EMPLOYMENT TRIBUNALS

Claimant	**Respondents**
Mrs S Messum	1. Bradford Management Services Ltd 2. Dr Gul Nawaz Akbar 3. Mr Bilal Akbar

Heard at: **Leeds Employment Tribunal** **On: 14-18 November 2022 and 16 December 2022 (deliberations)**

Before: **Employment Judge Davies**
Mr G Corbett
Ms Y Fisher

Appearances
For the Claimant: **In person**
For the Respondent: **Ms Hashmi (counsel)**

RESERVED JUDGMENT

1. The Claimant's complaints of unfair dismissal and unauthorised deduction from wages against the First Respondent are well-founded and succeed.

2. The Claimant's complaint that the First Respondent refused to permit her to exercise her right to take paid annual leave under the Working Time Regulations is not well-founded and is dismissed.

3. The Claimant's complaint of pregnancy/maternity discrimination against the First and Second Respondents, including her complaint of discriminatory dismissal, is well-founded and succeeds.

4. The Claimant's complaint of direct sex discrimination is not well-founded and is dismissed.

5. The Claimant's complaint of harassment related to sex against the First and Second Respondents in relation to the letters sent to her in April and August 2019 inviting her to an investigation meeting are well-founded and succeed.

6. The Claimant's complaint of harassment related to sex against the First and Second Respondents in relation to the Second Respondent saying that the Claimant was "not presentable" was not brought within the Tribunal time limit and it is not just and equitable to extend time for bringing it.

7. The Claimant's remaining complaints of harassment related to sex are not well-founded and are dismissed.

8. Any other complaints are dismissed on withdrawal by the Claimant.

REASONS

Introduction

1. These were complaints of unfair dismissal, pregnancy/maternity discrimination (including constructive dismissal), direct sex discrimination, harassment related to sex, breach of the right to take annual leave under the Working Time Regulations and unauthorised deduction from wages brought by the Claimant, Mrs S Messum, against her former employer, Bradford Management Services LLP and two named individuals, Dr Gul Nawaz Akbar and Mr Bilal Akbar.

2. The Claimant represented herself. The Respondents were represented by Ms Hashmi (counsel). At the start of the hearing, the Tribunal had not been provided with hard copies of the witness statements, although EJ Drake had ordered the Respondents to provide copies for the Tribunal. The Claimant had also produced some late witness statements. The Tribunal ordered the Respondents to prepare a complete file of the witness statements, including the small number of additional ones, and Ms Hashmi dealt with that. It took some time and the hearing was only able to resume mid-afternoon. At that stage, the Tribunal discussed the complaints with the parties. The Claimant confirmed precisely what complaints she was pursuing and the Respondents made some concessions. The Tribunal agreed with the parties a list of the complaints that the Tribunal was to decide. That is set out below. On the second day, the Claimant indicated that she wanted to pursue a complaint of victimisation. However, when the Tribunal explored it with her, it was clear that her complaint was that she was treated badly after she handed in her maternity notice. That is a complaint of pregnancy/maternity discrimination, not a complaint of victimisation. No amendment to the claim was permitted in those circumstances.

3. There was an agreed file of documents, and the Tribunal considered those to which the parties drew our attention. We admitted further documents during the hearing by agreement.

4. The Respondents did not object to the late witness statements from the Claimant and they were admitted by agreement. However, not all the witnesses attended to give evidence. The Tribunal explained to the Claimant that little weight could be attached to the evidence of people whose statements were not tested in cross-examination at the hearing.

5. The Tribunal heard evidence from the Claimant and from Ms Bi and Ms Zahuruddin on her behalf. Ms Bi gave her evidence with the assistance of an interpreter, Mrs Mir. The Tribunal considered the written statements from Ms Marwaha, Ms Baidya, Ms Rashid and Ms Akhtar on the Claimant's behalf. For the Respondents, we heard evidence from Dr Akbar (Second Respondent and

Head of Technical and Compliance at First Respondent) and Mr Akbar (Third Respondent and Director of the First Respondent).

6. On the fourth day of the hearing, the Respondents produced witness statements from Mr Karim (Financial Controller of the First Respondent), Mrs Kanwal (employee of First Respondent) and Ms Akbar (Dr Akbar's daughter). For reasons explained in detail at the hearing, the Tribunal refused to admit this evidence. Ms Akbar's evidence was not relevant to the issues in any event. Mrs Kanwal's was of peripheral relevance and arose from the Claimant's late witness statements, but could have been provided three weeks ago. Mr Karim's evidence was relevant, but the prejudice to the unrepresented Claimant in admitting it at that stage, after she had given her evidence and been cross-examined on it, outweighed the prejudice to the legally represented Respondents in excluding it. The Tribunal acknowledged Mr Karim's difficult personal circumstances, which were said to have been the reason why no witness statement was produced for him in the first place. However, those circumstances had not changed. What appeared to have changed was that the Respondents had persuaded him to give evidence in any event after hearing the evidence given on the first three days of the hearing.

7. Considerable hearing time was lost because of the lack of witness statements on the first day, the need to clarify the claims and issues at the outset of the hearing, parties/representatives attending the Tribunal late and other matters. The Tribunal agreed a timetable for the evidence with the parties, to ensure that the hearing concluded in the available time. We stuck to the timetable and made clear to the parties that they needed to ask the relevant questions of each witness within the time available. Because of the various delays, it was not possible for the Tribunal to deliberate and reach its decision within the original hearing dates. The Tribunal met on the first available date to do so. We explained to the parties that this judgment would be delayed in those circumstances.

Claims and issues

8. The Tribunal agreed with the parties that the complaints the Claimant was pursuing in these proceedings were as follows. Any other complaints are dismissed on withdrawal above.

Constructive unfair dismissal

8.1 The Claimant says that the First Respondent unfairly constructively dismissed her. She says that it fundamentally breached her contract of employment by:

8.1.1 Accusing her of theft and the way that allegation was handled;
8.1.2 Removing her duties from her and effectively demoting her;
8.1.3 Forcing her to work overtime;
8.1.4 Not permitting her to take annual leave.

8.2 She says that was an automatically unfair dismissal because the reason or principal reason for dismissal was a reason connected with her pregnancy

or the fact she took maternity leave. Alternatively, it was an ordinary unfair dismissal.

Pregnancy/Maternity discrimination

8.3 The Claimant says that the Respondents treated her unfavourably because she took maternity leave by removing her duties from her and effectively demoting her after she returned from maternity leave.

8.4 The Claimant says that she was constructively dismissed at least in part because of this, and that her dismissal was therefore discriminatory.

Direct sex discrimination

8.5 The Claimant says that the Respondents treated her less favourably because she is a woman by investigating her for theft and giving her a warning about that. She compares her treatment to that of Shokaib Karim.

Harassment related to sex

8.6 The Claimant says that the Respondents subjected her to unwanted conduct related to sex that had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, by

8.6.1 Accusing her of theft and the way that allegation was handled;
8.6.2 Removing her duties from her and effectively demoting her;
8.6.3 Asking her to withdraw her grievance; and
8.6.4 Dr Akbar saying to her that she was “not presentable” and “unfortunately the company cannot carry luggage.”

Holiday

8.7 The Claimant says that the First Respondent refused to allow her to exercise her right to take annual leave under the Working Time Regulations 1998.

Unauthorised deduction from wages

8.8 The Claimant says that the First Respondent failed to pay her for overtime she worked (on average 5 hours per week for 41 weeks in 2020) amounting to £1757.

Issues

9 The issues for the Tribunal to decide to determine those complaints are:

Time limits

9.1 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

9.1.1 For any complaint about conduct before 4 February 2021, was it part of a course of conduct extending over a period that ended after 4 February 2021?
9.1.2 If not, was the claim made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
9.1.2.1 Why were the complaints not made to the Tribunal in time?
9.1.2.2 In any event, is it just and equitable in all the circumstances to extend time?

9.2 Was the unauthorised deductions complaint made within the time limit in section 23 of the Employment Rights Act 1996? The Tribunal will decide:
9.2.1 For any payment of wages that should have been made before 4 February 2021, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
9.2.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
9.2.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

9.3 Was the annual leave complaint made within the time limit in regulation 30 Working Time Regulations 1998? The Tribunal will decide:
9.3.1 Was the complaint made within three months plus early conciliation extension of the date on which it is said that the Claimant should have been permitted to exercise her right to take annual leave?
9.3.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
9.3.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

Unfair dismissal

9.4 Was the Claimant dismissed?
9.4.1 Did the First Respondent do the following things:
9.4.1.1 Accusing her of theft and the way that allegation was handled;
9.4.1.2 Removing her duties from her and effectively demoting her;
9.4.1.3 Forcing her to work overtime;
9.4.1.4 Not permitting her to take annual leave?
9.4.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:
9.4.2.1 whether the First Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and
9.4.2.2 whether it had reasonable and proper cause for doing so.
9.4.3 Did that breach another term of contract?

9.4.4 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.

9.4.5 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.

9.4.6 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that she chose to keep the contract alive even after the breach.

9.5 If the Claimant was dismissed, the First Respondent does not advance a potentially fair reason for dismissal.

Pregnancy and Maternity Discrimination

9.6 Did the Respondents treat the Claimant unfavourably by removing her duties from her and effectively demoting her after she returned from maternity leave?
9.7 Was the unfavourable treatment because the Claimant had exercised the right to maternity leave?
9.8 Was the Claimant constructively dismissed?
9.9 If so, was part of the breach of contract that gave rise to the constructive dismissal the above unfavourable treatment? If so, the dismissal was discriminatory.

Direct Sex Discrimination

9.10 Did the Respondents investigate the Claimant for theft and give her a warning about that?
9.11 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant says she was treated worse than Shokaib Karim.

9.12 If so, was it because of sex?

Harassment related to sex

9.13 Did the Respondents:
9.13.1 Accuse the Claimant of theft and handle the investigation of that accusation unfavourably;
9.13.2 Remove the Claimant's duties from her and effectively demote her;
9.13.3 Ask her to withdraw her grievance; and

9.13.4 Did Dr Akbar say to her that she was "not presentable" and "unfortunately the company cannot carry luggage"?

9.14 If so, was that unwanted conduct?

9.15 Did it relate to sex?

9.16 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

9.17 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Holiday

9.18 Did the First Respondent refuse to allow the Claimant to take the annual leave to which she was entitled under the Working Time Regulations?

Unauthorised deduction from wages

9.19 Did the First Respondent fail to pay the Claimant for overtime she worked (on average 5 hours per week for 41 weeks in 2020) amounting to £1757?

9.20 Was the Claimant entitled to payment for that overtime?

Findings of fact

9. The First Respondent is a company that provides the workforce for the Mumtaz group of companies. It has around 50 employees. The Second Respondent, Dr Gul Nawaz Akbar, is formally its Head of Technical and Compliance. His son, the Third Respondent, Mr Bilal Akbar, is formally a Director and the owner and Managing Director of the First Respondent. The Financial Controller is Mr S Karim. The Claimant started work for the First Respondent in January 2016 as an Executive and HR Assistant.

