages 135 and 136 of the bundle] the claimant was advised about oversharing things, and of the need to listen. She was also commended for her handling of a difficult situation.

6.10 Joanne Huddart held a one to one meeting with the claimant on 2nd May 2019. This was as part of the claimant's monthly performance reviews. There are notes of that meeting at pages 138-139 of the bundle. Prior to the meeting on 2 May 2019 she had been made aware by Sadie Ody of some of the concerns that there were with the claimant. Reference was made to the claimant having a couple of "wobbles". Joanne Huddart addressed issues with the claimant's personality and professionalism during the meeting. The claimant had felt that the respondent was trying to 'strip back' her personality with the improvements that were expected. Joanne Huddart explained that it was important that she remained professional at work and that there was a balance that had to be found.

6.11 From that point onwards Joanne Huddart held regular performance reviews with the claimant on a bi-monthly, roughly, basis. The next two meetings [pages 140-141 of the bundle] were straightforward and she did not have specific cause to discuss any conduct or behavioural issues with the claimant in these. There were a few smaller issues with performance which she felt were managed in these meetings.

6.12 Around May 2019, it was reported to Sadie Ody that a mentor had raised concerns with two MYA Area Managers, Kerry Hyland and Jimmy Crewe, regarding how the claimant spoke to participants enrolled on the Talent Match programme, have been unemployed for more than 12 months, many of whom were suffering from anxiety or other complex matters. It was alleged that the Claimant had abruptly asked a participant attending a group session, in front of the rest of the group, why they had turned up late and told them that it was not good enough. The individual concerned had high level autism and was very concerned that he was in trouble for the remainder of the session.

6.13. Sadie Ody discussed this with the claimant and remind her that she needed to be careful of the way she speaks to participants with mental health concerns.

6.14 A further issue arose when the claimant attended a job fair on 3 October 2019 and discussed the loss of her daughter with two Mentors she had not met before. Sadie Ody received feedback that this had made them feel uncomfortable.

6.15 As a result, Sadie Ody had cause to discuss the claimant's openness and oversharing with her . She advised her that some of the Mentors did not feel comfortable with the information she was sharing as they did not share a close relationship with her.

6.16 In relation to the claimant's work performance and actions in the presence of the MYA staff, several concerns were raised with Sadie Ody during the claimant's employment. The overarching issue appeared to be that the claimant had a poor attitude to her work , and that there were issues with the way she presented herself to other members of her team and to MYA employees. It was reported to Sadie Ody by Ruth Price, Employability Manager for MYA, that the claimant's communication skills were extremely blunt, often disruptive and not consistent with those of a team player.

6.17 The claimant had previously lost a child, a matter that she discussed with others, and of which her employers were aware. She discovered she was pregnant again on 4 October 2019, and attended a hospital appointment on 10 October 2019 where she was advised that she was "high risk" and would need to attend hospital every 2 weeks during her pregnancy to be monitored.

6.18 The claimant told Sadie Ody that she was pregnant that day. Her reaction was to say that she was delighted for her. The claimant asked her to go with her to tell her Line Manager, Joanne Huddart, Head of Employability the following day, which she did. Her reaction was to say that she was happy for the claimant , and to congratulate her. The claimant told Joanne Huddart that she would need to attend fortnightly appointments at the hospital because of being "high risk." Joanne Huddart also informed the Claimant that a risk assessment would need to be carried out as soon as possible, and this was carried out on 11 October 2019 [pages 75-76 of the bundle].

6.16 Joanne Huddart at 11.31 on 10 October 2019 sent an email to Gill Ditchburn and Christine Coburn [page 70 of the bundle] informing them that the claimant had told her she was 5 weeks pregnant. She referred to the claimant being under the Women's Hospital, and that she would need daily injections at home , and how her next appointment was the following week. In the email she said this :

*"I have told her just to keep myself and Sadie informed for now as to when she has hospital appts?"*

She asked Christine Coburn to have a chat with her, and referred to the claimant mentioning a maternity policy.

6.17 In her reply (the same page of the bundle) Christine Coburn said that she would meet with the claimant as soon as possible, and would read the policy. She went on to discuss the claimants entitlements , and how any absences should be recorded, and dealt with.

6.18 The respondent has had some 6 or 7 employees take maternity leave, and has a maternity policy ( though it was not produced). As the claimant was in the very early stages of pregnancy, and her due date had not yet been notified, no consideration had been given as to when she might start her maternity leave, and how it would be covered.

6.19 The claimant also told Gill Ditchburn of her pregnancy that day. She knew this was the news she had been hoping to get for a while and she congratulated her immediately. The claimant did comment that she thought she was going to tell her off, but did not know why she thought this might happen.

