



EMPLOYMENT TRIBUNALS

Claimant Miss L Edwards

Respondent Shield Mechanical & Electrical Services Limited

Heard at: Exeter
(remotely)

On: 20 & 21 September 2021

Before:

Employment Judge Goraj

Members Ms Hewitt- Gray
Ms G Mayo

Representation

The claimant: Mrs S Anwar, case worker – Bristol Law Centre

The respondent: Mr P Arthur solicitor

RESERVED JUDGMENT

THE UNANIMOUS JUDGMENT OF THE TRIBUNAL IS that: -

1. The claimant was unfairly dismissed by the respondent in breach of section 99 of the Employment Rights Act 1996.
2. The claimant was unlawfully discriminated against by the respondent in breach of section 18 of the Equality Act 2010.
3. It is just and equitable to increase any compensatory award/any compensation for unlawful discrimination awarded to the claimant by 20% pursuant to section 207 A (2) of the Trade Union & Labour Relations (Consolidation) Act 1992.

4. It is just and equitable to reduce any compensation awarded to the claimant pursuant to section 124 of the Equality Act 2010 by 10 per cent for contributory fault.

REASONS

Background

1. The claimant was employed by the respondent from 19 October 2017 until 23 April 2019.
2. By a claim form presented on 22 July 2019, the claimant complained of unfair dismissal and unlawful discrimination because of pregnancy. The claimant's claim form is at pages 2-16 of the bundle.
3. The claimant's ACAS Early Conciliation Certificate records that: - (a) the claimant's EC notification was received by ACAS on 10 May 2019 and (b) the ACAS EC certificate was issued on 17 May 2019 (by email) (page 1 of the bundle).
4. The respondent's response form is at pages 17 – 25 of the bundle. The respondent denied the allegations including that: - (a) the claimant had informed Mr Jackson, HR, or any manager, of her pregnancy prior to her dismissal (paragraph 9 of the particulars of response at page 24 of the bundle) and (b) it had breached the ACAS Code.

The Bundle of Documents

5. The Tribunal was provided with an agreed bundle of documents to which a number of additional documents were added during the course of the hearing ("the bundle").

The witness statements and associated matters

6. The Tribunal received witness statements and heard oral evidence from: -
 - 6.1 The claimant
 - 6.2 On behalf of the respondent: - (a) Mr Grant Dimmock, apprentice electrician (b) Mr Daniel Jackson, director and (c) Mr L House, chairman of the respondent and of the group holding company.

7. There were significant factual disputes/ evidential inconsistencies relating to the events in question including in respect of the nature of the discussions between Mr Jackson and the claimant regarding her work and the discussions between Mr Jackson and Mr Dimmock on the evening of 18 April 2019. Overall, the claimant's oral evidence was consistent with her pleaded case and the Tribunal found the claimant to be a credible witness.
8. The Tribunal however had concerns about the credibility of the respondent's evidence including in particular :- (a) as Mr Jackson had lied to Mr House regarding his knowledge of the claimant's pregnancy (b) Mr Jackson/ Mr Dimmock gave inconsistent / contradictory evidence regarding their discussions about the claimant's pregnancy on 18 April 2019 (as referred to further below) (c) Mr Jackson was unable to provide specific details of his discussions with HR during the week of 15 April 2019 and (d) Mr Jackson contended in his oral evidence that the claimant had been provided with supporting documents at the hearing on 23 April 2019 which was wholly inconsistent with the respondent's own documentary evidence.
9. The Tribunal was further concerned in particular by :- (a) the complete absence of any documents relating to Mr Jackson's dealings with HR during the week of 15 April 2019/ on the morning of 23 April 2019, including with regard to the nature of such discussions and the setting up of the arrangements for the meeting on 23 April 2019 (the Tribunal enquired about the existence of any such documents but was informed that there were none) and (b) there was no acknowledgment in the respondent's grounds of resistance of the fact that Mr Jackson first became aware of the claimant's pregnancy on 18 April 2019 and further the respondent misleadingly contended at paragraph 9 of such response (page 24 of the bundle) that , " At no time in this meeting" (the meeting of 23 April 2019) " or before had the claimant informed Mr Jackson, human resources, or any manager she was pregnant".
10. The hearing was conducted remotely. This Judgment was reserved as there was insufficient time on the second day for the Tribunal to make/ deliver its judgment.

The Issues

11. At the commencement of the Hearing, the Tribunal confirmed with the parties, that the issues which the Tribunal are required to determine are as identified at paragraphs 7- 10 of the Case Management Order

dated 13 November 2019 (“the Order”) as clarified / as otherwise stated below : -

- 12.1 If the claimant succeeds in her complaint of unfair dismissal because of pregnancy in breach of section 99 of the Employment Rights Act 1996 (“the Act”) and/or unlawful discrimination because of pregnancy in breach of section 18 of the Equality Act 2010 (“the 2010 Act”), it was agreed that the Tribunal would also determine at this hearing whether any compensatory award/ any other compensation should be increased pursuant to section 207 A of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) in respect of any alleged failure on the part of the respondent to comply with the provisions of the ACAS Code of Practice 1 Code of Practice on Disciplinary and Grievance Procedures (2015) (“the ACAS Code”). The claimant relies on the following alleged breaches:- (a) paragraph 5 (failure to carry out necessary investigations to establish the facts of the case) (b) paragraph 9 (failure to provide the claimant with sufficient information to inform her of the nature of the problem) (c) paragraph 11 (failure to allow the claimant reasonable time to prepare her case) (d) paragraph 13 (failure to allow the claimant to be accompanied at the meeting and (e) paragraph 18 (failure to take appropriate action).
- 12.2 If the claimant succeeds in her complaint of automatically unfair dismissal because of pregnancy, the respondent confirmed that it does not seek to rely on paragraphs 7.3 or 7.4 of the Order (whether the claimant would have been fairly dismissed in any event if a fair procedure had been followed and/or had contributed to her dismissal) for the purposes of section 99 of the Act.
- 12.3 If the claimant succeeds in her complaint of discrimination because of pregnancy (as the claimant’s pregnancy was an effective cause of her dismissal) the respondent does however seek to rely on contributory conduct.
- 12.4 It was agreed that the Tribunal would confine its deliberations to the above matters at this stage and that any remaining issues relating to remedy (if relevant) would be considered separately.

