EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mrs M Cumming	**v**	Tadley Engineering Ltd (1) Tadley Precision Machining Ltd (2)

Heard at: Reading Employment Tribunal

On: 18, 19, 20 and 21 March 2024,
28 March 2024 and 12 April 2024 (deliberations)

Before: Employment Judge Hawksworth
Ms H T Edwards
Mr A Scott

Appearances
For the claimant: Ms H Platt (counsel)
For the respondents: Ms L Hatch (counsel)

RESERVED JUDGMENT

The unanimous decision of the tribunal is that:

1. The following complaints of pregnancy discrimination contrary to section 18 of the Equality Act 2010 and pregnancy detriment contrary to section 47C of the Employment Rights Act 1996 and regulation 19 of the Maternity and Parental Leave etc Regulations 1999 succeed against the second respondent to the following extent:

    1.1. Issue a: on 7 January 2021 the respondent presented the claimant with a new employment contract containing an earlier start time;

    1.2. Issue b: the respondent asked the claimant on 23 February 2021 and 19 March 2021 to sign the new contract and told her that it would be assumed that she had agreed to it if she did not reply;

    1.3. Issue g: on 8 March 2021 the respondent did not uphold the claimant's grievance in respect of the identification of the claimant's role as part time and sending the claimant a new employment contract;

    1.4. Issue l: on 24 March 2021 the respondent informed the claimant that her salary would be reduced to the pro-rata equivalent of 20 hours per week;

1.5. Issue m: In April 2021 the respondent failed to pay the claimant her full wages.

2. The remaining complaints of pregnancy discrimination and pregnancy detriment fail and are dismissed.

3. The complaints of victimisation contrary to section 27 of the Equality Act 2010 fail and are dismissed.

4. The complaints of automatic and ordinary unfair dismissal contrary to sections 98 and 99 of the Employment Rights Act 1996 fail and are dismissed.

5. The complaint of wrongful dismissal in respect of notice pay fails and is dismissed.

6. The complaint of unauthorised deduction from wages in respect of 2 days statutory sick pay due in April 2021 (£19.17 per day) is well founded and succeeds.

7. The remaining complaints of unauthorised deduction from wages are not well founded and are dismissed.

8. All the complaints against the first respondent are dismissed.

REASONS

The claims, hearings and evidence

1. The respondents are engineering companies whose specialisms include sheet metal fabrication, welding and electromechanical assembly. The claimant was employed by the respondents as a financial control assistant from 26 February 2018 until her summary dismissal on 14 May 2021.

2. The claimant complains about treatment between January 2021, when she told her employer she was pregnant, and May 2021 when she was dismissed. She says this treatment was pregnancy detriment, pregnancy discrimination, and/or victimisation because of raising a grievance, early conciliation, and presenting an employment tribunal claim. She says her dismissal was automatically unfair because of pregnancy, or an ordinary unfair dismissal, or pregnancy discrimination. The claimant also makes complaints of unlawful deduction from wages and wrongful dismissal in respect of notice pay.

3. The respondent denies the claim and says the claimant was dismissed for reasons relating to her conduct.

4. The claims were presented on 16 April 2021 and 23 June 2021. Early conciliation started on 11 March 2021 (respondent 1) and 15 March 2021 (respondent 2) and ended on 6 April 2021 for both respondents.

5. Preliminary hearings took place on 25 October 2022 and 24 January 2023.

6. The main hearing took place on 18 to 21 March 2024. It was originally arranged to deal with both liability and remedy, but we decided at the start of the hearing that we would deal with liability only. There was insufficient time to deal with remedy as well.

7. The parties had prepared an agreed bundle with 1156 pages. The claimant's counsel provided a chronology and the respondent's counsel provided a table of complaints.

8. We took the morning of the first day to read the witness statements and documents referred to in the statements, together with the claim form, response form and case management orders.

9. There were three witnesses for the claimant and three for the respondent. We started the claimant's evidence on the afternoon of day 1 and continued on the morning of day 2. On the second day of the hearing the claimant had forgotten to take her medication and was feeling very anxious. Other witnesses who did not work for the respondents had attended and were waiting to give evidence, so, with the parties' consent, we paused the claimant's evidence at about lunchtime. We interposed other witnesses as follows:

   9.1 the evidence of the claimant's witnesses Bahador Khosravinejad and Jackie Taylor on the afternoon of day 2. Both were former colleagues of the claimant; and

   9.2 the evidence of the respondent's witness Ian Bristow on the afternoon of day 2, and for a short period on the morning of day 3.

10. We then concluded the claimant's evidence on day 3.

11. The respondent's witness Wayne Musella gave evidence on the afternoon of day 3. The evidence of James Griffin, the respondent's final witness, was heard on days 3 and 4.

12. Both counsel made closing remarks at the end of day 4. Ms Platt also provided written submissions. We are very grateful to both counsel for their efforts in assisting us to complete the evidence and closing remarks in the time allocated for the hearing.

13. There was insufficient time in the initial four hearing days for us to make our decision and give judgment and reasons, so we reserved judgment and arranged two further hearing days for deliberation, to be attended by the panel only. Those deliberation days took place on 28 March and 12 April 2024. The judge apologises to the parties for the delay in promulgation of these reasons. The delay was because of the current workload in the tribunal, and the large number of issues to be determined in this case.