6.20 On 16 October 2019 the claimant carried out a makeup procedure on a colleague, Anita, whilst at work at the MYA . This was witnessed by a manager at MYA, Jimmy Crewe . Although no participants were in the building , this was reported back to Sadie Ody, and MYA management did not consider this professional behaviour on the part of the claimant . she spoke to the claimant and the colleague and advised that their behaviour was not acceptable during working hours. Sadie Ody thought that the claimant's responses demonstrated that she did not see that there was an issue and that she was only doing her colleague's eyebrows.

6.21 Gill Ditchburn was informed by Sadie Ody around 17 October 2019 of the issue concerning the claimant doing make-up on a colleague in the office, during working time. She emailed Ruth Price, Employability Manager for MYA , on 17 October 2019 [page 77 of the bundle] to update her on the situation and advise her of her plan to speak to the claimant and Anita.

6.22 The claimant also revealed to Sadie Ody that she was discussing participants with her husband, including sharing incorrect details about an accused sex offender. This was a clear breach of confidentiality and could have led to false information about the individual being disclosed to the general public.

6.23 A further issue occurred when a mentor had discovered that the claimant had contacted a participant about looking for employment. This particular individual was not ready to return to work as a result of mental health issues and suffered further anxiety from the call. The mentor raised a concern with their Area Manager from MYA, Kerry Hyland, who called the claimant to discuss the matter. Kerry found the claimant to be difficult and that she started to raise her voice and argue. Kerry later called Sadie Ody to raise an informal complaint.

6.24 When Sadie Ody discussed this issue with the claimant, she told her she had been asked to call the participant, but she had been made aware that she had been told by another Career Coach that she should not. she informed the claimant it was not acceptable, no matter the reason, to argue with an Area Manager.

6.25 Sadie Ody received an email from Ruth Price on 11 October 2019 in which she asked her if she could speak to her about the claimant [page 73 of the bundle]. She did so that day , and it was clear that Ruth Price shared the same concerns that others had already raised with Sadie Ody about the claimant, in particular her behaviour in the office and the way she spoke to staff and participants.

6.26 Sadie Ody advised Ruth Price that she would monitor the claimant's behaviour closely moving forward and discuss the issues with the claimant with a view to improving her attitude towards staff and participants. Within 24 hours of that conversation, she did speak to the claimant about being more approachable with colleagues and staff and to focus on her work.

6.27 Sadie Ody received a further email from Ruth Price at 08.56 on 24 October 2019 raising further concerns regarding the claimant. On this occasion Ruth Price informed Sadie Ody that the Claimant had been seen eating toast in a pod and had made a young person wait for their meeting whilst she was doing so [page 85 of the bundle]. She followed this up with an email later that day, at 10.22, in which she asked Sadie Ody not to mention the toast incident to the claimant , as she was going to get an email about the incident from the receptionist. She went on to say this:

*"I think this is just about Jen not understanding how to deal with our cohort. She's abrupt and comes across that way. I'm sure she really doesn't mean to be but she's just not appropriate."*

6.28. Sadie Ody on 25 October 2019 spoke to the claimant her about this issue and made her aware that the Project Manager had been made aware. She stressed to the claimant that this was not appropriate and gave a bad impression of Elevate. She told her that she should not eat unless she was on an agreed break and that it was not acceptable to make a young person wait in reception.

6.29 During the last week in October 2019, Ruth Price informed Sadie Ody that MYA were planning on making a formal complaint about the claimant. At that point, Sadie Ody did not know what those complaints were, but has since seen that the complaints are set out in the document at pages 90-91 of the bundle.

6.30 On 29 October 2019 Joanne Huddart reported to Christine Coburn and Gill Ditchburn , by email [page 86 of the bundle] that Collette Taylor , Programme Manager at MYA was "really not pleased" with the claimant , and that she thought that she would prefer that she was not involved in the Talent Match project, though she (Gill Ditchburn) was are aware that the respondent could not simply remove her. At that time the respondent did not have any other projects to which it could move the claimant.

6.31 On 1 November 2019 Collette Taylor sent an email (page 87 of the bundle ) to Joanne Huddart in which she forwarded another email from MYA staff , forwarding a further email from other members of MYA staff (all dated 1 November 2019) , to which was attached a two page document in which Louise and Kim of MYA set out various issues that they had with the claimant's conduct when working at MYA. The most recent of these was an incident on 28 October 2019, in relation to a participant who had arrived late, and who was told that the claimant did not have an appointment with him, but then agreed to see him.

6.32 The version of this document in the bundle at pages 90 and 91 of the bundle has at its head "Received from MYA 1<sup>st</sup> November 2019". Much questioning was conducted in the hearing about , and the claimant has previously questioned, the provenance and authenticity of this document. The font and layout of the heading is the same as the body of the document. Whilst it was put that it would be odd for the author(s) of the document working in MYA to head it in this way, the Tribunal does find, on a balance of probabilities, that this was the document that the respondent received.

