EMPLOYMENT TRIBUNALS

Claimant: Mrs E Preteni Shala

Respondent: Mr Rashid Khan t/a Rashid and Rashid Law Firm

Heard at: London South Tribunal
On: **7th February 2022 (preliminary matters and pre-reading) 8th February 2022 to 11th February 2022 (evidence), 10th May 2022 (evidence, submissions and deliberations), 11th May 2022 (in chambers only– deliberations) and 26th August 2022 (oral judgment)**

By: Hybrid (face to face and CVP)

Before: **Employment Judge Clarke**
Mrs J Jerram
Mr W Dixon

Representation:
Claimant: In Person
Respondent: Mr M Sahu (Counsel)

Albanian Interpreters: Ms Angela Minaj (8th February to 11th February 2022)
Ms Blenda Zotha (10th May 2022).
Ms J Canaji (26th August 2022)

WRITTEN REASONS

Introduction

1. The Claimant was employed by the Respondent. She notified ACAS of her potential claims under the early conciliation procedure on 4th March 2019. The ACAS certificate was issued on 4th April 2019.

2. By a claim received on 23rd April 2019 the Claimant sought compensation for pregnancy discrimination, holiday pay, and a failure to pay the national minimum (living) wage. Although the Claimant subsequently resigned from her employment, no claims were brought in relation to the termination of her employment.

3. The Respondent resisted the claim denying that the Claimant was subject to any discrimination and asserting that she had been paid at least minimum wage.

4. The hearing took place over an initial 5 days between 7th to 11th February 2022 and, as this proved insufficient, for the remainder of the evidence, submissions, and deliberation on a further 2 days on 10th and 11th May 2022. Judgment was reserved and delivered orally on 26th August 2022. The Claimant was assisted by an Albanian interpreter during the evidential, submission and judgment stages of the hearing.

5. At the commencement of the hearing on 7th February 2022, the Claimant withdrew her claim for holiday pay, the Respondent's name was formally amended by consent of the parties and a list of issues were agreed. The agreed list is appended to this judgment.

Apology

6. There has a been a significant delay in producing these written reasons. The Tribunal apologies to the parties for this delay. The parties have been advised by separate letters as to the reasons for the delay.

The Law:

Standard of Proof

7. The party who bears the burden of proving the claim, or any element of the claim, must do so on the balance of probabilities.

Pregnancy Discrimination

Test:

1. S.18 of the Equality Act 2010 confers on employees the right not to be discriminated against on the grounds of pregnancy or maternity. Enforcement of that right is by way of complaint to the Tribunal under section 120 of the Equality Act 2010.

2. The Claimant must show that she was subjected to unfavourable treatment by the Respondent during the protected period and that such unfavourable treatment was because of her pregnancy.

8. The protected period begins when the pregnancy begins and ends either at the end of the period beginning 2 weeks after the end of the pregnancy (where the woman has no right to ordinary or additional maternity leave) or, where a woman has the right to ordinary and additional maternity leave, at the end of the additional maternity leave or when she returns to work (if earlier) – s18(6) of the Equality Act 2010.

9. S.136 EA 2010 sets out a two-stage burden of proof for claims brought under the Act which has been subject to clarification and guidance, in particular in *Igen -v- Wong [2005] EWCA Civ 142; [2005] IRLR 25*8:

Stage 1: The prima facie case
There must be primary facts from which the tribunal could decide, in the absence of any other explanation, that discrimination took place. It is not necessary that a tribunal would definitely find discrimination, only that reasonable tribunal properly concluding on the balance of probabilities could do so.
The burden of proof is on the Claimant: *Ayodele -v- (1) Citylink Ltd (2) Napier [2018] IRLR 114, CA.; Royal Mail Group Ltd -v- Efobi [2021] UKSC 22* and the tribunal must take into account all of the evidence adduced (not only that of the Claimant) and any argument made by the Respondent (eg that a comparator is not truly comparable). The tribunal should not take into account any explanation for the treatment given by the Respondent.

Stage 2: the burden shifts
The Respondent must prove that it did not discriminate against the Claimant by proving that the treatment was in no sense whatsoever because of the protected characteristic. Cogent evidence is expected to discharge the burden of proof.

10. In *Hewage -v- Grampian Health Board [2021] UKSC 37* the Supreme Court said of the burden of proof provisions that "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 on a position to make positive findings on the evidence one way or the other."

11. Provided that the protected characteristic had a significant influence on the outcome, discrimination is made out – *Nagarajan -v- London Regional Transport [1999] IRLR 572, HL*.

12. Unfavourable treatment is an objective test. The Tribunal should consider whether the reasonable employee would consider the treatment to be unfavourable. There is a neutral burden of proof in relation to this element.

Time limits:

13. Time limits for claims for bringing a claim for pregnancy discrimination are set out in s.123 of the Equality Act 2010 ("EQ 2010"). The primary time limit is within 3 months of the discriminatory act, but this is extended by the ACAS early conciliation provisions – s140B EQ 2010.

14. Where the Claimant relies upon an omission rather than on a positive act of the Respondent, time runs from when the person decided not to do the act. In the absence of evidence to the contrary, someone is taken to decide on failure to do something when either they do an act which is inconsistent with them doing it or (if they do not do anything inconsistent) on the expiry of a period in which they might reasonably have been expected to do it – s.123(4) EQ 2010.

15. If more than one discriminatory action is claimed, the 3 month time-limit attaches to each action.

16. However, under s132(3) conduct extending over a period is treated as if done at the end of the period, so the 3 month time limit only needs to be counted from end of the period. This is often colloquially referred to as 'continuing discrimination'. In *Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96*, the CA held that 'an act extending over a period' can comprise a 'continuing state of affairs' as opposed to a succession of isolated or unconnected acts. There needs to be some kind of link or connection between the actions, especially if different people are involved. This often means that a series of discriminatory actions can be in time provided the claim was brought within 3 months of the most recent action (ie the most recent action which is ultimately found to be discrimination).

17. The Tribunal also has a wide discretion to extend time if it is just and equitable to do so – s.123(1)(b) EQ 2010. If more than 1 discriminatory act is claimed, the time limit applies to each unless there is continuing discrimination, that is conduct extending over a period, in which case time runs from the end of the period – s.132(3) EQ 2010.

18. The burden is on the Claimant to show that it is just and equitable for an extension to be granted. There is no presumption that the discretion will be exercised, extensions are the exception rather than the rule – *Robertson -v- Bexley Community Centre t/a Leisure Link [2003] IRLR 434 (CA)*.

19. When considering whether or not to exercise its discretion to grant an extension of time, the tribunal should have regard to the checklist in s.33 of the Limitation Act 1980 (as modified by the EAT in *British Coal Corporation -v- Keeble & Others [1997] IRLR 336, EAT*). The tribunal should consider the prejudice each party will suffer according to the decision reached and all the circumstances of the case and in particular:
    (i) The length and reasons for the delay;
    (ii) The extent to which the cogency of the evidence will be affected by the delay;
    (iii) The extent to which the Respondent has co-operated with any requests for information;
    (iv) The promptness with which the Claimant acted once s/he knew of the facts giving rise to the cause of action; and
    (v) The steps taken by the Claimant to obtain appropriate advice once s/he knew of the possibility of taking action.

20. The potential merits of the claim may also be relevant to the exercise of the discretion: *Rathakrishnan -v- Pizza Express (Restaurants) Ltd [2016] ICR 283, EAT*.

Remedy:

21. An award for injury to feelings is assessed on the basis of the Vento guidelines which set 3 bands for injury to feelings. The original bands have been updated to reflect inflation by presidential Guidance dated 5th September 2017 and subsequent Addenda.

22. The Second Addenda dated 25th March 2019 relating to claims presented after 6th April 2019 and before 6th April 2020 is applicable to the present case and sets the bands as follows:
    lower band (less serious cases, isolated or 1 off occurrences): £900 to £8,800

middle band (cases that do not merit an award in the upper band): £8,800 to £26,300
upper band (the most serious cases): £26,300 to £44,000
Only the most exceptional cases should result in awards in excess of £44,000.

23. The award for injury to feelings should reflect the degree of the injured feelings, not the nature of the discrimination per se. Whilst there is often a correlation between the degree of discrimination and the degree of injury to feelings, that is not necessarily the case.

24. The Tribunal may also award aggravated damages are where hurt feelings are increased because the acts of discrimination were done in an exceptionally upsetting way, where the discriminatory conduct is evidently based on prejudice, animosity or is spiteful or intended to wound (as opposed to ignorance or insensitivity) or where the trial is conducted in an unnecessarily oppressive manner.

25. The damages awarded should reflect only the injury to feelings caused by the unlawful discrimination as opposed to any injury to feelings caused by claims which have not been upheld or external factors.

26. The Tribunal may also consider whether to make any recommendations.

National Minimum Wage/Unauthorised deduction from wages

Test:

27. Section 1 of the National Minimum Wage Act 1998 ("NMWA 1998") requires a person who qualifies for the national minimum wage to be remunerated in respect of work in any pay reference period at a rate which is not less than the national minimum wage.

28. S.9 of the NMWA 1998 and Regulation 59 of the NMWR 2015 require an employer to keep and preserve records sufficient to establish that the employer is remunerating the worker at a rate at least equal to the national minimum wage for a period of 6 years.

29. Where a worker who qualifies for the national minimum wage is actually paid less than the national minimum wage in any pay reference period, section 17 of the NMWA 1998 requires the Claimant to be paid the difference plus additional remuneration to bring up to the minimum wage to be calculated in accordance with the formula:

The difference between the pay received and the pay should have received divided by the rate of the national minimum wage that was payable during pay reference period multiplied by the rate payable at the determination

30. Section 28 of the NMWA 1998 reverses the usual burden of proof and creates a presumption that the claimant qualifies for the national minimum wage at the relevant time, and that the claimant was renumerated at less than the national minimum wage, unless the contrary is established.

31. Pursuant to sections 1 and 2 of the NMWA 1998, the determination of the hourly rate of remuneration and the applicable minimum rates is set out in the National Minimum Wage Regulations 2015 ("NMWR 2015").

32. Regulation 6 of the NMWR 2015 defines the pay reference period as being 1 month, or for any worker who is paid wages by reference to a period shorter than a month, that period.

33. Regulation 4 of the NMWR 2015 (as updated by the subsequent Regulations), specifies the national minimum wage for the Claimant (who was over 25 at all material times). The relevant rates were as follows:
    (i) between April 2016 and March 2017: £7.20/hr
    (ii) between April 2017 and March 2018: £7.50/hr
    (iii) between April 2018 and March 2019: £7.83/hr
    (iv) in August 2022: £9.90/hr.

34. Regulation 7 of the NMWR 2015 specifies that to determine the hourly rate at which a worker is to be treated as having been renumerated in any pay reference period, the remuneration in the pay reference period is to be divided by the hours worked in the pay reference period. "Hours" includes fractions of an hour – Regulation 3. Regulations 8, 9 and 10 specify how the remuneration paid in any pay reference period is to be ascertained and Regulations 11 to 16 deal with deductions which reduce the remuneration.

35. Regulation 17 of the NMWR 2015 sets out how the hours of work in any pay reference period are to be determined. For salaried hours of work, Regulations 21 to 29 apply.

36. Pursuant to Regulation 21 of the NMWR 2015, the salaried hours of work are those for which a worker is entitled to be paid an annual salary (or annual salary plus performance bonus and/or salary premium) in respect of a number of hours in a year (whether or not specified in the contract) and is not entitled to other payments for those hours. Also, that the worker is entitled to be paid, where practicable, in equal instalments of between 1 week and 1 month (or quarterly provided that the quarterly payments occur by way of monthly payments).

37. Regulations 22 to 29 of the NMWR 2015, determines how the hours of work in any pay reference period are to be calculated.