THE FINDINGS OF FACT

- 13 The claimant was employed by the respondent from 19 October 2017 until her summary dismissal (with pay in lieu of notice) on 23rd April 2019. The claimant was initially employed as an administration assistant. At the date of her dismissal the claimant was employed as office administration manager
- 14 The respondent, which provides mechanical, electrical and associated services, employed approximately 30 staff at the time of the events in question. The respondent is part of a group of companies which has its head office in Bristol. At all relevant times the claimant was line managed by Mr Daniel Jackson (the dismissing officer) who is a director of the respondent. The chairman of the respondent and of the holding company is, and was at all relevant times, Mr Luke House (the appeals officer). The respondent/ respondent group has a Human resources team which included at the relevant time, Ms J Robb and Ms T Redmond. Ms J Robb provided advice / support to Messrs Jackson and House in respect of the claimant. The Tribunal has not been provided with any documentation relating to Mr Jackson's / House's dealings with HR in respect of the claimant.
- 15 The respondent/ Group has a number of policies as contained at pages 133- 155 of the bundle. The Tribunal has had regard in particular to:-
 - 15.1 The provisions of the disciplinary policy at pages 137- 139 of the bundle, including :- (a) that the policy is stated to apply to all employees (b) the principles set out at paragraph 1.2- 1.8 including that informal action would be considered where appropriate to resolve problems, that no disciplinary action would be taken until a reasonable investigation had been undertaken and that employees would be provided where appropriate with written copies of evidence and relevant witness statements in advance of a disciplinary meeting (c) the staged procedure which provided for the issue of warnings in the absence of gross misconduct and (d) the examples of conduct which was likely to be considered as gross misconduct. The procedure does not include any "short service" exemptions entitling the respondent to dispense with the disciplinary procedure in cases where an employee had less than two years' service.
 - 15.2 The respondent's equal opportunities and maternity policies at pages 139- 144 of the bundle. Messrs Jackson and

House told the Tribunal they have not received any equal opportunities training.

The claimant

16 The claimant entered into a personal relationship with Mr Grant Dimmock at the end of December 2018 / beginning of January 2019. When the claimant stayed overnight at Mr Dimmock's home the claimant would regularly leave Mr Dimmock's home at 8am and would arrive at the respondent's offices at or around 8.20 am. Mr Dimmock is, and was at all relevant times, employed by the respondent as an apprentice electrician. Mr Dimmock spends most of his working time on external customer sites. Mr Dimmock's mother is, and was at all relevant times, in a personal relationship with Mr Jackson's father-in-law and Mr Dimmock and Mr Jackson consider themselves as "family". In February 2019, the claimant discovered that she was pregnant. The claimant did not tell anyone other than Mr Dimmock about the pregnancy at this time. The claimant's expected date of confinement was 8 November 2019. The claimant gave birth to their child on 15 November 2019. The claimant's relationship with Mr Dimmock ended acrimoniously during June 2019. The claimant's ongoing dealings with Mr Dimmock continue to be acrimonious and they are currently involved in court proceedings.

The claimant's employment with the respondent

17 When the claimant commenced her employment with the respondent in October 2017 she was employed as an administration assistant working alongside the then office manager. The claimant was employed in such capacity on a full-time basis with an annual salary of £17,500 per annum. The claimant undertook general administration duties and after a while, also undertook additional duties relating to purchase orders, returns and time sheets. The claimant received Christmas bonuses in November 2017 and 2018 which she was told was awarded in recognition of her hard work, and also received a gift card of £50 in March 2018. The claimant received two pay rises during the course of her employment with the respondent.

Appointment as Office Administration Manager

18 On 31 December 2018, The claimant was promoted by Mr Jackson to the role of Office Administration Manager and her salary was increased to £22,000 per annum. The claimant commenced her new role in January 2019. The claimant was not issued with a revised contract of employment until 17 April 2019. The claimant was issued on that date with a Summary of Employment Terms, Contract of Employment and Job description which are at pages 53-64 of the bundle. The claimant accepted the contract and accompanying documents the same day. The claimant was

told by Ms Robb of HR on 17 April 2019 that the contract was being issued because of an impending audit.

- 19 The Tribunal has noted in particular from the above contractual documents that :- (a) the claimant's contractual hours of work are stated to be from 8.30am to 4.30pm on Monday to Thursday and 8am to 4pm on Friday (paragraph 9 of the Summary Terms- page 53) (b) it is stated at paragraph 11 of the Summary Terms that the claimant was entitled to an unpaid 30 minute break for lunch between 12pm and 1.30pm and two paid breaks of 15 minutes per day paragraph 11 – page 53 of the bundle) (c) the references to the respondent's disciplinary and grievance procedures (paragraph 9 of the Contract – page 57 including that they are stated in the Contract to be non – contractual) and (d) the contents of the Job description (page 64 of the bundle) relating to the claimant's main duties (including the claimant's responsibilities for time sheets and the imputing of information, updating of project folders and other finance related duties) together with the stated qualities for the post.
- 20 Mr Jackson contended in his oral evidence that the claimant was required to attend for work at 8:00 AM on Monday to Thursday in order to compensate for the otherwise 30-minute unpaid break at lunchtime. This was disputed by the claimant who further contended that she did not, in any event, take a break at lunchtime. The Tribunal rejects the respondent's contentions regarding such matters as there is no reference to any such requirement in the Summary of terms or the Contract referred to above. Further, The Tribunal accepts the claimants evidence that she did not, in any event, take a break at lunchtime.
- 21 Following her promotion, the claimant was relocated by the respondent from an upstairs office which she shared with other staff, to a downstairs office which she shared with Mr Jackson. The purpose of the move was to enable her to focus on her responsibilities for finance. The Tribunal rejects the respondent's contention that the principal reason for such move was because of the claimant's excessive talking with other staff as this is wholly inconsistent with the respondent's decision to promote the claimant to a management position and award her a significant pay rise.
- 22 Following the claimant's appointment as Office Administration Manager, the respondent recruited an administration assistant to assist the claimant with administrative duties.

Informal discussions with the claimant

- 23 The respondent contends that within weeks of the claimant's promotion to Office Administration Manager, Mr Jackson had concerns regarding the claimant's competence and conduct and that Mr Jackson had three

informal discussions with the claimant regarding such concerns between December 2018 and 23 April 2019. The respondent contended that such concerns related to the claimant's failure to start work on time, time spent talking to colleagues, the failure to keep project files up to date and to collect time sheets from operatives on a timely basis. The respondent did not however contend that the claimant was warned that her employment was at risk. The respondent was unable to confirm the dates of any such discussions and did not make/ retain any notes of any such discussions.