The issues

14. The issues were agreed at a preliminary hearing with Employment Judge Beck on 24 January 2023. At the start of the hearing before us, the claimant withdrew her complaints of whistleblowing detriment and indirect sex discrimination. A copy of the list of remaining issues is included in an appendix to these reasons.

15. The 23 factual matters relied on by the claimant are referred to as issues a to w. The claimant says that these were incidents of pregnancy detriment, pregnancy discrimination, and/or victimisation. There were some amendments to the dates of some of these issues at the start of the hearing.

16. The claimant also complains of automatic and ordinary unfair dismissal, wrongful dismissal in respect of notice, and unlawful deduction from wages.

The facts

17. This section sets out our findings of fact. Where there is a dispute about what happened, we decide, by reference to the evidence we heard and read, what is most likely to have happened.

18. Issues a to w are not in chronological order in the list of issues. We have kept our findings in broadly chronological order, but we have departed from this slightly at some points where doing so assists us to record the facts relevant to each of the issues we have to decide.

The start of the claimant's employment

19. On 26 February 2018 the claimant started work for the first respondent as a Financial Control Assistant (page 187). Her role included payroll, credit control and supplier invoicing. She worked 37.5 hours a week, from 9.00am to 5.00pm, with a half hour lunch.

20. The claimant had an induction on 26 February 2018. She signed some documents on this day, including a confidentiality agreement. We accept the evidence of the claimant that she was not given and did not see a written contract at this time. We make this finding because other documents signed by the claimant at the induction meeting were retained by the respondent, but there was no signed copy of the claimant's contract.

21. From the start of her employment the claimant worked closely with Jackie Taylor, an accountant who worked on a consultancy basis one day a week for the first respondent for 38 years. Ms Taylor left the business in December 2020.

22. Most of the issues before us are about what happened during the period starting in January 2021, when the claimant told the respondent that she was pregnant, up to May 2021 when she was dismissed. However, we first need to set out our findings about an earlier period of maternity leave from the respondents which the claimant took from March 2019 to January 2020, and about her return to work after that maternity leave.

The claimant's period of maternity leave in 2019

23. In March 2019 the claimant started a period of maternity leave. The first respondent appointed someone on a temporary contract as the claimant's maternity cover.

24. In October or November 2019 the claimant had a meeting about her return to work with James Griffin, the first respondent's managing director. Mr Griffin did not keep a note of this meeting or make any other record of the arrangements for the claimant's return to work. However, after the meeting the claimant sent Mr Griffin an email on 29 November 2019 (page 279) about the arrangements. She said she would require a transition period in the first two months, to facilitate her child starting full-time nursery. She said in the email that she could work two days a week in January 2020, three days a week in February 2020 and then back to full-time in March 2020.

25. Mr Griffin was unsure about whether he received this email. We find that he did. There was no reason why he would not have received it; it was sent to the correct email address. We find that the claimant's email accurately reflects the agreement they reached. It was consistent with what happened after the claimant returned from maternity leave and with her pay, as confirmed by the evidence of Ms Taylor whose duties included running the monthly payroll which included the claimant's pay.

26. We also find that during the discussions before the claimant's return to work from maternity leave in January 2020, Mr Griffin suggested that on her return the claimant would move from the first respondent, Tadley Engineering Limited, to the second respondent, Tadley Precision Machining Ltd. The second respondent is a sister company of the first respondent. It has fewer staff and a smaller turnover, so the workload for its Financial Control Assistant is smaller than that for the Financial Control Assistant for the first respondent.

27. We find that this move was agreed between the parties to facilitate the claimant's phased return work after maternity leave. The claimant did not object to the move because Mr Griffin reassured her that it would be on the same terms and conditions as before. Mr Griffin and the claimant did not agree that the claimant's role after her return from maternity leave would be a part-time role. If Mr Griffin had suggested this, the claimant would have objected, because she wanted to return to a full-time role after her 2 month phased return.

28. The claimant's period of maternity leave in 2019 was largely uneventful. There was a minor problem in that, while she was on maternity leave in December 2019, the claimant did not receive the usual gift of a Christmas turkey from the respondent.

29. At about this time, the founder and previous managing director of the business Graham Morgan died suddenly. This had an enormous impact on the respondents' businesses. Mr Griffin took over the role of managing director; he was under very considerable pressure during this time.

Return to work and change of employer

30. The claimant returned to work in January 2020 as agreed with Mr Griffin. She worked two days a week during January 2020.

31. At the time of the claimant's return from her maternity leave in January 2020 there had been some staffing changes. Ahead of the claimant's phased return to work and her move from the first respondent to the second respondent, the first respondent engaged a new Financial Control Assistant, Alina Osborne.

32. Ms Osborne started working for the first respondent in about January 2020. She was carrying out the role the claimant had done before her maternity leave. Ms Osborne was significantly more qualified in finance than the claimant. Ms Osborne had a degree in accountancy and she was doing a masters in a finance field. She was also working towards her professional accountancy qualifications and qualified as a Chartered Accountant in about April 2021. The claimant had no accountancy qualifications.

33. The claimant's employment transferred to the second respondent, Tadley Precision Machining Limited, on 1 February 2020. The claimant was not issued with any written change of employment particulars or new terms and conditions in writing at the time of the transfer.

34. The claimant worked three days a week in February 2020.

35. The claimant said there was a problem with non-payment of overtime when she was back at work in February 2020 and still breastfeeding her daughter. We find that the reason the claimant's overtime claim was not paid was because the claimant had not clocked in or out at lunchtime, not because the claimant was breastfeeding. We make this finding based on the contemporaneous record of the decision (page 832).