6.33 The claimant attended a Performance Review Meeting on 4 November 2019 with Joanne Huddart and Ruth Price, the Employee Engagement Manager from MYA, who had been supervising the claimant and other staff working at MYA's premises on the "Talent Match" project. Sadie Ody was not present. This was not the only meeting that Ruth Price attended , she was present in other performance reviews of the respondent's staff who worked at MYA.

6.34 The meeting began with Joanne Huddart explaining that Ruth Price would take a more active role in managing staff working on the Talent Match project, and would attend future reviews. The notes are at page 142 of the bundle.

6.35 During the meeting Ruth Price raised concerns that staff at MYA had raised with her, and the concern that the claimant did not fit with MYA culture. The claimant needed to be more professional , and to soften her approach with participants. She was told that she should not overshare. Her knowledge and expertise were recognised as excellent. personal information with staff or participants, and needed to work on her relationships with staff. She said the concerns had been raised by MYA staff via Colette Taylor, but she did not say who they were. Colette oversaw the project and was employed by MYA. The claimant was taken aback by this, believing that she worked well with the Mentors and was upset at the suggestion that she was not "person centred." She said no one had told her this, and Ruth Price said she could come over as abrupt.

6.36 Joanne Huddart said she would set up regular briefings with Sadie Ody for the next few weeks, the first one being the next week on 11 November 2019 .

6.37 After this meeting Sadie Ody had an informal meeting with her, possibly the following day. She asked if the claimant was OK, and said she did not know what they were going to say to her in that meeting and she had only found out about it when she attended her own one-to-one meeting after the claimant.



6.38 On 6 November 2019 Sadie Ody held another 1 to 1 meeting with the claimant. They discussed the issues that has been raised, and the claimant's concerns. Sadie Ody stressed the importance of the need for appropriate behaviour , and the need to be aware of the environment in which the claimant was working. As MYA was the respondent's funder, this was most important. Sadie Ody discussed with the claimant how she should not moan to other staff, and that a positive, professional attitude was required.

6.39 Following that meeting, however, it was reported to Sadie Ody that the claimant had gone into a CV workshop being conducted by another colleague, Anita, a Career Coach. It was reported that she had disagreed with the Career Coach in front of the group, which she had found disruptive and unprofessional. She had left the session to get another Coach to get the claimant out of the session . She requested that the claimant no longer attended any of her sessions.

6.40 Sadie Ody recorded her meeting with the claimant, and the subsequent report she received from the Career Coach in an email on page 92 of the bundle to Joanne Huddart.

6.41 In the claimant's account of the CV workshop , she agrees that Anita gave examples of CVs, and that she commented on one negatively. She said she was hoping a participant would have picked up on the weaknesses of that CV, but she had pointed it out first. She did apologise. She did say quite a lot in the workshop, but denied that she disagreed with Anita, she just gave a few of her own examples. She conceded how she might have said a bit too much in the workshop, bearing in mind Anita was running it.

6.42 Joanne Huddart and Gill Ditchburn decided that action needed now to be taken, and set up a meeting with the claimant for 12 November 2019. On the evening of Sunday 10 November 2019 the claimant received a text message [pages 95 – 96 of the bundle] from Gill Ditchburn to inform her that she did not need to attend work the following day but was to attend for an "Employment Review Meeting" on Tuesday 12 November 2019.

6.43 On Monday 11 November the claimant went to the Post Office to collect the registered post letter. On her way she phoned Sadie Ody and asked if she knew anything about this, which she did not.

6.44 The letter [page 94 of the bundle] invited the claimant to attend a meeting the following day and stated that issues had been raised regarding her competencies and behaviours. The letter advised her she could bring a work colleague to the meeting. No further documentation was enclosed with that letter.

6.45 The claimant spoke to Sadie Ody around 9.15 on Monday 11 November , and asked if she could attend the meeting with her. Sadie Ody spoke with Gill Ditchburn, about the claimant's request. She was not told that she could not attend, she was told that it was her personal decision to make. After thinking about it carefully, she decided herself that she would not attend the meeting , because of the involvement she had in raising concerns with the claimant and with management. She did explain in a text message to the claimant her thoughts and the Claimant told her she should not worry

if she did not want to attend. The text exchanges are at pages SW27 and 28 of the bundle.

6.46 The claimant asked Ann, but she could not attend , so she ended up attending the meeting on her own.

6.47 The meeting took place on 12 November 2019. Gill Ditchburn, Joanne Huddart and the Head of Operations, Christine Coburn attended.

6.48 In advance of the meeting Gill Ditchburn prepared a rough agenda [page 97 of the bundle] to follow. This was not provided to the claimant.