- 24 The claimant accepted that Mr Jackson had discussed with her, as part of their normal day to day dealings, issues relating to the compilation of project folders and the collection of time sheets from the engineers, albeit she says that she explained to him the difficulties which she was experiencing in obtaining completed time sheets from the engineers. The claimant denied that Mr Jackson had discussed the other alleged concerns with her or that she had ever been informed that her work was below the required standard/ that she would be dismissed if her work did not improve.
- 25 Having given the matter careful consideration, the Tribunal is satisfied that Mr Jackson did have discussions with the claimant between February – April 2019, as part of their day to day dealings, regarding issues relating to the compilation of the project folders and the obtaining of completed time sheets from the engineers. The Tribunal is not however satisfied that the claimant was at any time warned that her work had fallen below the required standard or that her employment was at risk if she did not address such matters. Further, the Tribunal is not satisfied that Mr Jackson raised with the claimant any concerns relating to any lateness for work or time spent talking to colleagues. When reaching its conclusions the Tribunal has taken into account in particular, the absence of any relevant documentary evidence in support of the respondent's contentions save that is recorded in the minutes of the review/ dismissal meeting on 23 April 2019 (at page 67 of the bundle), that Mr Jackson stated that he had previously raised issues with the claimant regarding the collection of the time sheets from the engineers and that the claimant acknowledged that she was aware of the requirements concerning the project files/ did not dispute that issues relating to the project files had been raised with her previously. The Tribunal has further noted however that there is no reference in such notes to any discussions with the claimant regarding any lateness for work or that there had been any previous discussions regarding the time the claimant had spent talking with colleagues.

Mr Jackson's dealings with HR in April 2019

- 26 The respondent contends that :- (a) Mr Jackson discussed his concerns regarding the claimant with HR on 3 occasions between 8 and 17 April

2019 following complaints from colleagues about the claimant's competence and conduct (b) Mr Jackson informed HR that he was thinking of instituting disciplinary proceedings and was informed by HR that that claimant needed to be issued with a contract before instituting any disciplinary proceedings (c) he was advised by HR of the possibility of a short service review with the claimant i.e. without adhering to the full disciplinary procedure as the claimant had less than 2 years' service (d) by 17 April 2019 his mind was 99 per cent made up that he would terminate the claimant's employment pursuant to a short service review process and (e) that everything was in place for it to go ahead on the following Tuesday (23 April 2019) following the Bank Holiday.

- 27 Having given the matter careful consideration, the Tribunal is satisfied on the balance of probabilities that :- (a) Mr Jackson had discussions with the HR department during the first half of April 2019 about concerns relating to the claimant's work (b) as a result of such discussions Mr Jackson was advised by HR that the claimant needed to be issued with a contract before any disciplinary proceedings (including any dismissal) could be instituted (c) the contract of employment /summary terms and job description was issued by HR (at which time the claimant was told that it was being issued for audit purposes) and accepted by the claimant on 17 April 2019 (d) HR discussed with Mr Jackson the possibility of undertaking a "short service review" as the claimant had less than 2 years' service and (e) no decision had however been taken by Mr Jackson by close of business on 18 April 2019 to commence disciplinary proceedings and/or to terminate the claimant's employment (including to arrange any review meeting on 23 April 2019).
- 28 When reaching the above findings, the Tribunal has taken into account in particular the following:- (a) the Tribunal has received no oral evidence from the respondent's HR team or any documentary evidence of their dealings with Mr Jackson in relation to the claimant to substantiate Mr Jackson's contentions that arrangements had been set in place for a review meeting / possible termination of the claimant's employment on 23 April 2019 (b) the findings of the Tribunal concerning the discussions between Mr Jackson and the claimant on 18 April 2019 (as referred to below) and (c) Mr Jackson accepted in his oral evidence that the letter inviting the claimant to the review meeting on 23 April 2019 was prepared that day.

The discussions between the claimant and Mr Jackson on 18 April 2019

- 29 The claimant contended that she had had a discussion with Mr Jackson at work on 18 April 2019 during which it was agreed that she would get the documentation and spreadsheets up to date in readiness for a meeting to discuss them on his return from his impending holiday to New York. The claimant also contended that Mr Jackson told her on 18 April

2019 that he would speak to the engineers to ensure that they were aware which paperwork had to be completed and by when. Mr Jackson denied that any such discussion had taken place. The Tribunal prefers, on the balance of probabilities, the claimant's evidence regarding such discussions. When reaching this conclusion, the Tribunal found the claimant to be a more credible witness than Mr Jackson for the reasons explained at paragraphs 8-9 above. There was no suggestion at this meeting that the claimant's employment was at risk. Mr Jackson was on leave in New York between 25 and 29 April 2019.

The events at the public House on the afternoon/ evening of 18 April 2019

- 30 On the late afternoon/ evening of 18 April 2019 (which was the Thursday before the Easter holiday weekend), a number of staff from the respondent, including Messrs Jackson and Mr Dimmock, visited a local public house. The claimant attended briefly before leaving to visit her parents. Mr Jackson spoke to Mr Dimmock about the claimant during the course of the evening as referred to below. The respondent's evidence regarding the discussions between Mr Jackson and Mr Dimmock on the evening of 18 April 2019, is however inconsistent/ contradictory as explained below.
- 31 In summary, Mr Dimmock contended in his witness statement that:- (a) on the evening of 18 April 2019, Mr Jackson had a private discussion with him outside the pub in the works' van during which he gave Mr Dimmock the heads up, as a family member, that things were not working out with the claimant who had been given lots of chances at work however people were moaning about her starting late and her attitude (b) Mr Dimmock shared with Mr Jackson that the claimant had told him that Mr Jackson had spoken to her about work issues (c) he then told Mr Jackson that the claimant had just found out that she was pregnant and (d) Mr Jackson said that it was really bad timing as everything was already set with HR for Tuesday.
- 32 Mr Dimmock stated in his oral evidence to the Tribunal regarding the events of the evening of 18 April 2019 that: - (a) when he told Mr Jackson about the claimant's pregnancy Mr Jackson became upset and said that things were already in place to deal with the issues but did not say what was in place and (b) that Mr Jackson did not tell him that he was going to dismiss the claimant.
- 33 In a statement which Mr Dimmock gave to the respondent on 15 August 2019, as a part of an internal investigation by the respondent (pages 118-119 of the bundle), Mr Dimmock however, stated that Mr Jackson had

told him in the pub on 18 April 2019 that he was “letting Libby go on Tuesday” before he told Mr Jackson about the claimant’s pregnancy.

