Case No: 2500923/2023

EMPLOYMENT TRIBUNALS

Claimant: **Mrs M Dobson**

Respondents: **Michael Cook Law Firm (1) Mr Michael D Cook (2)**

Heard at: **Newcastle CFCTC** **On: 5-7 February 2024 & 22 April 2024**

Before: **Employment Judge Arullendran**

Members: **Mr D Morgan**
Ms L Jackson

Representation:

Claimant: **In person**
Respondents: **Mr Colin McDevitt (counsel)**

JUDGMENT having been sent to the parties on 25 April 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant's claim is that, after disclosing her pregnancy to the respondents, the offer of being promoted to a director was withdrawn and her employment was summarily terminated for reasons related to her pregnancy. The respondent resists the claims of pregnancy-related discrimination and assert that a genuine redundancy situation existed which resulted in the claimant's dismissal.

2. The issues to be determined by the Tribunal were agreed by the parties and set out at paragraphs 7 and 8 of the case management order dated 2 August 2023 which can be seen at page 54 of the bundle. Further issues relating to remedy were added to the list of issues at the beginning of this hearing with the agreement of the parties. The consolidated list of issues to be determined by the Tribunal are as follows:

1.1 Did the respondent, within the protected period, treat the claimant unfavourably by:
1.1.1 withdrawing an offer of promotion on or about 1 February 2023?
1.1.2 terminating her employment with effect from 1 March 2023?
1.2 If so, did the respondents do so because of her pregnancy?
1.3 What compensation, if any should be awarded in respect of the complaint of discrimination under section 18 Equality Act 2010 for financial losses and injury to feelings?
1.4 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
1.5 If not, for what period of loss should the claimant be compensated?
1.6 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
1.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
1.8 Did the respondent or the claimant unreasonably fail to comply with it?
1.9 If so, is it just and equitable to increase or decrease any award payable to the claimant?
1.10 By what proportion, up to 25%?
1.11 Should interest be awarded? How much?

3. We heard witness evidence from the claimant, the second respondent (dismissing officer), Loretta Coulson (office manager) and Robert James Heerin (managing director of Rob Heerin HR Limited and appeal officer).

4. We were provided with a joint bundle of documents consisting of 654 pages, the majority of which were not referred to in evidence. We have only referred to those documents in the bundle which were referred to in evidence when making our findings of fact.

5. The findings of fact had been made on the balance of probabilities. The reference to page numbers in brackets refer to the joint bundle of documents or hearing file.

<u>The Facts</u>

6. The claimant began her employment with the respondent on 22 August 2022 and was employed as a conveyancing solicitor with nine years post qualification experience. The claimant worked 24 hours per week over three days for which she received an annual salary in the sum of £21,000. The full-time equivalent, had the claimant worked five days per week, would have been £35,000 per annum. The claimant was the only qualified solicitor in the business carrying out residential conveyancing. The second respondent practised commercial conveyancing and, although he had carried out residential conveyancing in the past, he transferred his residential conveyancing files (42 cases) to the claimant when she started working with him. The second respondent is the sole director of the first respondent.

7. The first respondent operated from two sites at the time of the claimant's appointment. The claimant was based at the Seaham office, along with the second respondent. One other solicitor and the administration staff were based at the Houghton-le-Spring office.

8. In September 2022 Claire Henry, who had been a conveyancing secretary for approximately 20 years, moved from the Houghton-le-Spring site to the Seaham office as the second respondent said he wanted all conveyancing to be carried out from the Seaham office. Claire Henry was then in the process of being trained up to become a paralegal and, as she was not legally qualified, she required supervision from a solicitor. Ms Henry worked on a full-time basis and was earning £24,000 per annum.

9. On 21 October 2022 the second respondent met with the company accountant to discuss the financial statements for the year ending 31 May 2022. The accountant recommended that the respondent reduced its costs and increase its fees as there was a loss of £28,000 for the year ending 31 May 2022. The accountant provided the respondent with this advice in an email dated 9 August 2023 which was approximately five months after the claimant had been dismissed and three months after she had submitted her claim to the Employment Tribunal, as can be seen at page 546 of the bundle. No explanation was provided by the respondents about why the accountant was asked to produce such an email almost 10 months after the meeting which took place on 21 October 2022.

10. In or around September or October 2022 the respondent advertised for a receptionist/administration assistant to deal with the administration work relating to conveyancing. Leanne Mordue was appointed as the receptionist and administration assistant and began working for the respondent on 22 October 2022 at the Seaham office on a full-time basis earning £21,000 per annum. The respondents did not consider rescinding the offer of employment to Ms Mordue following the meeting with the accountant the previous day.

11. The second respondent did not inform the claimant about his meeting with the accountant on 21 October 2022, nor did he have any discussions with the claimant about the financial position of the organisation. The claimant was not permitted to bill her own clients throughout her employment and that function was carried out by the second respondent. The respondent provided automated quotes to potential clients and the second respondent allocated the work to members of staff after the quotes had been accepted by the clients.