6.49 In the meeting Gill Ditchburn stated that there were issues with the claimant's competencies and behaviours and that barely a week had gone by where a complaint had not been raised against her [CHECK] . She said they had to extend her probation period by a further 3 months because of concerns about her work. The claimant pointed out that was not in fact the case, that her probation period had been extended because she was only just starting on the Talent March programme and they needed to measure her against those KPIs. The claimant queried why she had not been made aware of any complaints before. Gill Ditchburn said that the claimant did not recognise when she was being reprimanded and that she did not act with integrity. She also mentioned that they had sought legal advice and were told that they were well within their rights to hold the meeting. Referring to the claimant asking why these issues were not raised previously , she said, that it was not their style to scream and shout.

6.50 The notes of the meeting are at pages 98 – 100 of the bundle. The claimant agrees that the first few paragraphs are reasonably accurate. The claimant asked Gill Ditchburn to clarify the status of the meeting, and she said it was an "Employment Review Meeting." The claimant was given a typed, unsigned document and an email from Sadie Ody dated 6 November which she had never seen before. [pages 90 – 93 of the bundle]. She was given as long as she wanted to read these, before the meeting was resumed. She did not ask for an adjournment or for extra time.

6.51 The document recorded that 2 receptionists employed by MYA had concerns about her. In particular the document states:-

- (a) that the claimant was at fault for not meeting a young person at the railway station;
- (b) that on another occasion she had talked in a "loud and rude manner,"
- (c) that on one occasion the receptionist felt she was not helpful and did not ensure a young person was made to feel welcome,
- (d) that on another occasion she had spoken to one of the receptionists in a "rude and instant manner" and shrugged her shoulders;
- (e) that she had kept young people waiting at reception on one occasion for 3 – 5 minutes and on another occasions for 5 – 10 minutes

6.52 The claimant was reminded of the issues regarding oversharing personal information, for example [page 98].

6.53 The claimant was surprised that this was where the allegations had come from. She could not respond to all of these as there was insufficient detail given for her to recall the incident, although she did recognise some of the incidents. The claimant denied in their entirety the contents of the complaint from MYA and simply stated 'ok' in relation to the email from Sadie Ody, which Gill Ditchburn took to be an acceptance of the contents. She explained to the claimant that it was difficult for the respondent to challenge the content of the complaint from MYA because the contents were consistent with other behavioural issues that had been raised with the claimant in the past.

6.54 The claimant was asked to leave the room. Gill Ditchburn considered the claimant's position in the meeting, including her denial of the content of the complaint against her. However, she saw no reason and was provided with no argument or evidence by the claimant that the complaint was not genuine, or could have been fabricated. She could see no reason why those involved in making the complaint would not have been truthful, and she felt that the content of the complaint was consistent with the claimant's previous behaviours. She therefore concluded that the contents of the complaint and Sadie Ody's email were accurate. She reached the decision, with that input, that the claimant should be dismissed from her employment. The decision was made on the basis that the claimant's behaviour and conduct was now beginning to jeopardise the respondent's highly important relationship with MYA, evidenced by the complaint that had been sent, and the further issues raised by Ruth Price. Further, the claimant had shown that informal action against her was simply not effective. The issues had been raised with the claimant throughout her employment and the respondent had seen little to no improvement. This was evidenced by the issue on 6 November 2019 when, immediately after a meeting to discuss issues, the claimant left and caused more issues in a CV session held by a colleague. For her, this showed that any further action short of dismissal would be a waste of time and was far more likely to further jeopardise the relationship with MYA than lead to any improvement from the claimant.

6.55 The claimant was called back in again after 5 to 10 minutes and informed that her employment was being terminated with immediate effect and that she would be paid until 12th December 2019. The claimant was sent a dismissal letter by email dated 13 December 2019. The letter stated that, the company did not feel she was the right "fit" for the organisation and that they had received a formal complaint from their funders. [page 105 of the bundle]

6.56 On 12 November 2019 at 15.48 Gill Ditchburn sent an email to Collette Taylor at MYA informing her of the claimant's dismissal. She replied to the effect she would do whatever was needed to ensure a smooth transfer of workload, and would direct everything to Sadie Ody [pages 101 and 102 of the bundle].

6.57 The claimant appealed against her dismissal [pages 113 – 114 of the bundle]. Her grounds of appeal were, firstly, in relation to the issues with her competencies and behaviours, that no competency issues had been raised during her one to ones, or her appraisal, no behavioural issues had been raised either, and a four stage procedure,

in line with the company handbook, had not been adopted in her case. In respect of the respondent not feeling that she was a right “fit” for the organisation, she was unsure what this meant, and how this would be measured. Thirdly, the alleged complaint from MYA was not signed nor formal. She also raised a number of other points about the process, and the appeal, particularly as to the lack of any procedure before her dismissal. In her concluding paragraph she referred to having instructed a solicitor, and how she felt that she had been discriminated against on the grounds of the protected characteristic of her pregnancy.