- 34 In summary, Mr Jackson stated in his witness statement regarding the events of 18 April 2019 that :- (a) he asked Mr Dimmock if he could have a quiet chat with him (b) when they got in the van he told Mr Dimmock that things were not working out with the claimant’s work and that because he was “family” he wanted to give him the “heads up” that the claimant had been given loads of chances but people were moaning about the claimant starting work and her attitude (b) Mr Dimmock told him that the claimant had told him that Mr Jackson had spoken to her previously regarding work issues (c) Mr Dimmock then told him that the claimant had just found out that she was pregnant and (d) he told Mr Dimmock that it was really bad timing as everything was set with HR.
- 35 In summary, Mr Jackson stated in this oral evidence however: - (a) that he told Mr Dimmock at the pub on 18 April 2019 that he would be having a meeting with the claimant on Tuesday when would be terminating the claimant’s employment and (b) that he was upset when he heard about the claimant’s pregnancy as he was aware of the implications for family relations.
- 36 Having given careful consideration to the above evidence, the Tribunal is satisfied, on the balance of probabilities, that the discussions between Mr Dimmock and Mr Jackson regarding the claimant at the pub on 18 April 2019 were as follows :- (a) Mr Jackson told Mr Dimmock that there were issues with the claimant’s work and that because he was “family” he wanted to give him the heads up (b) Mr Dimmock told Mr Jackson that the claimant had just found out that she was pregnant (c) Mr Jackson told Mr Dimmock that it was bad timing as HR were involved (d) Mr Jackson did not, however, tell Mr Dimmock that he would be having a meeting with the claimant on Tuesday 23 April 2019 or that he would be terminating the claimant’s employment.
- 37 When reaching the above conclusions, the Tribunal has taken into account in particular that :- (a) Mr Jackson does not state in his witness statement that he had told Mr Dimmock that he had arranged a meeting with the claimant on 23 April 2019 or that he had decided to terminate the claimant’s employment (b) there is no documentary or other evidence to substantiate that a meeting had been arranged/ set up for Mr Jackson and the claimant on 23 April as at 18 April 2019 (or in the light of the findings at paragraph 27 above) that any decision had been taken as at 18 April 2019 to commence disciplinary proceedings/ terminate the claimant’s employment) (c) that Mr Jackson accepted in his oral evidence that the letter issued to the claimant at the meeting on 23 April 2019 was not prepared until that day (d) the alleged arrangement of a

meeting prior to 23 April 2019 is inconsistent with the claimant's evidence (which was accepted by the Tribunal) that it was agreed between Mr Jackson and the claimant on 18 April 2019 that they would have a meeting following his return from New York (on 29 April 2019) to discuss the matters referred to at paragraph 29 above and (d) the inconsistencies in Mr Dimmock's and Mr Jackson's evidence as set out above as to what had been decided/ had been said on 18 April 2019 regarding the claimant's position going forward.

- 38 A number of other staff were told about the claimant's pregnancy at the pub on 18 April 2019. The claimant was upset when she was informed by Mr Dimmock that her pregnancy was known about as she was concerned that it was too early in the pregnancy for it to be made common knowledge. Mr Dimmock did not disclose to the claimant the contents of his discussions with Mr Jackson on the evening of 18 April 2019.

The events of 23 April 2019

- 39 When the claimant arrived for work on Tuesday 23 April 2019 (following the Easter Bank holiday weekend) Mr Jackson was not in their shared office. The claimant called Mr Jackson's mobile a few times on the morning of 23 April 2019, to ascertain where he was as other members of staff were enquiring about his whereabouts but did not get a response. The claimant received an email from Mr Jackson at 12.42 addressed to her and other staff stating that he was at the respondent's head office that day and inviting her and 3 others to meet him at the head office at assigned time slots. The claimant was given the final time slot of 3.30pm to 4pm. The email did not give any indication of what Mr Jackson wanted to discuss with them.

The meeting on 23 April 2019

- 40 The claimant attended the meeting as requested on 23 April 2019. Mr Jackson was accompanied by Ms Robb of HR. When the claimant arrived Mr Jackson threw an envelope across the table and asked her to read the letter inside. Mr Jackson told the claimant that Ms Robb was present to take notes of the meeting. The letter is at pages 65 – 66 of the bundle. Mr Jackson confirmed to the Tribunal that the letter was prepared on 23 April 2019. Mr Jackson further confirmed to the Tribunal that he did not inform HR about the claimant's pregnancy.
- 41 In brief summary, the letter invited the claimant to attend a review meeting on 23 April 2019 at 3.30pm, contained a section entitled "background" in which Mr Jackson gave a summary of concerns which he stated had started in the early part of January 2019 when the claimant was moved downstairs due to the amount of time she had spent talking to colleagues and the lack of attention to detail which she was giving to her new role. Mr Jackson also stated that he had had several informal

meetings with the claimant regarding her failure to complete tasks in her new role the last being on 16 April 2019 and that he felt that her general attitude and standard of work had fallen below what was expected of her. The letter included 3 allegations relating to :- (a) maintenance of project files (b) failure to collect job sheets in a timely manner and (c) complaints from other staff about starting late and excessive time spent talking to others. Mr Jackson advised the claimant that she was entitled to be accompanied by a work colleague of trade union representative and that her employment was at risk of termination.

- 42 Mr Jackson contended in his oral evidence that the documentation at pages 89- 99 of the bundle was also provided to the claimant on 23 April 2019 at the commencement of the meeting. This is denied by the claimant who says that the only document which she received was the letter. The Tribunal is not satisfied that any documentation was provided to the claimant other than the letter of invitation. When reaching this conclusion the Tribunal has taken into account in particular, that there is no reference to any such documentation in the letter dated 23 April 2019, in the minutes of the meeting or in the subsequent letter of dismissal.
- 43 The respondent's notes of the meeting on 23 April 2019 (which are incorrectly dated as 24 April 2019) are at pages 67 – 69 of the bundle. The Tribunal is satisfied that the notes are a broadly accurate account of what occurred subject to the matters referred to below.
- 44 The claimant confirmed at the meeting that she had read and understood the letter, that she did not wish to be accompanied at the meeting and was happy to proceed. The Tribunal however accepts the claimant's evidence that she was taken completely by surprise by the nature of the meeting and did not have a proper opportunity to consider her position. The Tribunal further accepts the claimant's evidence that she only agreed to proceed unaccompanied as she could not think of anyone who could act as a companion as such short notice.
- 45 Mr Jackson briefly discussed with the claimant the 3 allegations listed in the letter in summary as follows:- (a) the project files – the claimant acknowledged that there had been difficulties with the project files but stated that the problems had arisen because other people had had access to the files and that the difficulties had been exacerbated by the fact that they had had 5 jobs running for one client. The claimant further stated that the problems had been caused by communication but acknowledged that they needed to be dealt with correctly and stated that things were a lot clearer now (b) job sheets - the claimant acknowledged that there had been difficulties with the job sheets and that Mr Jackson had previously explained to her the importance of collecting the sheets. The claimant however, described to Mr Jackson the difficulties which she had had collecting the job sheets from the engineers and that she had

been chasing them until they submitted the forms. The claimant also stated that it was her understanding that Mr Jackson wanted her to get the engineers to send the form to the manager and (c) talking to other staff – Mr Jackson told the claimant that he had received complaints from 3 members of staff about her being upstairs talking about non work matters– the claimant acknowledged that she was a chatty person and accepted that when she had gone upstairs to talk about work she had got talking about non work issues. The claimant also stated that she was seeking to address the issue.