Arrangements during the Covid pandemic

36. The claimant began working full-time from the beginning of March 2020. Her daughter was in nursery 5 days a week at this time.

37. On 23 March 2020 the first national lockdown for covid started. The pandemic and the measures introduced to deal with it brought additional pressures for the respondents at a time when they were still struggling after the death of Mr Morgan.

38. Engineering work of the kind carried out by the respondents' was viewed as essential and was exempt from the requirement for everyone to stay at home. The respondents' operational staff continued to work on site.

39. The claimant, like other office staff of both respondents, began mostly working from home. She attended the office once a week, to download timesheet information from the digital time recording equipment which

registered the working hours of operational staff. She needed this information to complete the weekly payroll.

The claimant's pregnancy

40. In late October/November 2020 the claimant became pregnant again. She told Mr Griffin about her pregnancy on 5 January 2021.

The new employment contract (issue a)

41. As we have found, although the claimant's employment had transferred from the first respondent to the second respondent on 1 February 2020, the claimant had not been given any written particulars of the change, or an updated contract of employment at that time.

42. On 7 January 2021, Mr Griffin sent an email to the claimant enclosing a new employment contract. He asked her to sign and return it (page 233). The contract recorded that her employer was the second respondent, Tadley Precision Machining Limited. The terms of the new contract were very similar to the standard terms which the claimant should have been given at the start of her employment with the first respondent, but as she had not been provided with a copy of those terms at her induction in February 2018, she was unaware of this.

43. The claimant was concerned about some of the terms in the contract she was given on 7 January 2021. In particular, she was worried that it did not expressly reflect the hours she worked. The contract said hours of work were 8.00am to 5.00pm 'or as otherwise agreed'. The claimant had always worked 9.00am to 5.00pm.

44. We find that at this time Mr Griffin sent a contract to the claimant only. We find that he did not send standard contracts to other staff at the same time as the claimant. If he had sent contracts to other staff, we would have expected there to have been emails in the same terms as that sent to the claimant, and we were not shown any. In addition, one of the claimant's office staff colleagues who worked for the second respondent had not been sent a new contract by March 2021 (page 844).

45. We find, based on the timing of events and the fact that the claimant was singled out in this way, that the decision to send the new contract to the claimant was prompted by her notification of her pregnancy to Mr Griffin.

The claimant's visit to the office (issue f)

46. On 3 February 2021, the claimant attended the office to download time sheet information from the digital time recorder.

47. During the pandemic, the respondents had an arrangement in place where only one person would work at a time in the office. This was for social distancing reasons, because of the small size of the office.

48. On 3 February 2021 one of the claimant's colleagues was in the office when the claimant went in. The claimant's colleague had particular concerns about covid, because she lived with a vulnerable person. She said the claimant could not come into the office, because only one person could be in the office at one time, in line with Mr Griffin's instructions.

49. The digital time recording information could be downloaded from the corridor. The claimant's colleague offered the claimant a chair to sit on while she was in the corridor downloading the timesheets. We find that the claimant declined the offer of a chair and chose to sit on the floor for a short time while she downloaded the time recording data.

Discussion about antenatal appointments (issue c)

50. The claimant had two antenatal appointments in January (page 237). She had another antenatal appointment coming up on 23 February 2021.

51. On 12 February 2021, the claimant had a meeting with Mr Griffin to discuss cash flow. During the meeting she said she would be having more antenatal appointments. Mr Griffin asked whether she would be using annual leave for her antenatal appointments. The claimant said it was illegal to ask her to do that.

52. Very shortly after the meeting Mr Griffin checked the position and confirmed to the claimant that he did not expect her to take annual leave for antenatal appointments.

53. We find that the claimant had not been required to take annual leave to attend her antenatal appointments in January 2021, and no deduction was made from her pay in respect of these appointments. She was not required to take annual leave for any subsequent antenatal appointment. This is consistent with the claimant's payslips for this period.

Claims for overtime (issues d and e)

54. On the afternoon of 22 February 2021, the claimant made a claim for overtime for 21 hours worked at weekends in February and for time and expenses for driving on the evening of 18 February 2021 to a colleague's house to pick up a headset for her computer (page 264).

55. Mr Griffin replied to the claimant on 22 February 2021, in two emails. He said that overtime for her role was not approved and not required (page 261). In his second email, Mr Griffin reiterated that the claimant should not be doing overtime as her role did not require it and he had not authorised it. He agreed as a gesture of goodwill to reimburse the claimant's travel costs for picking up the headset (page 263).

56. We accept that the overtime being claimed by the claimant was not authorised in advance by Mr Griffin and that the respondents had a requirement that overtime must be approved in advance. This is consistent with the terms and conditions for the claimant's role which said that no extra

payment would be made for any additional hours worked, unless expressly authorised by the line manager (page 168).

57. The claimant had seen this term in the contract sent to her on 7 January 2021, but in any event, as payroll was part of her role, she was aware before then of the requirement for overtime to be approved in advance. The claimant had previously been paid for overtime worked, for example in 2019 while she was working for the first respondent (page 706). We find, based on the claimant's evidence to us, that this overtime had been worked at the respondent's request and had therefore been approved in advance.

Request to sign the new contract (issue b)

58. The claimant did not sign and return the new contract which Mr Griffin sent to her on 7 January 2021 because she was concerned about some of its terms.