6.58 Prior to the appeal, Roy Williams, the Chair of the Board of Trustees , to whom it was allocated, asked Christine Coburn for her notes of the hearing, and a copy of the disciplinary policy. Ashe provided these by email of 21 November 2019 [page 118 of the bundle]. In her email Christine Coburn referred Roy Williams to a section in the handbook under the heading “Capability Procedures” entitled “Short Service Staff” [page SB6 of the bundle] which reads:

*“We retain discretion in respect of the capability procedure to take account of your length of service and to vary the procedures accordingly. If you have a short amount of service, you may not be in receipt of any warnings before dismissal but you will retain the right to a hearing and you will have the right to appeal.”*

6.59 The appeal was heard on 25 November 2019 by Roy Williams, and Ms Laura Grigsby was also present to take notes which can be found at pages 125-128 of the bundle. The claimant asked if she could record the meeting but was not permitted to. The claimant asked how these alleged complaints had originated as they were typed in the “Third Person.” She said there should be an “audit trail” to show how the alleged complaints had come to management’s attention. The reason she did so was that she suspected that these had been solicited by management.

6.60 The claimant said she thought she had been dismissed because she was pregnant. Roy Williams asked Laura Grigsby whether or not anyone had ever been sacked for being pregnant, and got a negative reply. The notes of the meeting are at pages 125 – 128 of the bundle.

6.61 Roy Williams gave the claimant opportunity to put forward her points of appeal which were several and are listed in the minutes. These included the fact that the claimant felt that Sadie Ody, had been discouraged from attending the Employment Review meeting with the claimant, that she was disappointed with the decision , that she did not attend work on 11th November 2019 and felt there was no justification for that decision and that no competency or behavioural issues had been raised with her prior to the Employment Review meeting apart from in a meeting with Sadie at the beginning of November.

6.62 He had access to copies of the notes from the claimant’s performance review meetings (or 121 meetings as they are referred to in the minutes) that had been held at various times through her employment. He highlighted to the claimant that there had been a discussion during the performance review meeting on 28th March 2019 [page 135] where Christine Coburn had discussed with the claimant oversharing and listening to the customers. The claimant agreed that this constituted raising the issue with her. He also highlighted to the claimant the notes from the meeting on 2nd May

2019 [pages 138- 139] in which, on the second page, Joanne Huddart had discussed some 'wobbles' that the claimant had, including discussing the importance of professionalism and consideration of the people she was working with. The claimant stated that she felt the feedback in the performance review meetings was too generic. Roy Williams could not see from the notes of those meetings that the claimant had asked for specifics at the time, and in his view the notes of the meeting on 28 March 2019 did refer to specific examples. The claimant said that she felt there were two reasons for her dismissal, the first was that her 'face did not fit' on the Talent Match contract, and the second was that she had informed the respondent of her pregnancy. She questioned the complaint sent by MYA, mainly attacking its authenticity, but did accept that the complaint was genuine once they had discussed the matter. The claimant said that the contents were very opinionated, and Roy Williams inferred that she was disagreeing with the contents. She provided no evidence to support that the complaint was not genuine and accurate, nor did she put forward any reason why the complaint may have been made in spite or may not have been truthful.

6.62 In relation to why she believed that her dismissal was related to her pregnancy, the claimant said that she felt this because she would need 11/2 hours off every two weeks, and the respondent would have to pay SMP.

6.63 At the end of the meeting he advised the claimant that he would review the points she had made and the evidence and reach a conclusion. He considered the matter and reached the conclusion that the decision to dismiss the claimant should be upheld. Ultimately, he was satisfied that there were behavioural issues with the claimant, and these had been discussed with her throughout her employment with the issues coming to a head in November 2019. He felt that there were valid grounds to dismiss the claimant at the time that she was dismissed and that the reasons for that decision were supported by evidence. He saw no connection between the claimant's pregnancy and her dismissal, it was clear that the only motivation was the claimant's behaviour and conduct. He could see a clear trigger point for the timing of the dismissal. He saw no reason why the complaint from MYA or the email from Sadie Ody were not completely genuine and accurate.

6.64 He therefore sent the claimant an outcome letter on 29 November 2019 in which he detailed the outcome and responded to the points raised by the Claimant in the meeting [pages 130- 131 of the bundle]. He explained how, as the claimant lacked two years' service, the respondent was not required to follow the disciplinary policy. He went through the other points made by the claimant, and gave his reasons for rejecting them. In particular the claimant had in the appeal accepted that the MYA complaint was genuine, and he was satisfied that her pregnancy was not in any way a factor in her dismissal.