- 46 When the claimant finished her comments, Mr Jackson told the claimant that the respondent had taken the decision to terminate her employment with immediate effect. Mr Jackson further stated that he had raised the issues with her previously on numerous occasions however there had been no improvement. Mr Jackson further advised the claimant that her contract was therefore terminated, and she would be paid 4 weeks' notice.
- 47 Mr Jackson asked the claimant whether she understood why he had taken the decision. The claimant is recorded in the notes as replying "yeah, ok". The claimant accepts that she said this but contends that she was upset and crying strongly at this point and that it was an ironic comment. The Tribunal accepts the claimant's explanation. The claimant left the meeting in tears and was escorted off the premises by Ms Robb.
- 48 It is agreed that neither party made any reference to the claimant's pregnancy on 23 April 2019.

The claimant's letter of dismissal

- 49 The claimant elected to collect her letter of dismissal from the respondent's premises on 24 April 2019. The letter of dismissal dated 24 April 2019 is at pages 70 – 71 of the bundle. In summary, the letter states that :- (a) that the claimant attended a review meeting on 23 April 2019 (b) the claimant was advised in advance of her right to be accompanied (which she chose not to exercise) and that her performance and suitability for the role of Office Administration Manager would be discussed (c) listed the 3 allegations contained in the letter of invitation and (d) recorded that the claimant had confirmed that she had received the invitation in advance of the hearing and was aware of the issues to be discussed and understood the decision (d) confirmed that the claimant's last day of service was 23 April 2019 and that she would be paid in lieu of notice and (e) advised the claimant of her right of appeal.
- 50 When the claimant attended the respondent's head office on 24 April 2019 to collect her letter of dismissal, she spoke to Mrs Robb and

Redmond of HR. The claimant became upset during their conversation and told them that she would be homeless. The claimant also told them that she was 8 weeks pregnant. The claimant requested and was given a copy of the respondent's handbook. The respondent also gave the claimant information regarding her maternity rights/ entitlements.

The appeal process

- 51 The claimant appealed against her dismissal by an email to Mr House dated 25 April 2019. This email is at pages 72 – 73 of the bundle. In very brief summary, the claimant complained that her dismissal was unfair and unlawful including that she had not been given any advance warning of the meeting and/or given an opportunity to prepare and/or to be accompanied or to defend herself and that she was too upset to ask any questions. The claimant acknowledged that on a couple of occasions Mr Jackson had expressed his grievances if things were not working however, she had not been given a chance to defend herself or improve or told that it could lead to an improvement notice or warning. The claimant stated that she did not wish to discuss the allegations “in this instance” as she was basing her request for an appeal on the “legality” of the whole process being withheld. The claimant stated that she had not been provided with any evidence to support the allegations which led her to believe that the dismissal was definitely personal. The claimant did not make any reference to her pregnancy.

- 52 Mr House, who was accompanied by Ms Robb, conducted an appeal hearing on 2 May 2019. The respondent's notes of the meeting are at pages 75 – 81 of the bundle. The Tribunal is satisfied that the minutes are a broadly accurate account of the meeting. The claimant gave a detailed response to the allegations including why she did not believe that her dismissal was justified which Mr House agreed to investigate further.

- 53 Mr House wrote to the claimant by letter dated 9 May 2019 dismissing her appeal as he stated that he considered that the decision to dismiss the claimant was reasonable in the circumstances. This letter is at pages 83-84 of the bundle. The letter addressed the procedural issues raised by the claimant rather than the substance of the allegations. In brief summary Mr House stated that he was satisfied that the procedure adopted by Mr Jackson complied with the law including that :- (a) the claimant was given an opportunity to read the letter dated 23 April 2019 (b) that the claimant had confirmed that she understood the contents and was happy to proceed unaccompanied (c) if the claimant had wished to have time to prepare and/or to arrange to be accompanied she could have asked for an adjournment of alternative hearing date (d) that the claimant was given an opportunity to respond to the allegations during the hearing and (e) that there was no evidence that that the decision to dismiss the

claimant was anything other than work related and was not personal. Mr House also stated that the ACAS Code was for guidance only.

The claimant's email dated 9 May 2019

- 54 The claimant responded to Mr Luke's letter by an email dated 9 May 2019 challenging the dismissal of her appeal. This email is at pages 84-85 of the bundle. In brief summary, the claimant challenged the outcome of the appeal and said that she would be taking the matter to ACAS on the grounds of Mr Jackson divulging personal information about her being pregnant and telling colleagues that she had been sacked. The claimant also questioned how Mr House could say that it was not personal as Mr Jackson was told that she was pregnant on the evening of 18 April 2019 and she was fired instantly the next working day. The claimant also stated that although she had been with the respondent for less than 2 years she had a right to proceed to an Employment Tribunal because she was pregnant. Mr House stated that he was unaware of the claimant's pregnancy until he received this email - this is not challenged by the claimant.
- 55 Following receipt of the claimant's email, Mr House asked Mr Jackson directly whether he had been made aware of the claimant's pregnancy as alleged by the claimant. Mr Jackson denied that he had been aware of the claimant's pregnancy. Mr Jackson accepts that he lied to Mr House regarding such knowledge.

The letter dated 15 May 2019

- 56 Mr House replied to the claimant by letter dated 15 May 2019 rejecting the claimant's concerns and confirming her dismissal. This letter is at pages 86 – 88 of the bundle. In summary Mr House :- (a) denied that the respondent had acted in breach of the ACAS Code or otherwise acted unlawfully with regard to the claimant's dismissal (b) listed (and enclosed with the letter the documents at pages 89 – 99 of the bundle) evidence which he contended supported the informal concerns which he stated had been raised informally by Mr Jackson with the claimant in the weeks prior to the claimant's review meeting (c) stated that he had spoken to Mr Jackson who had categorically denied that anyone had told him on the evening of 18 April 2019 that the claimant was pregnant (and noted that the claimant had not mentioned her pregnancy during any of the subsequent meetings) and (d) stated that he considered that the claimant's dismissal was reasonable in the light of the ongoing issues which Mr Jackson had with the claimant's work and that he did not believe that the claimant's dismissal was in anyway connected to her pregnancy.

Other matters

57 The respondent included, at pages 100 -119 of the bundle, emails from various managers/ staff, which are all dated 13 May 2019, in which they raise a range of alleged concerns regarding the conduct and capability of the claimant. We have however placed limited weight on these emails for the following reasons:- (a) none of them are signed and/or have been submitted as formal witness statements / have been supported by oral evidence which can be challenged/ tested as part of the Tribunal process (b) all of the emails appear to have been sent in response to a request for information from Mr Jackson – the Tribunal has not however been provided with a copy of any request for information by Mr Jackson (d) none of the writers state in their emails that they raised any concerns with Mr Jackson regarding the claimant during the course of employment with the respondent and (e) the emails are dated 13 May 2019 which is 3 days after the claimant's EC notification was received by ACAS.

Matters relating to the claimant's conduct and capability

58 In so far as we are required to determine such matters for the purposes of the Issues identified above, we are satisfied that the respondent has established, on the balance of probabilities, that at the time of the claimant's dismissal Mr Jackson had concerns relating to the claimant's work in respect of - (1) the administration and updating of project folders and (2) the collation of job sheets from engineers.