12. The claimant was regarded by the respondents as a competent fee earner and no performance issues were raised by the respondents with the claimant. Throughout her employment, the claimant discussed with the second respondent the ideas she had about how to bring more work into the organisation and foster a good working relationship with other organisations, such as estate agents. However, other than expressing a general agreement that the claimant's ideas were good, the respondents did not provide the claimant with the means to carry out her proposed networking activities. The claimant was not provided with a budget for networking

and she did not have ready access to petty cash as that was kept at the Houghton-le-Spring office.

13. One of the ideas discussed between the claimant and the respondents about attracting more residential conveyancing work involved appointing a second director so that the first respondent could be added as an approved provider to mortgage lender panels. The majority of such panels require the firm of solicitors to have two or more partners and, therefore, the first respondent was not eligible to apply until a second director had been appointed. In January 2023 the respondents had to turn away three potential clients because the firm was not on the relevant mortgage lender panel.

14. The second respondent discussed with the claimant the possibility of merging the two offices as a way of reducing the overheads and the claimant was asked by the second respondent to view potential properties with him. The claimant was also asked to provide her input when the first respondent was undertaking a recruitment exercise for the receptionist and administration assistant for the Seaham office, thereby treating the claimant as an integral senior member of staff.

15. It is common ground that December and January are quiet months in terms of residential conveyancing work. In December 2022 the announcement by the government in the change in interest rates had a negative effect on the residential conveyancing market. There was a corresponding reduction in the number of new files opened by the claimant in December 2022 which meant there was less work to be performed in January 2023, although the claimant continued to meet her billing target of three times her salary. The claimant advised the respondents in January 2023 that she would be happy to reduce her hours of work until things picked up, but the second respondent told the claimant that this was not necessary, however the claimant offered to take some afternoons off as unpaid leave throughout January and this was gratefully accepted by the respondents. The claimant took two half days as unpaid leave on 19 and 23 January 2023 and a half day of unpaid leave on 13 February 2023.

16. On 26 January 2023 the second respondent sent a message to the claimant at 7:43 AM asking to meet her at Seaham Hall (page 500). The message stated that "*there is something I want to run by you. I will meet you inside the hotel. Cheers*." The claimant told her husband about the message and he made a joke to the effect that he hoped the claimant would not be receiving her P45. The claimant agreed to meet the second respondent but was surprised to see the office manager, Loretta Coulson, also in attendance as the second respondent's message had not indicated that anyone else would be present at the meeting. The second respondent told the claimant that he was extremely impressed with her work, that she was a valued member of the team and that he valued her assistance in relation to the running of the company and of her own files. The second respondent then asked the claimant to become a director of the organisation with a pay review to take place in August 2023. The second respondent set out some additional responsibilities he wanted the claimant to undertake as a director which included dealing with staffing issues within the conveyancing department. The second

respondent discussed with the claimant his dissatisfaction with Ms Henry and Ms Mordue in relation to their timekeeping and the quality of their work. The claimant indicated at this meeting that she would be happy to discuss the issues with the staff members and manage them.

17. The claimant followed up the meeting of 26 January 2023 with an email dated 29 January 2023 (page 344) stating "*I have given some thought to what we discussed on Thursday about me becoming a director, I would be happy to do that with a pay rise now rather than in a few months. My bill book up until the Christmas break was £36,000 and this covers four months from the start of my employment until pre-Christmas. For the sake of the figures I'm happy to just say it was £30,000 so over the year that would equate to £90,000. As a general rule of thumb a solicitor should earn a third of their bill book (with a full-time secretary which as you know I don't have) so a third would be £30,000. However, I am currently only being paid £21,000 which is far below a third of my bill book. On that basis I wouldn't be keen to take on the extra responsibilities you mentioned without my salary reflecting what I am currently billing. If you were to pay me a salary equivalent to a third of my bill book then I would be happy to take on the extra responsibilities you mentioned without being paid further for those responsibilities. Obviously, if this is something you are able to do then I'm happy to arrange a further meeting so we can chat through the finer details but if you're not able to I am of course happy to stay as I am for now*."

18. A further discussion about the offer of the directorship took place between the claimant, the second respondent and Loretta Coulson on 30 January 2023. The claimant explained what she was looking for in terms of a pay rise if she became a director, i.e. to receive part-time earnings in the sum of £30,000 per annum for working three days per week. Loretta Coulson thought that this equated to a full-time equivalent salary of £60,000 per annum, which the respondents could not afford. The claimant disputed that the full-time equivalent would amount to £60,000 and stated that it would be £50,000. Ms Coulson disputed that but checked it later that day and then sent an email to the second respondent on 30 January 2023 at 1:35 PM (page 653) stating "*so she was correct, £50,000 per annum based on 24 hours working week is £30,000*". Ms Coulson's email to the respondent on 30 January 2023 concluded that it would not be reasonable for the respondent to agree to the increase sought by the claimant.

19. The second respondent replied to the claimant on 31 January 2023 (page 343) stating that the market was quiet and although the claimant had some great billing months from August to December 2022 the work had since declined. The second respondent acknowledged that the claimant's work was of a high standard and that she had become an essential and valued member of the team and proposed to increase the claimant's annual salary to £40,000 on a pro rata basis if she became a director and for the claimant to take over the role of Compliance Officer for Legal Practice or Money Laundering Officer.

20. The claimant replied to the respondent on 31 January 2023 (page 345) stating that January had been a very quiet month but that it had picked up towards the end both

in terms of quotes and file openings. The claimant indicated that she had opened 7 files, as opposed to a norm of between 12 to 15 per month, but that her bill book to the end of January was still £40,000 which gave her an average annual billing of £96,000, a third of which would give a salary in the sum of £32,000. The claimant indicated that the offer of £40,000 per annum would be reduced pro rata to £24,000 per annum which equated to a £3,000 pay rise per annum upon becoming a director and would be equivalent to the amounts being paid to Ms Henry and Ms Mordue who were not legally qualified. The claimant also indicated that the respondent was asking her to take on responsibility for managing the conveyancing staff and department and that the addition of becoming the Compliance Officer had never been mentioned before. As such, the claimant indicated that her bottom line would be £30,000 per annum, that she was really enjoying the job and would be happy to become a director and take on the extra responsibility, but only if the money was right as it would take a lot of time and effort to take on that extra responsibility.

21. On 1 February 2023 the claimant and the second respondent attended a training event at Ramside Hall Hotel. Whilst attending the training event the second respondent continued his discussions with the claimant about the proposal for her to become a director and the claimant's evidence is that he asked the claimant if she would be happy to accept Ms Henry as her secretary because he was not happy with Ms Henry's casework and wished to demote her to the position of secretary. The second respondent's evidence is that he did not tell the claimant that he intended to demote Ms Henry and that he was happy with the quality of her work. We prefer the evidence of the claimant on balance as this is consistent with and this explains why the claimant felt compelled to reveal her pregnancy to the R as she would otherwise have waited until she had her 12 week scan to make the announcement. The claimant told the second respondent that she would be happy to have Ms Henry as her secretary, however she felt that the demotion and effect on Ms Henry salary would be unfair, particularly as Ms Henry had told people in the office that she was struggling financially. Therefore, at the end of the training course, the claimant spoke to the second respondent about the proposed demotion of Ms Henry. The claimant then asked to speak to the respondent privately in her car, to which he agreed. The claimant told the second respondent that she was nine weeks pregnant, although she did not wish for anyone else to know that until she had her 12 week scan which was due to be arranged on either 28 February or 3 March 2023. The second respondent agreed not to disclose this fact to anyone else. The claimant felt that she had to inform the second respondent about her pregnancy because there was a real risk that Ms Henry would resign if she was demoted but the respondent would require someone to complete the claimant's work when she took maternity leave, so she did not want Ms Henry to resign. The second respondent congratulated the claimant on her pregnancy and asked her if she needed anything, to which the claimant replied that she did not. The claimant told the second respondent that she had been feeling exhausted and had used the two afternoons which she had taken as unpaid leave in order to sleep. The claimant suggested that she might take some further unpaid half days if the workload remained low but, as she was already nine weeks pregnant, she did not expect the exhaustion to continue for much longer and was expecting to feel more like herself

on her return from her forthcoming annual leave on 1 March 2023. The second respondent agreed to the claimant taking unpaid leave, as appropriate.

22. The claimant told the second respondent towards the end of the conversation in the car on 1 February that she was still happy to become a director and the second respondent's reply to this was that he would "just have to leave it". The second respondent's evidence in cross examination at the Tribunal hearing was that his comment that he would "just have to leave it" related to the claimant wanting to discuss work issues after she had informed him about her pregnancy. The second respondent claims that he was trying to indicate that it was not the right time to discuss work matters as the claimant had just told him that she was pregnant and that there was no discussion about work matters at all whilst seated in the car. We prefer the evidence of the claimant given that the explanation provided by the second respondent in relation to this matter entirely contradicts the grounds of resistance relied upon by both respondents at paragraph bb which can be seen at page 39 of the bundle, which states that the comment "just have to leave it" referred to the lender panels and did not refer to the claimant not being asked to become a director. This is entirely inconsistent with the evidence given by the second respondent that no discussions took place at all about work whilst he and the claimant were seated in the claimant's car on 1 February 2023. Further, when asked by the Tribunal why the second respondent's witness statement contains no evidence about this comment, Mr Cook replied that it was not included because he believed it to be irrelevant. However, he accepted that this is the very comment relied upon by the claimant in her ET1 form as amounting to the withdrawal of the directorship, which is one of the claims of pregnancy-related discrimination and he also told the Tribunal in evidence that he had studied employment law at university and was familiar with the concepts of protected characteristics and discrimination. In those circumstances, we are satisfied that the claimant's account of what was said in the conversation which took place at the training event and in the claimant's car on 1 February 2023 is, on the balance of probabilities, more likely to be an accurate reflection of the events. The claimant was told that Ms Henry was to be demoted to her secretary and the second respondent told the claimant that he would have to "leave it" in reference to the claimant's comment that she would be happy to become a director and this was said after the claimant disclosed her pregnancy to the second respondent.

23. The claimant continued working as a conveyancing solicitor and was not upset about the respondents not proceeding with the offer of directorship because she was happy in her position as a solicitor and did not wish to take on a lot of extra responsibility without an appropriate increase in her salary. Nothing more was said between the claimant and the second respondent about the directorship prior to the claimant commencing her annual leave on 16 February 2023.

24. The claimant checked the respondent's system on 16 February 2023 and found that she had 8 new files in her name. It is common ground that all the residential conveyancing files opened after 16 February 2023 were done so in the name of Ms Henry rather than the claimant.

25. The respondent made attempts to reduce some of its overheads in January and February 2023. The respondent negotiated a 50% reduction to the rent for the two offices from which it operated and it cancelled its subscription to Lexis Nexis. The second respondent refers in paragraph 24 of his witness statement to the organisation obtaining a loan to cover its VAT liability and appears to suggest that this was done before the redundancy situation arose in February 2023. However, the loan agreement at page 442 of the bundle is dated 4 April 2023. As the documentary evidence is inconsistent with the witness evidence of the second respondent, we are not satisfied that the VAT liability of the organisation formed part of the respondents' reasons to make the claimant redundant or that the second respondent attempted to secure a loan prior to the claimant's dismissal. The second respondent refers in paragraph 26 of his witness statement that he took the decision to lower the respondent's fees in addition to the other cost-cutting measures set out in his statement. However, the documentary evidence at pages 258 and 259 of the bundle demonstrate that the reduction to the respondent's fees took place on 9 November 2022 and we do not accept the respondent's evidence given in cross examination that a further reduction in fees took place in January 2023 as this is not corroborated by the documents in the bundle.

26. On 28 February 2023 the respondent dismissed the claimant with immediate effect and paid the claimant one week's wages in lieu of notice (page 383). The reason given by the respondent for terminating the claimant's employment was the economic climate and, taking into account the number of new matters opened in conveyancing in the New Year, it was felt that there was not enough work to support the claimant's position. The first respondent did not provide the claimant with the means to appeal against the decision to dismiss her. It is common ground that the first respondent did not give the claimant any warning about her pending dismissal, nor did it undertake any discussions with the claimant prior to the termination of her employment to see if there were any alternatives to the dismissal.

27. The respondents stated in cross examination that the trigger for the redundancy situation was connected with the first respondent running out of money at the bank and insufficient work coming in. The first respondent's bank statements for January and February 2023 can be seen at pages 342 and 378 of the bundle. The January statement shows that the respondent had a balance in the current account in the sum of £1,762.07 and in the savings account in the sum of £7,335.81. The February statement shows that the respondent had a balance in the current account in the sum of £1,144.54 and in the savings account in the sum of £9,169.96. The bank statement for the respondent dated 30 December 2022 can be seen at page 296 of the bundle and this shows that the respondent had a balance in the current account in the sum of £1,255.08 and in the savings account in the sum of £21,518.95. The respondent has not provided statements for the period before December 2022. The first respondent's profit and loss account for a period of nine months ending on 28 February 2023 can be seen at pages 379 and 380 of the bundle. This shows a gross profit in the sum of £168,128.06 and a profit after taxation in the sum of £6,629.30. The respondent has not disclosed any company accounts for any period before June 2022. The second respondent accepted in cross examination that the total money the respondent had in the bank

in January was £9,097.88 and the total money in the bank in February was £10,314.50, which was a higher figure than January. The second respondent maintained in cross examination that the trigger for the claimant's redundancy was the lack of money available to the organisation and, when it was pointed out by the claimant that the money in the bank in February was more than the sum available in January, the second respondent said that it would have to pay what was owed for VAT, which it could not afford, however the loan to pay VAT was not taken out by the respondent until April 2023. The respondent did not take up the claimant's offer to reduce her hours of work in January to 2 days per week because the second respondent did not believe that it was necessary for such a reduction to be made at that time.

28. The second respondent made the decision to dismiss the claimant on the morning of 28 February 2023 and the letter of termination was emailed to the claimant on 28 February 2023 at 3:44 PM (page 381). The second respondent accepted in cross examination that the claimant had opened the majority of the residential conveyancing files in February 2023 prior to commencing her annual leave. The claimant had opened eight new files and Ms Henry had opened three new files. The respondent made the decision to dismiss the claimant as redundant on the basis of the number of new files opened, despite accepting that the claimant had proportionally opened more files in February than the same period of time in December and January. The respondent did not take into account the value of the work in progress when making the decision to dismiss the claimant. The second respondent's evidence about the criteria used to determine who should be made redundant was based on the second respondent's view about how the business could operate going forward without a conveyancer. The second respondent took the view that he could undertake the conveyancing work in addition to his own workload and Leanne Mordue and that Claire Henry would be able to assist him or work in an administrative capacity by answering the telephone, although Mr Cook accepted that there were hardly any telephone calls to the company as there was a low take-up by clients of the quotes the respondents were providing. The second respondent also knew, at the time he made the decision to dismiss the claimant, that the claimant had less than two years' service and therefore could not bring a claim for unfair dismissal against the respondent.

29. When the claimant received the email from the respondents on 28 February terminating her employment she was very upset; she felt totally blind sighted and telephoned her husband. The claimant then felt unable to deal with the matter for a couple of days because she was so upset.

30. On 1 March the claimant sent an email to the respondents (page 389) asking for a copy of the respondent's appeal procedure. Loretta Coulson replied to the claimant the same day (page 388) stating that the first respondent did not have any formal written procedure for appealing but suggested an informal discussion. On 2 March 2023 Ms Coulson wrote to the claimant (pages 386-7) and stated that there was no formal appeal process due to the length of the claimant's employment, but suggested a telephone conversation might be possible. Ms Coulson also mentions

in this letter the possibility of the claimant undertaking a consultancy role with the respondent.

31. The claimant wrote to the respondent again on 3 March (pages 385-6) setting out her grounds of appeal but used the first respondent's grievance procedure to raise the issues as she had not been provided with an appeal procedure. In this document the claimant disputed that there was a redundancy situation, or that she should not have been selected and she also argued that the dismissal was an act of pregnancy related discrimination. The second respondent telephoned Rob Heerin of Rob Heerin HR Limited on 3 March 2023 to ask him to deal with the claimant's appeal/grievance but the respondents did not inform the claimant that they had appointed a third party to deal the procedure. Mr Heerin was away on holiday at the time he took the telephone call from the second respondent. The second respondent told Mr Heerin that the claimant had been employed for less than two years and that she had been dismissed without any consultation or any procedures having been followed. Mr Heerin was also told that the claimant was pregnant. Ms Coulson wrote to the claimant on 6 March 2023 inviting the claimant to a grievance meeting on 13 March 23. On 9 March 23 the respondents wrote to the claimant (page 396) informing the claimant that she and second respondent were proposing to meet with her to discuss her appeal. Lorretta Coulson also wrote the first version of the appeal outcome letter, of which 5 versions were produced (pages 591 – 623) and which were amended by the second respondent. Ms Coulson wrote the outcome letter before any discussion were held with the claimant. The claimant replied to the respondents on 9 March (page 401) stating that she did not feel that a fact finding meeting was necessary as she had provided all the information she had in her possession on 3 March 2023 when she submitted her appeal and that she had nothing further to add but the claimant advised the respondents that, if they needed to meet face to face, that she was available on 14 March at 4pm. The claimant also says in this email that she was struggling to come to terms with the way she had been treated by the respondents. The respondent did not reply to the claimant's suggestion to meet on 14 March 2023 at 4 PM.

32. On 14 March 23 Rob Heerin sent the appeal and grievance outcome letter to the claimant (pages 422-429). This was the first time the claimant knew about the involvement of Mr Heerin. The letter is printed on Mr Heerin's letterhead but the contents are taken from the outcome letter produced by the respondents. Mr Heerin did not contact the claimant prior to producing the outcome letter and he did not have any discussions or ask any questions of the second respondent prior to issuing the outcome letter, apart from the initial telephone conversation he had with the second respondent on 3 March, which Mr Heerin took whilst he was on holiday. Mr Heerin did not address the claimant's complaint that her dismissal was related to her pregnancy at all. The claimant's complaint of discrimination is set out in the appeal outcome letter at page 426 and Mr Heerin's response was that the pregnancy was never brought into consideration in respect of terminating her employment. The outcome letter states "*The company refutes your suggestion that your contract of employment has been terminated on the basis of a one-off act of discrimination. The company takes allegations of this nature extremely seriously and will take whatever steps are necessary to defend any actions or claims which*

may be brought by any court or tribunal arising from the same." However, when questioned by the Tribunal, Mr Heerin's evidence was that the did not ask the second respondent whether the pregnancy had any impact on his decision to dismiss the claimant and that he had never dealt with a pregnancy discrimination complaint before this case. The respondents' evidence to the Tribunal was that the grievance outcome was entirely Mr Heerin's decision. However, Mr Heerin accepted that he did not carry out any investigation as he held no discussion with the two people involved in the dispute i.e. the claimant and second respondent and he also accepted that the outcome letter had been written by Loretta Coulson which he had then merely copied onto his own letterhead. Therefore, we do not accept the respondents' evidence and we are satisfied that Mr Heerin did not make an independent decision on the outcome of the appeal. Both Mr Heerin and the respondents knew about the existence of the ACAS Code of Practice on Disciplinary and Grievance Procedures but neither Mr Cook or Mr Heerin made any attempt to consult the Code or put into practice the requirements of the Code to carry out a fair investigation and hold meetings with the claimant prior to making their decisions.

33. If the claimant had remained in employment with the first respondent she would have been entitled to receive 90% of her salary for the first 6 weeks of her maternity leave and she intended to start her maternity leave on 1 August 2023 for 12 months. After the claimant's employment came to an end, she was struggling mentally with what had happened because of the dismissal and did not feel able to look for work until 9 May 2023. The claimant looked for job adverts in the Law Society Gazette after her dismissal but she did not find any conveyancing jobs advertised in the north east and she did not approach any recruitment agencies as she had never used them before. The claimant looked for work with firms and solicitors she already knew in the north east to try and find another post, but the claimant did not look for work after her baby was born. The claimant intends to meet with Ken Barrow about a potential vacancy after her maternity leave comes to an end in August 2024.

34. The claimant was so upset by the dismissal that she could not think about looking for alternative work for approximately 2 months. Her appetite was non-existent and she was worried about her baby. The claimant felt that she did not have a reason to get up in the mornings and the period after her dismissal was one of the darkest times in her life. The claimant felt overwhelmed by the litigation and without her support network would not have been able to make a statement for the hearing.

35. The claimant received 1 weeks' notice pay from the first respondent on 28 February 2023 to 7 March 2023. She received carer's allowance (£307 every 4 weeks) from 13 March 23 to 17 June 2023 and then from 18 June 2023 the claimant received maternity allowance to the end of March 2024 (£327.60 every 4 week or £81.90 per week). From April 2024 the claimant has been receiving carer's allowance. The claimant believes that it will take approximately 3 months to find alternative employment at the same rate as she was earning with the first respondent and the 3 months would start from the end of her 12 month maternity leave, i.e. 1 August 2024.

36. The claimant was enrolled on a pension scheme with the first respondent and would have paid into that scheme each month until she began her maternity leave, at which point she would have received 90% of her salary for 6 weeks and therefore the employer's pension contributions would also have been paid at 90% for those 6 weeks.

Submissions

37. The claimant made written closing submissions which she supplemented orally. The written submission has not been reproduced in these Reasons but the contents of those submissions were taken into account in their entirety. In summary, the claimant submitted that the withdrawal of the offer of a promotion and the termination of her employment amounted to pregnancy-related discrimination given that the promotion was withdrawn immediately after she had disclosed her pregnancy and the dismissal followed four weeks thereafter. The claimant submits that the pregnancy need not be the sole or principal reason for the discrimination but, for her to succeed with her claim, it is enough that it was a contributing cause or a material influence. The claimant submits that no evidence has been presented by the respondents to show what the trigger event was for the alleged redundancy situation in February 2023 and the respondents have failed to disclose any financial information for any of the previous years which means that it is not possible to make a comparison to see if the first respondent's financial position was any worse than it had been previously. The claimant submits that her efforts to find alternative work by making speculative applications is a tried and tested method and she had obtained her employment with the first respondent by using this method.

38. The respondents made oral submissions and provided the Tribunal and the claimant with a copy of the decision in Maksymiuk v Bar Bromo Partnership [2012] WL 2922902. The respondents submit that, in accordance with the decision in Madarassay v Nomura International plc [2007] EWCA Civ 33, there is insufficient evidence to draw an inference from primary facts that the decisions taken by the respondents were because of the claimant's pregnancy. The respondents submit that there was no offer of a promotion as the parties were still in negotiations, but neither side could agree and those negotiations came to an end. The respondents submit that this is not the case of unfair dismissal and that a failure to follow a fair procedure does not mean that the dismissal was an act of discrimination if the reason shown by the respondent, in this case a genuine redundancy, is not connected to the pregnancy.

The Law

39. Section 18 of the Equality Act 2010 provides

> "(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably –
> (a) because of the pregnancy, or
> (b) because of illness suffered by her as a result of it.

…
(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends –
(a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
(b) if she does not have that right, at the end of the period of two weeks beginning with the end of the pregnancy."

40. Section 136 of the Equality Act 2010 provides

"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

41. Unfavourable treatment is not defined under section 18 of the Equality Act. We have taken into account the statutory Code of Practice on Employment 2011 produced by the Equality and Human Rights Commission which states that a failure to consult a woman for reasons related to her pregnancy could amount to a detriment.

42. For a discrimination claim to succeed under section 18, the unfavourable treatment must be because of the employee's pregnancy. The Tribunal must look at whether the protected characteristic has operated on the discriminator's mind and has thus led to him to act in the way complained of. It does not have to be the only such factor, but it is enough if it has had a significant influence. Further there is no need for it to be conscious and a subconscious motivation, if proved, will be sufficient.

Discussion and Decision

43. Applying the relevant law to the facts we find that the claimant informed the respondents about her pregnancy on 1 February 2023 and the protected period began approximately 9 weeks before that date. The respondents were aware of the claimant's pregnancy at all material times and the decisions to not proceed with the directorship and to terminate the claimant's employment were both taken during the relevant protected period.

44. We find that the claimant was offered the opportunity in January 2023 by the respondents to become a director of the first respondent and there was a period of negotiation about the duties and salary between 26 January 2023 and 1 February 2023. We find that the claimant told the second respondent on 1 February 2023 that she was still interested in becoming a director and this conversation took place in the claimant's car directly after she had disclosed her pregnancy to him. It was immediately after the claimant had said she was still interested in becoming a director that the second respondent said he would have to "leave it". We find that this amounted to the respondents changing their mind about the claimant joining

the firm as a second director, which was unfavourable treatment of the claimant as both sides had been actively negotiating the position right up until the claimant announced her pregnancy and there was no indication by the respondents up to that point that the offer might be withdrawn. We do not accept the respondents' submission that there was no offer of a directorship. The respondents clearly made such an offer to the claimant on 26 January 2023 and the fact that both sides were actively discussing the proposal and negotiating terms up until the claimant disclosed her pregnancy demonstrates that the offer was still on the table as at 1 February 2023.

45. In terms of the termination of the claimant's employment, we find that this was unfavourable treatment as it brought her employment, which she enjoyed, and her ability to earn wages to an end. There was no suggestion by the respondent that the termination of employment does not amount to unfavourable treatment.

46. The claimant and respondents did not agree on the salary for the directorship and the parties were still in negotiations on 1 February 2023. We do not accept that the reason for the respondents changing their mind about the claimant becoming a director was because of the lack of agreement about the salary because the respondents were aware of the claimant's bottom line before they attended the training course at Ramside Hall on 1 February 2023 but they continued with the discussions throughout that day and only changed their mind after the claimant told the second respondent that she was pregnant. We find that, due to the proximity in time between the disclosure of the pregnancy and the respondents' change of mind, they were materially influenced by the claimant's pregnancy and we find that the withdrawal of the offer of promotion was because of the claimant's pregnancy.

47. In terms of the termination of the claimant's employment, we find that the claimant was dismissed without any consultation or any warnings from the respondent about the potential financial situation of the company. The respondents did not consider anyone else as at risk of redundancy and the respondents did not carry out any assessment of the workforce prior to making the decision to dismiss the claimant. The respondents knew about the claimant's pregnancy and had decided not to promote her to the position of director because of her pregnancy and this demonstrated that the respondents were consciously, or unconsciously, motivated by the claimant pregnancy in their decision-making process. In those circumstances, we find that the there are primary facts from which we can conclude that the reason for the claimant's dismissal was because of her pregnancy. That shifts the burden of proof to the respondents in accordance with section 136 of the Equality Act 2010. The question for the Tribunal is whether the reason shown by the respondents had nothing whatsoever to do with the pregnancy. We find that the respondents have not discharged the burden of proof on them to show the claimant's dismissal had nothing whatsoever to do with her pregnancy because there is insufficient evidence in front of us that a redundancy situation existed in February 2023, no procedures were followed and none of the other staff were considered as being risk. The financial evidence from the accountant was procured after the proceedings had been commenced and many months after the dismissal. Further, the loan agreement was dated at least 2 months after the decision to

dismiss had been taken. There was no financial evidence from the first respondent demonstrating the financial performance of the firm in previous years and, therefore, there was no evidence to corroborate the respondent's assertion that a dire financial situation existed in February 2023 which necessitated immediate action resulting in the summary dismissal of the claimant. In those circumstances, we find that the claimant was dismissed because of her pregnancy and this was discrimination contrary to section 18 Equality Act 2010.

48. In terms of remedy, we find that the claimant has taken reasonable steps to replace her lost earnings from the date of dismissal to the date of the hearing. The claimant was on maternity leave for the majority of that period and we find that it would not be reasonable to expect her to undertake the same level of job-hunting activities as someone who was not pregnant and not on maternity leave. The claimant made job enquiries on 9 May (pages 508-9) and 7 Jun (page 511), 9 June (page 513) and 20 July (page 520). On 11 Dec she had a reply form Kenneth Barrow who invited her for a discussion about a potential job and the claimant will be meeting him again after the hearing has concluded. The respondent did not present any evidence of suitable vacancies the claimant could have applied for.

49. We find that both Respondents are jointly and severally liable in accordance with section 109 of the Equality Act 2010 as the second respondent was acting in the course of his employment with the first respondent at all material times. The first respondent is vicariously liable for the actions of the second respondent.

50. The first respondent did not present any evidence about a potential Polkey reduction. Therefore, we find that it is not appropriate to reduce the claimant's compensation as there is no evidence in front of us that her employment would have come to an end in any event at a later date, nor is there any evidence that the claimant would have reduced her working time to 2 days per week; although the claimant offered to make such a reduction in January 2023, this was not accepted by the respondents and there is no evidence that the claimant would have only worked two days per week had she not been dismissed.

51. We find that the ACAS Code on Disciplinary and Grievance Procedures applied in this case as the reason for the claimant's dismissal was because of her pregnancy and not redundancy. We find that the claimant did not unreasonably fail to comply with the Code as she went to great lengths to find out what the proper procedure was to appeal against her dismissal and she did not refuse to attend the appeal/grievance hearing but had stated to the respondents that she was agreeable to attend a face-to-face meeting and provided the respondent with a suitable date and time to attend which the respondent ignored. The first respondent failed to consult the claimant before she was dismissed and Rob Heerin, on behalf of the first respondent, failed to carry out a proper investigation and failed to hold a meeting with the claimant before reaching a conclusion on the appeal. We find that the respondents unreasonably failed to comply with ACAS Code and it is just and equitable to increase the compensation to be awarded to the claimant in accordance with section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 (TULCRA). We find that it is just and equitable to award

an uplift in the sum of 20% to reflect the fact the respondents did not carry out any procedures at all prior to the dismissal and the external consultant did not make any efforts to deal with complaint about pregnancy discrimination or to consult with the claimant or to come to his own independent conclusions on the appeal. Both the respondents and the external consultant took the view that, because the claimant had less than two years continuous service, they did not have to follow any kind of proper process or procedure. It would have been a relatively simple matter to consult the ACAS website and to adopt and apply a basic but fair procedure before making any decisions about the claimant's employment and before dealing with the claimant's appeal and no explanation has been provided about why a firm of solicitors and a HR specialist failed to undertake such a simple task.

52. In terms of injury to feelings we accept the claimant's evidence that she was blind sighted and upset by the respondents' decision to terminate her employment and the manner in which it was done, although she was not upset at the time about the withdrawal of the offer to become a director. The claimant was upset by the dismissal, so much so that she could not think about looking for alternative work for approximately 2 months. Her appetite was non-existent and she was worried about her baby. The claimant felt that she did not have a reason to get up in the mornings and the period after her dismissal was one of the darkest times in her life. The claimant felt overwhelmed by the litigation and without her support network would not have been able to make a statement for the hearing. In light of these injuries we find that the CLAIMANThas suffered injuries to her feelings. The injury suffered by the claimant has persisted for several months, although the severity declined after the first 2 months as she was then able to start looking for alternative work. Both the claimant and the respondents have made submissions that the injury to feelings falls within the middle band as set out in the case of Vento v Chief Constable of West Yorkshire Police (No2) [2002] EWCA Civ 1871. In those circumstances we award the sum of £12,000 for injury to feelings.

53. The claimant suffered loss of earnings from the end of the notice period to today's date. However, there was no loss of earnings for the period the claimant was in receipt of maternity allowance as this was the same amount the claimant would have received as statutory maternity pay if she had not been dismissed, apart from the first 6 weeks which would have been payable at the rate of 90% of her salary. Therefore, the claimant suffered loss of earnings from 8 March onwards and the relevant calculation is as follows:
    8 March – 17 June 2023 = 14 weeks plus 2 days (page 536 figures on the schedule of loss relating to monthly and weekly earnings agreed between the parties)
    14 x £324.52 = 4543.28 + (2 days @ £108.17 = 216.34) = £4759.62
    MINUS (Received £432.30 + 8 weeks @ £76.75 = £614 Total = £1046.30)
    Loss to 17 June 2023 = £3,713.32

    From 18 June to 31 March 2024 no loss of earnings apart from 6 weeks 90% which is £292.06 x 6 weeks = £1,752.41

    1 April to 22 April: 3 weeks @ £324.52 = £973.56 – (Received 3 x £81.90 = 245.70) = £727.86

Total loss to today = £6,193.59

54. We find that the claimant should be in a position to start looking for work from 1 July 2024 and she should be able to start a new job by 1 September 2024, particularly as she has already had contact with Ken Barrow. We find that the claimant should be able to replace the earnings she has lost when she starts her new job and, therefore, it is highly unlikely that she would have a claim for ongoing loss of earnings and we note the claimant has not suggested otherwise. We therefore award future loss of earnings from 23 April 24 to 31 August 24 which is 18 weeks. 18 x 324.52 = 5841.36 minus (the claimant shall receive18 x 81.90 = 1474.20) = £4367.16

55. The total loss of earnings for the period 8 March 2023 to 31 August 2024 is £10,560.75.

56. The 20% uplift in accordance with section 207A TULRCA is to be awarded on the award for loss of earnings in the sum of £2112.15.

57. We find that interest is to be awarded at the rate of 8% per annum on the award for injury to feelings and loss of earning in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. The day of calculation is the date of the Judgment and the start of the period for calculation is the earliest date of the discriminatory act, i.e. 1 February 2023. For the purposes of calculating interest on financial losses, the calculation of interest is from the midpoint between the date of discrimination and the date of this hearing.

58. The calculation for the award of interest on injury to feelings in the sum of £12,000 at 8% gives a daily rate of £2.63 from 1 February 2023 to 1 February 2024, i.e. the sum of £960. From 2 February 2024 to today there is a further 111 days @ £2.63 = £291.93. This gives a total figure for interest on injury to feelings in the sum of £1,251.93.

59. The calculation for the award of interest on financial losses is taken from the midpoint between the first day of discrimination and the date of this hearing or it can be expressed as 4% rather than 8% which gives the same result as awarding interest at the rate of 8% from the midpoint. 4% of £10,560.75 is £422.43 per annum or £1.15 per day. The award for interest is therefore £422.43 plus a further award for 111 days to the date of today's hearing, i.e. 111 x £1.15 = £127.65, which gives a grand total for the award of interest on financial losses in the sum of £550.08.

60. The total amount of interest awarded for injury to feelings and financial loss is in the sum of £1802.01.

61. The respondent is ordered to pay to the claimant compensation in the sum of £26,474.91.

Case No: 2500923/2023

Employment Judge Arullendran

Date: 3 June 2024