6.65 After the dismissal, the respondent needed to replace the claimant. Ruth Price by email of 18 November 2019 (page 115 of the bundle) enquired whether the respondent had advertised the post, and offered to circulate it, though she had no one on her radar she could recommend. Joanne Huddart replied that as the claimant was appealing they could not advertise her post.

6.66 In terms of other projects that the claimant could have been re-deployed to, this was not actively considered, nor was it suggested by the claimant. There may have

been some smaller projects to which the claimant could have been deployed, but Gill Ditchburn did not want to risk placing the claimant in another setting.

7. Those, then are the relevant facts. There was no real dispute on most of the facts, and the Tribunal is quite satisfied that no witness has done anything other than tell the Tribunal the truth as they saw it. Where there has been any conflict of evidence, the Tribunal has preferred the accounts of the respondent's witnesses, as they are more corroborated by the documentation.

### **The submissions.**

#### **i) For the respondent.**

8. The parties made submissions. For the respondent Mr Ellison submitted that the only reason that the claimant was dismissed was the genuine concerns about her performance. There were such concerns throughout her employment. Sadie Ody and others had provided several examples. These were initially resolved informally, and the claimant had accepted this had occurred. He referred the Tribunal to the various 1 to 1 meetings, in particular those on 28 March and 2 May 2019. It was clear that the claimant was being told she needed to improve.

9. When the claimant have informed Sadie Ody of her pregnancy on 9 or 10 October 2019, the claimant had accepted that she had been happy, and had been supportive of her need for hospital appointments. The issues with MYA , however, continued. He referred to the documents of 1 November 2019, and the specific examples therein of the claimant's behaviour. Escalation was therefore entirely reasonable in those circumstances. The Performance review on 4 November 2019 was used to discuss these issues. It was a reasonable way to deal with them. It had no connection with the pregnancy , it was a normal meeting. The focus of the meeting was MYA's concerns, and the respondent had its own concerns about the claimant's behaviour.

10. Following that meeting was the meeting on 6 November 2019 between the claimant and Sadie Ody, where the issues were discussed again. This was at least the fourth time such issues had been discussed, and the need to improve raised with the claimant , but she took little notice of this. Immediately after this meeting the claimant went into a CV workshop being conducted by another career coach, and behaved in a way that led to her asking the claimant to leave the meeting. The claimant had not denied this.

11. To then hold the Performance Review meeting was a fair and reasonable response and nothing to do with the claimant's pregnancy. There were clear reasons for it , in particular the MYA complaints of 1 November , and the events of 6 November. This action was clearly and solely motivated by these triggers, and not the announcement of the pregnancy , which was several weeks earlier. The Review was the last resort, it was only the events of 6 November that the respondent felt that it had no choice but to take action.

12. Sadie Ody's decision not to attend with the claimant was clearly her own, and not because she had been told not to. The claimant attended on her own, and said she

was content to do so. She could respond to each point. Her suspension for one day, for which she was paid was not punitive, it was giving her time to prepare.

13. The respondent had clear , and genuine reasons for the dismissal. It genuinely believed the MYA complaints. The claimant's case that these were solicited is unsupported by any evidence. Pages 87 to 89 in the bundle show the email trail. The claimant had agreed that the complaint was a genuine one. The claimant does not appear to be able to make any other link between her pregnancy and her dismissal. It is only the timing of the two events that she can rely upon.

14. In terms of the appeal, the claimant does not in the claim form, make any claim that the appeal was any further act of discrimination. The claimant in the appeal was clearer as to the respondent's reasons for her dismissal. She was unable to advance any reason why the decision was wrong, or should be overturned.

15. In essence, there were already issues with the claimant's performance , an then an unsolicited complaint was received from MYA, followed by the meetings on 4 and 6 November , following which the claimant then went into the CV workshop. As a last resort the respondent then held the Performance Review. Pregnancy was not a factor in the claimant's dismissal at all, and the claim should be dismissed .

**ii) For the claimant.**

16. For the claimant , Mr Halson submitted that any evidence of the claimant's alleged performance issues before October 2019 should be discounted, as that had a only a tenuous link with her dismissal months later. The relevant events started when the claimant divulged that she was pregnant . Pages 70, and 75 and 76 show the respondent's knowledge of her pregnancy on 10 October 2019. The first documented complaint from MYA then comes on 11 October 2019, with Ruth Price's email.

17. There then follows the issue with the make-up which is noted on page 77, on 17 October 2019. There Joanne Huddart says she will be speaking to both the claimant and Anita. On 24 October there is then the further allegation, referred to as "toastgate", and the allegation that the claimant is abrupt. In fact he took the Tribunal through the sequence of events and documents from that point onwards up to the review meeting at which the claimant was dismissed.

18. He pointed out that there was nothing in the documentation from MYA, such as pages 90 and 91, or anywhere else, where MYA make it clear that they wanted the claimant to be take off the programme. They may want the issue addressed, but nowhere is it said that they want the claimant dismissed. Kim in her email of 1 November 2019 on page 88 refers to "some members of the Elevate staff team", referring to not just the claimant.

19. In the next scheduled meeting on 4 November 2019, these concerns were raised, but were left for the claimant speak further with Sadie Ody at their next meeting, due on 11 November 2019. That is how the respondent was prepared to deal with these matters. Then in a meeting on 6 November 2019, which was not the next scheduled meeting, the issues were discussed again. It was after that meeting, and the complaint about the claimant from Anita that the matter was escalated. The

claimant was not aware of Sadie Ody's email of 6 November 2019, and it was not discussed with her, or copied to her.

20. The next scheduled meeting was cancelled, and the claimant told not to come in on the following Monday. His was a significant change, as up until then these issues had been dealt with informally.

21. Once invited to the meeting on 12 November 2019 the claimant tried to get Sadie Ody to accompany her, unaware that she has caused the meeting to take place, and so cannot support her.

22. The respondent prepared for the meeting, taking advice, and preparing the document at page 97. This appears to be preparing to justify a decision which has already been taken. This was not problem solving or fact finding. The actual , unredacted complaints were only produced in the course of the hearing. It was clear that the respondent had made up its mind what it was going to do, and was then going to trawl through as many documents as it could find to justify the dismissal. Whilst fairness was not, he appreciated, the issue, the respondent had not used a problem solving approach, why had it not issued any warnings, but rushed into a meeting for dismissal?

23. Was this a case of third party pressure to dismiss ? MYA were simply trying to change things, not necessarily by dismissing the claimant . What had Gill Ditchburn meant by saying her hands were tied ? She seemed to mean that it was the claimant, by not taking on board the criticisms, rather than MYA, who was tying the respondent's hands. It appears to be that the incident on 6 November 2019 was the reason for the dismissal, not MYA. There was no investigation of this incident, and it was never put to the claimant. It was unlikely that this could be a last straw. The real reason here was the pregnancy.

24. He referred to s.136 of the Equality Act 2010 , as to the burden of proof. The meeting on 12 November 2019 followed a pre-determined agenda. The respondent was not really interested in what the claimant had to say. Then respondent has gone to great lengths to justify the decision, trawling back as far as possible, and trying to suggest that the claimant had been warned about her performance previously. This revealed how the respondent was seeking to cover something up. If it was the recent issues which were the reasons for the dismissal, why would it not simply rely upon those ? The answer was because it had to cover up the fact that these were not the real reason for the dismissal.

### **The Law.**

#### **Pregnancy or maternity discrimination.**

25. The claims are of direct discrimination, pursuant to s.19 of the Equality Act 2010, which provides :



**18 Pregnancy and maternity discrimination: work cases**

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

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

(a) *because of the pregnancy, or*

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

(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.*

**Discussion and Findings.**

26. There is only one claim before the Tribunal, that the claimant's dismissal was an act of direct pregnancy related discrimination. Whilst various facts are relied upon in support of the claim, none of them are advanced as claims themselves. This is a one issue case – that issue being the reason why the claimant was treated the way that she was in being dismissed. The burden of proof in direct pregnancy discrimination claims is the same as it is in all other direct discrimination claims. Section 136 of the Equality Act 2010, which provides that the reversal of burden of proof applies 'to any proceedings relating to a contravention of this Act'. It is expressly set out in the explanatory notes to the Act that in any claim where a person alleges discrimination, harassment or victimisation under the Act, the burden of proving his or her case starts with the claimant. Once the claimant has established sufficient facts, which in the absence of any other explanation, point to a breach having occurred, in the absence of any other explanation, the burden shifts onto the respondent to show that he or she did not breach the provisions of the Act. The Court of Appeal in **Greater**

**Manchester Police v Bailey [2017] EWCA Civ 425** held that 'It is trite law that the burden of proof is not shifted simply by showing that the claimant has suffered a detriment and that he has a protected characteristic or has done a protected act: see **Madarassy v Nomura International [2007] ICR 867** per Mummery LJ at paras. 54-56 (pp. 878-9).' This two stage test has recently been reaffirmed in the Supreme Court in the case of **Royal Mail Group v Efobi [2021] UKSC 33, [2021] 1 WLR 3863**.