59 When reaching such conclusions, we have taken into account in particular:- (a) the documentation contained at pages 89 – 99 of the bundle and (b) the claimant's acknowledgement during the disciplinary/ appeal processes of issues relating to such matters/ that they had been raised with her by Mr Jackson (pages 67 and 79 of the bundle). The Tribunal is not however satisfied that Mr Jackson regarded such matters to be of serious concern in the light, in particular of the following :- (a) no warnings were issued to the claimant pursuant to the terms of the respondent's disciplinary procedures and (b) our findings concerning the discussions between Mr Jackson and the claimant on 18 April 2019 during which Mr Jackson agreed to speak to the engineers regarding the timely completion of the necessary paper work and review the documentation with the claimant following his return from leave (paragraph 29 above). Moreover, there was no indication by him during that discussion of any such serious concerns.

60 The Tribunal has also considered the remaining allegations relating to the claimant's alleged lateness for work, eating breakfast at work, excessive talking at work and related alleged complaints from staff

regarding such matters. The Tribunal is not however satisfied, save where indicated below, that the respondent has established, on the balance of probabilities, any founded concerns regarding such matters.

- 61 When reaching such conclusions the Tribunal has taken into account in particular :- (a) its findings of fact at paragraphs 16 and 19-20 above regarding the claimant's contractual hours of work and times of arrival for work including that she did not take any lunch break – which findings do not support the respondent's contention that the claimant was late for work (b) that the claimant admitted eating breakfast on 2 occasions but otherwise denied the allegations together with the absence of any sworn supporting evidence from the respondent regarding such matters (c) whilst the claimant admitted that she was a "chatty person" and spent significant time on the telephone the Tribunal however accepts that claimant's evidence that it was necessary for her spent a lot of time on the telephone chasing the engineers for outstanding timesheets (which is supported by the Tribunal's findings (paragraph 29) concerning the events of 18 April 2019 when Mr Jackson agreed to speak to the engineers about was required of them (d) the Tribunal 's findings at paragraph 21 regarding the reasons why the claimant was moved downstairs including the rejection by the Tribunal of the respondent's contention that this was because of excessive talking on the part of the claimant (e) Mr Jackson was unable to provide details of any alleged complaints being made to him by other members of staff prior to the claimant's dismissal regarding such matters and further there is no reference in any of the emails dated 13 May 2019 (pages 100-119) to any such complaints being made by staff to Mr Jackson prior to the claimant's dismissal and (f) there was no evidence that Mr Jackson raised such matters with the claimant prior to the meeting on 23 April 2019.

CLOSING SUBMISSIONS

- 62 We have given careful consideration to the closing submissions of the parties. Neither party sought to rely on any legal authorities.

THE LAW

The claimant's complaint of unfair dismissal because of pregnancy

- 63 The Tribunal has had regard in particular to (a) section 99 of the Act together with Regulation 20 of the Maternity & Parental Leave etc Regulations 1999 and (b) section 207A of the 1992 Act/ the provisions of the ACAS Code.

The claimant's complaint that she was unlawfully discriminated against because of pregnancy

- 64 The Tribunal has had regard in particular to:- (a) sections 18, 39, 123, 124 and 136 of the 2010 Act (b) section 207A of the 1992 Act / the provisions of the ACAS Code and (c) the Guidance contained in the Equality and Human Rights Commission Code of Practice on Employment (2011)

THE CONCLUSIONS OF THE TRIBUNAL

The claimant's complaint of unlawful discrimination because of pregnancy (section 18 of the 2010 Act)

- 65 The Tribunal has considered first the claimant's complaint of unlawful discrimination because of pregnancy in breach of sections 18 and 39 of the 2010 Act.
- 66 The Tribunal has reminded itself in particular that: - (a) it is the responsibility of the claimant to prove facts from which the Tribunal could decide or draw an inference that she has been discriminated against because of her pregnancy (b) if the claimant is able to prove such facts the burden shifts to the respondent to prove, on the balance of probabilities, that it did not act unlawfully. Further, if the respondent's explanation is inadequate or unsatisfactory the Tribunal must find that the act was unlawful (c) the Tribunal has to consider whether the claimant's pregnancy was an effective cause rather than the effective cause of the unlawful treatment including whether it had a significant influence (which means for these purposes more than minor or trivial) (d) the alleged act of discrimination is the claimant's dismissal and the alleged discriminator is Mr Jackson and (e) the claimant does not contend that Mr House discriminated against her because of her pregnancy.

The submissions of the parties

- 67 In brief summary, it was contended on behalf of the claimant that she had established facts from which the Tribunal could and, moreover, should conclude that the claimant's pregnancy was the effective cause of her dismissal. The claimant relied in particular on the following matters :- (a) prior to the discovery of her pregnancy the claimant was regarded as a good employee who had received pay rises and other bonuses/ gifts and was promoted in January 2019 (b) the claimant was dismissed by Mr Jackson on the first working day following the discovery of her pregnancy by Mr Jackson (c) the respondent has not provided any details of the alleged informal discussions with the claimant concerning any work

issues and further no concerns were raised with the claimant in accordance with the respondent's disciplinary procedure / the ACAS Code (d) the respondent has not produced any documentary evidence relating to his discussions with HR during the week preceding the claimant's dismissal including with regard to any arrangements for the meeting on 23 April 2019 (e) there was a dispute between Mr Jackson/ Mr Dimmock as to what was discussed on the evening of 18 April 2019 including whether Mr Jackson told Mr Dimmock that he was going to terminate the claimant's employment and (f) Mr Jackson/ Mr House had not received any equal opportunities training.

- 68 In brief summary, it was contended on behalf of the respondent that :- (a) the claimant did not make any reference to her pregnancy at the review / appeal meeting or at any time thereafter until 9 May 2019 and the claimant did not therefore consider that her pregnancy was the reason for her dismissal (b) the claimant was issued with a contract of employment on 17 April because HR had identified a potential financial penalty if a contract was not in place by the time of the claimant's dismissal (c) the claimant was aware of the issues relating to her performance – the claimant admitted at the review hearing that Mr Jackson had previously raised issues with her concerning the time sheets and that she admitted being a “chatty person”/ “ a nightmare”. Further the claimant did not challenge the substance of the allegations at the appeal and (d) the reason for the claimant's dismissal was her performance / conduct as substantiated by the documentation / statements in the bundle and if she had done her job properly, she would have still been employed by the respondent.

The conclusions of the Tribunal - complaint of discrimination because of pregnancy

- 69 Having given the matter careful consideration, the Tribunal is satisfied that the claimant has established facts from which the Tribunal could decide, in the absence of any other explanation, that her pregnancy was an effective cause of her dismissal.
- 70 When reaching this conclusion the Tribunal has taken into account in particular, the following finding of facts:-

70.1 The claimant was promoted to the position of Office Administration Manager with effect from 31 December 2019 at which time she received a pay rise.