59. On 22 February 2021 the claimant emailed Mr Griffin (page 259) and asked to arrange a meeting to discuss the contract, but no meeting took place.

60. On 23 February 2021, Mr Griffin sent the claimant a letter asking her to sign the new contract (page 265). The letter went on to say that the claimant's role was in fact part-time. It set out in a table the duties of the role and the hours each required per week, totalling 20 hours maximum per week. This was the first time it had been suggested to the claimant that her role was not full-time. She had been paid for a full-time role since March 2020 when she returned to full-time hours after her phased return to work from maternity leave in January and February 2020.

61. In his letter of 23 February 2021, Mr Griffin said that since the April 2020 lockdown, it had been noticed that the claimant was being paid for a five day working week when her role did not require it. It said that going forward, expectations had to be clarified, and the role was part-time, requiring a maximum of 20 hours per week. It concluded by saying that if the signed copy of the contract was not received by 26 February 2021, the second respondent would assume that the claimant had accepted all the terms of the contract and the specific duties detailed in the letter of 23 February 2021 itself.

62. The arrangements for the claimant's return to work in January 2020 had been poorly documented by the respondent. The short-term reduction in the claimant's hours in January and February 2020 loomed large in Mr Griffin's mind, rather than her return to work full-time in March 2020. Rather than a phased return to work, he thought about the arrangement as the creation of a part-time role for the claimant. We find that he had remembered this wrongly. The move to the second respondent was to facilitate a short phased return, but it was always intended that the claimant would return to a full-time role after 2 months.

63. In about April 2020, during the first national lockdown, Mr Griffin had discussed some concerns about the claimant's working hours with Ms

Taylor. He thought that while she was working from home, the claimant may not have enough work for a full-time role. He thought that if the claimant had been in the office, her duties would have been filled out by other administrative tasks, but those could not be done from home. Ms Taylor suggested to Mr Griffin that if he thought the role required fewer hours, he should speak to the claimant about it and suggest that her hours be reduced. Mr Griffin did not do so at that time.

64. We find that Mr Griffin was prompted by the overtime claim the claimant made on the afternoon of 22 February 2021 to revisit this point and to write to the claimant the next day about her contract and her working hours. He was frustrated and annoyed by the claimant making an overtime claim when she was being paid full-time to do a role he thought might be done part-time. We do not accept that this letter was a discussion document intended to open discussions with the claimant about changes to her role. Rather, the letter was clarifying the respondents' expectations and telling the claimant what would happen.

The claimant's grievance (issues g and h)

65. On 24 February 2021, the claimant made a formal grievance (page 269). The claimant says this is one of her protected acts.

66. The grievance raised concerns about Mr Griffin. The claimant said she felt she had been discriminated against because of maternity and pregnancy by both respondents.

67. Mr Griffin heard the claimant's grievance himself. The grievance meeting took place on 1 March 2021 (page 302).

68. On 8 March 2021, Mr Griffin sent the claimant a letter notifying her of the outcome of the grievance meeting (page 300). The letter adopted the paragraph numbering used in the notes of the grievance meeting (page 302).

69. Two parts of the claimant's complaints were upheld: the non-delivery of the Christmas turkey in December 2019, and the non-payment of agreed fuel costs for the trip to pick up the headset. The respondents said the claimant would be sent a £25 voucher to apologise for the non-delivery of the turkey, and that she would be paid her fuel costs in respect of the trip to pick up the headset. The claimant did not receive the voucher or the fuel costs because the respondent overlooked this.

70. Other than these points the grievance was not upheld. In particular, Mr Griffin reiterated that the claimant's role was part-time, but failed to provide any explanation as to why. He did not engage with the claimant's complaint about feeling pressurised to sign a new contract, only saying 'every employee must have an employment contract'. He did not explain why the claimant had been sent a contract for signature at that specific time (two days after she notified him of her pregnancy).

71. On 11 March 2021, the claimant notified Acas for early conciliation. She relies on this as a protected act.

Further communications about the new contract (also issue b)

72. On 19 March 2021, Mr Griffin emailed the claimant to say that as she had not returned the signed contract, the respondent assumed that she had accepted all the terms and conditions of employment (page 314).

Issues with Ms Osborne (issue j)

73. The claimant did not have an easy working relationship with Ms Osborne, the new Financial Control Assistant who began working for the first respondent in January 2020. The claimant felt that Ms Osborne should not be giving her advice about how to do her job. There were a number of difficult exchanges between them.

74. One issue between the claimant and Ms Osborne concerned the retention of financial backup documents. On 8 March 2021 Ms Osborne emailed the claimant to ask her to delete backups because they were taking a lot of space and the company had to pay for backup space (page 311).

75. The claimant replied to Mr Griffin saying that financial backups should be stored for six years. Ms Osborne, who had been copied into the claimant's email, replied to say that the most recent backup included the information in previous backups. The claimant emailed Mr Griffin again, asking him to clarify this and saying again that financial data should be stored for six years.

76. On 18 March 2021 the claimant emailed Mr Griffin to say that she would like to raise a formal complaint because Ms Osborne had gone ahead and deleted the second respondent's financial backups. The claimant asked Mr Griffin who had given permission for the backups to be deleted and who would pay any fines if HMRC requested the information which had been deleted (page 310).

77. Another issue between the claimant and Ms Osborne concerned the payroll for the second respondent in March 2021. The administration for that payroll had to be completed by 24 March to allow it to be paid by the due date of 27 March 2021.

78. On 24 March 2021 Ms Osborne emailed the claimant at 08.29 to ask when she was available to speak about the payroll (page 321). The claimant did not reply but at 10.53 sent an email with some pay queries to Mr Griffin, copying in Ms Osborne (page 324). Another employee, Karen Yeo, had some of the information the claimant needed, but she had only sent it to Ms Osborne and had forgotten to copy the claimant. Later that day, Ms Yeo forwarded the information on to the claimant saying, 'My fault, I should have copied you both in' (page 326).

79. Ms Osborne emailed the claimant at 15:03 to say that she would call her and then emailed her again at 18:00 to say that she had tried to call on teams and on the claimant's mobile, but the calls had been declined (pages 328, 329).

80. The claimant sent further queries to Mr Griffin later that day, and he replied to her at 21.40 that evening. He provided some more information and told the claimant that the other points she had raised were in hand by management and should not hinder payroll. He suggested that Ms Osborne could provide the claimant with any further guidance she needed (page 860). Ms Osborne was copied into this email exchange and could see that the claimant had been provided with the information she was requesting.

81. Having carefully considered the exchanges on 24 March 2021, we do not find that Ms Osborne withheld any information from the claimant which prevented her from being able to carry out her role.

82. The second respondent's payroll for 27 March 2021 was delayed. It had not been paid by 29 March 2021. The payroll was the claimant's responsibility. The matters she had raised did not have to have delayed the whole payroll. The delays in the claimant completing the payroll administration resulted in a three-day delay to the second respondent's payroll.

Contact during the claimant's sick leave (issue i)

83. The claimant had been signed off sick by her doctor on 22 March 2021 for two weeks (page 355). She carried on working and did not tell the respondent that she had been signed off sick until 26 March 2021 (page 350). She began a period of sick leave on 26 March 2021.

84. The claimant said that the respondent did not pay her properly for 22 to 25 March 2021. We find that the claimant was paid in full for those days, and that there was no recovery of pay for those days as an overpayment. We make this decision based on the claimant's payslips at pages 641 and 646.

85. On 29 March 2021 the claimant messaged her colleague Rose Whitford by WhatsApp to ask if she had been paid. Mrs Whitford replied to say they should be paid tomorrow.

86. On 30 March 2021, the following day, Mrs Whitford messaged the claimant by WhatsApp to say that Mr Griffin had asked if she could pop over to collect the claimant's laptop, bank fob and log in passwords. This was so that payroll and finance duties could be performed in the claimant's absence, and so that the laptop could be repaired. The claimant did not reply to this WhatsApp message.

87. Also on 30 March 2021, Mr Griffin emailed the claimant at her home email address and asked if she could drop off the laptop and the bank fob (page 356). He suggested that, alternatively, Mrs Whitford could go to the claimant's house and collect both. The claimant did not reply to this email. The following day Mr Griffin sent another email saying:

> "If you're not able to drop the laptop and bank fob off we would like to arrange a time we can collect from you today. Please advise what time would be suitable."

88. Mrs Whitford sent another WhatsApp message on 31 March 2021 with the same request. The claimant did not reply to these messages either.

Issues with the claimant's laptop (issue k)

89. The claimant said her laptop was not working properly between January 2021 and 12 April 2021. She said that the respondent failed to provide her with a replacement or other computer to enable her to carry out her role effectively.

90. There were some difficulties with the claimant's laptop's camera and microphone. A log of issues raised by the claimant with the respondents' technical support provider showed that the claimant had reported issues on 30 occasions between April 2020 and April 2021 (page 887). We accept that a minority of those issues, around 5, were to do with the laptop hardware not working. The remainder were to do with software issues like emails not synching, password resets, setting out of office. We accept that there was some impact on the claimant's ability to use her laptop, particularly for Teams meetings, although this was not a consistent problem throughout the whole period.

91. On 25 March 2021, the IT support engineer recommended that the claimant's laptop should be sent for repair and said that this would take two to three weeks (page 869). The following day the claimant began a period of sick leave. Mr Griffin and Mrs Whitford asked her to return her laptop so that it could be repaired. The claimant returned the laptop on 13 April 2021.

The claimant's pay (issues l and m)

92. On 24 March 2021, Mr Griffin emailed the claimant to confirm what pay she would receive for April 2021 (page 334). He said:

> 'As outlined in the return of contract letter (23/2/21), the Financial Control Assistant duties are detailed to 20 hours maximum per week, your salary will be adjusted accordingly pro-rata. Currently you're paid £27,000 per year for a 42.5 hour week, this will reduce to £12,690 for the 20 hours."

93. The reference to the claimant having a 42.5 hour week was incorrect. In fact the claimant's full-time working week was 37.5 hours as she started at 9.00am each day. We find that this was a mistake by Mr Griffin, it was not done deliberately. He had made the same mistake in the claimant's contract. It was not a deliberate attempt by him to reduce the claimant's pay even further.

94. The claimant was paid less than full-time basic pay for April 2021 (page 620). Her basic pay for April 2021 was reduced to reflect a 20 hour part-time

working week as a proportion of a full-time working week of 42.5 hours. The respondent corrected this in the pay for May 2021, by paying the claimant the shortfall with her full-time basic pay, recorded as 'back pay' (page 621).