27. In terms of what the 'something more' needs to be, Sedley LJ in the judgment of the Court of Appeal in **Mr S Deman v The Commission for Equality and Human Rights [2010] EWCA Civ 1279** at para. 19 said this:

*"We agree with both counsel that the "more" which is required to create a claim requiring an answer need not be a great deal. In some instances it will be furnished by non – response, or an evasive or untruthful answer, to a statutory questionnaire. In other instances it may be furnished by the context in which the act has allegedly occurred."*

Thus, it is not sufficient for the claimant to contend that she had the protected characteristic, and then suffered unfavourable treatment. She has to show "something more" to raise a prima facie case that the latter was because of the former.

28. Whilst no comparator is necessary for a pregnancy discrimination claim, it is nonetheless often instructive to examine whether there is any evidence to suggest that, had the protected characteristic not been of the nature that it was (i.e. the claimant was not pregnant), the claimant would have been treated any differently.

29. The Tribunal has searched for the "something more". It cannot be found in the reactions of any of the claimant's managers to her announcement of her pregnancy. She agreed in her evidence that each of them stated they were happy for her, and congratulated her. A risk assessment was then quickly carried out. Whilst it would be unseen by the claimant, the email exchange between Joanne Huddart and Christine Coburn on 10 October 2019 (page 70 of the bundle) is entirely consistent with an employer properly reacting to the notification, and indicating that it will honour the claimant's pregnancy and maternity entitlements.

30. Where then, is the something else that the claimant needs to reverse the burden of proof? The Tribunal cannot see anything. The claimant considers that her treatment was unfair, and it may have been, but where is the evidence that it was because she was pregnant? Frankly, there is none. The evidence is that the respondent had not even got the claimant's due date, had given no thought to her maternity leave or maternity cover, and had given no indication that her attendance for hospital appointments would be an issue, in fact, quite the opposite. All the claimant has is the timing of the decision to dismiss her and the announcement of her pregnancy. Additionally, it could be argued that she has the fact that the respondent did not follow its procedures in dismissing her, but that is equally explicable by her lack of service. She cannot point to any other non – pregnant employee who lacked the necessary service, but who was taken through the disciplinary procedure. In terms of her treatment being because of her pregnancy, therefore, there is no "something else". The claim fails at this stage.

31. If, however, the Tribunal were wrong on that, and the burden of proof did pass to the respondent, then the Tribunal considers there is ample evidence upon which the

respondent can show that the claimant's pregnancy had nothing to do with the decision to dismiss her. That is for a number of reasons. Firstly, whilst not to the extent that the claimant's employment was at risk, there is evidence that there were issues with her employment before the announcement of her pregnancy. In meetings in March and May 2019 issues were raised about her oversharing, needing to listen and a lack of professionalism. Secondly, it was not the respondent who was raising these issues, it was staff at MYA. Whether they were fair in doing so is not the issue, the fact is that they did. To the extent that the claimant feels that her dismissal was because she "did not fit" in the Talent Match project, or was so perceived, she may well be right, but that is, of course, a non – pregnancy related reason.

32. That there were some incidents at MYA, the claimant concedes. She concedes, for instance, that the make – up incident occurred. She concedes some of the issues raised about her interaction with some of the participants. Crucially, she concedes that she went into a CV workshop being conducted by another Mentor, and that there was then a complaint about this. This was immediately after she had spoken with Sadie Ody about some of the issues about her behaviour. That, the Tribunal notes, was the catalyst for the action that was then taken. None of this has anything to do with the claimant being pregnant, and everything to do with the perception that her employers, and more importantly, their funder MYA, had of the claimant. That perception, fair or not, was the reason why she was dismissed, and nothing else. The respondent, through all the dealings that the claimant had with management, said and did nothing to indicate that there would be any problem with her pregnancy. All the reactions to it were positive, swift action was taken to carry out a risk assessment, and her potential need for time off was unlikely to be a significant issue, however the claimant felt about it. The respondent may, the Tribunal accepts, may largely have made up its mind to dismiss before the meeting on 12 November 2019, which would be unfair in an unfair dismissal context. That does not mean, however, that the reason it did so was the claimant's pregnancy. The Tribunal still has to ask the reason why, and is quite satisfied that the reason was not related to the pregnancy. Further, the respondent did not have anyone "waiting in the wings" to take over, it then had to recruit to fill her post. These are not the actions of an employer with any problem with pregnant employees, which had previously, the evidence is, managed some 6 or 7 similar situations.

33. The claimant cannot complain of unfair dismissal, and had she been able to, this may well have been an unfair dismissal. Her pregnancy, however, does not afford her immunity from dismissal. It is unlawful to dismiss a woman because she is pregnant, not whilst she is pregnant. That is, in the Tribunal's view, what the claimant's real complaint is, and it fails.

Employment Judge Holmes

Date: 26 November 2021

RESERVED JUDGMENT SENT  
TO THE PARTIES ON 29 NOVEMBER 2021

FOR THE TRIBUNAL OFFICE

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