38. Pursuant to section 13(1) of the Employment Rights Act 1996 an employer must not make an unlawful deduction from wages. Failure to pay less than the applicable national minimum wage pursuant to the NMWA 1998 and the NMWR 2015 amounts to an unlawful deduction.

Time Limits:

39. Unauthorised deductions from wages under s.13(1) of the Employment Rights Act 1996 ("ERA") must be brought within 3 months of the deduction, or within 3 months of the last deduction where that has been a series of deductions of sufficient frequency and repetition (subject to any ACAS conciliation extension) – s. 23(2)(a) and s23(3)

ERA. Where there has been a series of deductions, a gap of more than 3 months will break the series – *Bear Scotland Ltd & Others -v- Fulton & others and other cases [2015] ICR 221 EAT*.

40. If the complaint is about a series of deductions or payments, the three-month time limit starts to run from the date of the last deduction or payment in the series: S.23(3) ERA. 6.

41. For a number of deductions to be a "series" there has to be "sufficient frequency of repetition", that is a sufficient factual and temporal link (Per Langstaff P in Bear Scotland v Fulton [2015] IRLR 15). It is probably not necessary for all the deductions in a series to be unlawful provided that there is at least one in-time proven unlawful act (see *Ekwelem v Excel Passenger Service Limited [2013] EAT 0438/12* and *Royal Mail Group limited v Jhuti [2018] EAT 0020/17 per Simler P*).

42. The primary time limit may be extended if it was not reasonably practicable for the claim to be presented in time and it was presented within a reasonable time thereafter – section 23(4) ERA. The Claimant bears the burden of proving that it was not reasonably practicable to bring the claim in time.

43. Reasonably practicable does not mean "reasonable", nor does it mean not physically possible but means something like "reasonably feasible" – *Palmer & anor -v- Southend-on-Sea Borough Council [1984] ICR 372, CA*.

44. What is reasonably practicable is a question of fact and should be given a liberal construction in favour of the employee, but where the reason for failing to present in time relates to ignorance of rights, the Claimant's ignorance must be reasonable - *Dedman -v- British Building and Engineering Appliances Ltd [1974] 1 All ER 520 [1974] ICR 53*. The question is whether the Claimant ought to have known of his rights – *Porter -v- Bandridge Ltd [1978] ICR 943, CA*.

45. Ignorance of a fact that is crucial or fundamental to a claim may render it not reasonably practicable to present the complaint in time. A fact will be crucial or fundamental if, when learning it, the Claimant's state of mind genuinely and reasonably changes from one where s/he does not believe s/he has grounds for a claim to one where s/he believes a claim is viable. Ignorance of a fact will not render it not reasonably practicable to present a claim unless the ignorance is reasonable and the change in belief is also reasonable. *Cambridge and Peterborough NHS Foundation Trust -v- Crouchman [2009] ICR 1306* and *Machine Tool Industry Research Association -v- Simpson [1988] ICR 558, CA*.

46. The existence of an internal process is not sufficient to justify not bringing the claim in time *Bodha -v- Hampshire Health Authority [1982] ICR 200* and *Palmer & anor -v- Southend-on-Sea Borough Council [1984] ICR 372, CA*. Although, where there is no advisor and/or there are other special circumstances or additional factors such as youth and inexperience, mental health difficulties or misleading behaviour by the employer, it may not be reasonably practicable to present a claim until after the internal process has been concluded – for example: *John Lewis Partnership -v- Charman EAT*

0079/11, *Webb -v- Carphone Warehouse ET Case no. 1402557/11* and *Owen & anor -v- Crown House Engineering Ltd [1973] ICR 511.*

47. Even when claims are brought in time or time is extended, claims for unlawful deductions from wages cannot be pursued in respect of deductions which took place more than 2 years prior to the presentation of the claim - s23(4A) of the ERA.

The Evidence

48. At the hearing, the Claimant represented herself and gave sworn evidence. She also called sworn evidence from her husband, Mr Dalip Salja, and from Mariyam Nagadya Wlodarczyk.

49. The Respondent was represented by Counsel, Mr Sahu, who called sworn evidence from Mr Rashid Khan, Mrs Mariyem Afifa, Mr Ata-Ul-Qadir Tahir, Ms Guila Kaur and Mr Fazal Saqib.

50. The Tribunal was referred to, and considered, witness statements from each witness who gave oral evidence. The Tribunal was also provided with witness statements from Anshul Gupta Nilesh G Rupwate, and Nazira Begum on behalf of the Respondent but these witnesses were not called to give evidence.

51. Additionally, the Tribunal considered documents contained in a bundle comprising 357 pages and 3 additional pages of evidence comprising an e-mail and attachment from the Claimant to the Respondent dated 14th December 2018 and a letter from the Respondent to the Home Office dated 25th November 2016.

52. On 11th February 2022 new evidence was sought to be admitted by the Respondent. The application was renewed on 10th May 2022. The new evidence included outgoing post diary, a notice from May 2017, Techlogic documents, e-mails and a file note, a bank statement, photographs taken of the Respondent's premises in 2022, the print outs of documents related to statutory sick pay that had been referred to by Mr Tahir in his evidence. Those applications were refused as being made far too late in the hearing (after the Claimant had given evidence) and in any event on the basis that the evidence sought to be admitted was not sufficiently probative or relevant to the issues to be determined.

53. Throughout this judgment, text in bold within square brackets refer to the pages of the trial bundle.

The Submissions

54. At the conclusion of the evidence, the Tribunal received closing submissions from the Claimant orally and from the Respondent both in writing and orally.

55. The Claimant's submissions were largely a summary of the evidence that she had given and an explanation as to how she had calculated her losses on her schedule. She also highlighted a small number of inconsistencies in the Respondent's evidence.

56. The Respondent's submissions recited some of the evidence. They were to the effect that the Respondent's witnesses were consistent and credible whereas the Claimant was not, and her witnesses were largely irrelevant or worthless: her husband was not privy to matters, and Ms Wlodarczyk had her own axe to grind. Also, that the documentation was reliable and accurate. Further, that the claims were out of time and time should not be extended.

57. In relation to the wages claim the Respondent submitted that the claimed deductions were not part of a series, that the payslips and accountant's calculations demonstrated that the Claimant had been paid minimum wage and that, given the evidence of absences and lateness, the Tribunal could not be satisfied that she had worked more hours than she had been paid for.

58. In relation to the discrimination claim the Respondent submitted that the last act took place in 2019 and the acts complained of were discrete separate acts that did not amount to a course of conduct in any event. Further, there was no substance to the claims and that the evidence showed the allegations to be false. Rather, the Respondent had sought to accommodate the Claimant's behaviour and erratic attendances and be flexible regarding her working conditions when pregnant – reducing her workload, allowing extra breaks, and paying her for the hours she says she worked without question. Also, that some of the matters complained of were applied to everyone in the office and could not be considered to be unfavourable treatment related to pregnancy.

General Findings on the Witness Evidence

59. There was a significant amount of disagreement between the witnesses for the Claimant and those for the Respondent.

60. In general, where there was disagreement, the evidence of the Claimant was preferred by the Tribunal.

61. The Tribunal found the Claimant and her witnesses to be generally credible, compelling, plausible and reliable.

62. The Claimant gave evidence in a straightforward manner, generally doing her best to answer the questions put to her. Much of her evidence was corroborated by contemporaneous documentation the genuineness of which was not challenged. Some of it was corroborated by the testimony of other witnesses (including witnesses for the Respondent). Although the Tribunal accepted that there were some inconsistencies, inaccuracies and a degree of exaggeration in the Claimant's evidence, primarily regarding the hours she worked and her calculations in respect of the claim for deduction from wages, the Tribunal considered these inconsistencies to be minor, largely understandable, and not to detract from her credibility overall.

63. Mr Dalip Salja's evidence was limited to providing background regarding the extent and nature of the injury to the Claimant's feelings and was unchallenged in any material respect. His evidence was straightforward and corroborated by letters from

the Claimant's GP and midwife. The Tribunal found him to be an honest and reliable historian.

64. The Tribunal considered carefully the evidence of the Claimant's witness, Mariyam Nagadya Wlodarczyk and had particular regard to the fact that Mrs Wlodarczyk's employment was not contemporaneous with that of the Claimant and that she herself has a pending Tribunal claim against the Respondent of a similar nature. Nevertheless, the Tribunal found her evidence to be genuine, plausible, believable and relevant. She had known the Respondent over a period spanning approximately 7+ years from 2013 and the Tribunal found her evidence about how nice the Respondent had been for so long but how his behaviour changed such that she had "never known him to be like that" after she told him of her pregnancy to be particularly compelling.

65. The Tribunal did not find the majority of the evidence from the Respondent and his witnesses to be truthful, credible or reliable. None of the Respondent's witnesses could be considered to be independent. Their evidence lacked cohesion and was frequently inherently implausible in light of undisputed facts. It was often vague and/or lacking in detail or contemporaneous corroborative evidence to support it. On a number of occasions, most notably regarding the presence or otherwise of video cameras and a "signing in" book the Respondent's witnesses gave evidence which was inconsistent with other parts of their own evidence, the evidence of other witnesses for the Respondent, and/or contemporaneous documents.

66. The Tribunal found the Respondent himself to be highly evasive, argumentative and inconsistent when giving oral evidence. Significant parts of his evidence were undermined by contemporaneous documentation (for example: his assertion that the Claimant was not a paralegal and wrongly referred to herself as a paralegal in March 2017 [**para 9 of his witness statement**] was contradicted by his own letter to the home office dated 25th November 2016 in which he referred to her as such). Further, much of his evidence was not corroborated by the contemporaneous documentation that the Respondent would have been expected to have and to have retained. His evidence was further discredited by wholly implausible evidence that he gave regarding:

    (i) the terms of the Claimant's contract (he denied that the written contract that he had prepared and signed reflected the Claimant's actual terms);
    (ii) his assertion that a risk assessment had been conducted (despite the lack of any document that could reasonably be construed as an appropriate risk assessment); and
    (iii) the presence of CCTV cameras in the office (which he denied, but which evidence was contradicted by numerous other witnesses, including those called on behalf of the Respondent, and by the photograph at [**H10**]).

    Those parts of the Respondent's evidence the Tribunal did feel able to rely upon mainly supported the Claimant's case.

67. The Tribunal did not find Mrs Mariyam Afifa an impressive witness. Her evidence regarding her supervisory role over the Claimant was particularly unsatisfactory, she gave little evidence that was directly relevant to the issues for the Tribunal and she

was difficult to pin down at times. The Tribunal did not find Mrs Afifa's evidence of the Respondent's behaviour towards her in respect of her own pregnancies to be of much assistance to determining the manner in which he had behaved towards the Claimant. This is because she and the Claimant had very different positions and roles in the Respondent's business, and their perceptions and expectations were also different. Further, her evidence was tainted by her assertion that she had neither seen anyone else's statements prior nor helped anyone else with their statement. This was contradicted by Ms Kaur (whose written evidence was to a substantial degree identical to that of Mrs Afifa's and who acknowledged having been assisted by Mrs Afifa).

68. Ms Kaur's evidence was limited, and the Tribunal found it to be of no real value in determining the relevant issues. She worked in a different office from that of the Claimant and had only infrequent direct contact with the Respondent. Consequently, her evidence as to how she was treated during pregnancy was of little assistance in determining how the Claimant had been treated. She could give no direct evidence as to the Claimant's treatment. She admitted having been assisted by Mrs Afifa to draft her written statement, and her written statement was substantially identical to parts of Mrs Afifa's.

69. Mr Tahir, like other of the Respondent's witnesses was sometimes credible and reliable so far as general matters related to the office were concerned but he was not independent. He had been working for the Respondent for over 10 years and his evidence demonstrated that he was essentially loyal to the Respondent. The Tribunal felt unable to accept his evidence regarding a meeting which took place on 3rd October 2018 for reasons that are explained more fully below and concluded that where his evidence differed from that of the Claimant, the Tribunal preferred the Claimant's evidence.