70.2 The claimant was subject, at the time of her dismissal, to the terms of the respondent's disciplinary procedure which was

stated to apply to all employees and which contained a detailed procedure (including staged warnings in the absence of gross misconduct to be issued prior to dismissal/ investigations prior to disciplinary action/ dismissal). The claimant was not subject to any such warnings prior to her dismissal.

70.3 On 18 April 2019 (the last working day prior to the Easter Bank holiday), Mr Jackson agreed with the claimant that she would prepare agreed information/ documentation to review with Mr Jackson on his return from leave (between 25 and 29 April 2019). There was no suggestion at this meeting that the claimant's employment was at risk (including that any "review meeting" had been arranged for 23 April 2019).

70.4 On the evening of 18 April 2019, Mr Jackson had a discussion with Mr Dimmock as set out at paragraph 36 above. Mr Jackson did not tell Mr Dimmock about any meeting on 23 April 2019/ any decision to commence disciplinary proceedings/ to terminate the claimant's employment. Mr Jackson found out about the claimant's pregnancy.

70.5 Mr Jackson was absent from the office, which he shared with the claimant, on the morning of 23 April 2019. At around midday the claimant received an email inviting her to a meeting at 3.30pm. The email gave no details of the purpose of the meeting.

70.6 When the claimant attended the meeting at 3.30pm she was given a letter dated 23 April 2019 (which the respondent accepted was prepared that day) inviting her to a review meeting to discuss allegations relating to her performance/ conduct which could result in her dismissal. The claimant was not provided with any supporting documentation. Following a discussion with Mr Jackson the claimant was dismissed with immediate effect (with pay in lieu of notice).

70.7 Mr Jackson did not advise the respondent's HR department of the claimant's pregnancy on the morning of 23 April 2019 and subsequently told Mr House (when asked a direct question) that he was unaware of the claimant's pregnancy at the time of her dismissal (which was not true).

71 In the light of the above, the Tribunal is satisfied that the claimant has established such facts to pass the burden of proof to the respondent, pursuant to section 136 of the 2010 Act, to show, on the balance of

probabilities, that the claimant's pregnancy was not an effective cause of the claimant's dismissal.

72 Having given the matter careful consideration, the Tribunal is not satisfied that the respondent has given an adequate / satisfactory explanation to discharge such burden. When reaching this conclusion the Tribunal has taken into account in particular the following:-

72.1 The respondent has failed to produce any oral evidence from HR or any documentary evidence whatsoever of Mr Jackson's dealings with HR during week commencing 15 April 2019 to substantiate his contentions that:- (a) he had at that time serious concerns regarding the claimant's performance/ conduct/ was contemplating (or had decided upon) her possible dismissal and /or (b) that arrangements had been made prior to the evening of 18 April (when he first became aware of the claimant's pregnancy) to conduct a review meeting on 23 April 2019 at which he proposed to consider the claimant's possible dismissal.

72.2 The evidence (including the emails from staff dated 13 May 2019) which the respondent has submitted in support of its contentions that there were serious concerns relating to the claimant's performance and conduct was not collated / submitted until after the claimant's dismissal /the rejection of the claimant's dismissal/ appeal (and notwithstanding Mr Jackson's contention that supporting documentation was provided to the claimant at the hearing on 23 April 2019.

72.3 Further, the emails from staff dated 13 May 2019 (which were sent to Mr Jackson 3 days after ACAS received the claimant's EC notification) in response to an undisclosed request for information from Mr Jackson contain no references to any previous complaints being made by staff to Mr Jackson regarding the claimant's performance or conduct.

72.4 Mr Jackson's lack of candour about his knowledge of the claimant's pregnancy at the time of the claimant's dismissal. Further, the unsatisfactory explanation provided by Mr Jackson for misleading Mr House namely, that if he had told him it would not have had any bearing on the issue.

73 In all the circumstances the Tribunal is satisfied that the claimant's dismissal was an effective cause of her dismissal, and her complaint of unlawful discrimination therefore succeeds.

The claimant's complaint of unfair dismissal contrary to section 99 of the Act and Regulation 20 of the Maternity and Parental Leave Regulations etc 1999

- 74 The Tribunal has reminded itself in particular that: - (a) the claimant had less than 2 years' continuous service at the date of her dismissal (b) the onus of proof is therefore on the claimant to show that the reason, or if more than one, the principal reason, for her dismissal was pregnancy. This is a more onerous burden than in discrimination cases in which it is sufficient to establish unlawful conduct if the pregnancy is an effective cause of the treatment and (c) a principal reason is the reason that operated in the employer's mind at the time of the dismissal.
- 75 The parties relied on the previous submissions referred to above including it was contended on behalf of the respondent in particular, that :- (a) the concerns identified in the letter of invitation dated 23 April 2019 and as discussed (and acknowledged by the claimant) at the review meeting that day and as confirmed by the subsequent documents and emails dated 13 May 2019, were the reason/ principal reason for the claimant's dismissal and (b) that the claimant's pregnancy played no part in the respondent's decision to dismiss the claimant.
- 76 Having given the matter careful consideration, the Tribunal is satisfied, in the light of the findings of fact, that the claimant's pregnancy was the principal reason for the claimant's dismissal. When reaching this conclusion the Tribunal has taken into account in particular: -
- 76.1 The matters referred to at paragraphs 70 and 72 above including in particular that the claimant has established on the facts that :- (a) as at the afternoon of 18 April 2019 (i.e. immediately prior to finding out about the claimant's pregnancy) Mr Jackson had arranged to meet with the claimant following his return from leave (on 29 April 2019) to review financial information with her (b) Mr Jackson did not inform the claimant during the discussions on the afternoon of 18 April 2019 of concerns regarding her performance or conduct or of any proposed review meeting on 23 April 2019 (the next working day following the Bank holiday). Further, Mr Jackson informed the claimant that he would speak to the engineers to ensure that they were aware of what was required of them with regard to the submission of time sheets and (c) Mr Jackson was unexpectedly absent on the morning of 23 April 2019 with staff enquiring about his whereabouts, (d) the letter inviting the claimant to the " review meeting" on 23 April 2019 was not prepared until that day (d) the respondent did not provide the claimant (notwithstanding the terms of the disciplinary policy)

with any documents evidencing the nature of any concerns either prior to or at the meeting on 23 April 2019 (e) the respondent dismissed the claimant summarily (in breach of the provisions of the disciplinary procedure which provided for the issue of warnings in the absence of gross misconduct) during the meeting on 23 April 2019 after a brief discussion regarding the alleged concerns and (f) Mr Jackson's lack of candour regarding his knowledge of the claimant's pregnancy including that he did not inform HR of her pregnancy prior to the claimant's dismissal and lied to Mr House during the course of his investigations when asked about whether he was aware of the claimant's pregnancy at the time of the claimant's dismissal.