10. We start by making some findings about credibility. The Tribunal found that the Claimant was giving honest and accurate evidence. She was doing her best to remember events. Her answers were generally consistent. She had kept notes of some matters at the time, and her answers were consistent with those. Ms Zahuruddin's evidence was not challenged in cross-examination and the Tribunal accepted it. The Tribunal found that Ms Bi was a straightforward and honest witness.

11. By contrast, the Tribunal found the evidence of Mr Akbar and Dr Akbar fundamentally lacking in credibility. The backdrop to these proceedings is that Dr Akbar used to be the Managing Director of the First Respondent. With effect from 8 December 2017 Dr Akbar was disqualified from being a company director for a period of six years for misusing company assets. The disqualification will expire in December 2023. Not only does it prevent Dr Akbar from being a company director, but it prevents him from taking part, directly or indirectly, in the management of a company.

12. The Tribunal had no doubt on the evidence before us that Dr Akbar has continued to be closely involved in the management of the company, with little

actual change in practice since 2017. Changes of job title and ownership did not necessarily seem to the Tribunal to reflect the reality of what was done in practice. In reaching that view, the Tribunal took into account the evidence of the Claimant and Ms Bi. The Claimant said that Dr Akbar authorised everything: wages, rotas, hiring and firing, holidays. That was the case before 2017 and he continued as the sole-decision maker in all business affairs after he was disqualified. Ms Bi gave evidence about events in 2018 and 2019 involving Dr Akbar in the workplace, in which Dr Akbar was dealing with disciplinary matters, making decisions about holidays and the rota, and giving instructions to HR and others.

13. We also took into account the evidence of Mr Akbar and Dr Akbar. Dr Akbar's evidence about this issue was telling. The Claimant put to him in cross-examination that he was acting behind Mr Karim and Mr Akbar because he had been banned from directorship in 2017. He disagreed, saying that the business had simply been handed to the next generation. He explained that he was reaching retirement age and that three or four years ago they (he and his brothers) decided that the business would be passed to the next generation. He therefore started attending for only a few hours in afternoons and had minimal input into the business. His son has taken over from him. It was put to Dr Akbar that this was not a decision to pass the business onto the next generation; he had no choice because he had been disqualified. He said that was not right. He was therefore shown a copy of the disqualification order and he agreed that he had been disqualified for six years in 2017. He was asked why, therefore, he had said that he had decided to hand the business on three or four years ago (i.e. in 2018 or 2019). He said, "We reduced our involvement in the business." He was asked the question again. He said that he was disqualified in 2017 and stepped back three or four years ago. It was put to him that being disqualified was not just a technical thing and that it required him to step back. He said that he had reduced his hours three or four years ago. Dr Akbar's evidence did not stack up. The Tribunal found that this was because he had not stepped back as required by the terms of the disqualification order. As is evident in the findings of fact below, it was clear to the Tribunal that Dr Akbar was closely involved in, and directing, the day-to-day management of the business. It seemed to the Tribunal that much of his evidence was designed, necessarily, to give the impression that he had complied with the requirements of the disqualification order. It is our view that he had not, so his evidence did not withstand scrutiny. That meant that it fundamentally lacked credibility.

14. Mr Akbar was caught by the same difficulty. His evidence was intended to maintain the pretence that his father no longer had meaningful control over the company, and this meant that it, too, was not consistent with the evidence from the time. Mr Akbar could not explain decisions or actions, or gave inconsistent evidence about them, because it was in fact his father who had taken them.

15. By way of example, as explained in more detail below, the Claimant was given a verbal warning by Mr Karim in May 2020 for taking food home from the canteen (we note at this stage that she had permission to do so). Mr Akbar said in cross-examination that it must have been his father who gave Mr Karim instructions to investigate that matter. Dr Akbar said in cross-examination that he was not involved in the investigation into the Claimant's conduct. The Claimant then put to Dr Akbar specifically that he had written the investigation

questions for Mr Karim. He said that was not correct, he was not involved in the process. The sequence of events was that Mr Karim held two investigation meetings with the Claimant, one on 15 May 2020 and one on 22 May 2020. In between those two meetings, on 20 May 2020, Dr Akbar held a meeting with Mr Karim, asking him questions about the answers the Claimant had given on 15 May 2020. He was asked how that had happened, if he was not involved in the investigation process. He said that it was because what the Claimant had said related to Mr Karim and he was part of the investigation into Mr Karim. He was asked how he knew what the Claimant had said to Mr Karim on 15 May 2020 if he was not involved in that process. He said that it was, "shared with me." He was asked why that was, and he was not able to provide an explanation. The only plausible explanation for Dr Akbar being promptly told what the Claimant had said at the investigation meeting on 15 May 2020, was that he was involved in that investigation process and Mr Karim was reporting back to him.

16. Mr Akbar said in his witness statement that he was not involved in that process either. In cross-examination he was asked about that. He said at one point that Mr Karim had told him he thought the Claimant had taken food home more than 2 or 3 times. He was asked when Mr Karim told him that. He said that it was in a discussion when Mr Karim issued the verbal warning. He added that it was Mr Karim's decision and that he "ran it by" him. He then said that his "instructions" were that Mr Karim must be fair. He was asked why his witness statement said that he was not involved in the process, if he had discussed it with Mr Karim, spoken to him about the outcome, and instructed him to act fairly. He said that it was because he was "not involved", then that he was "not involved in the decision-making process" and then that his "instructions were general." We return in more detail to that disciplinary process in the chronology below.

17. It was obvious, and the Tribunal found, that Dr Akbar was directing the investigation into the Claimant's conduct. His evidence to the contrary was inconsistent with the documents and with what Mr Akbar said about how the process took place because it was not true.

18. The evidence of Dr Akbar and Mr Akbar was more generally lacking in credibility too. Their witness statements were brief. Their oral evidence was sometimes inconsistent with their written statements, and frequently gave the impression of being made up as it went along. By way of example, Dr Akbar claimed in his statement to have treated the Claimant with respect and professionalism. He said that she never raised a grievance about the way he treated her. There was ample opportunity for her to do so. Had he acted in the way she alleges, he would have expected her to raise a complaint. She did not do so. In cross-examination, Dr Akbar was shown a grievance written by the Claimant about him and sent directly to him on 30 September 2019. He was asked why his witness statement did not refer to it. He said that it was because it was subsequently withdrawn. He was asked why his witness statement did not say that the Claimant had made but withdrawn a grievance. He said that it was because it was withdrawn. The Tribunal considered that the witness statement was misleading. Similarly, Mr Akbar said in his witness statement that the Claimant raised issues for the first time in her resignation letter. His attention was drawn in cross-examination to a letter the Claimant wrote in August 2020 raising some of those issues. He confirmed that he became aware of that letter when preparing for the Tribunal proceedings, and before he wrote

his witness statement. He was asked why he had not referred to it in his witness statement. He said, "my recollection was that the grievance was in relation to [a different issue]." He was reminded that he had just given evidence that he only saw the letter at the time he was preparing for the Tribunal proceedings. He could not explain his evidence.

19. As we have noted, the Claimant started work for the First Respondent in January 2016 as an Executive and HR Assistant. She is highly educated, with an MBA from Islamabad University. She was contracted to work 26 hours per week, which included a 20-minute unpaid daily break. By January 2019 she was earning £19,000 per annum "pro-rata". In effect, her pay was calculated to ensure she earned national minimum wage for the hours actually worked, not including the 20-minute breaks. She was paid £968.63 per month.

20. The Claimant was contractually entitled to a free lunch in the work canteen. Her contract authorised deductions from wages to cover the cost of food provided to consume at work. However, this term was not relevant in her case because she was entitled to a free meal. Factory staff were allowed to eat in the canteen but had to pay for their meal. Their names were marked on a list and the cost deducted from their wages.

21. The Claimant's contract incorporated the First Respondent's Handbook. The holiday year started on 6 April and the Claimant's entitlement was her statutory entitlement. Consistently with the Working Time Regulations, the Handbook required employees to give notice of holiday requests equivalent to twice the length of leave requested. The First Respondent's holiday request form was inconsistent with that, suggesting that one month's notice was required in all cases.

22. The Handbook set out a disciplinary procedure. It said that employees would be notified in writing of allegations against them and would be provided with information relating to the allegation prior to a disciplinary hearing. They would have the right to be accompanied at the hearing by a colleague or trade union representative. They had the right to appeal any disciplinary decision.

23. The Handbook sets out a whole range of policies and processes consistent with good employment practice. However, the Claimant's evidence was that in practice employees were unable to benefit from their entitlements because of the way the business was operated. Many of the workers were on zero hours contracts and Dr Akbar would put them "on call" and stop offering them any hours as a means of control and/or punishment. The threat of being put "on call" stopped people from taking their annual leave or standing up to Dr Akbar. Dr Akbar was unhappy when people presented sick notes and would give instructions that they should not be paid. There was ample supporting evidence of these practices and the Tribunal found that this was indeed how Dr Akbar ran the business. In particular:
    23.1 Ms Zahuruddin's unchallenged evidence was that she developed good working relationships with her employer and managers, but that all changed after she stood up to Dr Akbar in January 2016. An order was missed on 6 January 2016 and Dr Akbar blamed Ms Zahuruddin. He was angry, shouting and abusive towards her. When she told him to stop shouting at her he turned towards her in an angry and domineering

manner. He was shocked and disbelieving. He ordered her to follow him to his office. She was in tears but he continued shouting at her and interrogating her. After she had stood up to him, his whole attitude towards her changed. He undermined her and made derogatory comments about her work and appearance. He ostracised her and told her that she was no longer a part of the HR team. He no longer returned her Salaam. That carried on until she was dismissed on the false premise of redundancy.

23.2 It was the Claimant who made Ms Zahuruddin redundant on Dr Akbar's instructions. The Claimant took on Ms Zahuruddin's tasks until she had recruited an administrative assistant a few months later. It was clear that there was no redundancy situation in relation to Ms Zahuruddin.

23.3 The Claimant gave evidence that Dr Akbar blamed an employee called Saima for a mistake in January 2019. She confronted him and said that the error was not her fault and in response he put her on call, saying that she must learn a lesson. She was not given any hours after that. Dr Akbar instructed the Claimant to replace her with Ms Baidya. Apart from general denials, this evidence was not disputed or contradicted by the Respondents.

23.4 The Claimant named six employees whose sick notes Dr Akbar had challenged. One specific example was that Dr Akbar had told her not to pay Mr Rashid's sick pay and to tell him that his sicknote had not been received. Apart from general denials, this evidence was not disputed or contradicted by the Respondents.

23.5 Ms Bi gave evidence that on 5 June 2019 she was celebrating Eid at her brother's house when Ms Karwaha called and asked her to work. She was unable to do so because she was not at home. She was put on call for a week as a result and given no work. She attended work with a sicknote on 10 June 2019 and Ms Karwaha refused to take it and asked her to work. On 12 June 2019 Dr Akbar shouted and swore at her. She was never called for work again. Ultimately, she had to resign so that she would be paid her week in hand. That evidence was not challenged.