70. Mr Saqib's written evidence was in fluent English without any interpretation statement or other indication of any language difficulty. Nevertheless, it was clear after the commencement of cross-examination, that he was unable to give reliable evidence in English and his evidence was therefore postponed until an Urdu interpreter was available. His oral evidence was limited in scope and of little assistance. The Tribunal found him to be loyal to the Respondent and supportive of him. It was accepted he was generally doing his best to answer questions accurately and much of his general evidence was accepted but the Tribunal did not consider all of his evidence to be reliable, in particular that regarding the lack of a sign in book, which was contradicted by other witnesses.

71. The Tribunal did not feel able to place any weight of the statements of the Respondent's witnesses who were not called to give evidence and were not therefore available for cross-examination. Their evidence was, in the main vague and of limited value, much of it merely being to the effect of the Respondent's character. Two of the witnesses did not work in the same office or at the same time as the Claimant and could give no relevant direct evidence about her treatment by the Respondent. The reliability of the evidence in these statements was also uncertain given the issues with the statements of witnesses who had attended. Additionally, the statement of Anshul Gupta asserted in the heading that it was the statement of Mrs Afifa Maryem. It had not been corrected prior to signature. The Tribunal could not rule out the possibility

that the contents of the statement had been influenced by Mrs Afrifa. The Tribunal therefore disregarded the contents of these witnesses' statements.

72. The Tribunal also felt it could place little or no weight on a number of the documents that were submitted on behalf of the Respondent, especially where they conflicted with the account given by the Claimant. In particular, the summary of the hours worked by the Claimant [**C3**] which the Tribunal was told was prepared by the Respondent's accountant. Also, various warning letters purportedly sent to the Claimant [**E1 – E5**] and notes of various meetings with the Claimant which the Respondent said had taken place [**F1 – F15 and L1- L4**]. The contents and genuineness of virtually all of these documents were challenged by the Claimant, who disputed that many of these meetings had taken place at all or that the all the persons said to be present were in fact there. The reasons for the Tribunal being unable to place little or no weight on these documents is set out in further detail below.

Relevant Findings of Fact and Associated Conclusions

73. The Respondent is a qualified solicitor who operates a sole practitioner immigration practice regulated by the Solicitors Regulatory Authority under the name Rashid and Rashid Law Firm. He has offices on 2 sites and employs in the region of 25 people, mainly caseworkers, across these 2 sites with the majority situated at Merton High Street office where the Claimant worked and where the Respondent spent the majority of his time. He uses external accountancy services to deal with his payroll.

74. The Claimant was at all material times over the age of 25 years. She is originally from Kosovo but came to this country in late 2014. She had previously worked in Kosovo as a solicitor but is not entitled to practice in the UK. She commenced employment with the Respondent on 4th January 2016 working from the Merton High Street offices. The first 3 months of her employment were a probationary period. She was initially given administrative tasks such as dealing with post and some translation work but progressed on to assisting caseworkers and possibly eventually operating to some degree as a case worker herself. On 25th November 2016, in a letter to the Home Office regarding an extension of the Claimant's visa, the Respondent described her as a paralegal.

75. Her employment came to an end in 2019 after her resignation by letter dated 23rd December 2019 [**K6 & K39**] whilst on maternity leave.

76. There was dispute between the parties about the majority of the other facts. The findings set out below are the Tribunals'' findings on the disputed evidence together with its reasons for its findings.

The Terms of the Contract between the Claimant and the Respondent and hours worked by the Claimant

77. The Tribunal was referred to 2 written contracts of employment for the Claimant. The first contract stated that the Claimant's employment would commence on 1st April 2016, described the Claimant's role as "Support Staff Admin" and was signed by the Respondent but not the Claimant [**B1 – B6**]. That provided for the Claimant's working

hours to be "9.30am – 6pm Monday to Friday or mutually agreed" at a salary of £13,000 per annum payable monthly [**B1**].

78. A further contract stating that the Claimant's continuous employment commenced on 1st October 2017 was signed by both Claimant and the Respondent [**B7 – B12**]. That contract described the Claimant's role as "Assistant Case Worker", stated that the Claimant's working hours were "9.30am – 6pm Monday to Friday with 1 hour for lunch" [**B7**] and "Your salary would be £13,000 pounds per annum payable monthly. You are a PAYE employee and we will deduct tax and national insurance from your gross salary" [**B9**]. There were also terms related to unpaid time off in exceptional circumstances such as compassionate leave or to care for sick dependents only on prior approval of the Respondent, an entitlement to statutory sick pay and a holiday entitlement of a total 28 days per annum (including bank holidays).

79. The second contract also stated: "You are required to sign in 'signing in book' each time you arrive and leave the office." [**B7**]. This term was not present in the 2016 contract.

80. Neither contract provided for a fixed term of employment.

81. Although there was some dispute between the parties as to whether the 2016 contract had ever been agreed between them, there is no doubt that the 2017 contract had been and nothing turns upon the dispute regarding the earlier contract. It is accepted by both parties that the basic terms as to hours and salary were the same throughout the Claimant's employment.

82. There was disagreement between the parties as to whether the hour per day for lunch was paid or not paid. Neither version of the contract specifically states the total working hours per week or whether or not lunch was paid. The Claimant's initial ET1 claim form asserted that she worked 37.5 hours per week, it was only in her subsequent schedule of loss that she asserted her paid contractual hours were 42.5 hour week after taking advice. However, in her latest minimum wage calculations the Claimant reverted to using a 37.5 hour week. During the course of the evidence, the Tribunal heard numerous references from the Claimant and other witnesses to "making up time" during the lunch break.

83. On the balance of probabilities, the Tribunal concluded that the lunch hour was not paid and that the contracted hours worked by the Claimant were therefore 37.5 hours per week.

84. The 2017 contract was obviously incorrect or inappropriate in a number of ways and the Respondent disagreed that the 2017 written contract in fact reflected the terms of the Claimant's employment.

85. Firstly, the 2017 did not have the correct date of commencement upon it. The Claimant's employment with the Respondent was agreed to have started on 4th January 2016 with no subsequent break. Therefore, the start of her continuous employment was 4th January 2016, not 1st October 2017 as stated on the face of the document.

86. Secondly, the salary of £13,000 per annum provided for was substantially below the applicable national minimum wage for the contracted 37.5 hours per week work, from 1st October 2016. The applicable rates were as follows: from 1st October 2016 to 31st March 2017: £7.20 per hour (equating to £14,040.00pa); from 1st April 2017 to 31st March 2018: £7.50 per hour (equating to £14,625.00pa); and from 1st April 2018 to 31st March 2019: £7.83 per hour (equating to £15,268.50pa).

87. The Respondent gave evidence that the Claimant had only a year-to-year contract that was renewed annually, that the Claimant never worked fixed hours but worked the hours she wanted to and that her pay was determined by her giving him the total number of hours that she had worked at the end of each month, usually orally, which he then paid without question at the national minimum wage rate.

88. This evidence is wholly inconsistent with the written contract signed by both parties. The Respondent effectively asked the Tribunal to disregard the written agreement. He was however unable to provide any adequate explanation as to why he would have generated and signed an employment contract which did not reflect the actual terms of employment. It was particularly incredible that he should have done so given his qualification and practice as a solicitor.

89. Additionally, the Respondent was unable to provide any documentary evidence as to the information given to him by the Claimant regarding the hours worked and on which he says her pay was based other than the document at [**C3**] prepared by his accountant (which is entitled "Summary Of Hours Work from May 2016 to Nov 2019"). This document has 5 columns headed (from left to right) "Month", "Hour rate", "Gross pay", "net pay" and "hours". The hourly rates in the "hourly rates" column are the appropriate national minimum wage rates for the months they correspond to, and it was not disputed that the gross and net pay reflected the amounts in fact received by the Claimant.

90. The Respondent also gave evidence to the effect that the Claimant was the only employee with whom he had this arrangement, that she had told him orally at the end of each month the number of hours that she had worked and that he had not recorded the information in any permanent format or single record but that either she or he may have occasionally jotted the number of hours down on a bit of paper that was not retained. Also, that he had passed the information on, usually orally, to his accountant who had then calculated the pay due and that he did not have records from his accountant recording the hours worked other than the document at [**C3**]. The Claimant disputes the hours recorded on [**C3**] are accurate or that this process described by the Respondent occurred at all.

91. There was also a disagreement between the parties as to whether there was ever a "signing in book" as referred to in the 2017 contract of employment. This book was not mentioned in the 2016 contract and was therefore an additional term in the later document. No such book was produced in evidence.

92. The Claimant asserted that there was such a book and that it was present and used throughout her employment. Her witness, Mrs Wlodarczyk, also gave evidence that there was a signing in book in use during her employment in 2020.

93. The Respondent gave evidence that there was no signing-in book during the Claimant's employment, that there had previously been a signing-in book for a short time but that it had been stopped in 2015 as all the senior solicitors forgot to use it, there were disputes about comings and goings and so he abandoned it and decided to simply trust all his employees.

94. The Respondent's witnesses gave inconsistent accounts as to the existence and use of a signing in book. Ms Afifa said that there was a signing in book for a short period in 2015 but that this pre-dated the Claimant's employment. Mr Tahir, who manned the reception desk where the book was located, also agreed that there had been a signing in book but that it had been abandoned in 2015 because of the issues with the staff not using it properly and that there had been no attendance register since. Mr Saqib worked for the Respondent throughout 2015 in the admin department and was partly responsible for keeping an eye on this sort of thing but gave evidence that there was no sign in book and that there never had been one.

95. The Tribunal preferred the evidence of the Claimant and her witness. It was both plausible and consistent with the manner in which the Respondent managed his employees in other ways that he would maintain a signing-in book and monitor the hours worked by his employees. It was wholly implausible that his reaction to there being issues about people's comings and goings and the accuracy of the employees own recording of their hours that he would simply decide to trust his employees and abandon any attempt to monitor whether they were complying with the hours they were contracted to work. This is particularly so given the Respondent's legal obligation to maintain records of hours worked by staff for the purposes of national minimum wage legislation. Further, there was no plausible explanation as to why, if the book had indeed been abandoned in 2015 prior to the commencement of the Claimant's employment, she would have known about it, or why a requirement to use it to record her hours was included in the Claimant's 2017 contract of employment over 2 years after it was said to have been abandoned) but not in the 2016 version which preceded it.

96. The Tribunal also rejected the Respondent's oral and evidence regarding the contractual arrangements with the Claimant and finds that the contractual arrangements between the Claimant and the Respondent at all material times were those as set out in the written agreements at [**B1 – B12**] save in relation to the start date of her continuous employment (see paragraph 85 above).

97. The Tribunals reasons for rejecting the Respondents evidence are as follows:

98. His evidence was wholly contrary to the signed written agreement [**B7 – B12**] and was unsupported by any reliable or contemporaneous records. The Respondent, being a qualified solicitor would have had at least a basic understanding of contract law and the Tribunal considered it wholly incredible that he had signed an employment contract which so materially differed from the terms he now claims were in fact applicable.

99. The Tribunal found it incredible that the Respondent simply accepted without question from the Claimant the hours that she had worked and paid her accordingly. This was particularly incredible in light of his clear and apparent concerns about the hours she was working (see for example his assertion that she was disciplined in January 2018 for arriving late to work (paragraph 7 of his witness statement and [**E1**]) and the schedule of timings [**G40-41**] that he compiled from text messages sent to him about her lateness/absences and which he relied upon). These concerns are inconsistent with his assertion that she worked the hours she wanted and he paid her only for those hours. Further, contrary to his legal obligation, the Respondent kept, or claims to have kept, no record of the hours actually worked by the Claimant, despite his assertion that her pay was based on those hours and despite his assertion in oral evidence that "I have a law firm, I know my duties".

100. The Tribunal also rejected the validity, accuracy and genuineness of the accountant's document at [**C3**] which the Tribunal concluded had been "reverse engineered" to reconcile the pay received by the Claimant with the national minimum wage. For the avoidance of doubt, the Tribunal did not accept that the stated "hours" on the document at [**C3**] in fact reflected the hours worked by the Claimant.

101. The Tribunal had regard to the lack of contemporaneous documents to support the information on the Summary at [**C3**]. Also, that it does not make any reference to periods of holiday pay or sickness pay (both of which appear to have been paid at times during the Claimant's employment given the levels of pay in months during which the Claimant is known to have taken holiday and/or sick leave). Further, [**C3**] is demonstrably inaccurate: it does not record or account for a £400 payment made to the Claimant in October 2018 (which both the Claimant and the Respondent agreed was made as additional pay after a meeting on 3rd October 2018).

102. Even aside from the matters above, the Tribunal considered the document itself at face value and did not find it to be an inherently plausible record. The Tribunal considered that if the Claimant had been reporting the number of hours that she had worked it was more likely that she would have done so in hours and minutes rather than the decimal recording adopted in the "hours" column of [**C3**]. Although it accepted the possibility that the accountant had merely translated the hours and minutes to decimal hours for the purposes of the document, the Tribunal also noted that the fractional hours did not correspond to a whole numbers of minutes, and it appeared implausible that the Claimant had recorded not merely hours and minutes but seconds worked.

103. The Tribunal also considered the hours recorded per month overall. It noted that if the hours in [**C3**] were accurate the Claimant had **never** undertaken her contractual hours in any month.

104. Although the Tribunal was referred to a number of messages from the Claimant regarding lateness or absence (summarised at [**G40-41**]) these did not indicate a level of absence, lateness or non-attendance which would explain the deviation in the hours worked per month on [**C3**] from those the Claimant was expected to work. The Tribunal accepted that the Claimant did regularly arrive at work later than her contracted hours

of work by an indeterminable and variable amount of time. However, it also accepted her evidence that she made up any hours she missed through lateness or leaving early, by making up hours in lunch time and on some occasions by working on a Saturday, a day that she was not contractually obliged to work. The Respondent gave evidence that the office was open on Saturdays and that some workers came in although there was no specific evidence from him as to whether the Claimant did so. Text messages at [**G3**] and [**G5**] support her assertion that she worked some Saturdays and in at least one contemporaneous document she offered to stay after 6pm on a weekday, 6pm being the end of her contractual hours. There are no records which contradict what the Claimant says and for the reasons set out in paragraph 62 above the Tribunal found the Claimant's evidence to be reliable.

105. The Tribunal also considered it unlikely that if the Claimant's day-to-day hours and absences were as irregular as the Respondent asserted, they nevertheless resulted in an entirely consistent fractional total number of hours reported at the end of each month for lengthy periods but that this was not questioned by the Respondent.

106. The Tribunal also considered it inherently implausible that if the Claimant had reported the exact number of hours/minutes she worked at the end of each month, that the time reported would have been consistently the same fractional amount month-on-month shown on [**C3**] for numerous separate periods despite the variation in the number of working days in the months. The Tribunal also noted that none of Claimant's contemporaneous notes show any form of time recording.

107. The Tribunal also considered it improbable that during the period February 2017 to July 2017 the Claimant's pay remained consistently the same month-on-month whilst the fractional number of hours worked by the Claimant was the same for February and March 2017 then dropped to the same (but different) fractional number of hours at precisely the date the minimum wage rate changed. Although a drop in April may have been explained by the change in the number of days worked by the Claimant as a result of a language course she undertook (see below) the amounts for April to July 2017 were wholly consistent each month whereas the number of days in the month, the number of days holiday taken, and the number of days the Claimant was absent for her language course fluctuated month-on-month.

108. The Tribunal also noted that the payments in October 2017 and November 2017 (the first 2 payments following the signing of the 2017 contract), exactly matched the monthly equivalent of the gross wage payable under the 2017 contract. This seemed inherently unlikely had it been calculated in the manner described by the Respondent.

109. Additionally, neither of the written contracts signed by the Respondent purported to remunerate the Claimant at the equivalent of the national minimum wage. Nor did it appear that they were archaic documents that the Respondent had simply overlooked updating for changes in the minimum wage rate as they were not identical in their terms. The Respondent had generated the documents and had clearly amended the terms in the 2017 contract from those in the 2016 contract. Had the Respondent been alive to, and understood, the requirement to pay the national minimum wage, and intended to do so, no doubt this would have been reflected in the contractual terms he drafted and signed.

110. The Tribunal also noted that Mrs Wlodarczyk's evidence as to the rate of her remuneration in 2020 (of £800 per calendar month for 37.5 hours per week) was not challenged by the Respondent save that it was put to her in cross-examination that she was self-employed rather than an employee. The Tribunal noted that her rate of remuneration also appeared to have been at substantially less than the national minimum wage.

111. The Tribunal accepted that there was a period when the Claimant's working hours changed. In April 2017 the Claimant requested, and was granted, 1 day off each week in order to study. She initially intended to do a language course as a pre-cursor to commencing a GDL course in September 2017. In fact, the Claimant did not undertake the GDL course, only the language course, and she therefore took 1 day off each week only from 24th April 2017 to the end of July 2017.

112. Although the Respondent asserted that this 4 day per week arrangement continued for a much longer period, possibly until the end of the Claimant's employment, the Tribunal accepted the Claimant's evidence as to the duration of this arrangement, which it considered was more consistent with the other evidence it received. The Tribunal noted that the text messages regarding absence at [**Section G**] spanned all days of the week and did not therefore support the Respondent's assertion that she was consistently taking 1 day per week off. Further, Mr Saqib gave evidence that the Claimant was always in each day Monday to Friday and could not recall any period when she was working only 4 days per week. No other witness gave evidence that the Claimant worked only 4 days per week. The Tribunal considered that whilst it was conceivable that Mr Saqib might not have remembered a short period when the Claimant was consistently absent for 1 day each week, it was unlikely that no witness other than the Respondent would have given evidence regarding a 4 day week if it had persisted for a lengthy period beyond the approximately 3 months the Claimant said that it had lasted. Further, the subsequent contract signed by both the Claimant and the Respondent in October 2017 provided for a 5 day working week and made no provision for time off to study.

113. In conclusion, the Tribunal finds that, save for this short-term variation where the Claimant was studying, the terms of the Claimant's employment were those as set out in the written terms signed by both parties in 2017. The contract was a permanent contract for 37.5 paid hours per week and generally the Claimant worked those hours although there were some periods of absence (to study, for holidays, sickness or occasional other reasons).

Events During the Claimant's pregnancy

114. In 2018 the Claimant fell pregnant. On 12th July 2018, when she was about 11 weeks pregnant, the Claimant told the Respondent of her pregnancy during an oral conversation. There is a dispute between the parties as to how the Respondent reacted to this news. The Claimant says that the Respondent interrupted her and told her that she must resign now as she was not fit to work anymore and would not be able to cope with the stress. The Respondent denies saying this and says that he

congratulated the Claimant and spoke to her politely. No other people were present during this conversation.

115. The only evidence that tangentially supports the Respondent's account of the conversation is that of his witnesses Mrs Afrifa and Guilia Kaur who each fell pregnant whilst in the Respondent's employ. The Tribunal did not consider that their evidence as to the Respondent's reaction or how they were treated when pregnant to be of any value in determining how the Respondent treated the Claimant. Ms Kaur did not work in the same office and had little day to day contact with the Respondent and Mrs Afifa was in a very different role and position vis-a-vis the Respondent to that of the Claimant. They may also have had different expectations as to how they should be treated when pregnant.

116. By contrast, Mrs Wlodarczyk's gave evidence of a very similar reaction from the Respondent as that described by the Claimant when she informed him of her pregnancy some 2 years later.

117. The Claimant's evidence is also supported by a number of contemporaneous documents. The Respondent and other witnesses agreed that the Claimant had a notebook with her and wrote down everything that was happening. Her note of 12th July 2018 [**L7**] confirms her account to the Tribunal of the conversation with the Respondent.

118. Additionally, on 18th July 2018 (some 6 days later) the Claimant made a written complaint to the Respondent regarding discrimination which included: "When I told you about my pregnancy (on 12/07/18) your reaction was so bad so you immediately asked me to resign using as an excuse that from now on I will not be able to perform my daily duties because of my pregnancy" [**K18**]. No issue has been raised as to the genuineness of this document, only the accuracy of its contents. Nor was there any contemporaneous documentary rebuttal from the Respondent.

119. Further, on 10th September 2018 (approximately 2 months after the event) the Claimant told her GP about the conversation, as evidenced by her GP's letter of 9th September 2019 [**N2**]. The Claimant's midwife also confirmed that the Claimant had told her during early pregnancy that the Respondent had been putting pressure on the Claimant to leave her job since she informed him of her pregnancy [**N1**].

120. Texts from the Respondent himself also tend to support the Claimant's account. On 18th July 2018 [**K36**] the Respondent sent a text to the Claimant in response to a series of texts regarding her absence from work for a hospital attendance for pregnancy related tests and scans saying: "I already told you if you are not feeling well and not able to perform your duties. Then you are free to give me a month notice." The Tribunal did not find his explanation for this text convincing.

121. Subsequently, the Respondent wrongly sought to terminate the Claimant's contract, sending a text on 24th September 2018, whilst the Claimant was on sick leave which read: "your yearly employ contract is finishing in October, please contact me" [**G16**]. This text was followed by a further text on 3rd October 2018 in which he stated "Also you already aware that I am not renewing your employment contract" [**K21/G33**].

122. The Respondent's explanation for these texts is that he had problems with the Claimant's behaviour and so did not intend to renew her contract. He relied on a number of different allegations against the Claimant including lateness, misrepresentation, poor performance, stealing the firm's data and unauthorised use of mobile phone and internet during working hours. He said these behaviours had led to him issuing warning letters, copies of which are in the bundle at [**E1-E5**]. The Claimant disputed that she had ever been given these warning letters or disciplined for the behaviours that they describe.

123. The Respondent's evidence was to the effect that these warning letters had been given to the Claimant by hand. Although the Respondent has a disciplinary process as set out in the 2016 contract of employment at [**B3- B4**] there was no suggestion that it had been followed prior to the issue of these letters, which were a stage 2 action under the process.

124. In particular, the Respondent advanced no evidence which suggested that prior to these warning letters there had been any investigation, any opportunity for the Claimant to state her case at a hearing at which she was entitled to be accompanied, or any verbal warnings for minor breaches, as required by the disciplinary procedure.

125. The only evidence that the letters had been given to the Claimant at all came from the Respondent himself. Although some of the letters were marked O/C (office copy) some were not. There was no evidence of receipt by way of countersignature on the office copy and no other documentary record of them having been handed to the Claimant (such as a contemporaneous file note or endorsement on the letters) which indicated they had.

126. As previously noted, the Respondent accepted that the Claimant always had a notebook with her and wrote everything down. There were no records in her notes, which appeared to be fairly continuous, to suggest that she was given such warnings. The Tribunal considered it unlikely, having heard the other evidence in this case, that had she been given such warnings she would not have challenged them, as she has during this case, or generated any written comment in relation to them, either by letter to the Respondent, or in her own notes.

127. On the balance of probabilities, the Tribunal therefore found that these warning letters had not been given to the Claimant.

128. Even if the Tribunal's conclusions in this regard were wrong, the Tribunal did not consider the warning letters to be of any value in determining whether there was any reason other than the Claimant's pregnancy for the Respondent wanting to terminate the Claimant's employment in July/October 2018. This is because these letters were not the product of a robust disciplinary process: the Claimant had had no opportunity to challenge them, they had not been followed up beyond the warning letters by the Respondent, and the Respondent did not at the time raise them as being the reason why he did not wish to continue to employ the Claimant.

129. Further, following a meeting on 3rd October 2018 the Respondent resiled from his previous position and indicated that he would in fact renew the Claimants contract. Indeed, he continued to employ her although the Tribunal has not been provided with any subsequent written contract despite the Respondent's text to the Claimant on 3rd October 2018 [**G33**] stating "as a result of our meeting I have decided to renew your employment contract for another one year. You are receiving your one-year contract soon."

130. What occurred at that meeting was also a matter of contention between the parties. Although both agree the meeting took place, and that it lasted approximately 10-15 minutes, there was no agreement as to who was present or what was discussed. The Claimant's account was that only she and the Respondent were present, and that the discussion was primarily about the contract she had and the fact that it was not a fixed term contract. Her account is supported by her notebook record at [**L2**].

131. The Respondent says that not only were he and the Claimant present, but that Mr Tahir was also there, and that the discussion was regarding the Claimant's pay and in particular the Respondent's failure to pay her during a period of sickness – which I will return to later. His account is supported by the evidence of Mr Tahir and by a document at [**F3**] which purports to be the notes of that meeting. That note however is extremely brief and lacking in detail. It is signed by Mr Tahir but not by either the Claimant or the Respondent.

132. Nothing in the meeting notes, or the evidence of either Mr Tahir or the Respondent, explains why the Respondent would have changed his mind about the Claimant's continued employment as a result of this meeting, which he clearly did, as evidenced by the text he sent. This tends to support the Claimant's account of the meeting as being the more accurate one.

133. On the other hand, there was clearly an issue around that time as to the Claimant's pay, in particular regarding her period of sickness between 14th September 2018 to 1st October 2018. Both parties are agreed that subsequent to this meeting a £400.00 payment was made to the Claimant on top of the wages that she had previously received. Nothing in the Claimant's contemporaneous note of the meeting [**L2**] or her oral or written evidence explains this. She did not suggest that pay was discussed at all during this meeting. This might tend to support the Respondent's account of the meeting. However, the Tribunal notes that a payment of £400 around this time can be explained by the e—mails from the Claimant to the Respondent on 1st October 2018 and 3rd October 2018 [**K27 & K23-24**] which took issue with her wages for September 2018 and with the failure to pay for the period of her sick leave, asked for an explanation in writing as to the reason why payment wasn't made and/or set out her assertion that she is owed further sums.

134. It is unclear why Mr Tahir was, or would have been, present at the meeting. He claims to have been brought in as a senior member of staff as a mediator and to have provided the Claimant with an explanation as to her entitlement to sick pay. The Tribunal struggled to understand why he would have been chosen as the person to explain sick pay to the Claimant. He is neither an accountant nor a lawyer but works in the admin department. It was not an area of his expertise. Nor was it adequately

explained why the Respondent felt it necessary to bring in someone as a mediator for this meeting. The Tribunal noted that Mr Tahir was unable to give even a cursory account as to the sick pay entitlement he discussed with the Claimant in his oral evidence but simply indicated that he relied on printouts, which were not in the original bundle. As noted at paragraph 52 above, the Respondent sought to adduce further evidence of the printouts but the Tribunal declined to admit the evidence as it did not consider that it would assist the Tribunal to decide the issues in the case.

135. Mr Tahir's note of the meeting [**F3**] (which is totally at odds with the Claimant's note [**L2**]) records that the Claimant understood the calculations and records that the Claimant understood that she had been paid correctly. If that were the outcome of the meeting it is difficult to reconcile that outcome with the subsequent £400 payment which both the Respondent and Claimant agree was made.

136. On the balance of probabilities, for the reasons set out above, the Tribunal preferred the evidence of the Claimant and finds that the only people present at the meeting were the Claimant and Respondent and the discussion centred on her employment status and the validity of the Respondent's attempts to terminate her employment.

137. Having considered all of the above, the Tribunal finds as a fact on the balance of probabilities, that the Respondent did make the comments regarding resignation and fitness to work that the Claimant described as being his response to being told of her pregnancy on 12th July 2018. Further, that those comments and his subsequent messages purporting to terminate her employment were unfavourable treatment that was solely related to her pregnancy. There was no other credible explanation for the comments and no alternative explanation for them was offered by the Respondent (who simply denied that they had been made).

138. After dealing with the evidence used by the Tribunal to determine whether or not the Respondent made the comments asserted by the Claimant on 12th July 2018 and those linked matters this judgment will now return to the chronology of allegations after 12th July 2018.

139. Following the conversation on 12th July 2018 in which Claimant informed the Respondent of her pregnancy, the Claimant alleges that the Respondent did a number of other things which were unfavourable and related to her pregnancy.

140. The Claimant says that following her pregnancy announcement, on 16th July 2018 the Respondent made comments about her clothing being inappropriate, despite the fact that her pregnancy was not yet showing and the clothes she was wearing were the same clothes she had always worn. She also referred to numerous occasions on which she says the Respondent shouted at her. Although some corroboration for her claims can be found in her contemporaneous notes [**Section L**] and in her message to the Respondent [**K36**] none of the other witnesses accepted that the Respondent shouted, and the office is essentially open plan save for a glass box which is the Respondent's office within it. Whilst the credibility of the Respondent's witnesses is in doubt, and they were not necessarily present at the relevant times, the Tribunal is mindful that whether or not someone is shouting or merely speaking loudly and assertively may be a matter of perception.

141. The Tribunal did not consider on the evidence that it could find on the balance of probabilities that the Claimant was shouted at by the Respondent or that any adverse comments regarding her clothing (which took place when she was not heavily pregnant and was wearing essentially the same clothes as she always did) or that any shouting or comments which did occur were significantly influenced by the Claimant's pregnancy.

142. Similarly, the Claimant also complained of a number of other acts of the Respondent throughout the period of her pregnancy, which might be broadly described as "nit-picking". These included the Claimant receiving a text on 24th August 2018 regarding her failure to comply with a policy regarding post, being told not to move a cupboard (and being refused help to do so) and being told in November 2018 not to use her personal phone and e-mail at work and to eat in the kitchen not at her desk. The Tribunal finds that all of these incidents occurred. The Tribunal accepted the Claimant's evidence as to these incidents which was partially corroborated by her contemporaneous notes and/or the evidence of the Respondent. The Tribunal was not however satisfied that these actions were related to the Claimant's pregnancy. The evidence of the Respondent and his witnesses and the general nature of the issues raised satisfies the Tribunal on the balance of probabilities that there were alternative explanations for this behaviour and that the Claimant's pregnancy was not a significant factor in the Respondent's actions.

143. It is apparent from the totality of the evidence that the Respondent has a tendency to micro-manage his employees and is keen to maximise their work output. The Tribunal is satisfied that whilst there may not have always been clear written policies regarding such matters, the Respondent wished things to be done in his particular ways. Where there was a lack of compliance, he tended to take action, even if there had been a previous lack of clarity as to how he wanted things done. That action was not, in the Tribunal's view, limited to the Claimant. The Tribunal notes that the policy regarding post circulated on 30th August 2018 [**H2**] and the notice regarding eating and drinking [**H5**] were not merely sent to the Claimant. Where there was a lack of compliance in the office with his expectations, he would generate written documents to convey his expectations. The Tribunal accepts that some of the rules were flouted by other as well as the Claimant, for example eating and/or drinking at desks, but is unable to conclude on the evidence available that no other employees were similarly pulled up on their behaviour or that the Claimant was singled out as there is simply no clear evidence either way. Additionally, there may be alternative explanations, such as health and safety, for a reluctance to permit furniture to be moved. The Tribunal does not therefore find that these matters were unfavourable treatment related to the Claimant's pregnancy.

144. What is clear however, and is not disputed by the Respondent, is that immediately after the Respondent was made aware of her pregnancy, the Claimant's role and duties changed as a result of a unilateral decision of the Respondent, which was not discussed with, or agreed by, the Claimant in advance. Both parties agree that following notification of the Claimant's pregnancy the Respondent ceased to allocate the Claimant case work and required her to undertake post duties.

145. The Tribunal finds that in effect this was a demotion. The clear line of progression within the Respondent's office, and one which the Claimant had followed, was that new non-solicitor recruits started off with basic admin duties, including managing post and progressed to other administrative tasks, then helping out existing caseworkers as an assistant caseworker before ultimately becoming a caseworker with their own case load. At the time of her pregnancy the Claimant had progressed to being at least an assistant caseworker, as reflected by her job title recorded on the 2017 contract and the description of the duties she undertook.

146. The Respondent admits that the reason he altered the Claimant's duties was due to her pregnancy. Whilst the Tribunal accepts that his stated intentions in doing so were to assist her during her pregnancy, and further accepts the possibility that other pregnant women may have welcomed or been desirous of such assistance, it was assistance that the Claimant neither wanted, requested or needed.

147. Although there was no corresponding pay cut with the change in her duties, the Tribunal finds that this was clearly unfavourable treatment as a result of the Claimant's pregnancy.

148. Further, in the short term this in fact led to an increase in the Claimant's duties as she was required to manage both her existing assistant caseworker case management duties and the post duties, which was also unfavourable treatment related to her pregnancy.

149. There was dispute about how many people were allocated to assist with post both before and after this adjustment to the Claimant's role, and as to whether the Claimant was allocated an unfair proportion of the post duties. In light of the findings above, the Tribunal did not consider it necessary to make specific findings regarding this. However, the Tribunal noted the consistency of the Respondent and his witnesses' evidence that whilst there were a larger number of people who undertook post duties overall, there were generally only 2 or 3 people undertaking post duties at any one time.

150. In addition to the change in her duties, it was also agreed between the parties that during the course of her pregnancy, the Respondent moved the Claimant's desk allocation. There was dispute between the parties as to how often the Claimant was moved, where exactly she was moved to and whether she was moved to places that were unsuitable for a pregnant woman. The Tribunal preferred the evidence of the Claimant which was supported by her contemporaneous notes [in particular **L14-L15, L18 and L19**] and made the following findings:

151. The Claimant was directed by the Respondent to move her work-station on several occasions during her pregnancy, which had not previously been the case and which she found to be unsettling and inconvenient.

152. One of the places she was required to move to in July/August 2018 was a windowless area within the main office that was enclosed by glass and had no direct air conditioning. Although some of the Respondent's witnesses indicated that there were fans to assist with air circulation, the Tribunal accepts the Claimant's evidence, which

was not significantly challenged, that this room became extremely hot at that time of year and was particularly unsuitable for her as a pregnant woman. The Respondent's own evidence was to the effect that he noticed she did not look happy or comfortable and so he moved her again out of the room.

153. By an e-mail on 19th July 2018 the Claimant asked the Respondent to carry out a pregnancy specific health and safety risk assessment [**K16-18**]. The Claimant says that the Respondent did not do so at that time, or at any time subsequently.

154. The Respondent says that he did carry out such an assessment. He refers to a meeting on 19th July 2018 between himself and the Claimant that he says took place to discuss it and his minutes of that meeting [**F1-F2**]. He also relies on a document at [**H1**] dated 13th February 2020 which on its face states that it is a "Health and Safety Acknowledgment". That document bears a statement: "all employees at Rashid & Rashid law firm confirm that there is no health and safety issues at the work place since we started our employment. We further confirm that the office is clean and tidy and we are all happy with Mr Khan's health and safety arrangements". It is signed by some 18 employees.

155. Notwithstanding the minutes within the bundle the Claimant disputes that any such meeting took place between herself and Mr Khan on 19th July 2018. Her contemporaneous notes do not refer to it and the minutes themselves were not signed by her.

156. The minutes themselves do not indicate that an appropriate risk assessment had been carried out. They refer only to discussion of a number of concerns raised by the Claimant regarding toilet breaks, heavy lifting and work-load. No written risk assessment has been produced and it is apparent from the Respondents evidence that there was not one, and that he does not understand what such a risk assessment should entail. He referred to the Document at [**H1**] as a risk assessment, which it blatantly is not. In any event, this document post-dates the Claimants maternity leave and was not executed until almost 18 months after her request.

157. Whilst the Tribunal does not rule out the possibility that there were informal discussions between the Respondent and the Claimant from time-to-time which were not recorded in the Claimant's notes, the Tribunal finds that despite the Claimant's clear request for a pregnancy related risk assessment, no such assessment was carried out. The request was a reasonable one and the failure to comply with it and undertake such a risk assessment was unfavourable treatment. The failure to conduct a risk assessment of any type at that time was clearly related to the Claimant's pregnancy notwithstanding the Respondent's lack of understanding as to what an appropriate risk assessment should address.

158. The Claimant also says that the Respondent was unprofessional and rude on 18th July 2018 in relation to her missing work for scan and was subsequently difficult on further occasions about her missing work in order to attend antenatal appointments and scans. At [**K36**] there are contemporaneous text messages to the Respondent in respect of the appointment on 18th July 2018 which corroborate her account. The

Respondent did not respond in writing to her text assertions about his behaviour regarding this.

159. Contemporaneous evidence from the Claimant's midwife [**N1**] and the Claimant's contemporaneous notes [eg **L3**] also corroborate the Claimant's account. Additionally, a number of the Respondent's texts demonstrate that he queried her leaving early at times that she says she had appointments related to her pregnancy. It is however accepted by the Claimant that she did not in fact miss any appointments as a result.

160. There is little evidence that the Claimant gave the Respondent clear or reasonable notice of the appointments, apart from her own evidence that she did. The Respondent says that she did not. However, whilst she may not always have given much notice of appointments, on balance, the Tribunal prefers the Claimant's evidence for the reasons previously explained. The Tribunal finds on the balance of probabilities that the Respondent did make it difficult for the Claimant to feel comfortable attending pregnancy related appointments and on one occasion accused her of lying about having worked through her lunch break to make up time. Whilst the Respondent's conduct did not prevent her from attending the appointments, it amounted to unfavourable treatment which was directly related to her pregnancy.

161. Further, at some point after the Claimant announced her pregnancy, the Respondent started requiring the Claimant to make daily reports as to the work that she had undertaken. That he did so is clear from the documents in the bundle. A number of the reports appear in the papers, as well as a text message from the Respondent to the Claimant on 5th September 2018 in which the Respondent complained about the Claimant's failure to provide a daily report [eg **G32**].

162. It is not clear exactly when that started but it predated 5th September 2018 and persisted through the remainder of the Claimant's working time. This was something which the Claimant had not previously been required to do and there is no evidence that any other employees were required to provide similar reports. Although the Respondent attributed this to concerns about the Claimant's performance, for the reasons already stated, the Tribunal rejects the Respondent's evidence as to the Claimant's poor performance, and the Tribunal finds that this was also unfavourable treatment which was related to her pregnancy.

163. There were other incidents relied on by the Claimant. Between 14th September 2018 and 1st October 2018 the Claimant was off work due to sickness. She was not initially paid for this period. There is no claim before the Tribunal for unpaid sick pay and it appears that this period was subsequently paid by way of the £400 payment made after meeting on 3rd October 2018 which is referred to in more detail above.

164. The circumstances in which the Tribunal find this occurred are as follows: The Claimant initially e-mailed the Respondent late on Friday 14th September 2018 saying that she would be off sick for 10 days starting on Monday 17th September 2018 [**K31 & K43**]. She subsequently produced a fit note from her GP which is dated 17th September 2018 and confirmed that she was unfit for work from 17th September 2018 to 30th September 2018 because of "stress related problem" [**K44**].

165. The Respondent had concerns about the veracity of the Claimant's claim to be unwell. He asserted that this was not true sick leave and that it was in fact pre-planned holiday. In his response to a grievance lodged by the claimant in January 2019, he claimed that she had "defrauded HMRC by booking sick leave three days in advance" and further said "This action of your is clearly deceiving and misleading the system… It is highly unfair that you get paid for your planned sick leave when you were not sick" [**B16 - 17**]. His concern arose from the timing of the notification of sick leave which was prospective and pre-dated the GP's sign-off. He did not consider that the Claimant could genuinely have predicted she would be sick 3 days after the notification.

166. The Claimant's explanation for this notification of intended sick leave in advance of it actually occurring was that she had been to see her GP on Monday 10th September 2018 (the Monday immediately preceding the Friday notification). She was suffering from a stress related illness and said that the GP wanted to sign her off work there and then, but the Claimant had too much to do and asked the GP not to issue a sick note at that time. However, as a result of this, things not having improved, by Friday 14th September she knew that she would be signed off work from first thing on Monday 17th September when she was able to get an appointment. She therefore gave the Respondent the notice on Friday.

167. The Tribunal accepted her explanation and that this was a genuine period of sick leave. The Tribunal also finds that the Respondent's refusal to pay sick pay without investigating the concerns he had or the background and when in receipt of an apparently genuine fit note signed by a GP (it has not been suggested was anything other than a genuine document) was unfavourable treatment. It was further unfavourable treatment to accuse the Claimant of fraud in relation to this series of events in response to her raising a grievance.

168. However, the Tribunal does not find that this unfavourable treatment was related to the Claimant's pregnancy. The Tribunal accepts that the Respondent was unaware of the background described by the Claimant and consequently found it understandable that he had some concerns and suspicions. Although the reason for the sick leave related to the Claimant's pregnancy and the issues she was facing at work, the reason for the Respondent's questioning of the veracity of the Claimant's claim to be sick was not related to her pregnancy. The Tribunal finds that his suspicions arose from a misunderstanding and lack of information regarding the background. The Tribunal further finds that the Respondent would have acted in this manner even if the Claimant hadn't been pregnant, or if faced with the same situation in respect of one of his other employees (whether or not they were pregnant).

169. There were a number of other incidents (many of these might be described as micro-management or micro-aggressions) about which the Claimant complained which occurred throughout the Claimant's pregnancy and there was significant dispute about whether some of the meetings asserted by the Respondent had happened at all. The Tribunal did not consider it necessary to make detailed findings of fact on each of these many incidents.

170. However, four other notable matters occurred during the Claimant's pregnancy which the Tribunal did consider in detail.

171. On 6th September 2018 was told by the Respondent not to respond to queries raised by the Respondent by e-mail but to respond in hand-written letters. The Respondent also refused to put the complaints that he said he had about the Claimant not doing her job properly in writing. The Tribunal accepts the Claimant's evidence that this occurred and found that this was a cause of anxiety to the Claimant. There was no evidence that other employees had the same experience or were given the same instructions and the Tribunal concluded that these acts were as a result of the Respondent having unfavourable treatment related to the Claimant's pregnancy. The Claimant had already verbally accused the Respondent of discrimination based on her pregnancy and the Respondent appeared to wish to minimise documetnary records.

172. On 14th September 2018, the Claimant provided details in writing to the Respondent of her due date and the date she wished to commence her maternity leave on 7th January 2019 [**K13**]. She requested confirmation of her qualification for statutory maternity pay and the amount that she would receive. Subsequently, she sent further correspondence on 12th November 2018 [**K10 – 12**] asking for confirmation of her maternity leave and pay. She subsequently sought to take her outstanding holiday before her maternity leave commenced. The Respondent failed to respond to any of Claimant's requests to confirm the dates on which her maternity leave would start, her maternity pay and her holiday dates and ultimately the Claimant simply took her holiday and started her maternity leave, with her final day at work being 14th December 2018 [**D55**]. The Tribunal is satisfied that occurred. Despite the letters written to the Respondent about it [**K10 – 12, K27-28**] the Tribunal was not referred to any response in writing from the Respondent. Nor did he give clear evidence that he had in fact responded and agreed the dates. The fact that the Claimant raised issues regarding her maternity leave and pay in writing on multiple occasions supports her assertion that she did not receive a response initially. Whilst the Respondent might be excused a period of time to consider her requests and respond, the Tribunal finds that he should have done so at the very latest by early December 2018 following the Claimant's letter of 12th November 2018. By that time her holiday and maternity leave were imminent, over 2 months passed since her first request, and there should have a been a formal response. His failure to respond not only ignored her rights as a pregnant employee but was also clearly unfavourable treatment that was obviously directly referrable to her pregnancy. The Tribunal also notes that this was a matter which was likely to, and did, put her undue stress.

173. There was also an incident on 7th December 2018 where the Respondent queried why the Claimant was in Jenna (another employee)'s office and not in her seat. During their conversation he told her she was not allowed to speak to anyone or leave her seat during working hours. The Tribunal accepts the Claimant's evidence that this occurred. It is corroborated by evidence in an e-mail dated 7th December 2018 [**K8**] from the Claimant to Jenna enclosing a file attendance note and stating "P.S. As per Mr Rashid's instruction I am not allowed to come to your office" and by an e-mail the Claimant sent to the Respondent on 10th December 2018 [**K7**] complaining about his behaviour on 7th December 2018. It is also corroborated by the Respondent's response to her grievance [**B17 at para 26**] in which the Respondent says he always interrupts unnecessary conversations. How the Respondent was to know whether it was an "unnecessary" conversation is unclear. There is limited evidence that he

treated anyone else in this manner. E-mails such as that from the Claimant to the Respondent dated 14th November 2018 [**K9**] and entries in Claimant's own notes [**section L**] support her assertions that the Respondent behaved in this manner towards her and did not act similarly with other employees. The Tribunal finds that increasingly the Respondent micromanaged the Claimant as a result of her pregnancy and her absences related to her pregnancy appointments. One example of this was the requirement to provide daily reports detailed above and this incident was another example where the micromanaging went beyond that which he might have applied to any of his other non-pregnant employees. It amounted to unfavourable treatment related to her pregnancy.

174. The Tribunal also found that the Respondent's handling of the Claimant's grievance lodged on 22nd January 2019 [**J7-J11**] amounted to unfavourable treatment because of her pregnancy. The history of the handling of the grievance was largely uncontentious. The Respondent instructed Mr Terziu, to phone the Claimant about the grievance and Mr Terziu did so on 24th January 2019. During that call the Claimant advised Mr Terziu that she was on maternity leave and she told him she had not yet given birth. She then received a 4 further phonecalls from the Respondent or Mr Terziu on 29th January 2019 (the day she gave birth) whilst she was in labour which caused her to be stressed.

175. These phonecalls took place shortly after the Claimant commenced her maternity leave and lodged her grievance and at a time which Respondent should have realised was inappropriate. He had been notified [**K13 & K28**] that her due date was likely to be around that time.

176. The Respondent then wrote to the Claimant by an e-mail dated 31st January 2019 [**K1**], acknowledging her grievance and inviting her to attend the office for a formal grievance meeting. The Claimant's response, on 4th February 2019 [**K1**], indicated that she had just given birth to her son and was not feeling well and would let him know when it was convenient for her to attend the office.

177. Without having any further communication with the Claimant about the grievance, the Respondent then went on to hold a hearing and to determine the grievance on 27th February 2019 in the Claimant's absence [**B13**]. His letter of determination was dated 6th March 2019 [**B13 – B19**] and confirms this. The hearing on 27th February took place without the Claimant being notified that it would take place that day, thus depriving her of an opportunity to attend. Further, it took place less than 1 month after the Claimant gave birth and during a period of post-partum in which it would have been unreasonable to require any woman who had just given birth to attend such a meeting. Not only was the way in which the grievance was handled insensitive, but it was also unfair. It did not give the Claimant an opportunity to have a hearing to discuss her grievance. This was yet another example of clearly unfavourable treatment that was undoubtedly referable to her pregnancy and maternity.

178. There was a further matter about which there was much dispute, namely whether or not there was CCTV within the Respondent's offices. Although this is not a matter which goes directly to the central questions of this case it is a matter which the Tribunal considered when assessing the credibility and reliability of the witnesses and the

Tribunal and it is therefore appropriate to indicate the Tribunal's findings in this respect.

179. The Claimant asserted that there were CCTV cameras in the Respondent's offices and that they were active and there should have been footage from them which supported her claims. Her witness, Mrs Wlodarczyk's evidence corroborated that of the Claimant.

180. The Respondent maintained there was no CCTV and denied the presence of cameras or CCTV recordings even when challenged with the evidence of the photographs of the interior of his office, particularly that at [**H10**], which clearly show the presence of a camera.

181. The Respondent's witnesses also initially denied that there was any CCTV in the office. On further questioning both Mr Saqib and Mr Tahir ultimately conceded that there were, or had been, cameras in the office with each explaining that the cameras were installed when the new office was built but asserting that they were not, and never had been, operational.

182. On the basis of the oral evidence and the photo at [**H10**] the Tribunal finds that there were CCTV cameras in the office. However, there was no evidence that anyone has ever seen a recording from one of these cameras, nor is there any evidence from which the Tribunal could infer that the cameras must have been operational, and recordings made. There is therefore insufficient evidence for the Tribunal to make any finding that the cameras were working or that footage from them was recorded. Nevertheless, the Respondent's dogged refusal to accept that there were cameras (working or otherwise) at all undermined his credibility.

Conclusions on Liability

National Living Wage/unlawful Deductions

183. For the reasons set out above, the standard ("basic") hours worked by the Claimant were 37.5 hours per week save for between 24th April 2017 and 31st July 2017 when she worked only 4 days per week (equivalent to 28.125 hours).

184. The actual pay that the Claimant received is as shown on [**C3**] as having been paid plus an additional amount of £400.00 paid in October 2018 that is not accounted for on that schedule.

185. Save for the period when she was working only 4 days per week, in order to receive the national minimum wage the Claimant would have had to have been paid approximately £1,170 pcm between April 2016 and March 2017, when the applicable national minimum wage was £7.20/hr, £1,218.75 pcm between April 2017 and March 2018 when the applicable national minimum wage was £7.50/hr and £1,272.38 pcm from April 2018 onwards when the applicable national minimum wage was £7.83/hr less any deductions for unpaid absences.

186. Considering the Schedule on [**C3**], it is apparent that at no stage was the Claimant paid close to the national minimum wage at the rates applicable for any month at the relevant times. The Respondent has not satisfied the Tribunal on the balance of probabilities that she was.

187. Accordingly, the Claimant's claim for national minimum wage and unlawful deductions from wages is therefore successful subject to having been brought in time.

188. For the reasons at paragraphs 1, 2 and 39 above, any acts after 4th December 2018 will fall within the primary 3 month time limit (taking into account the early conciliation extension).

189. The failure to pay the Claimant the national minimum wage occurred throughout her employment, both before and after the commencement of the Tribunal claim and occurred in respect of each monthly wage payment that she received.

190. Deductions from the Claimant's pay which took place in December 2018 and subsequently were within the primary limitation period. The deductions from wages paid in November 2018 and prior to that date were not within the primary limitation period.

191. Despite the Respondent's submission that the acts were not sufficiently related to give rise to a series, the Tribunal disagrees. Each deduction formed part of a series of events under the *Bear Scotland* principles: The deductions took place each month with frequency, repetition and without any period of breaks. The deductions were all linked by virtue of deriving from the same basic cause: the failure of the Respondent to pay the Claimant at a rate equivalent to the national minimum wage, as she was entitled to be paid.

192. This is as clear an example of a series as it is possible to conceive. Indeed, if this were not to form part of a series, it is difficult to see how anything could be described as a series.

193. The Claimant's claims are not therefore time barred. They are restricted only by the provisions of s23(4a) of the ERA which mean that the Claimant is unable to claim in respect of any deductions prior to 24th April 2017, a period of 2 years prior to the presentation of the ET1.

194. It is therefore not necessary for the Tribunal to go on to consider whether it was it reasonably practicable for the claim to be made to the Tribunal within the time limit or, if not, what a reasonable period of extension would be as.

Pregnancy and Maternity Discrimination (Equality Act 2010 section 18)

195. On the basis of the findings of fact set out above, the Tribunal is satisfied that the Respondent did the following acts which amounted to unfavourable treatment of the Claimant, and which unfavourable treatment was because of her pregnancy:
    a. On 12th July 2018 the Respondent told the Claimant she must resign and that she was not fit to work anymore.

b. After being informed of her pregnancy, the Respondent effectively demoted the Claimant from case work assistant to admin staff by changing her duties. He no longer allocated her new casework and placed her on post duties.
c. The Respondent's action in changing her duties led to a short-term increase in the Claimant's workload through at least the remainder of July 2018 and into August 2018 as she was required to continue her existing case work and take on the new post work.
d. On various dates (and on a number of separate occasions) the Respondent moved the Claimant's desk allocation including in July/August 2018 when he placed her into a hot unventilated and unairconditioned room unsuitable for a pregnant woman.
e. The Respondent failed to carry out a pregnancy risk assessment when requested to do so.
f. The Respondent was difficult and rude about the Claimant's absences for pregnancy related scans and appointments.
g. The Respondent increasingly micro-managed the Claimant going beyond his micro-managing of other employees. This included:
    (i) requiring the Claimant to provide daily reports as to her work done;
    (ii) telling the Claimant not to respond to the Respondent by e-mail but to do so in a hand-written document;
    (iii) refusing to put his complaints about the Claimant in writing to her; and
    (iv) telling the Claimant on 7th December 2018 that she was not to leave her seat or speak to anyone during working hours.
h. The Respondent failed to confirm the Claimant's dates for maternity leave (and her holiday immediately prior to the start of her maternity leave) and her entitlement to, and rate of, maternity pay despite requests from the Claimant for him to do so.
i. The Respondent failed to handle her grievance appropriately or sensitively in that he determined the grievance without giving the Claimant a reasonable opportunity to attend a grievance meeting/hearing.

196. The treatment of the Claimant in respect of these matters amounted to a material difference in the way the Respondent treated the Claimant before she announced her pregnancy and the manner in which he treated her after he was informed of her pregnancy. It also differed from the manner in which he treated other employees.

197. The Tribunal did not consider it necessary in respect of all of the above incidents to apply the burden of proof provisions in s.136 of the EA 2010. Save where is specifically indicated otherwise, the evidence was such that the Tribunal felt able to make positive findings without going through that exercise.

198. There is no issue between the parties that all of the acts complained of took place during the protected period of pregnancy and maternity.

199. Accordingly, to the extent of the matters set out above, the Claimant's claim for pregnancy discrimination is well-founded and subject only to the issue of time limits will succeed.

200. For the reasons set out in paragraphs 1,2 and 13 above, any acts after 4th December 2018 will fall within the primary 3 month time limit (taking into account the early conciliation extension).

201. The acts at paragraphs 195(g)(i), 195(g)(iv), 195(h) and 195(i) above all fall within the primary limitation period and are not time barred.

202. The remaining acts in paragraph 195 which the Tribunal has found to be unfavourable treatment because of the Claimant's pregnancy took place prior to 4th December 2018 and therefore fall outside of the primary time limit. However, the Tribunal is satisfied that they, together with those acts at paragraph 195 which are within the primary time limit, were continuing discrimination amounting to conduct extending over a period.

203. This is because from the 12th July 2018 when the Claimant advised the Respondent of her pregnancy there were numerous and regular acts, or failures to act, which were discriminatory and which were all attributable to the Respondent. They created an adverse atmosphere for the Claimant which impacted her on a daily basis. The acts were all connected to the Claimant's pregnancy and the Respondent's individual actions occurred sufficiently proximate in time to each other amount so as to a continuing state of affairs rather than a succession of isolated or unconnected acts.

204. Pursuant to section 132(3) of the Equality Act 2010, conduct extending over a period is treated as done at the end of the period and as the last of the discriminatory acts forming part of the course of conduct were within the primary time limit, the Tribunal concluded that all of the discriminatory acts that the Claimant has proved were therefore brought within time.

205. Even if no act were within the primary time limit, or the Tribunal is wrong about all of the acts amounting to conduct extending over a period, the Tribunal would have considered it to be just and equitable to extend time under its discretion to do so for the following reasons:
    a. The Claimant's baby was born on 29th January 2019. The primary time limit covered the late stages of the Claimant's pregnancy, birth and the immediate period of postpartum when it would not have been reasonable for the Claimant to be expected to have acted with the same degree of expedition as someone who had not, during that period, been pregnant or recently given birth. The Tribunal would have considered a minimum 4 week extension to the period to be just and equitable for this reason alone. This would bring other incidents within the primary time limit.
    b. The delay was not unduly lengthy.
    c. The case is analogous to a last straw case, with the Respondent's acts being cumulatively damaging. Each had an impact upon the Claimant at a time when she was already vulnerable as a result of her pregnancy, which vulnerability impacted on her ability to bring this claim earlier.
    d. The cogency of the evidence was not significantly affected by the delay. A significant amount of the evidence was supported by contemporaneous documentation and no witness suggested that the passage of time had adversely affected their ability to give relevant evidence.

e. The Claimant would be substantially prejudiced by not being able to rely on all of the acts of discrimination that the Tribunal found had occurred and the Respondent would achieve a windfall by avoiding the consequences of all of his discriminatory acts.

Conclusion

206. For the reasons set out above, The Tribunal finds that the Claimant was not paid the national minimum wage and was treated unfavourably by the Respondent because of her pregnancy.

207. The Tribunal considered the appropriate remedies.

Conclusions on Remedy

Pregnancy Discrimination

208. In assessing the appropriate level of damages for injury to feelings in respect of the pregnancy discrimination the Tribunal reminded itself that damages for injury to feelings are intended to be compensatory not punitive and that the award is to compensate for feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.

209. The Tribunal noted that awards should not be so low as to diminish respect for the anti-discrimination legislation but should also not be excessive. The Tribunal had regard to the value in every-day life of the sum it was considering.

210. The Tribunal took into account the oral and written evidence of the Claimant, and her husband, the Claimant's contemporaneous accounts of how she felt in correspondence to the Respondent at [**K7**] and [**K34**]. That correspondence referred to stress, abdominal pains and not feeling movement from the baby for a whole weekend following the incident on 7th December 2018. The Tribunal also took into account correspondence from the Claimant's midwife [**N1**] and GP [**N2**] which contemporaneously recorded the stress experienced by the Claimant as a result of the Respondent's actions.

211. The Tribunal finds that the Respondent's behaviour that the Tribunal found to be discriminatory (at paragraph 195 above) spoiled what should have been a precious time for the Claimant and took place at repeated intervals throughout a period of around 9 months from 12th July 2018 to about March 2019. It covered the majority of her pregnancy and persisted during her maternity leave, including distressing and unnecessary calls from Mr Terziu whilst she was in labour and the dismissal of her grievance without her input.

212. The Tribunal found that the Claimant was devastated and shocked by the Respondent's initial comments and then and subsequently suffered a significant amount of anxiety and stress and felt humiliated and undervalued. She told the Tribunal in oral evidence that "from the moment I told Rashid about my pregnancy I

felt I was not able to enjoy my pregnancy". Her husband confirmed that she was frequently tearful on returning home from work and was upset most nights.

213. The Tribunal considered that the claim fell towards the middle-to end of the middle Vento band and that the appropriate sum to compensate the Claimant for the injury to her feeling was **£20,000.00**.

214. The Tribunal did not consider that the Respondent had intended to wound the Claimant. The Tribunal did consider that the Respondent had failed to treat the Tribunal claim with the requisite seriousness and had caused additional delay in the manner in which the trial was conducted, in particular as a result of his failure to identify that Mr Saqib required an interpreter in order to give evidence. However, on balance the Tribunal did not consider that there was sufficient evidence to conclude that there were aggravating features which had increased the impact of the discriminatory conduct on the Claimant. Accordingly, it did not consider an award of aggravated damages to be appropriate.

215. The Tribunal did consider it appropriate to award interest at the rate of 8% on the award from 12th July 2018 to 26th August 2022 (a total of 1507 days). This generated a further sum due to the Claimant by way of interest of **£6,606.03**.

216. As the Claimant is no longer employed by the Respondent, the Tribunal did not consider it appropriate to make any recommendations.

Unlawful Deduction from Wages/Failure to pay the national minimum wage

217. There was no claim for sick pay before the Tribunal.

218. The Tribunal first sought to determine what the difference between the pay received and the pay which should have been received was.

219. The Tribunal was handicapped in determining the appropriate difference in pay by the Respondent's failure to keep appropriate records in accordance with the requirements of S.9 of the National Minimum Wage Act 1998 and Regulation 59 of the National Minimum Wage Regulations 2015.

220. The Tribunal did not consider that the Claimant should be prejudiced by the Respondent's failure to keep the required records and sought to adopt a broad-brush approach based on the available evidence and the findings of fact set out above as to the hours worked.

221. The Tribunal therefore adopted the following approach in determining the number of hours the Claimant worked and the amount due to her:

222. Taking into account the 2 year cut-off imposed by s.23(4A) of the ERA, the Tribunal considered that the claim for minimum wage whilst the Claimant was working covered the duration from 24th April 2017 to 31st December 2018.

223. The national minimum wage changed in March 2018 therefore the Tribunal split the total duration into two periods (The "first period": 24th July 2017 to 31st March 2018 and the "second period": 1st April 2018 to 31st December 2018) for the purposes of undertaking calculations. For each of these 2 periods the method of calculation was the same. The method adopted by the Tribunal was as follows:

224. The Tribunal calculated the number of weeks in each of the 2 periods totalling **49 weeks** for the first period and **39 weeks** for the second period.

225. It adopted a starting point that the basic hours that she was expected to work were 37.5 paid hours per week. The Tribunal did not take periods of holiday absence into account separately as it assumed she was due to be paid, and was in fact paid, at full rate for periods of holiday.

226. The Tribunal had to take account of periods of absence when she did not work. These comprised periods of absence from work altogether and occasions when despite the Claimant attending work, the Claimant did not work the expected hours due to lateness or early departure.

227. Although the Tribunal accepted that the Claimant was sometimes late or left early, it also found evidence that she sometimes worked on Saturdays (a day that she was not contracted to work) and it accepted the Claimant's evidence that she made up time lost due to lateness or early departure in lunch hours. The Tribunal had no evidence from which it was possible to make a precise calculation as to either the missing hours or the additional hours worked. Adopting a broad-brush approach in the absence of precise evidence, and having accepted the Claimant's oral evidence that she made up the hours missed when she arrived late or left early, the Tribunal assumed that all hours lost this way had been made up and made no allowance for any additional hours that she may have worked.

228. The Tribunal did take account of the days of absence when the Claimant did not attend the office at all for reasons which were not sickness or holiday and for which the Respondent would have been entitled to deduct wages. These included 1 day each week during April, May and June 2017 when she was working only 4 days per week, the fifth day being taken off to study for her language course. Additionally, the evidence, in particular the texts in [**section G**] of the bundle, indicated a number of other days that the Claimant had not attended work. The Claimant had also listed the days that she had believed she had not attended work in her Schedule of Loss produced in May 2022.

229. The Tribunal accounted for these days of absences as follows:

230. The Tribunal conducted a comparative monthly assessment of the number of days absence indicated by [**section G**] documents plus the number of days absence as a result of the language course. It then compared the monthly days of absence reached from this method against the Claimant's May 2022 schedule/list. Where there was a difference in the number of dates of absence, the highest number from either source was taken as being the total number of days absence in that month.

231. The highest figures for the months in each of the periods were then added together and adjusted into weeks by dividing the total by 5. Over the first period 24th April 2017 to 31st March 2018 this method resulted in a total 30 days (6 weeks) absence to be deducted and for the second period 1st April 2018 to 31st December 2018 a total 34 days (6.8 weeks) absence to be deducted.

232. These absence totals were then subtracted from the total number of weeks in the period. For this first period this left a total of 43 weeks worked after accounting for absences. For the second period this left a total of 32.2 weeks worked after accounting for absences.

233. In order to convert the weeks to hours for the purpose of calculation, the number of weeks were multiplied by 37.5 (the number of hours each week worked by the Claimant) to give a total number of hours worked in each of the first and second periods. This produced a total number of hours worked by the Claimant in the first period of 1,612.50 and in the second period of 1,207.5.

234. The total number of hours in each of the periods was then multiplied by the relevant minimum wage (£7.50 for the first period and £7.83 for the second period) to give the total amount that should have been paid to the Claimant during the period. This gave figures of £12,093.75 that should have been paid to the Claimant in respect of the first period and £9,454.725 that should have been paid to the Claimant in respect of the second period.

235. The amount the Claimant was actually paid was ascertained using the agreed figures at [**C3**]. Account was also taken of the £400.00 payment in October 2018 which both parties accepted had been made but which was not included at [**C3**]. This gave total figures of sums actually paid to the Claimant during the first period of £10,131.32 and £7,453.90 for the second period.

236. Taking the total amount actually paid during the periods from the amounts calculated as being due the difference, being the amount the Claimant was underpaid by, was £1,962.44 for the first period and £2,000.825 for the second period.

237. The Tribunal also had regard to section 17(4) of the National Minimum Wage Act 1998.

238. Adjusting the figures at paragraph 236 above using the formula in s17(4) NMWA and the national minimum wage rate of £9.90 at the date of determination (26th August 2022) gave figures of £2,529.77 and £2,590.42 for the first and second periods respectively.

239. Adding these two amounts together, the total amount of the underpayment due to the Claimant for the period from 24th April 2017 to 31st December 2018 is therefore £5,120.18.

240. The Tribunal also considered the Maternity pay received by the Claimant. This had been based on the pay received by the Claimant, which was less than the amount due under the national minimum wage and was accordingly also underpaid.

241. The amount due to the Claimant for maternity pay was calculated using the Government's online calculator and a 9 week period from 1st August 2018 to 30th September 2018 using £292.63 per week (the Claimant's usual 37.5 hours per week multiplied by £7.83), a total of £2,642.67. This gave a total amount due of maternity pay due to the Claimant to 31st October 2019 of £6,528.54 as against actual maternity payments made of £6,321.82 (taken from [**C3**]).

242. The Claimant was therefore underpaid her maternity pay by £206.72, which was then adjusted using the formula in s17(4) of the National Minimum Wage Act 1998 to £261.37.

243. In total the Tribunal assessed the claim for National Minimum wage/unauthorised deduction from wages in the sum of £5,120,18 plus £261.37 = **£5,381.55**.

244. The Tribunal noted that the amount that it awarded under this head is more than the sum claimed by the Claimant on her revised Schedule of Loss. This was the result of the Tribunal's calculations having included the adjustment under s.17(4) NMWA, as the Tribunal is required to whether claimed or not. The Claimant's calculations did not include this adjustment.

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Employment Judge Clarke
Date:6 February 2023

Sent to the parties on
Date: 9 February 2023

LIST OF ISSUES

1. **Time limits**

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 04/12/18 may not have been brought in time.

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

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates? Latest specific Act complained of: 07/12/18, periods for general acts not specified.

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

1.3 Was the unauthorised deductions made within the time limit in section 23 of the Employment Rights Act 1996? The Tribunal will decide:

1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made etc?

1.3.2 If not, 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?

1.3.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.3.4 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?

2. **Pregnancy and Maternity Discrimination (Equality Act 2010 section 18)**

2.1 Did the respondent treat the claimant unfavourably by doing the following things:

2.1.1 On 12/07/18 told the Claiamnt that she "must resign" as she was "not fit to work anymore, won't be able to cope with stress"
2.1.2 On 16/07/18 made comments about the Claimant's clothing being inappropriate
2.1.3 On 17/07/18 increased the Claiamnt's workload by allocating her to deal with incoming post along with Mr Khalid (previously spread amongst 6 employees) and requiring her to work extended hours
2.1.4 Falsely accuse the claimant of not calling clients on time and causing complaints
2.1.5 Shouted at and insulted the claimant
2.1.6 Required the Claimant to provide him with daily reports, indicating that he did not trust her anymore
2.1.7 On 18/07/18 sending the Claimant an unprofessional and rude text regarding her having missed work for a pregnancy scan
2.1.8 On 19/07/18 told Mr Fazil (file finder) not to help the Claimant
2.1.9 On 25/07/18 re-located the Claimant's allocated workspace to room 205, a room with no ventilation, windows, or fresh air and where the temperature in the room rose to 39 degrees centigrade
2.1.10 On 27/07/18 told Mr Patel not to help the Claimant move a cupboard. Cl ignored
2.1.11 Between 27/07/18 – 31/08/18 constantly moved the claimant from one work space to another so that she had no permanent seat and asked her to do tasks others had responsibility for (file finding, checking which clients were in reception)
2.1.12 On 17/08/18 accused the claimant of lying regarding working through her lunch break to leave early for antenatal class
2.1.13 On 24/08/18 sent the claimant a text accusing her of failing to comply with a policy regarding post procedure that she was not made aware of until a letter of 30/08/18 was circulated
2.1.14 On 05/09/18 sent the Claiamnt a text message regarding her failure to send a daily report
2.1.15 On 06/09/18 told the Claiamnt that she must communicate in handwritten documents and not by e-mail. The Respondent refused to put complaints about the Claimant in writing.
2.1.16 Post not distributed equally
2.1.17 Between 14/09/18 – 01/10/18 failed to pay the Claimant sick pay when she was on sick leave
2.1.18 On 01/10/18 changed the claiamnt's duties in that he told her to sit in a seat unsuitable for pregnant worker.
2.1.19 On 03/10/18 sent the claimant a textstating that he would not renew her employment contract and claimed that it had ended

on 01/10/18. Then subsequently told her that he would renew it

2.1.20 Between 01/10/18 – 22/01/19 failed to respond to the Claimant's enquiries regarding her maternity leave

2.1.21 On 12/11/18 told the claimant not to use her personal phone and e-mail during working hours

2.1.22 On 13/11/18 told the claimant not to speak to colleagues at work

2.1.23 On 14/11/18 accused the Claimant of making up stories

2.1.24 On 16/11/18 told the claimant to go into the kitchen to eat (no-one else was required to)

2.1.25 On 07/12/18 queried why the Claiamnt was in Jenna's office and not in her seat. Shouted at the claimant and accused her of interrupting her colleagues and told the claimant that she was not allowed to speak to anyone or leave her seat during working hours

2.1.26 Failed to respond to the Claimant's complaint in writing sent on 10/12/18

2.1.27 overloaded the Claiamnt with work

2.1.28 Required the Claiamnt to undertake heavy lifting and unsuitable tasks

2.1.29 Created a hostile, intimidating and oppressive work environment for the Claiamnt in breach of the 1999 MHSW

2.2 Did the unfavourable treatment take place in a protected period? It is agreed that the Claimant was pregnant and told the Respondent that she was pregnant on 12/07/18.

2.3 Was the unfavourable treatment because of the pregnancy?

2.4 Was the unfavourable treatment because of illness suffered as a result of the pregnancy? (highlighted above)

3. **Remedy for discrimination or victimisation**

3.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

3.2 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

3.3 Should interest be awarded? How much?

4. **National Living Wage/Unlawful deductions**

4.1. It being agreed at the 23 March 2020 CMD, that a claim cannot be brought at all in respect of deductions made more than two years before the ET1 is presented [s23(4) ERA 1996]. As her ET1 was

presented on 23 April 2019, the C can only seek to claim from 24 April 2017 and not any earlier.

4.2. What were the actual hours that were worked by the Claimant?

4.3. What was the actual Pay that she received?

4.4. Was the C therefore paid the NLW that was current rate applicable at the said time?

4.5. If so, then her claim for NLW deduction/unlawful deduction of wages must fail. If not, then what amount(s) is the C owed?