- 77 In all the circumstances we are satisfied that the principal reason for the claimant's dismissal was the discovery by Mr Jackson of the claimant's pregnancy on the evening of 18 April 2019 and that any concerns relating to the administration of project folders or the collation of job sheets were a subsidiary consideration. The claimant has therefore been unfairly dismissed for the purposes of section 99 of the Act.

Adjustments for the alleged breaches of the ACAS Code

- 78 The Tribunal is required to consider whether there should be any adjustments to any compensatory award/ award of compensation for unlawful pregnancy discrimination by reason of any breaches by the respondent of the ACAS Code.
- 79 The Tribunal has reminded itself that it is required to consider:- (a) whether there have been any material breaches of the ACAS Code (b) if so whether any such failures were unreasonable and (c) whether it consider it just and equitable in all the circumstances to increase any award (for unfair dismissal/ unlawful discrimination) by no more than 25 per cent.
- 80 The claimant relies on the breaches identified in the Issues above and seeks an increase of 25 per cent. The respondent's position during the course of the appeal process was that there had been no breaches of the ACAS Code and that the respondent had complied fully with the law. It was accepted at the Hearing on behalf of the respondent that there had been some breaches of the ACAS Code but was contended that any such breaches were not material and that the respondent's conduct of the disciplinary process had to be considered in the context of the claimant's short service and the respondent's policy of short service reviews.
- 81 Having given the matter careful consideration the Tribunal is satisfied that there have been material breaches of the ACAS Code by the

respondent in respect of the following :- (a) paragraph 5 – failure to establish the facts of the case- there is no evidence before the Tribunal that Mr Jackson undertook any investigations prior to the meeting on 23 April 2019 and it is notable that none of the subsequent documentation or emails from staff (dated 13 May 2019) upon which the respondent relied in Mr House’s correspondence with the claimant / for the purposes of this Hearing was made available to the claimant at or before the disciplinary hearing (b) paragraph 9 – failure to provide the claimant with sufficient information to inform her of the nature of the problem. The claimant was provided with a summary of the matters in issue in the letter dated 23 April 2019 – however she was not provided with the more detailed information referred to above (c) paragraph 9 - failure to allow the claimant reasonable time to prepare her case – the claimant was given the letter dated 23 April 2019 at the commencement of the meeting. Further the claimant was given no prior warning that the meeting was a review meeting/ that her employment was at risk (d) paragraph 13 – failure to allow the claimant to be accompanied at the meeting. The letter dated 23 April 2019 did advise the claimant of her right to be accompanied, however the letter was given to the claimant at the commencement of the review and she therefore had no proper opportunity to make such arrangements in advance of the review meeting. The respondent contended that the claimant could have requested an adjournment but confirmed that she was happy to continue. There was however no evidence before the Tribunal to suggest that the claimant was advised of such entitlement at the review meeting and (e) paragraphs 18 – 23 – failure to take appropriate action -these provisions provide for the issue of warnings save in case of gross misconduct. There is no evidence that the respondent considered the possibility of issuing the claimant with a warning as an alternative to dismissal.

- 82 The Tribunal has then considered whether the respondent has acted unreasonably in respect of the above. The respondent sought to justify its actions on the grounds in particular that the claimant was a short serving employee with less than 2 years’ service and it was therefore reasonable to deal with her case in accordance with its short service practice/procedure. Mr Jackson also sought to justify the fact that the claimant was not given the letter inviting her to the review prior to the meeting on the grounds that it is likely to cause employees distress if they receive such a letter a number of days in advance.
- 83 Having given the matter careful consideration the Tribunal is satisfied that although the respondent did provide the claimant with some information in the letter dated 23 April 2019 and allow her to make comments in response at the review meeting, there has otherwise been an unreasonable failure on the part of the respondent in respect of the matters identified above. It is disingenuous of the respondent to contend

that the claimant was given a proper opportunity to prepare for or be represented at the review hearing when she had no warning of the nature of the hearing / was given the invitation at the commencement of the meeting. The Tribunal is also satisfied that the justification given by the respondent for not giving the claimant notice of the review meeting (namely that it is likely to cause an employee more distress if they know about it in advance) is wholly unreasonable and flies in the face of the ACAS Code and natural justice. Further, it is clear from our findings of fact that the claimant, who was in the early stages of her pregnancy, was distressed by the respondent's conduct of the review process including by the lack of any adequate warning time to prepare / arrange to be accompanied.

- 84 Having regard to all of the above, the Tribunal is satisfied that it is just and equitable to increase any awards (for unfair dismissal and unlawful discrimination) by 20 per cent. When reaching this conclusion the Tribunal has also taken into account that the respondent had an HR resource which was involved in the process and which should have been aware of the requirements of the ACAS Code.

Contributory fault

- 85 Finally, the respondent relies, in respect of the pregnancy discrimination claim only on contributory fault and says that any award of compensation pursuant to section 124 of the 2010 Act should be significantly reduced by reason of the claimant's conduct / performance as substantiated by the information/ emails provided as referred to previously above together with the short comings acknowledged by the claimant at the review meeting on 23 April 2019. The claimant denies that there were any significant conduct/ performance issues on her part and further contends that she, in any event, indicated a willingness to address such issues.

- 86 The Tribunal has applied a similar approach to that which it would apply in an unfair dismissal case. Accordingly, the Tribunal has reminded itself that when considering whether to make any reductions for contributory fault it has to consider whether, on the balance probabilities, the respondent has established that the claimant was guilty of culpable or blameworthy conduct, whether such conduct contributed to her dismissal and further whether it is just and equitable to make any such reduction in respect of any such conduct

- 87 Having given the matter careful consideration, the Tribunal is satisfied that it is appropriate to make a reduction to any compensation awarded pursuant to section 124 of the 2010 Act by 10 percent. When reaching such conclusion the Tribunal has taken into account in particular the findings at paragraphs 58- 61 including that:- (a) the respondent has

established that there were concerns relating to the administration and updating of project folders and the collation of job sheets from engineers (which were acknowledged by the claimant at the disciplinary hearing) (b) these did not however amount to serious concerns as at 18 April 2019 (prior to the discovery of the claimant's pregnancy) (paragraph 29) and (c) the respondent has failed to establish the wider matters of concern relied upon (paragraphs 60 – 61 above).

Employment Judge Goraj
Date: 14 October 2021

Judgment sent to parties: 28 October 2021

FOR THE OFFICE OF THE TRIBUNALS

Online publication of judgments and reasons

The Employment Tribunal (ET) is required to maintain a register of judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and reasons since February 2017 are now available at: <https://www.gov.uk/employment-tribunal-decisions>

The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in anyway prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness