



EMPLOYMENT TRIBUNALS

Claimant: Mrs O Yuldasheva

Respondent: Lacy Locks Salon Ltd

Heard at: Watford

On: 8,9,10 January 2024
(15 March 2024 in Chambers)

Before: EJ Bansal
Members – Mr N Boustred & Mr S Woodward

Representation

Claimant: In person (assisted by husband Mr Yuldasheva)

Respondent: Mr M Novakovic (Representative)

RESERVED JUDGMENT

The unanimous judgment of this Tribunal is that;

1. The claimant's complaint of automatic unfair dismissal contrary to s99 of the Employment Rights Act 1996 is well founded and succeeds.
2. The claimant's complaint of unlawful discrimination on the grounds of pregnancy contrary to s18 of the Equality Act 2010 is well founded and succeeds.

REASONS

Background

1. By a Claim Form presented on 16 December 2022, following a period of ACAS early conciliation from 27 October 2022 to 16 November 2022 the claimant brings complaints of automatic unfair dismissal contrary to s99 of the Employment Rights Act 1996 asserting that the reason or principal reason for her dismissal was her pregnancy and unlawful discrimination on the grounds of her pregnancy and/or because she was due to take maternity leave in or around October or November 2022 contrary to s18 of the Equality Act 2010.

2. The respondent defends the complaints on the basis that the only reason the claimant was dismissed was on grounds of capability, and that the claimant's pregnancy or that she was due to take maternity leave formed no part of the decision to dismiss her.

The Legal Issues

3. At a Preliminary Case Management Hearing held on 12 May 2023, Employment Judge Boyes discussed and agreed with the respective representatives the legal issues to be determined, which are set out below.

Automatic unfair dismissal (s99 Employment Rights Act 1996)

4. Was the reason or principal reason for dismissal that the claimant was pregnant and due to commence maternity leave in October/November 2022.

Unlawful discrimination on the grounds of pregnancy and/or maternity leave. (s18 Equality Act 2010)

5. Did the respondent treat the claimant unfavourably by doing the following things;
 - 5.1.2 Deciding to dismiss her on 5 August 2022 whilst she was pregnant and due to commence maternity leave in October/November 2022.
 - 5.1.3 Did the unfavourable treatment take place in a protected period?
 - 5.1.4 If not did it implement a decision taken in the protected period?
 - 5.1.5 Was the unfavourable treatment because of the pregnancy or because of illness suffered as a consequence of pregnancy?
 - 5.1.6 Was the unfavourable treatment because the claimant was seeking to exercise the right to ordinary or additional maternity leave?

The Hearing

6. The claimant was represented by her husband. The respondent was represented by their accountant Mr Novakovic.
7. An agreed bundle of documents of 153 pages was provided. The Tribunal read and considered the documents referred to in the witness statements and directed by the parties during the hearing.
8. The Tribunal was provided with a witness statement from the claimant, and statements from the respondent witnesses, Miss Ambarin Hussain (Director/owner), Mr Ruhin Khan (Husband of Miss A Hussian), Mrs Lisa Spina (Manager), and Miss Ellie Macklin (Employee). All witnesses gave oral evidence and were cross examined. The Tribunal also asked questions for clarification.

9. The Tribunal approached the witness statements with a degree of caution. It was observed that the statements were written through the prism of either advancing or defending the claim. The statement of Miss Hussain, who is the material witness and decision maker, was surprisingly brief and lacked essential material background facts and information about the claimant's performance/capability; the review meetings held, and the dismissal meeting. Accordingly, the Judge questioned Miss Hussain at length to ascertain the background facts and evidence to assist the Tribunal to make an informed decision.
10. At the conclusion of the parties evidence, both representatives produced written submissions which they supplemented orally. Due to lack of time for deliberations, the Tribunal reserved its decision.

Disclosure of documents

11. The Tribunal noted the lack of disclosure of key documents and information by the respondent. Miss Hussain told the Tribunal that she did not know that full disclosure was required. The Tribunal was surprised at this comment for the following reasons. The respondent has been represented by Mr Novakovic, who was in attendance at the Preliminary Case Management Hearing on 12 May 2023, at which disclosure would have been discussed. The Case Management Order clearly states at Para 10, "*the respondent must send the claimant copies of all documents relevant to the issues listed in the Case Summary.*" In addition, Para 12 explains the meaning of documents and states, "*You must send all relevant documents you have in your possession or control even if they do not support your case..*" This direction is clear, which the respondent ought to have properly understood.

The Witnesses

12. The Tribunal was required to make findings of fact. This was based on the documentary evidence provided and included making an assessment on the oral evidence and credibility of the witnesses. The Tribunal sets out briefly its assessment of the witnesses who gave evidence:-
 - (i) The claimant gave evidence consistent to her written statement. She was found to be a credible and consistent witness. She accepted that she did receive some complaints about her service from customers during her employment for which she received feedback. She also acknowledged that Miss Hussain was good to her; provided her with training and supervision, and that they enjoyed a good and trusted friendship.
 - (ii) Miss Hussain, gave her evidence well, particularly about her business. She accepted that her witness statement was brief and there was a lack of disclosure of documents and information. However, the Tribunal did not find her to be an entirely reliable or credible witness.
 - (iii) Mr Khan's evidence was of limited value given he was not the decision maker in the claimant's dismissal. The Tribunal did not find him to be a reliable or credible witness. He did not directly answer the questions put to him by the Judge. Instead he preferred to give answers he wanted

to support Miss Hussain and to justify the reason for the claimant's dismissal.

- (iv) Mrs Spina's evidence was confused and inconsistent. Her evidence was of limited value.
- (v) Miss Macklin gave evidence consistent to her statement, which supported the decision to dismiss the claimant.

Findings of Fact

13. Based on the evidence heard and read, including the assessment on the credibility of the witnesses, the Tribunal made the findings of facts as set out below. Where a conflict of evidence arose the Tribunal resolved the same, on a balance of probabilities. The numbers appearing in brackets in this judgment are reference to a page number in the bundle.
14. The respondent is a small employer with 3 employees, and operates as a hairdressing salon business specialising in hair extensions. The sole Director and shareholder is Miss Hussain. She has worked in the hairdressing industry for the last 20 years and set up the respondent business in 2020. The salon operates from premises at Unit 4, Texel Close, Oakbridge Park, Milton Keynes, and currently employs a Salon Manager (Mrs Spina), one other hairdresser (Miss Macklin) who joined in 2020, and an apprentice hairdresser (Sophia) who joined in April 2022.
15. The business structure is that Miss Hussain runs and operates the business with the assistance of Mrs Spina. In addition Miss Hussain is assisted by her husband, Mr Khan. He is not a Director, shareholder or an employee of the respondent. He runs his own marketing and media business and employs some 20 employees. Mr. Khan told the Tribunal that he attends at the salon regularly; helps out on reception; oversees the social media marketing side of the business; helps out with the administration; provides management training to Mrs Spina to assist her to conduct staff appraisals and reviews. He also confirmed he produced the respondent Staff Handbook. The respondent did not disclose this Handbook.
16. Miss Hussain confirmed she deals with employee issues. She has received no training in dealing with managing performance and dismissals. She obtained guidance and advice from her accountants/payroll advisers about the claimant's query about maternity pay and pay for time off for antenatal appointments. In relation to the claimant's dismissal, she contacted ACAS for some advice.
17. The Tribunal was told the respondent uses an appointment booking system called Forrest. Appointments are booked through Forrest by the clients and staff. There is also a facility on this system for clients to provide their feedback on the service received and of their experience with the staff attending to them. This system can be viewed by all employees.

The Claimant

18. The claimant is from Kazakhstan and has qualifications in hairdressing, which Miss Hussain said are not recognised in the UK.
19. Sometime in mid-summer 2021 the claimant posted on her Instagram page a search for a hairdressing position. Miss Hussain responded to the claimant and invited her for an informal discussion which led to the claimant's appointment, which according to the respondent was from 1 September 2021 on a part time basis.
20. The claimant was issued with a Contract of Employment. The version in the bundle was unsigned and undated. Miss Hussain explained the signed version was on the claimant's personnel file and that she did not know it was necessary to disclose this. The claimant agreed that this was the document which was issued to her. The contract, is in two Parts. The heading on Part 1, states, " These Particulars of Employment (Particulars) are to be read in conjunction with the attached Terms and Conditions of Employment (Terms and Conditions) which together form your Contract of Employment...Part 1, sets out the Particulars namely, job title (hairdresser); probationary period; place and hours of work; hourly pay rate (p31-32). Part 2 is the Terms and Conditions document. This is a full Contract of Employment which refers to policies contained in the Employee Handbook. This document was also unsigned and undated. (p33-44) Miss Hussain explained that this document was downloaded from the internet and used as a template Contract of Employment. She also confirmed the respondent does not have an Employee (Staff) Handbook or any written policies, for example, for maternity and pregnancy; capability; disciplinary and grievance procedures and standards of performance; Equal Opportunities Policy. In contrast Mr Khan in his evidence said he produced the Staff Handbook, which contains these policies and procedures. He said he compiled this after the Covid pandemic. He asserted he downloaded a template and produced the guide for the office which is kept in the kitchen staff room. Miss Hussain was clear that there is no Staff Handbook. She is the owner of the business and would know, if a Handbook was in existence. The Tribunal did not accept Mr Khan's evidence. This is an example of how he tailor made his evidence when questioned.

Claimant's Job Title

21. According to Miss Hussain, the claimant was taken on as a trainee in hair extensions, although the Contract of Employment refers to her job title as a Hairdresser. The claimant accepted that she was taken on as a trainee in hair extensions.

January 2022.

22. From 11 January 2022 the claimant was absent from work. At the time she was abroad visiting her parents in Kazakhstan. She was unable to return due to the political situation in Kazakhstan. She returned in early February 2022. Miss Hussain was understanding of the situation and kept her job open for her during this absent period, even though the claimant understood that her role may not be available on her return. In an email exchange on 11 January

2022, Miss Hussain wrote to the claimant, "*I'll not be opening up the position to anyone until I know what is going on x.*" (p57)

23. The claimant returned to work in the first week of February 2022. On 10th February 2022, Miss Hussain sent a text message to the claimant saying, "*Really proud of you for this week, well done.....*" (p64)
24. On the claimant's return Miss Hussain placed the claimant on probation for a month and reduced her working hours. The claimant accepted this. Miss Hussain's explanation for this was that the claimant had been away for 2 months and wanted to ease her back into work. On 8 March 2022, Miss Hussain increased the claimant's working hours to full time (p75) In the text message exchange, with the claimant, Miss Hussain, wrote, "*As per the return I had dropped your hours and placed you back on your probation for a month. You done well and therefore I have increased your hours to full time... As long as you're on the ball and working like you did last week there will be no issues.*" (p75)

The Claimant's pregnancy

25. Sometime in March 2022 the claimant discovered she was pregnant. She informed Miss Hussain in early April. The claimant accepted that Miss Hussain was happy for her, and that she congratulated her and her husband about their good news. The claimant accepted that upon learning of her pregnancy, Miss Hussain was supportive, for example, she purchased a stool for her and encouraged her to take regular breaks, and at times gave the claimant lifts to work.
26. On the matter of the MATB1 Form, Miss Hussain said this was briefly discussed with the claimant, but no Form was produced. The Tribunal has observed that a MATB1 Form is issued after the 20 week scan. On the understanding the claimant became pregnant in March, the 20 week scan would have taken place sometime in the month of August.

Training

27. Miss Hussain confirmed she holds regular review meetings with her employees, which she refers to as 1 to 1 meetings, at which she discusses the employees goals and any performance issues. She explained these meetings are pre-arranged and are diarised in the employee's diary in advance so they do not clash with any client bookings. The discussions are documented in writing. She frankly admitted that she has not received any training how to undertake these meetings/reviews. Her experience is limited to when she was an employee herself. The respondent disclosure of these meeting notes was limited to the two meetings held on 16 March 2022 and 7 July 2022. Apart from these meeting notes, the respondent did not disclose any other meetings notes which may have highlighted any performance issues. Miss Hussain explained she did not know that all of the meeting notes should have been disclosed.
28. In terms of training Miss Hussain explained that she and Mrs Spina are responsible for providing training to their employees. The training is done

practically using a dolls head, and also involves shadowing either herself or Mrs Spina. Miss Hussain confirmed that she keeps a note of the training given to the employees and issues certificates for training, if required to do so. The respondent did not disclose the claimant's training record or any other documents about her training. Again, Miss Hussain's explanation was that she did not think it was necessary to do so. She focused on the dismissal issue. Miss Hussain explained that she spent a lot of time training the claimant, which took a lot of her time and energy at the expense of her spending time with her clients. Mrs Spina confirmed she did not provide any training to the claimant.

Meeting 16 March 2022

29. On 16 March 2022, Miss Hussain held a meeting with the claimant. According to the claimant this was a review meeting. Miss Hussain, however, said in evidence this was meant to be a disciplinary meeting despite the disclosed document, is headed "Meeting". Miss Hussain confirmed the handwriting was hers and that at the meeting she discussed the claimant's goals, and that she gave her a verbal warning and arranged for the next review to be on the 24th. (p77) The claimant's evidence was that it was a normal and positive discussion about her goals and what she needed to improve one as recorded in the document. She accepted that she was told to communicate more to clients and was advised about improving her work. She accepted that she signed the note at the end of the meeting. The claimant was not given a copy of this note at the end of the meeting. This is not disputed by the respondent.
30. The claimant challenged this meeting note in two respects. She disputed that she was given a verbal warning, and that the written words "*24th-review what we have discussed and warning given*" were not written in that meeting, in her presence. These have been added afterwards. She has no recollection of a discussion about a meeting to be held on 24th. The first she saw this note was when it was disclosed by the respondent in disclosure process. Miss Hussain has not claimed that the claimant was given a copy of this note any time after the meeting. Had this been done, this would have given the claimant the opportunity to comment on the accuracy of this note. The Tribunal preferred the claimant's evidence about this meeting on 16 March. The Tribunal finds it was a normal review meeting at which the "goals" were discussed as written in the note. It was not a disciplinary meeting and neither was the claimant given a verbal warning. Had the claimant been given a verbal warning she would have remembered this. In evidence, Miss Hussain said she meant this to be a disciplinary hearing. The respondent has not provided any evidence to satisfy the Tribunal that the claimant was told or that it was made clear to her at any time that this was a disciplinary meeting. If it was a disciplinary meeting, Miss Hussain would have recorded this on the note. Miss Hussain accepted she was at fault for not doing so, and also for not confirming the verbal warning in writing to the claimant. The Tribunal also did not accept Miss Hussain's evidence that the words "*24th-Review what we discussed warning given*" were written at the meeting and in the presence of the claimant. It is also noted that given Miss Hussain, on her own evidence said these scheduled meetings are diarised, the respondent did not disclose the diary entry for this meeting, which would have supported her evidence.

Meeting - 24 March 2022

31. It is common ground that this meeting did not take place. Miss Hussain was unable to attend the salon as she was with her ill mother who was in hospital.
32. On this morning the claimant provided a positive Covid test, and messaged Miss Hussain of her feeling unwell. Nevertheless, she instructed the claimant to go to work as the salon had customer bookings. That evening Miss Hussain sent a text message to the claimant stating, *"I just wanted to let you know I really appreciate you coming in. I'm having a tough time at the moment with my mum being poorly so I appreciate it. I'm really grateful thank you x"* (p79) The Tribunal noted there is no message or any other document disclosed by Miss Hussain informing the claimant that the scheduled meeting would have to be cancelled and re-scheduled. Also, if this meeting was re-scheduled no evidence was disclosed to show this. Miss Hussain made no mention about this meeting in her statement.

Complaints March – May 2022

33. In the bundle the respondent disclosed 3 emails, two dated 7 May and one for 10 May 2022. (p81-83) These are feedback responses from three customers who had hair extensions done by the claimant. Miss Hussain refuted the suggestion put to her in cross examination that she had requested these emails to support the claimant's dismissal for this hearing. She explained that the feedback is provided by customers on their feedback page on the Forrest booking system. These feedback pages have been disclosed to show as evidence the issues with the claimant's work. Miss Hussain confirmed the totality of the written complaints are in the bundle. She confirmed that majority of the complaints and feedback were received verbally.
34. In the bundle, the Tribunal observed a series of messages during the period February and March 2022 between Miss Hussain and the claimant, in which the claimant is praised about her work. These are summarised as follows;
 - (a) On 10 February, Miss Hussain wrote, *"Really proud of you for this week well done..."*. (p64)
 - (b) On 14 February, the claimant is told *"..you done so well"*. (p65).
 - (c) On 25 February *"Morning. You working like me and Lisa now. Non-stop". "Honestly, I appreciate you so much. I know I'm hard on you but only want you to do well."* (p67). *"Everyone text me saying you are lovely, so well done."* (p67) *"You're doing really good and I'm really proud of you we can't make everyone happy but we can try our best"* (p68)
 - (d) On 2 March 2022, *"So super happy! You're making me so proud. Soon you'll be managing someone else to do it and you'll be Manager with Lisa eventually xx"*. *"You are doing well I promise. I know I'm hard on you. I am like that because I want you to do well xx"* (p69) *"You did well today. Thank you for making an effort with pictures and video. I see your hard work and you trying really hard. Thank you"* (p70)
35. Miss Hussain's response to these complimentary messages was that it demonstrated how supportive she was of the claimant, and that it is usual

for her to praise and encourage her employees in this way. Miss Hussain made the point the claimant is a lovely person, and she did not doubt her character.

36. In the bundle, the respondent disclosed a series of feedback reviews from clients about the service and work carried out by the claimant. (p121-131) These all post-dated the claimant's dismissal and the dates range from 22-27 March 2023 and 3-9 May 2023. These comment on the service received and the dissatisfaction with the hair extension work carried out by the claimant. In response to questions by the Judge, Miss Hussain admitted she contacted the clients who had complained at the time, and asked them to provide their statements to highlight their experience with the claimant. She accepted that she told the customers that these statements were needed for this hearing. The Tribunal took the view that this disclosure is unreliable evidence for the reasons these accounts have been solicited for the purposes of defending the claim, and no evidence was shown to confirm that these clients were attended to by the claimant, if at all. Accordingly, the Tribunal attached little weight to these statements.

Maternity – 23 May 2022

37. On 23 May 2022 the claimant sent a text message to Miss Hussain about maternity leave, and her wanting to change to part time hours. In that text message exchange Miss Hussain assured the claimant that she has sent an email to her accountant and *“that either way she will get maternity pay ”*. (p87) Further, Miss Hussain engaged with the claimant to ascertain when she wanted to go part time and on which days. At this point the claimant had not decided from when and which days. The discussion was left open for the claimant to let Miss Hussain know. (p87)

Meeting 7 July 2022 (p108)

38. On 7 July 2022, Miss Hussain met with the claimant. The contemporaneous hand written document disclosed by respondent is headed “Meeting”. It is signed by both Miss Hussain and the claimant. It records, “Goals for this week”, as (1) talking to clients; (2) 0 complaints; and (3) ensure hair isn't pulling. In the notes section, it is written, (i) Given a final warning of 0 complaints; (ii) Discussed dismissal if continues; and (iii) effecting business & team as a whole.
39. The claimant's evidence was that this was a normal review meeting, to discuss her goals, and how to improve her skills. She disputed that she was given a final warning or that there was any discussion about dismissal. The claimant said that the written notes “Given a final warning of 0 Complaints; discussed dismissal if continues, and effecting business & team as a whole” have been added after she signed the note. These words were not written in her presence. The Tribunal preferred the claimant's evidence on this point, and find that she would have remembered if the said words had been written in her presence. The claimant also asserted that she first saw this document when it was disclosed by the respondent in disclosure. The respondent did not claim that the claimant was given this note at the meeting or thereafter. The Tribunal finds this note was not sent to the claimant any time after the

meeting, and this has prevented the claimant the opportunity to comment on the accuracy of the note.

40. Miss Hussain's account of this meeting was that it was a disciplinary meeting. She accepted she did not give notice to the claimant that it was to be a disciplinary meeting either before or at the meeting. Miss Hussain said she was still trying to assist the claimant to improve as there was still issues about her work. The reference to "0 complaints" was explained in the context of not wanting any further complaints, and therefore she gave the claimant a final warning. She asserted she did tell the claimant that she will have to dismiss her if the complaints continued. She was adamant that she did give the claimant a final warning. In contradiction to this, Miss Hussain in her witness statement has asserted that at this meeting she gave the claimant a further "verbal warning", as opposed to a "final warning". It is also noted that Miss Hussain did not confirm this final warning in writing to the claimant and no evidence was disclosed that this alleged warning was recorded in the claimant's personnel records. Again had the claimant received written confirmation this would have given her the opportunity to comment or raise any issue. The Tribunal preferred the claimant's evidence which was consistent to her witness statement.
41. Mrs Spina in her oral evidence claimed she was present at this meeting in her role as Manager and as a witness. She said, she was informed of this meeting by Miss Hussain and was told it was a disciplinary meeting to discuss the claimant's performance. In her written statement she has made no reference to this meeting and that she was present or what was discussed. Also, Miss Hussain and the claimant made no mention of Mrs Spina being present in their witness statements or in oral evidence. The contemporaneous note does not record that she was present either. The Tribunal concluded Mrs Spina was not in attendance at this meeting.
42. The Tribunal was not persuaded by Miss Hussain's evidence that it was a disciplinary meeting and that the claimant was given a final warning. The Tribunal finds this was a review meeting, at which discussions were held about the claimant's progress generally and her goals.

22 July 2022

43. In about June 2022, the claimant and her husband were looking to move from Milton Keynes. This prompted the claimant to ask to work part time. In July, they decided not to move. On 22 July 2022, the claimant sent a text message to the claimant, in which she stated, *".. I know I asked to go part time but I think it is better for me to continue full time for 1—2 months and then part time. Could I do full time August and September xx"*. Miss Hussain replied that she was glad they were staying in Milton Keynes, and confirmed she could not put her back on full time for reasons they had previously discussed. (p113)

1 August 2022

44. On 1 August 2022 the claimant sent a message to Miss Hussain in which she stated, *"... Tomorrow I have a appointment with a doctor and only few hours at work can I take a day off tomorrow and go to work on Thursday until*

four? xx” Miss Hussain, replied, “ .. *That’s fine if you want a day off tomorrow I haven’t got anyone in for you on Thursday so don’t worry about coming in on Thursday I’ll see you on Friday hope all goes well at your appointment tomorrow xx*” (p114) This then led to an exchange of further messages. The claimant in reply, stated, “*Thank you. I would like to make sure that I get paid for this hours as well. Can you please confirm because in the future I will have other antenatal appointments. I don’t want any misunderstandings. That’s why I want to ask you about it.*” Miss Hussain replied “*It’s not a sickness or a holiday so it will be unpaid. If you wish to book it as holiday if you want in which case it will be paid. I hope that helps xx*”. The claimant replied, “*OK let’s book it as holiday*”. Miss Hussain responded, “*OK. It is just you knew about this for a while as we had booked off the first couple of hours already xx*”. (p115).

45. The discussion then refers to being paid for antenatal appointments. The claimant wrote, “*Yes, I know I’ve read some information about it. As far as I understand appointments with doctors during pregnancy are paid by the employer in the UK so I decided to ask you about it.*” Miss Hussain, replied, “*I’ve been very fair and understanding through everything. You had known about this appointment almost 3-4 weeks ago would have messaged me a day before for a whole day off. I will have a look into this and if needs to be will be paid. However you need to bear in mind you do not get paid for the whole day off. It is merely for the appointment time. You can’t get paid for a whole day off.*” The claimant response was, “*I am very grateful for your understanding and for everything. We discussed this appointment 3-4 weeks ago and we left it for later. It’s probably my fault that I do everything at the last minute. I just don’t like to discuss these moments. I feel very bad when I ask for something. I know I can’t paid for the whole day off. let’s do like a holiday tomorrow. See you on Friday. I know I’m pregnant now and I’m discussing a lot of points with you and I realise it’s not easy to cope with everything as a manager. I really don’t want to bother you. I just don’t want misunderstandings between us. Thanks again for your time today xx.*” Miss Hussain replied “*Absolutely not. I completely understand and whatever can do to help I promise to do. Just come to me with anything. I’ve always tried to help and make it as comfortable for you as I possibly can. I will be looking into this for you. If you are entitled to pay for the appointment I will pay you for the 2 hours you had originally booked but having the whole day off is your decision. Hope that makes sense. And if there is anything else I can do to help please let me know. I’m always here. I hope all goes well tomorrow.*”(p116-117)
46. In relation to antenatal appointments, Mrs Spina’s evidence was that each time the claimant went for an antenatal appointment which was booked on the system, she did not return and took the whole day off. She said she informed Miss Hussain about this. In her witness statement Mrs Spina stated, “*We were all concerned that often when the claimant was given time off to attend an antenatal/midwife appointment, she would fail to return to work. This meant that any clients booked in for her, would need to be serviced by others, causing unnecessary stress for all working that day.*” In response to a question from the Judge, “*If the claimant was taking time off did this cause a problem in the salon?*” Mrs Spina replied, “*Yes appointments had to be covered*”. Miss Hussain made no mention of this in her statement or evidence. The claimant, in reply to a question from the Judge, replied that “*she did not tell Miss Hussain about her antenatal appointments. She just*

booked time off, as she felt bad to ask and did not ask for paid time off.” She further explained that the email she sent on 1 August, was following a discussion with her midwife who informed her that she should be paid for time off. The Tribunal was not provided with any dates for antenatal appointments attended by the claimant. The Tribunal acknowledged that during this time the claimant would have had to attend some appointments

Disciplinary Meeting - 3 August 2022

47. By letter dated 3 August 2022 Miss Hussain invited the claimant to a disciplinary meeting scheduled for 5 August at 10:00 am at the salon premises. The letter stated,
*“Dear Odina, I am writing to inform you that you are required to attend a company disciplinary meeting on the Friday 5th August at 10:00 am which is to be held at Lacy Locks.
This action is being considered with regard to the following circumstances;
- Performance
- Continual customer complaints.
You are entitled, if you wish, to be accompanied by another work colleague or trade union trade union representative.
Yours sincerely
Ambarin” (p118)*
48. Miss Hussain explained she had taken advice from ACAS prior to sending the letter. The letter was downloaded from the internet and completed by her. The Tribunal noted this letter does not warn the claimant that an outcome could be dismissal or reference to previous warnings.
49. The claimant said she was shocked to receive this letter. She attended alone. Miss Hussain was accompanied by her husband Mr Khan. He attended to take notes of the meeting. Miss Hussain accepted that, in advance of this meeting, she did not give to the claimant any documents or specific details about her performance or customer complaints.
50. The contemporaneous note of this meeting is headed Disciplinary Meeting and confirms the date, the names of Miss Hussain, the claimant and Mrs Spina (as Manager). (p119) Miss Hussain confirmed she printed this document in advance of the meeting. The note contains handwritten notes taken by Mr Khan, Miss Hussain and the claimant signed the note. The claimant accepted she signed this at the end of the meeting but did not read it as she was crying and very upset having been dismissed. She was not given a copy of this at the meeting or sent a copy with the dismissal letter. This is not disputed by the respondent. The claimant first saw this note when it was disclosed by the respondent in the process of disclosure.
51. In their witness statements, the claimant and Miss Hussain gave very little detail about the actual discussions held at this meeting. Mr Khan, who was the notetaker made no reference to this meeting at all in his statement. Accordingly, the Tribunal made its findings of fact about this meeting based on the oral evidence heard, in particular to the questions asked by the Tribunal.

52. Miss Hussain, explained for this meeting, she had compiled two documents which she referred to in the meeting. The first document contained information showing statistical evidence of the claimant's retention rate of customers (p48-50). This document recorded the retention rates as; October 12%; November 10%; December 29%; May 30%; June 11% and July 0%. There was a undated document headed "Client complaints", which recorded 5 feedback/complaints. The document had no reference as to the dates when these complaints were given and by whom. (p51) There was one document, which was a feedback message from a customer. This document was not dated and did not have the name of the sender. Miss Hussain clarified that she compiled the "Client Complaints" document, and that she cut and pasted the text messages received. She did not realise she should have copied the full messages including the dates sent.
53. The claimant's recollection of this meeting was that when she was called into the meeting Mr Khan was already in the room. She recalled as follows;
- a. Mr Khan wrote the notes and that he did most of the talking not Miss Hussain.
 - b. She was not aware that the respondent was collating statistics. Something was said about statistics, but she could not now recall what.
 - c. She had a booking calendar. This was shown to her. She did not know that it was empty, with no bookings.
 - d. She was not shown any information or names of clients who had gone to Miss Hussain or Ellie. During her employment she had never been shown any list showing this information, or was made aware that clients did not want to book with her. She was not told that the business had to give refunds to clients because of her work.
 - e. Miss Hussain did state that she was on a final warning, but she did not know why Miss Hussain was referring to this as she was not aware that she had received a final warning at any time.
 - f. She did accept that some clients did make complaints about her during her employment, and acknowledged that she had on some clients put the extensions incorrectly but there was no recent complaints.
 - g. Miss Hussain did tell her that she would have to let her go. At this point, the claimant became upset and started crying, as she was not expecting this outcome. She asked if she could have a minute. She then left the room and on her return she was asked to sign the handwritten note. She signed it without reading it as she was upset and tearful.
 - h. At the end of the meeting Miss Hussain asked her to stay in the room. She did do so. It was emotional. They both cried and hugged each other, and Miss Hussain told her she did not want to dismiss her and that it was not personal.
 - i. She left through the back door to avoid seeing other staff.
54. Miss Hussain sent the dismissal letter dated 5 August by post. (p120)
The letter stated as follows;
Dear Odina,
This notice is to formally inform you that your employment with Lacy Locks will end as of Friday 5th August.
As discussed in your meeting, your employment has been terminated due to the following reason(s);

- *Continued poor performance resulting in several complaints and loss of clients.*
- *Team members losing paid client bookings, due to fixing/resolving your complaints.*
- *Loss of earnings due to refunds made because of the poor service provided.*

You'll be paid until 12th August 2022. You'll also receive your final pay on the 26th August.

All company materials, equipment or any other company property you have access to must be returned to the salon before 12th August 2022.

If you have questions or concerns about the above, feel free to contact me.

You may appeal this decision by ensuring that we receive your complete written reasons before 15th August 2022.

Sincerely

Ambarin Hussain

55. The claimant did not exercise her right of appeal. The claimant's effective date of termination was 12 August 2022.
56. Some days after the claimant's dismissal, the claimant contacted Miss Hussain and asked for her job back as she was in the process of applying for a mortgage and required 3 months' payslips. The claimant assured Miss Hussain that she would work harder. On 13 August 2022, Miss Hussain wrote to the claimant by email, and informed the claimant, "... *I have thoroughly thought about what we spoke about throughout this week and unfortunately at this time we cannot offer you your position, as unfortunately we have had several more complaints..*" (p149)
57. The claimant then returned to Kazakhstan. She said this was because of her mental health. She explained that she did ask Miss Hussain to help her with her appeal, but received an email to say she will not allow her to appeal. This email was not disclosed in the bundle.
58. The claimant contacted ACAS on 27 October 2022, following which she presented this claim on 16 December 2022.
59. Miss Hussain, in her witness statement and oral evidence denied that the Claimant was dismissed because she was pregnant, and that she was always understanding as she was trying for a baby herself. She asserted that despite the considerable training provided to her, the claimant failed to be competent to be able to carry out hair extensions unsupervised. "*A large number of complaints were received about her work particularly between May and July 2022, and despite reviews in the period between May 2022 and July 2022, it became clear to her that the claimant was struggling to undertake the work required in a competent manner. A barrage of complaints meant that the clients had no confidence in her ability, and this was affecting the good will built by the business*" Further, in her statement Miss Hussain stated, "*During reviews held with the claimant, by her own admission she regularly stated that she had no passion for her job. She didn't not enjoy her has job. It was myself that continued to try and encourage her, and kept training her to be competent*". She decided she had no choice but to dismiss the claimant, and also because she did not want the business to be ruined and had to act to

protect the reputation of the business, which had worked hard to build.

60. The claimant asserted that according to her, she was not aware of any ongoing performance issues or complaints had been received. She had no formal review meetings in the first 6 months of her employment. The first review meeting was held on 16 March 2022, and then on 7 July 2022. She did not know she had a retention target or that this was being monitored. She was not made aware of any complaints between the period of 7 July to date of dismissal, if these had been received. Also during her employment there was no discussion about the statistical information produced at the disciplinary meeting. She had no inclination or had been warned that she would be dismissed at the disciplinary meeting on 3 August. In answer to a question from the Judge, *“why did she think her dismissal was because of her pregnancy? The claimant replied “It was only when I asked Miss Hussain for time off for my appointments, a few days after that the dismissal came.”*
61. Based on respondent reasons for dismissing the claimant, the Tribunal noted the hearing bundle contained no documentary evidence of any written record of review meetings, if held, during the period May to July 2022, save for the meeting note for 7 July 2022. There was no evidence of the complaints received during this period, or even after the claimant’s termination as mentioned by Miss Hussin to the claimant in her email of 13 August 2022. (p149). Also surprisingly, there was no information to show the loss of clients, team members losing client bookings and loss of earnings due to refunds made to clients for poor service due to the claimant work/performance. In reply to the Judge’s question, Miss Hussain replied this information should be on the Forrest system, and as to refunds given these could be verified from the bank statements. The fact is that respondent disclosed no documentary evidence in support of the reasons given for dismissing the claimant as stated in the dismissal letter.

The applicable Law

The Equality Act 2010 (EqA)

62. Section 4 provides “pregnancy and maternity” is a “protected characteristic”.
63. Section 39 provides:
“An employer (A) must not discriminate against an employee of A's (B); (c) by dismissing B; or (d) by subjecting B to any other detriment.
64. Section 13 provides:
“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”
65. Section 18(2) provides:
“A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably; (a) because of the pregnancy, or (b) because of illness suffered by her as a result of it.”
66. Section 18(4) provides:

“A person discriminates against a woman if he treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.”

67. The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends.
68. Section 18 EqA makes it unlawful during the protected period to treat a woman unfavourably on the grounds of her pregnancy. No comparator is needed and no justification defence is available.
69. For a discrimination claim to succeed the unfavourable treatment must be ‘because of’ the employee’s pregnancy or maternity leave. The meaning of this expression was considered by the EAT in **Indigo Design Build and Management Ltd and anor v Martinez EAT 0020/14**. There, His Honour Judge Richardson confirmed that the law required a consideration of the ‘grounds’ for the treatment. He referred to **In Onu v Akwiwu and anor; Taiwo v Olaigbe and anor 2014 ICR 571, CA**, Lord Justice Underhill stated: ‘What constitutes the “grounds” for a directly discriminatory act will vary according to the type of case. The paradigm is perhaps the case where the discriminator applies a rule or criterion which is inherently based on the protected characteristic. In such a case the criterion itself, or its application, plainly constitutes the grounds of the act complained of, and there is no need to look further. But there are other cases which do not involve the application of any inherently discriminatory criterion and where the discriminatory grounds consist in the fact that the protected characteristic has operated on the discriminator’s mind... so as to lead him to act in the way complained of. It does not have to be the only such factor: it is enough if it has had “a significant influence”. Nor need it be conscious: a subconscious motivation, if proved, will suffice.’
70. Thus it is not sufficient that pregnancy merely be the “background” to the unfavourable treatment. It must be the “reason why” she was treated in that way.

Burden of proof (s136 EqA 2010)

71. Section 136 requires the claimant to prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of unlawful discrimination, and it is then for the employer to prove otherwise.
72. The cases of **Barton v Investec Henderson Crosthwaite Securities Ltd (2003) ICR 1205** and **Igen Ltd v Wong (2005) EWCA Civ 142** provide a 13 point form/checklist which outlines a two stage approach to discharge the burden of proof, namely;
- (a) Has the claimant proved facts from which in the absence of an adequate explanation the Tribunal could conclude that the respondent had committed unlawful discrimination?
- (b) If the claimant satisfies (a) but not otherwise, has the respondent proved that unlawful discrimination was not committed or was not to be treated as committed.

73. The burden is on the claimant to prove, on a balance of probabilities, a prima facie case of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. The claimant must establish more than a difference in status (eg pregnancy in this case) and a difference in treatment before a Tribunal will be in a position where it could conclude that an act of discrimination had been committed.

Automatic unfair dismissal (s99 Employment Rights Act 1996 ("ERA"))

74. A different burden of proof exists in the unfair dismissal claim .

75. Section 108 of the Employment Rights Act 1996 (ERA) provides, an employee who has less than two year's continuous employment does not have the right not to be unfairly dismissed unless the reason for dismissal is one listed in sub-section 3, commonly called " inadmissible reasons".

76. In **Smith-v- Hayle Town Council (1978) ICR 996, CA** it was held the burden of proving an inadmissible reason rests with the claimant where the employee lacks that continuous employment.

77. Section 99 of the ERA deals with automatic unfair dismissal. It provides;
(1) An employee who is dismissed shall be regarded for the purposes of this part as unfairly dismissed if;
(a) the reason or principal reason for the dismissal is of a prescribed kind, or
(b) the dismissal takes place in prescribed circumstances.

(3) A reason or set of circumstances prescribed under this section must relate to (a) pregnancy, childbirth or maternity; or
(b) ordinary, compulsory or additional maternity leave. ,

78. *The Maternity and Parental Leave Regulations (MAPLE)* add detail in Reg 20 saying an employee who is dismissed is entitled under section 99 of the ERA to be regarded as unfairly dismissed if the reason or principal reason for the dismissal is connected with her pregnancy

79. If it is found that the reason for dismissal or the principal reason was an inadmissible reason under section 99 ERA there is no room for the employer to argue that the dismissal was nonetheless reasonable in all the circumstances and therefore fair. George v The Beecham Group 1977 IRLR 43

80. All these points require a principal finding of fact —why did the respondent act as it did? If the reason is clearly not pregnancy or related illness, the claims will fail

Analysis and Conclusions

81. It is common ground that the claimant and Miss Hussian enjoyed a mutual friendship and their relations were good during their time together. It has been noted from their exchange of messages that Miss Hussain appreciated the claimant's assistance and efforts, particularly when Miss Hussain's

mother was ill and she had to deal with difficult customers.

82. Miss Hussain, was happy for the claimant and her husband when she learnt about the claimant's pregnancy, and assured her that she would do whatever necessary to make it as comfortable for her at work. (p117)
83. The Tribunal in reaching its conclusions as set out below, carefully considered and took into account the background circumstances leading to the dismissal, and the alleged reasons for the dismissal. The findings relate to both complaints.

(i) Claimant's role and training

The Tribunal considered this in the context of the claimant's role as a trainee hair extension specialist and not as an experienced hairdresser. She was in training for this role, and was effectively learning on the job. Miss Hussain provided the training herself and kept training records for each employee. However, no training records for the claimant were disclosed or any other evidence to show the training provided; the improvements she made and what were the ongoing performance issues. The claimant admitted she received training from Miss Hussain but disputed that she was struggling to learn the work or that it was not to the required standard. Miss Hussain in her statement, and oral evidence, asserted the claimant was slow to learn the job; and that "*I devoted endless hours to try to train the claimant, and it became a personal challenge for me to try to bring her work up to a acceptable standard, which I did not want to fail, so persevered for a year*". This assertion is rejected as it is unsubstantiated. The Tribunal also rejected the claim that the claimant said she had no passion for the job and did not enjoy it. The messages between Miss Hussain and the claimant did not support this at all. If this was the case, it is highly unlikely that Miss Hussain would have spent the time and effort or persevered for so long.

(ii) Complaints

The respondent maintained that a large number of complaints were received about the claimant's work. Miss Hussain admitted in evidence that the totality of the written complaints received were those contained in the bundle, namely the 3 emails received in May and July 2022, and some of the text messages. In the main these were received verbally. She asserted that "*a barrage of complaints meant that clients had no confidence in her ability,*" The Tribunal recognised that given the nature of work and how important hair issues are to a client, it is inevitable that clients may not always be satisfied with the service or the manner in which the service is provided. The claimant candidly admitted that on occasions she was aware clients had complained and that she received feedback from Miss Hussain, and how to improve her skills. However, the respondent case was that there was continuing complaints about the claimant. The respondent failed to provide any information about the nature of these ongoing complaints, whether these related to the work carried out or if these were related to the claimant's attitude, conduct or customer service provided. The Tribunal concluded, if the respondent was receiving "*a barrage of complaints*" as alleged, Miss Hussain would have retained a record, and raised these with the claimant formally, particularly given her concern about the reputation of

the business and loss of clients. In the absence of any evidence the Tribunal was not persuaded by Miss Hussain's assertions.

(iii) Warnings

For the reasons given in the findings above, the Tribunal did not accept the claimant was issued with any warnings as claimed. If these warnings had been given these would have been formally documented given the importance and implications of these particularly for the claimant. Further, the Tribunal observed that Miss Hussain, in her witness statement referred to the warning allegedly given on 7 July 2022, as a "further verbal warning" as opposed to a final warning as written in the Meeting note. This is a telling inconsistency in Miss Hussain's evidence and recollection of that meeting.

(iv) Performance issues and reviews

The Tribunal noted that the respondent had not shown that there were performance issues between the claimant's start date of 1 September 2021 to mid-March 2022. In fact, the documentary evidence in the bundle for this period shows Miss Hussain was happy with her work and performance, for which she was praised. The fact that Miss Hussain kept the claimant's job open for her return in February gives further weight to support the claimant. From the evidence heard, the period relied upon is effectively May 2022 to July 2022. Miss Hussain claimed that despite reviews in this period, it became clear that the claimant was struggling to undertake the work required in a competent manner or to the required standard. During this period the respondent provided only one review, the review of 7 July 2022, notwithstanding Miss Hussain's evidence was that reviews were conducted fortnightly and documented. Even if the reviews were not documented no evidence was provided of dates of these reviews, which would have been recorded in the claimant's diary as confirmed by Miss Hussain.

The Tribunal concluded that, save for the meeting held on 7 July 2022, no review meetings were held with the claimant. Had the performance issues been ongoing, it is likely these would have been more frequent, formal, and documented given the concerns held by Miss Hussain. The Tribunal concluded that whilst it is probable that some customers did complain the claimant's performance was not an ongoing issue as has been advanced.

The Tribunal also observed that despite the concerns as alleged by the respondent, the claimant was left to work unsupervised during this period. This is not the actions of an employer who held grave concerns about an underperforming employee; who lacked interest in the role; was causing a financial loss to the business, and adversely affecting the business reputation and the team.

(v) Decision and reasons for dismissal

Miss Hussain made the decision to dismiss the claimant. She did not assert that she was influenced by any other person in her decision. The reasons for dismissal are clearly set out in the dismissal letter. The Tribunal's findings about the performance have been stated above. Further the respondent

provided no evidence of loss of clients, loss of client bookings and of refunds made to customers due to the claimant's poor performance. It was incumbent on the respondent to satisfy the Tribunal. It has failed to do so. Further these concerns were not mentioned as an issue of performance in the letter inviting the claimant to the disciplinary meeting. Also no supporting evidence was produced at the meeting, and the meeting notes do not make any reference to a discussion about these concerns, as confirmed by the claimant. The Tribunal concluded that these claims have been included in the letter to add weight to justify the decision to dismiss the claimant. These reasons are unsubstantiated.

(vi) Timing of the dismissal

The claimant was dismissed few days after the claimant enquired about her pay for antenatal appointments and maternity leave. The Tribunal considered this to be highly relevant, particularly as it found, (as asserted by the claimant also) that up until this point there was no ongoing issues or ongoing concerns about her performance. Also, the claimant had no inclination or had been given any indication that she was at risk of being dismissed. Miss Hussain provided no explanation why it was decided to invite the claimant to a disciplinary hearing immediately after the claimant's query about her right to time off and pay for antenatal appointments.

84. On the basis of the above conclusions, the Tribunal decision in respect of the two complaints is set out below;

Unlawful discrimination on the grounds of pregnancy and/or maternity leave s18 EqAct 2010

85. The claimant was treated unfavourably by the respondent in that she was dismissed. The claimant's dismissal was effective from 12 August 2022 which was within the protected period under s18 EqA 2010. Miss Hussain knew the claimant was pregnant and that she would be taking time off for antenatal appointments and maternity leave in due course.
86. From the facts found as stated above, the Tribunal was satisfied that the claimant has shown facts from which the Tribunal could conclude in the absence of a non-discriminatory explanation that her dismissal could have been because of her pregnancy and/or her proposing to take maternity leave.
87. Therefore, the burden of proof shifted to the respondent to show that the claimant's pregnancy was not the reason for her dismissal. Based on the conclusions as set out above, the Tribunal unanimously decided that the respondent failed to discharge this burden. Therefore the Tribunal found the claimant's dismissal was discriminatory as it was because she was pregnant.

Automatic unfair dismissal – s99 ERA 1996

88. In respect of this complaint, because the claimant has less than two years' service, the burden of proof was on the claimant to show that the reason or principal reason was not because of or connected to her pregnancy.

89. On the facts found, the claimant has shown that the reason was because she was pregnant. The Tribunal is satisfied that although the claimant was receiving on the job training and had received some complaints and feedback, her performance was not to the extent as asserted by the respondent, and neither was her performance ongoing such that it adversely affected the business or caused financial loss as claimed. Accordingly, the Tribunal concluded that claimant was unfairly dismissed because of her pregnancy.
90. For the reasons stated above the claimant's complaints are well founded and therefore succeed.
91. Although the Tribunal, in this claim, was not required to determine the fairness of the disciplinary process, however the Tribunal found the process followed unsatisfactory and poor. Also, the Tribunal was not impressed with the respondent's inadequate knowledge of good employment practices and the ACAS Code of Practice.
92. The Remedy Hearing listed for **18 April 2024** will be heard unless the parties reach a settlement. The parties are reminded of the availability of the services of ACAS, and are encouraged to engage with ACAS in any settlement discussions, if pursued.

Employment Judge Bansal
Date 25 March 2024

JUDGMENT SENT TO THE PARTIES ON
26 March 2024

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FOR THE TRIBUNAL OFFICE

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