24. The Claimant was initially a trusted employee. Not long after she started as an Executive and HR Assistant, she took on extra roles doing administration, clerical tasks, sales order processing and technical tasks. She worked extra hours to complete her work. By January 2019 her job description included: managing recruitment of new members of staff; managing the performance management process; managing the annual leave systems; managing the clock-in system; managing the payroll functions; dealing with staff pay and benefits issues; monitoring staff attendance and ensuring return to work interviews were completed and disciplinary meetings held when required; providing induction training to all new staff; managing weekly shift rotas; and managing in-house catering/housekeeping operations. The Claimant was clear that she was required to manage the in-house catering/housekeeping, she was not required to perform those functions herself. The housekeeping operation included laundering the workwear used in the factory and cleaning. The Claimant's job description also required her to carry out tasks within her capability and deemed necessary by management. It made clear that flexibility was essential to meet changing business requirements. However, that plainly did not entitle the First Respondent to fundamentally change the Claimant's job

role or functions. She agreed that she might have to do "pitch in" in an emergency, but she could not be required, for example, to perform the housekeeping duties on a regular basis.

25. In January 2019 the Claimant was completing all the tasks in her job description. She sat at the HR workstation in the small office adjacent to Dr Akbar's office. She had access to the relevant systems on the PC at that workstation and had keys to access the personnel files. She recruited people, inducted them, trained them, dealt with the rota, dealt with disciplinary matters and performed a whole range of other duties, both HR and non-HR related.

26. On 12 February 2019 the Claimant gave notice that she was pregnant and intended to start her maternity leave in June. Her evidence was that Dr Akbar's attitude towards her changed when she did so. He stopped returning her Salaam and stopped talking to her. He was angry and questioned her performance, for example telling her she had ordered too many boots. He started sending her to the warehouse and packaging to do physically demanding work. Dr Akbar denied this. The Respondents argued that there was no reason to be unhappy about the Claimant's pregnancy because her maternity pay was paid by the state. The Tribunal did not find this denial convincing. We noted that while an employer may not meet the cost of statutory maternity pay, an employee's maternity leave does have an impact on a business. It will need to cover the employee's role in her absence. There may be time and cost associated with recruiting a maternity replacement, and the replacement may well lack the experience and expertise of the pregnant employee. Furthermore, there was again supporting evidence that Dr Akbar had a negative reaction to employees' pregnancies and the Tribunal accepted that this was his reaction to the Claimant's pregnancy too. In particular:
    26.1 The Claimant said that when Ms Javed announced her pregnancy Dr Akbar instructed her, "put her on call and get rid of her." She did so, and Ms Javed eventually had to resign to be paid her week in hand. Mr Akbar gave oral evidence that Ms Javed left for her own reasons. In cross-examination the Claimant asked him where the evidence of that was. She said that if Ms Javed's hours had not been reduced when she became pregnant it would have been easy to prove but no evidence had been provided. Mr Akbar simply said that he, "would not know the relevance of it." The Respondents have been legally represented throughout these proceedings. The Tribunal considered that if there had been evidence showing no change in Ms Javed's hours it would have been provided.
    26.2 The Claimant said that Ms Yasin called her in September 2019 (when the Claimant was on maternity leave) and told her that as soon as she reported her pregnancy she had been placed on call. She asked for the Claimant's advice. The Claimant subsequently found out from Ms Yasin that she had not been given work after her maternity leave and resigned. Mr Akbar's evidence was the same as in relation to Ms Javed. For the same reasons, the Tribunal considered that if there had been evidence in support of the Respondents' position it would have been provided.
    26.3 Although the Tribunal attached limited weight to it, we noted that Ms Rashid's statement said that she had no issues after her first pregnancy, but after she finished her second maternity leave she was

not offered any more work. Mr Karim told her that they did not have work for her; if they did, they would ring her. At that time the "hiring now" banner was displayed on the factory building. Ms Rashid also said that factory staff were "not authorised" to speak to the Claimant after her return from maternity. Mr Akbar said that Ms Rashid left for her own reasons. He drew attention to her resignation letter, which did not express any concerns and thanked the Respondents for the opportunities provided to her. The Tribunal found that letter of limited assistance – given the way we have found the business was operated, employees may have been reluctant to express concerns when resigning because they wanted to be paid their week in hand and any other entitlements. Again, no evidence of Ms Rashid's work patterns was provided by the Respondents to substantiate their assertion that she left for her own reasons.

27. The Claimant's evidence was also supported by her medical records. She spoke to a nurse practitioner on 25 February 2019. The nurse recorded the Claimant's description of her situation at work, and noted that the Claimant had told her that Dr Akbar had been "particularly difficult with her" since she told him she was pregnant. He shouted at her frequently, she was doing the work of two people, and she worked overtime but did not get paid for it. The nurse practitioner gave the Claimant a two-week sick note and advised her to go to Citizens Advice. The Claimant did not go to Citizens Advice. She said in cross-examination that this was not because she had exaggerated what was going on, but because she did not want to at that time. She was simply focused on getting to her maternity leave. The Tribunal accepted that evidence. We did not think it was undermined by the fact that the Claimant told the midwife in June 2019 that she would go down a legal route to pursue her pay. At that stage she had not been paid for three months and this put her family in financial difficulties. There was an imperative to resolve a failure to pay her promptly.

28. Weighing all this evidence, the Tribunal found that when the Claimant announced her pregnancy Dr Akbar's attitude towards her changed and he started treating her in the way she described.

29. On 1 March 2019 the Claimant interviewed Ms Bi about two disciplinary matters. Ms Bi worked in the canteen and it was her job to note which employees had a meal, so that they could pay for it through their wages. English is not Ms Bi's first language and she does not read and write English. However, there was a printed list with the employees' names on it (produced by the Claimant) and Ms Bi was able to mark on the sheet which employees had a meal. One of the matters the Claimant discussed with Ms Bi was an allegation that she had given food to somebody and not marked it on the sheet. Her explanation was that somebody asked to taste a dessert and she allowed her to do so. The Claimant's evidence was that Dr Akbar was angry when she told him Ms Bi's explanation and he instructed the Claimant to give Ms Bi a written warning. She did so. The employee who tasted the food (Sofia) was given a verbal warning. She was unhappy and threatened the Claimant with consequences.

30. On 21 March 2019 an anonymous complaint was made through the First Respondent's confidential reporting system that people were eating food and

not paying for it. The complaint alleged that the Claimant took food home two or three times per week and that Mr Karim took food home nearly every week. It questioned whether they paid for it.

31. Dr Akbar evidently reviewed the anonymous complaint and on 22 March 2019 he spoke to Ms Bi about it. The Tribunal had no doubt that Dr Akbar was angry with Ms Bi. He accused her of theft and asked her what her parents would think. He accused her of lying and insisted that she had given free food to employees. She tried to convince him that she had not. That was her evidence and we accepted it. Ms Bi was being accused of theft by giving food to the Claimant and others. Her focus was on rejecting that accusation. The Claimant's evidence was that after speaking to Ms Bi, Dr Akbar was angry and instructed the Claimant to cancel Ms Bi's imminent annual leave. Ms Bi said that Dr Akbar told her she could not take her leave; she must follow the rota or she would be put on call. The evidence of Ms Bi and the Claimant was consistent, and consistent with our findings about how Dr Akbar operated. The Tribunal accepted it.

32. Dr Akbar had prepared a handwritten note purporting to set out the questions he asked Ms Bi and her answers to them. The answers recorded suggested that Ms Bi told Dr Akbar that Mr Karim took roti home on a few occasions and offered to pay for them, while the Claimant regularly asked her to pack food to take home, used to ask her to cook certain foods because her husband liked them and so on. The handwritten note was signed by Dr Akbar and it contained what was said to be Ms Bi's signature (a simply written "S – Bi.") In cross-examination, Ms Bi said that she had not made the comments reported in the note to Dr Akbar and had not signed any document when questioned by him. We noted that she does not read English. The Tribunal panel are not handwriting experts. The simply written signature is similar to Ms Bi's signature on her witness statement but not identical. The Tribunal considered that it would have been possible for the signature to be written by somebody else. We took into account our finding that Dr Akbar was angry with Ms Bi and immediately instructed the Claimant to cancel her holiday. We considered it unlikely that in that state of mind he would have written a careful note of Ms Bi's answers while speaking to her, still less taken the time to go through it with her, explaining in Urdu what he had written. We also noted Dr Akbar's evidence that the discussion took only 30 minutes or so. The Tribunal therefore found that this was not a note written at the time by Dr Akbar and signed by Ms Bi. In those circumstances, we also found that it did not accurately reflect what she told Dr Akbar.

33. The Claimant was not aware of the anonymous allegation, nor that Ms Bi was being accused of giving food to the Claimant to take home.

34. The Tribunal was shown a note written by Dr Akbar on 2 April 2019 and signed by Mr Karim apparently on the same date recording a discussion between them about the anonymous allegation. Mr Karim is recorded as saying that he had taken some rotis from Ms Bi on a few occasions when his wife was in Pakistan and that he had asked Ms Bi to mark it on the canteen register. The note also indicates that Mr Karim was asked whether he was aware of any other employees taking food home from the canteen and replied that he knew the Claimant was taking food from the canteen.

35. It was clear that Dr Akbar reviewed the anonymous allegation and took steps to investigate it. This was an example of an occasion where his evidence and that of Mr Akbar appeared to be intended to give the impression that Dr Akbar was no longer managing the First Respondent, when in fact he was. Mr Akbar's evidence was that he was unaware of the anonymous allegation. His father was investigating because he was "still a senior member of the team" and "it happened to be him investigating." Dr Akbar said at one point that he was "instructed" to investigate the matter. When asked by whom, he said that he and Mr Akbar "agreed." Then he said that Mr Akbar asked him to "assist." He was asked whom he was assisting and he said that it was Mr Akbar. He said that Mr Akbar was in charge, then that both were deciding how to proceed. As we have noted, Mr Akbar's evidence was that he did not even know about the anonymous allegation. The Tribunal found that Dr Akbar's evidence was contradictory and inconsistent with his son's evidence because it was not true.

36. The Tribunal file contained a document purporting to be a record of a verbal warning given to Mr Karim by Dr Akbar on 11 April 2019 in relation to taking food home from the canteen. The Claimant questioned the authenticity of the document, because it had not been produced in earlier Tribunal proceedings involving Ms Bi and because Mr Karim had not told the Claimant that he had received a verbal warning. The verbal warning given to Mr Karim is not of obvious relevance to the claims brought by Ms Bi so the Tribunal could understand why it might not have been disclosed in those proceedings. However, the Tribunal found Dr Akbar's evidence about giving Mr Karim a verbal warning unconvincing. The Claimant pointed out to Dr Akbar in cross-examination that according to Dr Akbar's own note, Mr Karim said that when he took rotis he instructed Ms Bi to mark it on the register (so that he would pay for them). The Claimant suggested that there was no basis for disciplining this long-standing and trusted employee in those circumstances. Dr Akbar said, for the first time, that he had checked the sheets and found that they were not marked. The Claimant put to him that Mr Karim's name was not on the sheets; she knew that because she prepared them, and they only included the factory staff. He said, "It's your word against mine." The Claimant then asked where the sheets were. The Respondents had not produced them in evidence. The Tribunal found Dr Akbar's evidence implausible. We accepted the Claimant's description of the sheets, which she prepared. Dr Akbar's account was not included in his witness statement and was not recorded in the purported verbal warning. If Dr Akbar had genuinely thought Mr Karim lied to him about asking Ms Bi to record it on the sheet, the Tribunal would have expected that to be mentioned in the warning and indeed would have expected more serious action to be taken. The Tribunal also noted (see below) that the Claimant was formally invited in writing to an investigatory meeting in relation to the same anonymous allegation. The Tribunal was not shown any equivalent invitation sent to Mr Karim. If a disciplinary process had been instigated against Mr Karim because of the same anonymous allegation, the Tribunal would have expected to see equivalent documentation for him. For these reasons, the Tribunal found that Mr Karim was not given a verbal warning at the time.

37. The sequence was therefore that Dr Akbar spoke to Ms Bi on 22 March 2019 and accused her of theft. In his evidence to the Tribunal he said that it was the person who gave the food that was at fault not the people who accepted it. He

did not speak to the Claimant. He was asked why that was. He said that he had discussed what Ms Bi told him with Mr Akbar, the next day the Claimant went home before he arrived at work, and then the Claimant was off sick. It was pointed out to him that the Claimant was in work between 22 March 2019 and 1 April 2019. He then said that he was off work that week. The Claimant drew his attention to notes she had been keeping at the time of events and activities at work, which included accounts of activities or instructions involving Dr Akbar on 27, 28 and 29 March 2019. Dr Akbar insisted that he was away. He was asked where he had said that in his witness statement and he said, "I don't elaborate on that." The Tribunal had no hesitation in finding that Dr Akbar was at work between 22 March 2019 and 1 April 2019. His explanation for not speaking to the Claimant about the canteen issue was plainly untrue.

38. The Claimant was signed off work from 1 April 2019 with pregnancy-related fatigue and stress at work. She again told the doctor that Dr Akbar's behaviour had deteriorated towards her since she told him she was pregnant. This time the Claimant did hand in the fit note. The following day, Dr Akbar apparently spoke to Mr Karim about the canteen issue. Ms Marwaha was recruited as an HR Assistant in April 2019. On 25 April 2019 Ms Marwaha wrote to the Claimant asking her to attend an investigatory meeting on 1 May 2019. The letter did not give any detail of the allegation; it referred to an urgent matter that had arisen via internal confidentiality reporting.

39. The Claimant replied on 30 April 2019 saying that she could not attend the meeting because of her medical condition. She provided a note from her doctor's surgery confirming that she was not fit to attend because of pregnancy related illness.

40. The Claimant was not paid her sick pay for April 2019. She telephoned Ms Marwaha and then wrote to her on 10 May 2019. Ms Marwaha's witness statement said that Dr Akbar instructed her not to pay the Claimant's sick pay so that she would learn a lesson. That evidence was not tested in cross-examination, but it was strikingly similar to the Claimant's own account of instructions given to her by Dr Akbar in relation to other employees, and the Tribunal placed some weight on it for that reason. In the event, the Claimant was not paid until July 2019. The Tribunal found that Dr Akbar was behind this and that, as with other employees, he was deliberately not paying sick pay as a means of punishment and control.

41. The Claimant provided a further sicknote on 10 May 2019 signing her off work until 6 June 2019. Ms Marwaha wrote to her on 15 May 2019 to tell her that her maternity leave had now started and that she must fill out an ML1 form. While the Claimant says that she had already filled the form out, with a later start date for her maternity leave, she accepts (and accepted at the time in a conversation with Ms Marwaha) that her maternity leave had to start because she had four weeks' pregnancy-related sickness absence.

42. In her letter of 15 May 2019, Ms Marwaha also told the Claimant that the investigatory meeting would be rearranged. She asked the Claimant to let her know when would be convenient.

43. The Claimant's maternity leave therefore started on 14 May 2019 and she had her baby on 7 June 2019.

44. On 7 August 2019 the First Respondent (it is not clear who wrote the letter but the Tribunal had no doubt that it was on Dr Akbar's instructions) wrote to the Claimant asking her to attend an investigatory meeting on 15 August 2019. She was warned that if she did not attend, a disciplinary hearing might follow. At the Tribunal hearing, Ms Hashmi conceded that it was not appropriate to invite the Claimant to this meeting during her maternity leave. On 15 August 2019 the Claimant replied to say that she could not attend the meeting because she was fully committed with her newborn. The company wrote to her again on 21 August 2019 asking to meet her at her home address on 4 September 2019. Again the Tribunal found that this was on Dr Akbar's direct instructions. We made that finding without reference to Ms Marwaha's witness statement but we noted that it was consistent with what she said about Dr Akbar instructing her to write to the Claimant. The Claimant wrote to Dr Akbar personally on 22 August 2019. She said that she was not in a good position to attend after the birth of her newborn. She said that she had worked hard for the company for more than 3½ years, working a minimum five hours extra per week. She had never taken sick leave or unauthorised holidays. She asked for understanding. She did not receive a reply. The Claimant's view (see below) was that once she announced her pregnancy, Dr Akbar was trying to create a hostile environment for her, to force her to leave. We deal with that more generally below. However, it is relevant at this stage to make clear that we found that Dr Akbar did indeed instruct Ms Marwaha to write to the Claimant during her pregnancy-related sickness absence and then during her maternity leave, persisting in trying to make her attend an investigatory meeting despite the fact she was on maternity leave, so as to create a hostile or intimidating environment for her. The evidence of his approach generally to pregnant employees and of his changed approach to the Claimant, led the Tribunal to that conclusion.

45. On 30 September 2019, the Claimant wrote to Dr Akbar again. She complained that ever since she had given notice of her maternity to the company, she had noted a negative change in Dr Akbar's behaviour. The period of working with him during her pregnancy had been so stressful that she had to go off sick. She was not paid for her sick leave. She was not able to enjoy time with her newborn baby because she had been receiving letters from the company. She failed to understand what happened suddenly in her absence that the company had to conduct a meeting as soon as she went off sick. She asked to know what the allegations were and requested that the company wrote to her with full details of their concerns. She would respond in writing. She did not receive a reply.

46. On 16 April 2020 the Claimant gave notice that she would return from her maternity leave on 11 May 2020. Ms Dotkova had been employed as maternity cover for the Claimant. She conducted a return to work meeting with the Claimant on her first day back.

47. We deal first with the Claimant's complaint that after she returned from her maternity leave her duties were changed. In particular, she was no longer permitted to do any of her HR functions. She processed sales orders and was required at a later stage to do housekeeping. She was no longer permitted to

use the HR workstation, only the ordering workstation. She did not have access to the HR PC to enable her to carry out HR functions. Ms Dotkova sat at the HR desk and carried out the HR functions. After Ms Dotkova left in August 2020, Mr Karim did so. The Tribunal accepted the Claimant's evidence.

48. In cross-examination, Dr Akbar denied that the Claimant's HR duties were removed after her maternity leave. He said that she was doing the same work before and after her maternity leave, namely payroll. The Claimant said that she had never done the payroll. Dr Akbar then said that she was doing order processing before and after. The Claimant again insisted that her HR duties had been removed from her. She said that she was no longer preparing the rotas. Dr Akbar said that the process had changed during her maternity leave, partly because of Covid. A weekly rota was now prepared on Sunday. He was asked whether the Claimant prepared it and he said that he did not know; Mr Karim would allocate duties. The Claimant said that she no longer had the keys to access employee files. Dr Akbar said that he could not answer that. Dr Akbar did not agree that the Claimant no longer had access to the HR PC and the relevant software, for example to manage clocking in. Dr Akbar's evidence was again inconsistent and evasive. Dr Akbar was then asked whether Ms Dotkova had been employed as maternity cover for the Claimant. He confirmed that she had. He was asked whether the Claimant was entitled to return to her job when her maternity leave ended and he answered, "She did." He was asked what happened to Ms Dotkova. He said that she did "less HR and more order processing." He then added, "We didn't let Ms Dotkova go. Obviously Ms Dotkova was full-time and the Claimant was part-time. We shared the duties." Dr Akbar also suggested that when the Claimant had first been taken on, she had agreed to go full-time in due course, but had never done so. The Tribunal also noted the Claimant's evidence that she was ostracised and people did not speak to her after her return, which was consistent with the written evidence of Ms Rashid. That was consistent with a situation in which the negative reaction to the Claimant's pregnancy, and associated maternity leave, persisted.

49. The Tribunal had no hesitation in finding that when the Claimant returned from maternity leave she was told that she would no longer be performing her HR duties and she did not do so. That was on the instructions of Dr Akbar who continued to direct operations. The Tribunal found that the HR duties were initially given to Ms Dotkova. They were not subsequently returned to the Claimant, even after Ms Dotkova left. We found that this was in part because of Dr Akbar's negative view of the Claimant once she had informed him of her pregnancy, and in part because she had taken maternity leave and was being replaced by her maternity cover, who worked full-time hours. The fact that the Claimant was not given the duties back, even after Ms Dotkova left, indicates that there was a persisting animosity towards her and the Tribunal found that this was because of her pregnancy and maternity leave.

50. Returning to the chronology, the Claimant came back to work on 11 May 2020. On 12 May 2020 Mr Karim wrote inviting her to an investigatory meeting on 15 May 2020. The Claimant was still not told what the allegation against her was. Mr Karim was to be the investigator (despite the fact that he was the other person named in the anonymous allegation).

51. This is the matter referred to in the Tribunal's credibility findings above. We have explained why we concluded that Dr Akbar was behind this investigation. We concluded that Dr Akbar wrote the questions for Mr Karim to ask. The questions were misleading and prejudged matters. For example, the first question said that "a few employees" had reported witnessing the Claimant taking food home from the canteen for her family on a regular basis. That was untrue. The third question asked, "You did not seek permission from management before taking the food. Why?" The author of the questions did not know whether the Claimant had sought permission until she had been asked. The last few questions referred to the letter the Claimant had written to Dr Akbar in September 2019, which was referred to as a grievance. (We note that no action had been taken in respect of that grievance). One of the pre-prepared questions asked the Claimant why she had raised a grievance and another asked if she would like to withdraw it.

52. Mr Karim went through the questions with the Claimant. This was the first time she knew about the allegation. She immediately said that she had been working long hours and not taken her break. She had asked her manager – Mr Karim – if she could take food home and he gave her permission. She did so because she was pregnant and had not taken a break, so she needed to eat as soon as possible at home. The food was for herself, not for her family. She said that this had happened 2 to 3 times and was with her manager's permission. When it came to the questions about her grievance, she said that she would like to work with the company and withdraw her grievance. Going forward she wanted a good relationship with everyone. The Claimant signed the notes of the meeting. She wrote to ask for a copy on 20 May 2020. She was not provided with one.

53. The Tribunal accepted the Claimant's evidence that she withdrew her grievance when asked because she wanted to get on with her work with no problems. This was her fifth day back at work. That did not mean the things she had complained about did not happen.

54. As indicated above, Mr Karim evidently reported back to Dr Akbar. Dr Akbar asked Mr Karim whether he had indeed given the Claimant permission to take food home, and Mr Karim confirmed that he had done so two or three times. Mr Karim invited the Claimant to a further meeting on 22 May 2020. Again, the Tribunal found that this was on Dr Akbar's instruction. The pre-prepared meeting questions began as follows, "This meeting is a further investigatory meeting to obtain further evidence of the allegations against you of "theft"." The Claimant's evidence throughout has been that she was accused of theft. It is clear that she was. The further questions included asking whether the Claimant was aware of the company policy that she was not allowed to take food home if she was not eating at the canteen. The Claimant said that she was not sure, she only knew that if she had permission, she could take food home. We pause to note that no such company policy was drawn to the Tribunal's attention. The Claimant's answers to other questions were consistent: she had taken food home two or three times in total, with permission, during her pregnancy. The Claimant was asked why she thought this accusation had been made against her and she suggested that Ms Bi or Sofia might be retaliating for the warnings she had given them. She mentioned that Sofia had threatened her with consequences at the time. At the end of the meeting the Claimant was asked if she had any further questions and she commented that she was back at work

with good intentions, liked the working environment and enjoyed working there. Again, the Tribunal accepted her evidence that she just wanted to get on having so recently returned from maternity leave. The Claimant repeated her request for minutes of both investigatory meetings.

55. No disciplinary hearing was held, but on 28 May 2020 Mr Karim gave the Claimant a verbal warning "regarding food stealing." He told her that if it happened again she would be immediately dismissed and that the verbal warning would remain valid for six months. A typed record of the verbal warning was signed by Mr Karim on 28 May 2020. It recorded that the company were not satisfied that the Claimant had only taken food home during her pregnancy and believed that she had done so prior to her pregnancy on numerous occasions. This was said to be in line with confidential reporting and a statement received from a canteen operative. This typed record did not reflect the notes of the verbal warning as given, but it did reflect the handwritten notes purporting to record Dr Akbar's conversation with Ms Bi. The Tribunal found that Dr Akbar had instructed Mr Karim to give the warning, had most likely himself drafted the typed version; and that this was a continuation of his negative behaviour towards the Claimant relating to her pregnancy. In reaching that conclusion, we took into account Dr Akbar's denial of any involvement in this process at all (which we rejected); our finding that no verbal warning was given to Mr Karim at the time, contrary to Dr Akbar's evidence; Dr Akbar's untruthful explanation for not speaking to the Claimant about the anonymous allegation before she went on sick leave; the fact that Dr Akbar appears to have spoken to Mr Karim the day after the Claimant went on pregnancy-related sick leave and then pressed the Claimant to attend an investigatory meeting about it during her maternity leave; our finding that the purported note of the discussion with Ms Bi was not in fact signed by her and did not reflect what she told Dr Akbar; and our findings that Dr Akbar reacted negatively to the Claimant's pregnancy and other employees' pregnancies.

56. On 5 June 2020 the Claimant appealed against the warning. She said that her explanation had not been considered at all and that the evidence against her had not been provided to her. She referred to her suggestion that Ms Bi or Sofia were retaliating for the warning she had given them. She pointed out that she had not been provided with copies of the investigation meeting notes. She expressed the view that the verbal warning signalled the company's intention to dismiss her in the near future. The Claimant received no response whatsoever to her appeal. On 3 July 2020 the Claimant wrote chasing for a response. She heard nothing until 17 August 2020, when Mr Akbar wrote to say that there had been operational difficulties in the last few weeks, which was the reason for the delay. He would be conducting an "independent" review of Mr Karim's decision and would invite her to an appeal meeting in the coming weeks.

57. We pause to note that an issue arose in early August 2020. Ms Dotkova had three days' annual leave booked, from 6 August 2020. The day before, she asked the Claimant to do housekeeping tasks that she had been doing: laundry, cleaning and so on. The Claimant explained that she did not have time to do those duties as well as her own, but she was told she had to. She did the laundry on the Thursday. On the Friday Mr Karim told her that she had "messed up the laundry." On the Saturday Mr Karim confronted her and accused her of wasting time. The Claimant had to work on the Sunday. She was supposed to

work for 2 ½ hours. Mr Karim instructed her to do all the housekeeping. She did so but it took her 3 ½ hours. On 10 August 2020, the Claimant therefore wrote to the company raising her concerns arising from those events. She expressed concerns about the way Mr Karim had spoken to her and about being required to do the housekeeping duties. She said that she believed the company was significantly changing her working environment. She also said that she worked a minimum one hour extra every day and did not take any break. She did not get paid for any extra time she worked. She made clear that if her job required additional time she expected to be paid for it. She was only paid for four hours and 40 minutes but had been working more than six hours on a daily basis.

58. It appears that Ms Dotkova held a meeting with the Claimant about her complaint the next day and with Mr Karim on 19 August 2020. Mr Karim then held a meeting with Ms Dotkova on the same day. Plainly that is not an appropriate way to address the Claimant's concerns. The Tribunal was not provided with any evidence that an outcome was ever given to the Claimant. The Tribunal accepted the Claimant's evidence that she regularly raised concerns about having her HR duties taken away from her and being required to perform housekeeping duties verbally with Mr Karim and Mr Akbar.

59. Ms Dotkova resigned about a week later. The Claimant's evidence, which the Tribunal accepted, was that Mr Karim took on the HR duties at that stage. In October 2020, the Claimant approached Mr Karim and asked if she could take over her previous role. He told her that she could only do the jobs she was asked to do by management. She still was not allowed to do her contractual HR duties. She was required to do administrative or clerical tasks along with housekeeping.

60. Meanwhile, no action was taken about the Claimant's appeal against the verbal warning. On 9 October 2020, more than four months after she had appealed, the Claimant wrote again to Mr Akbar about it. She explained that she was disturbed and embarrassed because she had been accused of theft. She could not stop thinking about it; it was haunting her. She received no reply. She wrote again on 9 November 2020. Again, she referred to the fact that she had been accused of theft, felt disturbed and embarrassed, and could not stop thinking about it. Mr Akbar finally wrote to the Claimant on 24 December 2020, more than six months after she had appealed, inviting her to an appeal meeting on 31 December 2020 at 2pm.

61. Mr Akbar was asked in cross-examination about the reasons for the delay. He suggested that he did not have time to deal with it; he was under pressure because of Covid and being short-staffed. The Claimant put to him that it was affecting her wellbeing. He said that it was, "not my priority", adding, "I see it as a slap on the wrist. Why would it affect your wellbeing?" The Claimant pointed out what she had said in her letters of October and November. He said that he did not read those at the time. The Tribunal did not accept that Mr Akbar had so much work that he was unable to deal with this brief matter for more than six months.

62. When the meeting finally took place, the notes indicate that Mr Akbar asked three questions. He asked the Claimant what her grounds for appeal were (despite the fact they were clearly set out in her appeal letter). He said that

statements from other colleagues indicated that the Claimant was taking food home and questioned why they would have any reason to give a false statement. The Claimant repeated her point that Ms Bi or Sofia might be retaliating against her. Mr Akbar then asked if the Claimant understood that the company had an obligation to be fair and consistent in its decision making and she agreed that it did.

63. On 4 January 2021, the Claimant repeated her request for the meeting notes from 15 and 22 May 2020 and asked for the notes of the appeal meeting too.

64. On 15 January 2021 Akbar wrote to the Claimant with the outcome of her appeal. He said that the verbal warning had expired on 27 November 2020 and the matter was now concluded. He told the Tribunal that he had taken advice from the Bradford Chamber of Commerce before reaching that decision.

65. On 29 January 2021 the Claimant wrote to say that she was not satisfied with the outcome. She was not concerned with the timing of the verbal warning, her concern was the allegation. She had been falsely accused and a warning had been issued as if she had committed theft. She could not stop thinking about it. Removing the warning from her file did not remove it from her mind. The Claimant also repeated her complaint about working overtime almost every day with no break; complained about not having the keys of the main office after her maternity leave; said that she had barely taken annual leave in five years; and complained about the delay in dealing with her appeal, which she believed was deliberate. She said that she expected the company either to provide her with evidence of the alleged theft or write her an apology for wrongly accusing her within seven days.

66. The Claimant did not receive a reply. On 12 February 2021 she resigned. She said that she had been falsely accused of theft and never provided with any evidence; her recently acquired HACCP level 3 and Food Safety level 3 qualifications had been ignored; senior management had victimised her because of personal grudges; Mr Karim kept telling her to do housekeeping properly even though that was not her job; her annual leave request had been declined earlier that month, which was not the first time, and she had barely been able to take annual leave in five years; and she had not been provided with a healthy environment to work. She agreed to work the following week because the annual audit was due.

67. On 17 February 2021 Mr Akbar wrote a letter that obviously reflected the taking of legal advice. It was a prompt response offering to hold a review into the verbal warning and to conduct a grievance into the other concerns raised. The Claimant had already resigned by that point in any event, but she regarded these as hollow promises for understandable reasons.

68. One of the questions for the Tribunal is whether the Claimant resigned in response to conduct by the First Respondent. The Respondents placed great weight on the fact that the Claimant started a new job very shortly after resigning. They argued that this showed that she resigned because she had got another job, not because of any treatment by the First Respondent. That demonstrates a fundamental misunderstanding. Many employees cannot afford

to resign, despite serious breaches of contract by their employer, until they have found new work. The fact that they do not resign until they have found new work does not by itself mean that they are not resigning in response to the employer's conduct. It is in that context that the Tribunal considered the Claimant's evidence about her reasons for resigning. She was entirely open in cross-examination in saying that she had started to look for new work in October 2020. At the time she resigned, she had been interviewed for her new job with Morrisons but had not been offered it. Nonetheless, her evidence was that she resigned because of the hostile environment created by Dr Akbar and Mr Akbar's lack of authority to do anything about it. She could see that Dr Akbar was treating her in the same way he had treated other women and knew that he wanted to get rid of her. She considered that the allegation of theft and demoting her to do general clerical work and housekeeping, including toilet cleaning, were to degrade and humiliate her and force her to leave the company. The Tribunal accepted her evidence.

69. We noted that on 18 January 2021 the Claimant had completed a management survey. She ticked a box to say that she thought production staff valued and appreciated senior management and another to say that she had job satisfaction. The Respondents again sought to place great significance on this document. However, it did not cause the Tribunal to disbelieve the Claimant's evidence about her reasons for resigning. The answers she gave in a management survey that was to be reviewed by Dr Akbar before she resigned might well be designed not to rock the boat.

70. The Claimant commenced Early Conciliation against each of the three Respondents on 3 May 2021. She obtained certificates on 4 May 2021 (First Respondent) and 7 May 2021 (Second and Third Respondent). The claim form was presented on 9 May 2021.

71. We turn finally to some discrete matters.

72. The Claimant said that on one occasion when she was hiring a new administrative assistant Dr Akbar told her that the person should be "presentable, not like you." She did not give specific evidence about the impact of that comment on her. Dr Akbar denied making it, but the Tribunal found that he did. The Claimant had made a note of it at the time on 28 January 2019.

73. The Claimant said that on another occasion Dr Akbar was criticising her for paying people sick pay and told her that the company "cannot carry luggage." Again, she did not give specific evidence about the impact of that comment on her. Dr Akbar denied making it, but the Tribunal found that he did.

74. The Tribunal accepted the Claimant's evidence that she regularly worked more than her contracted hours, never took a break, and did a minimum of one hour extra per day. She said so at the time when she saw her doctor in February 2019 and in letters to her employer on 11 August 2020, 22 August 2020 and 29 January 2021. Her calculation that she was owed £1757 from after her return to work was based on the signing in sheets with which she had been provided. She explained that her husband was often left waiting outside the factory gates

to pick her up. Ms Bi confirmed that when she left at 2:30pm or even 3pm she would often see the Claimant's husband still waiting for her.

75. The Respondents' evidence that the Claimant did not have to work more than her contracted hours was unconvincing. Dr Akbar said that she did not have to do overtime for which she was not paid. She needed to manage her own time. That was why Ms Dotkova was kept on – because the workload was higher. Dr Akbar was therefore asked what happened when Ms Dotkova left. He said that they recruited Ms Wilkinson. It was pointed out to him that she was only recruited after the Claimant left and he was asked again what happened about those duties between August 2020 and February 2021. He said that he, Mr Akbar and Mr Karim carried them out. That was wholly implausible and the Tribunal found it was untruthful.

76. Mr Akbar's evidence was also to the effect that after her maternity leave the Claimant was never required to work overtime or through her breaks, there was cover for her. He was asked who that was, and he too said Ms Dotkova. He too was asked what happened when Ms Dotkova resigned and he said that Mr Karim carried out her duties. Again, the Tribunal found that wholly implausible.

77. We found that the Respondents' casual approach to the Claimant's contracted working hours was exemplified by Mr Akbar's inviting her to an appeal meeting at 2pm, which was her contracted finish time. When he was asked about that in cross-examination he started by saying that the Claimant did not suggest an alternative time, so he would assume it was okay for her. She pointed out that he should not assume it was okay for her because it was outside her working hours. He then said, "Of course we respect working hours. I did not realise she finished at 2pm. It didn't occur to me." It seemed to the Tribunal that this was precisely the point. It did not occur to Mr Akbar that the Claimant finished at 2pm, despite those being her contracted hours for five years, because that was irrelevant to the Respondents.

78. The Tribunal found that the Claimant was expected and required to work more than her contracted hours and that she did so. We accepted her calculation of the additional hours worked since her return from maternity leave. The Respondents could have produced detailed evidence to rebut her calculations but did not do so. The Claimant's evidence was not challenged in any detailed or specific way.

79. The Claimant's contract did not say anything about being paid for doing overtime. However, her pay was calculated on the basis that she would receive national minimum wage if she worked 4 hours 40 minutes per day. Under the National Minimum Wage Act, if she was not paid the national minimum wage because she was required to work longer hours unpaid, she is taken to be entitled under her contract to be paid national minimum wage for those hours.

80. The Claimant's last complaint is that she was not permitted to exercise her statutory right to take paid annual leave. The Tribunal saw seven holiday request forms from 2020. The Claimant was given one day off on 14 August 2020, one day off on 26 October 2020 and one of the two days requested on 20 November 2020. Her notes from the time indicate that those two days were requested because one of her children's classmates had tested positive for

coronavirus and he had to stay home from school. She may well have been entitled to leave to care for a dependent on that day. On three other occasions she was given an hour or two off. On two of those she confirmed that she would come in early. It seemed to the Tribunal that those three occasions reflected permission to vary her working hours to attend an appointment rather than permission to take annual leave. The last request was made on 31 January 2021 and was for two weeks' leave from 8 February 2021. That was refused on the basis that the Claimant should apply a month in advance in accordance with the policy. As we have noted, that was not in fact the policy, although the Claimant should have applied four weeks in advance. The Claimant did not give evidence of any other occasion on which she had submitted a holiday leave request that had been refused.

81. Alongside that evidence, however, the Tribunal also took into account our general findings about the way employees were pressured or coerced into not exercising their rights by Dr Akbar. They, and the Claimant, knew that there would be repercussions if they took their leave. We also noted that the Claimant's notes taken at the time indicate that she did jury service in late November/early December 2020. After that, on 11 December 2020, she asked Mr Karim if she could get her annual leave in the next few weeks. He told her that she had been away from work for two weeks so he could not give her any holidays soon.

82. The Tribunal found that the Claimant was discouraged generally from requesting annual leave to which she was entitled, and told specifically in December 2020 that she could not have any holidays soon. However, when she requested leave in February 2021 she did not give the notice required under Regulation 15 Working Time Regulations 1998.

83. The Claimant confirmed that when she left her employment she was paid in lieu of all her accrued holiday.

Legal principles

84. Complaints of unfair dismissal are governed by the Employment Rights Act 1996. The right not to be unfairly dismissed is found in s 94 Employment Rights Act 1996. Section 95 of that Act defines what is meant by dismissal. This includes what is usually called constructive dismissal, i.e. where the employee terminates the employment contract, with or without notice, in circumstances where she is entitled to so without notice by reason of the employer's conduct.

85. It is well-established (see *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221) that in considering whether an employee has been constructively dismissed, the issues for a Tribunal are:
    a. Was there a breach of the contract of employment?
    b. Was it a fundamental breach going to the root of the contract, i.e. such as to entitle the employee to terminate the contract without notice?
    c. Did the employee resign in response and without affirming the contract?

86. It is an implied term of the contract of employment that the employer will not, without reasonable cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between

employer and employee: *Malik v BCCI* [1997] IRLR 462. This is a demanding test. The employer must in essence demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract: see *Frenkel Topping Ltd v King* UKEAT/0106/15/LA at paragraphs 12-15. Individual actions taken by an employer that do not by themselves constitute fundamental breaches of any contractual term may have the cumulative effect of undermining trust and confidence, thereby entitling the employee to resign and claim unfair dismissal. The final act in such a series (or "last straw") need not be of the same character as the earlier acts but it must contribute to the breach of the implied term: see *Omilaju v Waltham Forest BC* [2005] IRLR 35 CA.

87. The essence of constructive dismissal is repudiation by the employer, which is accepted by the employee. The proper approach, therefore, once a repudiation of the contract by the employer has been established, is to ask whether the employee has accepted that repudiation by treating the contract of employment as being at an end. The employee's resignation must be in response (at least in part) to the repudiation, which must be the effective cause of it: see *Nottinghamshire County Council v Meikle* [2005] ICR 1, CA; *Wright v North Ayrshire Council* UKEATS/0017/13/BI.

88. Mere delay in resigning does not, of itself, amount to an affirmation of the contract. The question is whether the employee has made the choice to affirm the contract or to accept the employer's repudiation and resign. Affirmation is an issue of conduct not time: there is no set time after which the contract is deemed to have been affirmed; it all depends on the context. The employee's own position is relevant in considering whether his or her conduct amounts to affirmation – the more serious the consequences of resigning, the longer the employee might take to make the decision. Whether the employee is actually at work during the interim is also relevant. Where an employee is on sick leave it is not so easy to infer that he or she has affirmed the contract: see *Chindove v William Morrisons Supermarket plc* UKEAT/0201/13; *Bournemouth University Higher Education Corporation v Buckland* [2010] ICR 908.

89. Once dismissal is established, s 98 of the Employment Rights Act 1996 requires the employer to show the reason for the dismissal and that it was a potentially fair one. In a case of constructive dismissal, that is the reason for which the employer breached the contract of employment: see *Berriman v Delabole Slate Ltd* [1985] ICR 526 CA. If the employer proves a potentially fair reason for dismissal, the Tribunal must then consider whether the employer acted reasonably in all the circumstances in treating that as a sufficient reason for dismissing the employee.

90. Claims of pregnancy/maternity and sex discrimination are governed by the Equality Act 2010. The Equality and Human Rights Commission's Code of Practice on Employment is relevant to discrimination claims and the Tribunal considered its provisions. It is unlawful for an employer to discriminate against an employee by subjecting them to detriment or dismissing them. Dismissal includes constructive dismissal. It is also unlawful for an employer to harass an employee

91. The burden of proving discrimination or harassment is dealt with by s 136 Equality Act 2010. The Tribunal had regard to the authoritative guidance about the burden of proof in *Igen Ltd v Wong* [2005] ICR 931. That guidance remains applicable: see *Royal Mail Group Ltd v Efobi* [2021] ICR 1263. In essence, the guidance outlines a two-stage process. First, the complainant must prove facts from which the Tribunal *could* conclude, in the absence of an adequate explanation, that the Respondent had committed an unlawful act of discrimination against the complainant. That means that a reasonable Tribunal could properly so conclude, from all the evidence before it. A mere difference in status and a difference of treatment is not sufficient by itself: see *Madarassy v Nomura International plc* [2007] ICR 867, CA. The second stage, which only applies when the first is satisfied, requires the Respondent to prove that he did not commit the unlawful act. However, as the Supreme Court again made clear in *Efobi*, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.

92. Direct discrimination is dealt with by s 13 Equality Act 2010. Under s 13, direct discrimination arises where (1) an employer treats a person less favourably than it treats or would treat others and (2) the difference in treatment is because of a protected characteristic. In answering the first question the Tribunal must consider whether the employee was treated less favourably than an actual or hypothetical comparator whose circumstances were not materially different. The second question entails asking why the employee received less favourable treatment. Was it because of a protected characteristic or was it for some other reason? It is necessary to explore the mental processes of the employer, to discover what facts operated on his or her mind: see *R (E) v Governing Body of the Jewish Free School* [2010] IRLR 136, SC ("*JFS*"). The protected characteristic need not be the only or even the main cause of the less favourable treatment; it must be an effective cause: see e.g. *London Borough of Islington v Ladele* [2009] IRLR 154, EAT. It is not always necessary to answer the first and second questions in that order. In many cases it is preferable to answer the "reason why" question, first.

93. Maternity discrimination is covered by s 18 Equality Act 2010. Employers must not treat a women unfavourably during the protected period (starting with her pregnancy and ending when her additional maternity leave ends) because of the pregnancy or pregnancy related illness. Furthermore, employers must not treat a woman unfavourably because she has exercised a right to maternity leave. By virtue of s 18(7) maternity discrimination cannot also be direct sex discrimination. The Tribunal does not have to compare the employee's treatment with anybody else's in a complaint of maternity discrimination. It is unfavourable treatment that is unlawful, not less favourable treatment.

94. Harassment is governed by s 26 Equality Act 2010. By virtue of s 212 Equality Act 2010, same conduct cannot be both sex discrimination and harassment related to sex. Under s 26, there are three elements to the definition of harassment: (1) unwanted conduct; (2) that it has the purpose *or* effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her; and (3) that the conduct is related

to a relevant protected characteristic: see *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336.

95. The question whether conduct is related to a protected characteristic is not a question of "causation". Rather, the Tribunal must ask itself why the alleged harasser acted as he or she did? What, consciously or unconsciously, was his reason. That is a subjective test and is a question of fact: see *Warby v Wunda Group PLC* [2012] UKEAT 0430_11_2701.

96. The time limits for bringing claims of discrimination in the Employment Tribunal are governed by s 123 Equality Act 2010. Under s 123(3)(a), conduct extending over a period is treated as being done at the end of the period. A distinction is drawn between a continuing act and an act that has continuing consequences. Where an employer operates a discriminatory regime, rule, practice or principle, such a practice will amount to an act extending over a period.: see *Barclays Bank plc* v *Kapur* [1991] ICR 208, HL. The concepts of policy, rule, practice, scheme and so on are examples of when an act extends over a period. However, the focus of the inquiry is not on whether there is something which can be characterised as a policy, rule, scheme, regime or practice, but on whether there was an ongoing situation or continuing state of affairs in which the group discriminated against, including the Claimant, was treated less favourably: see *Hendricks v Metropolitan Police Commissioner* [2003] ICR 530, CA.

97. As regards extending time, the Tribunal has a wide discretion under s 123(1)(b) to do what it thinks is just and equitable in the circumstances. The onus is on the Claimant to persuade the Tribunal that it is just and equitable to extend time: see *Robertson v Bexley Community Centre* [2003] IRLR 434, CA. This is a question of fact and judgment, to be answered case by case by the Tribunal: see *Chief Constable of Lincolnshire Police v Caston* [2010] IRLR 327, CA. The Tribunal should assess all the factors in the particular case that are relevant to whether it is just and equitable to extend the time limit. This will include the length of and reasons for the delay and whether the delay has prejudiced the Respondent: *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23; *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640.

98. Complaints of unauthorised deduction from wages are governed by s 13 and s 23 Employment Rights Act 1996. Under section 17 National Minimum Wage Act 1998, an employee who is entitled to the national minimum wage and is not paid it in any pay reference period is taken to be contractually entitled to be paid at the national minimum wage for that period. The time limit for bringing a complaint under s 23 Employment Rights Act 1996 is three months (plus early conciliation extension) from the date of payment of the wages in question. If there is a series of deductions, the time limit runs from the date of the last deduction.

99. Under regulations 13 and 13A Working Time Regulations 1998, employees are entitled to a total of 5.6 weeks' paid annual leave per year. Under regulation 15 they may take the leave on a day they elect by giving their employer notice twice as long as the period of leave requested. The employer may require the worker not to take the leave by giving equivalent notice. The notice

requirements may be varied by the employment contract. An employee may complain to a Tribunal that her employer has refused to permit her to exercise her right under regulation 15. Under Regulation 30, the time limit for doing so is three months (plus early conciliation extension) from the date on which it is alleged that the exercise of the right should have been permitted. The time limit applies to each individual alleged breach.

100. Employers are not permitted to operate the notice requirements in an unreasonable, arbitrary or capricious way, so as to deny the employee's right to the leave, but a reasonable operation of the notice requirements may lead to an employee losing leave at the end of the leave year. For the four weeks' leave under regulation 13, the employer must take appropriate steps to enable the worker to exercise their entitlement, including by encouraging them to take leave and informing them of the risk of losing their entitlement if they do not: see *Kreuziger v Land Berlin* C-619/16, ECJ (retained law). If the employer fails to prove that it has done so, the employee will be permitted to carry the leave forward and claim a payment in lieu on termination of their employment. The remedy for a breach of regulation 15 is a declaration and such compensation as the Tribunal considers just and equitable, calculated in accordance with regulation 30(4). That does not include compensation for injury to feelings: see *Santos Gomes v Higher Level Care Ltd* [2018] ICR 157, CA.

101. Under s 23 Employment Rights Act 1996 and Regulation 30 Working Time Regulations, if a complaint was not brought within the time limit, the employee must satisfy the Tribunal that it was not reasonably practicable to bring her complaint in time. If the Tribunal finds that it was not reasonably practicable for the claim to be brought in time, it must then consider whether it was brought within a reasonable period.

Application of the law to the facts

102. The Tribunal's detailed findings of fact are set out above. We can deal with the issues much more briefly, because many of them turn on the findings of fact. We deal with the question of time limits alongside each relevant complaint.

Unfair dismissal

103. The Tribunal found that the Claimant was constructively dismissed, as follows.

104. As explained in detail in the findings of fact, an anonymous allegation was made about the Claimant, which it was plainly reasonable for the First Respondent to investigate in principle. However, it took no steps to do so, without good reason, between 21 March 2019 and 1 April 2019. It then asked the Claimant to attend an investigatory meeting, first during her pregnancy-related sickness absence and then during her maternity leave. It warned her that if she did not attend, she might face a disciplinary hearing. After the Claimant explained that she could not attend a meeting because of her newborn baby, the First Respondent wrote to her less than a week later asking to meet her at her home to conduct the meeting. The First Respondent concedes that was inappropriate. The Claimant raised a grievance, among other things about an investigation starting when she went off sick. She offered

to deal with the allegations in writing. She received no reply and no action was taken about her grievance during the seven months before she returned to work. That was all conduct without reasonable cause that was calculated or likely to seriously undermine mutual trust and confidence.

105. When the Claimant did return from maternity leave, it was reasonable to conduct an investigation meeting with her. However, during the course of the investigation meeting the Claimant was also questioned about raising a grievance and asked to withdraw it. That was conduct without reasonable cause that was calculated or likely to seriously undermine mutual trust and confidence.

106. The Claimant gave an explanation – that she had taken food home two or three times when she had not had time to eat at work, and that Mr Karim had given her permission to do so each time. Mr Karim accepted that he had done so. The Claimant was then given a verbal warning without any disciplinary hearing having been held. The First Respondent progressed straight from an investigation meeting to the giving of a disciplinary warning. The Claimant was not provided with any of the evidence against her, nor with the evidence of Mr Karim that supported her case. She was not given the right to attend a hearing, with a colleague or representative, as required by the First Respondent's disciplinary policy. That was conduct without reasonable cause that was calculated or likely to seriously undermine mutual trust and confidence.

107. The Claimant's appeal against the warning was completely ignored for more than two months. The Claimant wrote four letters chasing up her appeal, two of which explained how it was affecting her wellbeing. It still took more than six months for her appeal to be dealt with. The letter of appeal was short and concise. The fact that there was a high workload and problems associated with coronavirus does not justify such a delay. It might make some delay reasonable, particularly in the summer of 2020, but it did not justify a delay until the end of December 2020. That is particularly so given that when the appeal was dealt with, it appears to have comprised a meeting during which three questions were asked. Ignoring the appeal and then failing to deal with it for six months was conduct without reasonable cause that was calculated or likely to seriously undermine mutual trust and confidence.

108. The outcome of the appeal did not address the Claimant's grounds of appeal at all. It was plainly not an answer to the appeal to say that the verbal warning had now expired. That did not answer the Claimant's concerns about being wrongly disciplined for stealing food. Even if advice to that effect were given by the Bradford Chamber of Commerce, that does not provide reasonable cause for Mr Akbar's conduct. It must have been obvious to him that the Claimant was upset and concerned about being disciplined for stealing food and the way that had been dealt with, and that he needed to address her concerns. Failure to do so was conduct without reasonable cause that was calculated or likely to seriously undermine mutual trust and confidence.

109. The Claimant made clear in her letter of 29 January 2021 that Mr Akbar's approach was not satisfactory, as she succinctly explained. She made clear that she expected a response in seven days. She did not receive one. No explanation was given for the failure to respond to the Claimant's letter within that timescale, even if only to acknowledge it. That was conduct without

reasonable cause that was calculated or likely to undermine mutual trust and confidence.

110. As we have explained in detail in the findings of fact, after her return from maternity leave the Claimant's HR duties were removed from her. That was a significant part of her job role. It appears that, initially, the person who was employed to cover the Claimant's maternity leave was kept on and continued to do the HR duties. As Dr Akbar acknowledged, the Claimant was entitled to return to her own job at the end of her maternity leave. Even after Ms Dotkova left, the Claimant still was not permitted to return to her HR duties. There was no reasonable cause for that. The Claimant was also regularly required not simply to manage the housekeeping functions, but actually to carry out those tasks herself, including laundry and cleaning. The fact that the Claimant's contract permitted flexibility and that she agreed she might have to "pitch in" on occasions did not give the First Respondent the ability to remove a fundamental part of her job role, nor to require her to undertake menial tasks such as laundry and cleaning instead. This was conduct without reasonable cause that was calculated or likely to seriously undermine mutual trust and confidence and was also a breach of the express term of her contract that she was employed as an HR Assistant whose primary purpose was to assist with the smooth running of the human resources department.

111. As explained in detail in the findings of fact, the Claimant was required and expected to work beyond her contracted hours daily and she did so. She was paid minimum wage for her contracted hours and was not paid for the required additional hours. That was conduct without reasonable cause that was calculated or likely to seriously undermine mutual trust and confidence. It was also a breach of her contractual entitlement to be paid national minimum wage.

112. As explained in detail in the findings of fact, the Tribunal found that the Claimant was discouraged generally from requesting annual leave to which she was entitled, with the effect that she did not take all her leave. That was conduct without reasonable cause that was calculated or likely to seriously undermine mutual trust and confidence.

113. The Tribunal found that the above matters amounted cumulatively to a fundamental breach of the implied term of mutual trust and confidence. Further, the handling of the allegation of taking food, and the removal of the Claimant's HR duties, each, by itself, amounted to such a fundamental breach. Disciplining an employee for such a serious matter as theft without following any fair process, ignoring then delaying dealing with her appeal for months, then failing entirely to address her concerns, went to the root of the employment contract, and the trust and confidence between employer and employee. Likewise, removing from the Claimant the duties that comprised the primary purpose of her job role and effectively demoting her went to the root of the employment contract and demonstrated that the First Respondent no longer intended to be bound by it.

114. The First Respondent was therefore in fundamental breach of contract. The Tribunal found that the Claimant resigned in response. As explained, she started looking for a new job in October 2020 and she did not resign until shortly

before she started her new job for Morrisons. She may have expected to be offered that role. None of that means that she did not resign because of the First Respondent's breach of contract or that the breach of contract was not an effective cause of the resignation. What is required is conduct on behalf of the employer that is a fundamental breach of contract – in this context conduct without reasonable cause calculated or likely to destroy or seriously undermine trust and confidence. It is not necessary to establish that the employee's trust and confidence was destroyed in the sense that they were not physically able to attend work any longer. Many employees cannot afford to resign until they have another job to go to. Their reason for resigning may still be their employer's fundamental breach of contract. The Tribunal found that this was why the Claimant left. We accepted her evidence that she could see that Dr Akbar was treating her the same way that he had treated other women, so as to get rid of her. She considered that the allegation of theft and demoting her to do general clerical work and housekeeping were to degrade and humiliate her and force her to leave the company. She considered that Dr Akbar was creating a hostile environment and Mr Akbar had no authority to do anything about it. That is why she started looking for a new job in October – at a time when she had explicitly requested to be given her HR duties back and that had been refused, and when she was continuing to chase for her appeal to be dealt with and nothing was being done – and that is why she resigned, when Mr Akbar had failed to deal properly with her appeal and nobody had responded to her letter about that. The fact that the Claimant was willing to work a week's notice to help with the impending audit did not alter that. Again, employees may have many reasons for working some or all of their notice, for example to make sure that they get paid the sums they are owed. That does not mean that the employer's fundamental breach of contract is not the cause (or an effective cause) of their resignation.

115. The Tribunal found that the Claimant had not affirmed the contract. Concerns about having to work beyond her contracted hours and being unable to take annual leave were longstanding, and there might be arguments about affirmation regarding those issues (although the Claimant did complain, in writing, at times). The Tribunal did not consider that the Claimant had affirmed the contract in relation to having her HR duties removed from her. We found that she regularly raised this with Mr Karim and Mr Akbar, but nothing was done. She was working under protest; she was not indicating that she accepted the change in her duties. There was clearly no affirmation in relation to the First Respondent's approach to the allegation of stealing food. The breach was ongoing right up to the termination of her contract and the Claimant's words and actions did not show that she wanted to keep the contract alive. In particular, she was given the verbal warning shortly after her return from maternity leave. She promptly appealed and repeatedly pressed for her appeal to be dealt with. She made clear that she did not agree with the First Respondent's actions in relation to this allegation and that it needed to be addressed. She resigned promptly after the failure to deal properly with her appeal and the failure to respond to her letter with a final ultimatum.

116. That means the Claimant was constructively dismissed. The First Respondent did not advance a potentially fair reason for dismissal, so it follows that her dismissal was unfair.

Pregnancy and Maternity Discrimination

117. As explained in detail in the findings of fact above, the Claimant's HR duties were removed from her when she returned from maternity leave and she was effectively demoted by being required her to perform clerical and, sometimes, housekeeping duties. That was clearly unfavourable treatment. We explained in detail in the findings of fact why we concluded that it was done, at least in part, because the Claimant had exercised the right to maternity leave. In terms of the burden of proof, the Claimant proved facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the reason for her treatment was that she took maternity leave, in particular: the general evidence about treatment of pregnant women, with Ms Javed, Ms Yasin and Ms Rashid as particular examples; the lack of any reason for removing the Claimant's HR duties from her; and Dr Akbar's change of attitude to the Claimant when she announced her pregnancy. The Respondents failed to prove that maternity was not the reason. Dr Akbar did not provide any explanation. Rather he insisted, wholly implausibly, that there had been no change in the Claimant's duties. The Tribunal found that this was discriminatory treatment by the Second Respondent and the First Respondent, which was liable for his conduct.

118. For the reasons explained in relation to the unfair dismissal complaint, the Tribunal found that the Claimant was constructively dismissed. One of the fundamental breaches of contract that gave rise to her constructive dismissal was the removal of her HR duties from her and her effective demotion after her return from maternity leave. That conduct was not only in breach of contract but also discriminatory. Part of the reason for the fundamental breach of contract was therefore maternity discrimination. It follows that the constructive dismissal itself was discriminatory. The Tribunal found that this was discriminatory treatment by the Second Respondent and the First Respondent, which was liable for his conduct. The complaint about that was presented within the Tribunal time limit, because the Claimant's employment came to an end on 19 February 2021.

119. As regards the complaint of unfavourable treatment by removal of duties and demotion following return from maternity leave, the Tribunal found that this was not a one-off act with continuing consequences, but was the operation of a discriminatory regime, or an ongoing state of affairs in which the Claimant was treated unfavourably. The removal of the Claimant's HR duties happened when she returned to work from maternity leave but was re-visited and re-affirmed subsequently, including in August 2020 when Ms Dotkova left and in October 2020 when the Claimant specifically asked Mr Karim to give her her HR duties back. Each time, the Claimant was prevented from carrying out her HR duties because of Dr Akbar's personal negative approach towards her following her pregnancy and maternity leave.

120. If the Tribunal had not found that this amounted to conduct over a period, we would have found that it was just and equitable to extend time for the Claimant to bring the claim in any event. If there had been a one-off decision in May 2020, there was clearly a significant delay in bringing the claim, and the fundamental reason for it was the Claimant's lack of knowledge of Tribunal process and time limits. She could have found out about those if she had

researched them. However, the Tribunal would have concluded that the prejudice to the Respondents in extending time was limited, and outweighed by the prejudice to the Claimant in not allowing her to bring this important part of her claim. All of the same evidence had to be heard in any event in order to determine the unfair and discriminatory dismissal complaints, and the only real prejudice to the Respondents was therefore in facing a complaint that was otherwise out of time.

Direct Sex Discrimination

121. As explained in detail in the findings of fact, the Claimant was investigated for theft and given a warning about that. The Tribunal found that this was done on Dr Akbar's direct instructions. We also found that Mr Karim was not given a warning.

122. However, as explained in the findings of fact, the Tribunal found that Dr Akbar's attitude and behaviour towards the Claimant changed when she announced her pregnancy and that his treatment of her after that was because of pregnancy and because she took the associated maternity leave. We concluded that this applied to Dr Akbar's approach to the anonymous allegation, and his instruction to Mr Karim to give the Claimant a verbal warning. This was treatment that fell within s 18(4) Equality Act 2010. However, the Claimant did not present this as a complaint of pregnancy or maternity discrimination, she presented it as a complaint of direct sex discrimination. Under s 18(7) Equality Act 2010, treatment that falls within s 18(4) cannot be direct sex discrimination under s 13 Equality Act 2010. For that reason, this complaint does not succeed.

Harassment related to sex

123. We have set out detailed findings of fact about the conduct of the investigation and disciplinary process relating to the anonymous allegation of taking food from the canteen. The Tribunal found that writing to the Claimant inviting her to an investigation meeting when she was on pregnancy-related sickness absence (after failing to speak to her during the preceding 10 days without good reason) and then writing twice more during her maternity leave, culminating in a request to hold a meeting at her home when her baby was around 8 weeks old, was unwanted conduct that related to sex (in this case maternity). It knowingly intruded into the Claimant's time at home preparing for and then looking after her new baby, and continued even after she said that she was fully committed with her newborn. Furthermore, as explained above, the Tribunal found that Dr Akbar's purpose in instructing Ms Marwaha to write to the Claimant was to create a hostile or intimidating environment for her, so as to cause her to leave her job. This therefore amounted to harassment related to sex.

124. The Tribunal found that this complaint of harassment was part of the ongoing discriminatory state of affairs that happened after the Claimant announced her pregnancy. It was therefore presented within the Tribunal time limit. If it had not been, it would have been just and equitable to extend time for bringing it. The Tribunal would have concluded that the prejudice to the Respondents in extending time was limited, and outweighed by the prejudice to the Claimant in not allowing her to bring this part of her claim. All of the same evidence had to

be heard in any event in order to determine the unfair and discriminatory dismissal complaints, and the only real prejudice to the Respondents was therefore in facing a complaint that was otherwise out of time

125. The Tribunal found that the other aspects of the handling of the anonymous allegation and the investigation and disciplinary process that followed, while unacceptable, did not "relate to" sex (including pregnancy/maternity). They may have been unfavourable treatment because of pregnancy/maternity, but the Claimant did not bring such complaints in these proceedings.

126. The Tribunal found that removing the Claimant's HR duties from her and effectively demoting her was unfavourable treatment because of pregnancy/maternity. As such, it cannot also be harassment related to sex.

127. The Tribunal found that it was entirely inappropriate for the Claimant to be asked by Mr Karim (on Dr Akbar's instructions) if she wanted to withdraw her grievance. However, we found that that was not related to sex (including pregnancy/maternity). We found that it was simply because Dr Akbar did not accept being challenged, and the grievance was a direct challenge to him.

128. The Tribunal found that Dr Akbar did tell the Claimant that she was not presentable. We did not hear detailed evidence about that, nor about the context. It may have amounted to unwanted conduct related to sex, in context. However, it is not proportionate to consider that further because the Tribunal concluded that this was a discrete and free-standing complaint of harassment related to sex, that happened in January 2019. It did not form part of a course of conduct over a period. All the other discrimination and harassment complaints were about a change in attitude after the Claimant announced her pregnancy. In those circumstances, this complaint was presented very substantially outside the Tribunal time limit and the Tribunal did not consider that it was just and equitable to extend time for bringing it. The prejudice to the Respondent, in allowing an old and separate allegation to proceed, outweighed the prejudice to the Claimant. She was still able to pursue her more recent complaints about pregnancy discrimination and unfair dismissal.

129. The Tribunal found that Dr Akbar did tell the Claimant that the company could not "carry luggage". However, this did not relate to sex. It related to his unwillingness to pay sick pay to any employee and his view that employees on sickness absence were dead weight.

Holiday

130. The only specific complaint about the refusal of a request for annual leave to which the Claimant was entitled under regulation 15 Working Time Regulations 1998 was about her request for two weeks' leave in February 2021. However, the Claimant did not comply with the requirements of regulation 15 or the contractual requirement to provide four weeks' notice of her request. Her entitlement under regulation 15 was contingent upon her doing so, and a complaint about a breach of regulation 15 does not therefore succeed.

131. We have referred above to the position following the decision in *Kreuziger* (and other cases), that an employer must prove that it has taken appropriate steps to

enable an employee to take her annual leave, including by encouraging her to take it and by warning her that she may lose her entitlement if she does not. It is clear that, far from doing so, the First Respondent actively discouraged the Claimant and its other employees from taking their annual leave entitlement. However, the remedy for that is that the employee will be able to carry forward her untaken leave and will be entitled to a payment in lieu on termination of her employment. The Claimant confirmed to the Tribunal that she was paid in lieu of all outstanding annual leave on termination of her employment.

Unauthorised deduction from wages

132. As explained in the findings of fact, the Tribunal found that the Claimant had been expected and required to work extra hours every week, for which she was not paid. We accepted her calculation that since her return from maternity leave in May 2020 she had worked 205 extra hours. That was based on her time sheets. The Respondents did not challenge her in any detail about her calculation. The could have produced records to prove the hours worked by the Claimant and paid for, but they did not do so. There was no dispute that the Claimant's pay was calculated to ensure that she received national minimum wage for the 4 hours 40 minutes she was contracted to work. To the extent that working an additional five hours on average per week meant that she was not paid national minimum wage in any pay reference period, that was in breach of her deemed contractual entitlement. Her complaint of unauthorised deduction from wages therefore succeeds. However, the Tribunal will deal with the precise sum owed to the Claimant at the remedy hearing.

133. The Claimant's complaint is that she was underpaid in every month because of having to work extra, unpaid hours. This is a complaint of a series of deductions. The claim was presented in the Tribunal within three months (plus early conciliation extension) of the last deduction. The complaint was therefore presented within the Tribunal time limit.

Employment Judge Davies

19 December 2022