95. In March 2021, the claimant was paid statutory sick pay (SSP) for one day (page 641) and in April 2021 the claimant was paid SSP for another day (page 646). In relation to the April SSP, the respondent did not count the weekend as non-payable SSP 'waiting days'.

The claimant's return to work from sick leave

96. From 6 to 12 April 2021 the claimant was on annual leave which she had booked some time before.

97. The claimant returned to work on 12 April 2021, working from home (page 360). On 13 April 2021 she returned her laptop so that it could be repaired.

The request for the claimant to attend site to carry out scanning (issues o, p and q)

98. Mr Griffin emailed the claimant on 14 April 2021 to ask her to come into the site on 15 April 2021 to do a scanning task in the Inspection Lab while her laptop was being repaired (page 366).

99. The claimant replied the same day. She told Mr Griffin that she would be unable to attend the site because no health and safety risk assessment had been carried out (especially for her as a pregnant woman). She highlighted a number of health and safety issues (page 370).

100. On 15 April 2021, Mr Griffin replied to say that he had undertaken a risk assessment for the claimant to perform the scanning task (page 392). He attached the risk assessment to his email (page 393). The email also enclosed the coronavirus control measures policy and a maternity leave plan template which Mr Griffin asked the claimant to complete.

101. In the same email, Mr Griffin told the claimant that if she did not attend work, her absence would be treated as unauthorised and would be unpaid. He asked the claimant to confirm her availability to attend the site the next day. The claimant said she would attend the site to inspect the working area and conditions.

102. The following day, 16 April 2021 the claimant emailed Mr Griffin to say that she had attended site but did not feel safe and had not been provided with correct PPE. She said she would continue to carry out her specific job role if she was provided with a spare laptop (page 391).

103. We make the following findings about the safety of requiring the claimant to attend site to carry out work in the Inspection lab:

    103.1 Mr Griffin carried out a risk assessment for the claimant. This was genuinely completed by him and was not just a tick box exercise.

103.2 The claimant was issued with safety shoes at the start of her employment. We make this finding based on the witness statement signed by two of the claimant's colleagues who confirmed this (page 530) and the evidence we heard from Mr Khosravinejad who said that safety shoes were bought for him.

103.3 The second respondent's site was marked out so that there were safe walkways from one part of the building to the other. Again, we reach this finding based on the evidence of Mr Khosravinejad.

103.4 The respondent's Engineering Manager, Mr Jeffrey, prepared the Inspection Lab and was ready to meet the claimant to take her there on 15 April 2021.

103.5 The claimant raised a concern about the health and safety issues with the Health & Safety Executive and they contacted the respondent (page 1115). After the second respondent provided photographs and a response to the Health & Safety Executive, the Health & Safety Executive concluded that the concern could be closed (page 681).

104. Based on these findings, we find that the Inspection Lab was not an unsafe environment for the claimant to work in and that, in requiring the claimant to attend the site to complete a scanning task there, the respondent was not requiring the claimant to attend work without adequate PPE or safety equipment.

The claimant's first claim

105. The claimant presented her first employment tribunal claim on 16 April 2021.

The investigation (issues r, s and t)

106. On 16 and 17 April 2021 Ms Osborne raised complaints with Mr Griffin about the claimant's conduct and performance (page 382 to 388). They were detailed and serious concerns. We accept that Ms Osborne's concerns were genuine. In summary, Ms Osborne said:

106.1 that the claimant had sent two emails to her on 25 March 2021 that she found unprofessional and insulting in language and tone;

106.2 that the claimant had not completed her month end tasks for several months. The following duties were outstanding:

106.2.1 bank reconciliations for 3 months

106.2.2 supplier statement reconciliation for 2 months

106.2.3 Tricorn POs to Sage records reconciliation for 3 months

106.2.4 Wages journal for 1 month

106.2.5 Credit card for 3 months;

106.3 that Ms Osborne had identified that these issues were outstanding when she was asked to carry out year end work by Mr Griffin, that she had outlined the outstanding issues to the claimant on 23 March 2021 (page 321) and that she had to carry out these duties herself after the claimant reported sick on 26 March 2021.

107. On 21 April 2021, Mr Griffin emailed the claimant to say he had received complaints against her. He attached a letter requesting her attendance at an investigation meeting on 23 April (pages 397 and 399).

108. Mr Griffin also sent the claimant a two-page note he had prepared detailing the matters to be investigated (page 400).

109. Mr Griffin asked Mr Ian Bristow, a consultant, to carry out the investigation. The list of matters to be investigated included the matters raised by Ms Osborne and also:

109.1 Being obstructive and uncooperative when working with Ms Osborne on the payroll and year end activity;

109.2 Ignoring requests to drop off the bank fob and laptop, and not responding to emails or phone calls to arrange a time so the respondent could collect the bank fob and laptop, while the claimant was on sick leave;

109.3 refusing to come in and help support the office while her laptop was being repaired;

109.4 claiming pay for a five-day week when only 2 days were needed.

110. The date of the investigation meeting was put back to 27 April 2021 at the claimant's request. The meeting took place by telephone. The claimant was supported by her husband. A notetaker also attended

111. At the end of the meeting Mr Bristow confirmed to the claimant that she could provide any further responses in writing by email to the respondents, by sending them to the notetaker.

112. The claimant was given a copy of the meeting notes on 27 April 2021 and told to submit any written responses by close of business on 30 April 2021 (page 416). The claimant provided comments on the notes on 4 May 2021 (page 432).

113. In the course of the investigatory meeting (pages 419 to 423) the claimant accepted that work was outstanding. She accepted that she had not completed bank reconciliations for February and March, that credit card records had not been uploaded to Sage, and that purchase order information had not been completed.

114. Mr Bristow completed an investigation report and recommended that the allegations progress to a disciplinary hearing (pages 424 to 428). As part of his findings, he concluded that the claimant's core work had not been carried out correctly, that the claimant had been obstructive and uncooperative with Ms Osborne, that she had ignored requests to drop off the bank fob and laptop, and had been dishonest and obstructive by failing to respond to WhatsApp messages about this and that she had refused to come into work when her laptop was being repaired.

Disciplinary hearing invitation and suspension (issues r, s and t, u and m)

115. The claimant sent her MATB1 maternity form to Mr Griffin on 4 May 2021 (page 904).

116. On 7 May James Griffin wrote to the claimant to invite her to a disciplinary hearing (pages 443 and 435). She was provided with details of the matters to be considered at the disciplinary hearing and detailed evidence in support. These included the complaints by Ms Osborne and:

    116.1 Being obstructive and uncooperative when working with Ms Osborne on the payroll and year end activity;

    116.2 Ignoring requests to drop off the bank fob and laptop, and not responding to emails or phone calls to arrange a time so the respondent could collect the bank fob and laptop, while the claimant was on sick leave;

    116.3 refusing to come in and help support the office while her laptop was being repaired.

117. The allegation that the claimant had claimed pay for 5 days a week when her job could be done in 2 days a week was not pursued.

118. On 11 May 2021 Mr Griffin wrote to the claimant to say that she was suspended as of 4 May 2021. He attached a suspension letter dated 4 May 2021 which said that she was suspended on full pay (page 534 and 535).

119. Before being suspended, the claimant booked four days' annual leave which fell during the period of suspension. She did not ask the respondent to cancel those days annual leave. She says the respondent should have treated those days as suspension days, not holiday. She says that she should have been paid in lieu for those days as untaken holiday at the end of her employment.

The claimant's dismissal (issue v)

120. On 14 May 2021, the claimant's disciplinary hearing took place. She did not attend. She wrote to Mr Griffin by email on the morning of 14 May with her response to the allegations.

121. Mr Griffin made efforts to contact the claimant by telephone and text message. She told him that she was unable to attend.

122. Mr Griffin made the decision in the claimant's absence. He decided that the claimant should be summarily dismissed for gross misconduct with immediate effect (page 544). He told her that she had the right to appeal her dismissal.

123. The claimant appealed against the dismissal and Wayne Musella was appointed to hear the appeal. On 25 May 2021 the claimant asked for the appeal hearing to be postponed (page 588). On 27 May 2021 Mr Musella reviewed the documents in her absence. He decided that as the claimant had not presented any evidence which would justify a change to the outcome, the dismissal outcome would at that stage stand (page 687). Mr Musella was expecting that a full hearing would proceed when the claimant was able to attend.

124. On 14 July 2021 the claimant said she was still unable to attend the disciplinary appeal (page 590). The respondent took no further steps.

125. The claimant said that her dismissal was inconsistent treatment as two other employees guilty of misconduct were not dismissed by the respondent. One of those, a member of operational staff, admitted making a racist and misogynist comment to a colleague while under stress during the pandemic. He was very contrite and apologised to the colleague very promptly. Mr Griffin was inclined to dismiss the employee but Mr Musella recommended a final written warning instead and Mr Griffin accepted this recommendation.

126. Another employee was investigated for smoking cannabis at work. He was later dismissed.

<u>The claimant's pay queries (issues n and w)</u>

127. After the claimant's dismissal there was some correspondence between the claimant and Mr Griffin about her maternity pay.

128. On 14 May 2021 the claimant asked Mr Griffin in an email whether her maternity pay would be paid (page 566). Mr Griffin replied on 17 May 2021 saying, "We will look into the wages and your maternity pay and come back to you" (page 565).

129. On 18 May Ms Osborne emailed Mr Griffin about the claimant's requests for details about her pay. (page 569). The claimant did not see the email at the time but, having seen it subsequently, she complains about the content of Ms Osborne's email, specifically Ms Osborne's advice to Mr Griffin not to give the claimant information about her pay. Ms Osborne told Mr Griffin:

> "I don't think you need to show your hand or send any pay intentions until her payslip is due at the end of the month or at least until you see her appeal.

> There is no legal requirement to send her any of this information right now is there? It would just create more fuss, dispute and distraction."

130. On 20 May 2021, the claimant asked Mr Griffin again to confirm that arrangements were in place to pay her SMP (page 555).

131. On the same day, Ms Osborne emailed a Maternity Pay Calculation to Mr Griffin and said that when the MATB1 maternity form was received, SMP calculations could be completed. Mr Griffin forwarded the MATB1 form to Ms Osborne later that day (page 569).

132. The claimant received her statutory maternity pay from the respondent after raising the matter with HMRC on 26 May 2021 (page 583). The claimant was paid SMP from June 2021 to February 2022 (pages 622 to 629).

Claimant's second claim

133. The claimant presented her second employment tribunal claim on 23 June 2021.

134. The claimant's baby was born on 4 August 2021.

The law

'Ordinary' unfair dismissal

135. Section 98(2) of the Employment Rights Act 1996 sets out reasons for dismissal which are potentially fair reasons. These include reasons which "*relate to the conduct of the employee."*

136. In a complaint of unfair dismissal which the employer says is for conduct reasons, the role of the tribunal is not to examine whether the employee is guilty of the alleged misconduct. Guidance set out in the case of British Home Stores v Burchell requires the tribunal to consider the following issues:

    136.1 whether, at the time of dismissal, the employer genuinely believed the employee to be guilty of misconduct;

    136.2 whether, at the time of dismissal, the employer had reasonable grounds for believing that the employee was guilty of that misconduct; and

    136.3 whether, at the time that the employer formed that belief on those grounds, it had carried out as much investigation as was reasonable in the circumstances.

137. Where there is a potentially fair reason for dismissal, the tribunal has to consider (under section 98(4) of the Employment Rights Act 1996)

"*whether in the circumstances (taking into account the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a fair reason for dismissal."*

138. This is determined in accordance with equity and the substantial merits of the case. The tribunal considers whether dismissal was within the range of reasonable responses open to the employer. The tribunal must not substitute its own view of the appropriate penalty for that of the employer.

Automatic unfair dismissal

139. Dismissal for a reason relating to pregnancy, childbirth or maternity is unfair. Section 99 of the Employment Rights Act 1996 says:

> *"(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.*
>
> *(2) In this section "prescribed " means prescribed by regulations made by the Secretary of State.*
>
> *(3) A reason or set of circumstances prescribed under this section must relate to—*
>
> *(a) pregnancy, childbirth or maternity…"*

140. Prescribed reasons relating to pregnancy and maternity are set out in regulation 20(3) of the Maternity and Parental Leave etc Regulations 1999. The prescribed reasons that are relevant here include that the employee is pregnant (regulation 20(3)(a)), has given birth to a child (regulation 20(3)(b)) and that she took or sought to take or availed herself of the benefits of ordinary maternity leave or additional maternity leave (regulation 20(e)(d)).

Wrongful dismissal and breach of contract

141. An employment tribunal can consider complaints of breach of contract by employees in some circumstances. Article 3 of the Extension of Jurisdiction (England and Wales) Order 1994 says:

> *"Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—*

(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;

(b) the claim is not one to which article 5 applies; and

(c) the claim arises or is outstanding on the termination of the employee's employment."

142. A dismissal without notice for misconduct is a wrongful dismissal unless the respondent can show that:

142.1 the claimant actually committed the misconduct; and
142.2 the misconduct was of a sufficiently serious nature to amount to a repudiatory breach justifying summary dismissal.

143. The approach is not the same as in a complaint of unfair dismissal. It is not sufficient for the employer to demonstrate a reasonable belief that the employee was guilty of gross misconduct.

144. The question of whether the misconduct was sufficiently serious to justify summary dismissal is a matter of fact for the tribunal to decide. The tribunal must consider whether the conduct so undermined the trust and confidence between the employer and the employee that the employer should no longer be required to retain the employee.

145. Where the conduct relied on by the employer is a failure by the employee to carry out their duties, the question is whether negligent 'dereliction of duty' is 'so grave and weighty' as to amount to justification for summary dismissal (Adesokan v Sainsbury's Supermarkets Ltd [2017] IRLR 346.

Unauthorised deductions from wages

146. Employees and workers have the right not to suffer unauthorised deductions from wages by their employer. Statutory sick pay is included in the definition of wages in section 27 of the Employment Rights Act 1996.

147. Section 13 of the Employment Rights Act 1996 says:

"(1) An employer shall not make a deduction from wages of a worker employed by him unless-

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction."

Pregnancy/maternity detriment

148. Section 47C of the Employment Rights Act 1996 is headed 'Leave for family and domestic reasons'. It says:

> *"(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.*
>
> *(2) A prescribed reason is one which is prescribed by regulations made by the Secretary of State and which relates to—*
>
> *(a) pregnancy, childbirth or maternity*
>
> *…*
>
> *(b) ordinary, compulsory or additional maternity leave."*

149. Prescribed reasons relating to pregnancy and maternity are set out in regulation 19(2) of the Maternity and Parental Leave etc Regulations 1999. The prescribed reasons that are relevant here include that the employee is pregnant (regulation 19(2)(a)), has given birth to a child (regulation 19(2)(b)) and that she took or sought to take or availed herself of the benefits of ordinary maternity leave or additional maternity leave (regulation 19(2)(d)).

150. 'Detriment' is given a wide interpretation. It has the same meaning here as in the Equality Act 2010, where it has been held to mean putting under disadvantage, or doing something that a reasonable worker would consider to be to their detriment. An unjustified sense of grievance is not sufficient to constitute a detriment (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11).

Burden of proof in complaints of detriment

151. In a complaint of detriment, section 48(2) provides that it is for the employer to show the ground on which any act, or deliberate failure to act, was done. This means that the burden shifts to the employer where the other elements of a complaint of detriment are shown by the claimant.

Pregnancy and maternity discrimination

152. Section 18 of the Equality Act 2010 prohibits unfavourable treatment because of pregnancy in some circumstances. Section 18 says:

> *(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.*
>
> *(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.*

(3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

(4) A person (A) discriminates against a woman if A 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.

(5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).

(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 2 weeks beginning with the end of the pregnancy.

(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—

(a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or

(b) it is for a reason mentioned in subsection (3) or (4).

Victimisation

153. The word victimisation is used in a technical sense in the Equality Act 2010. In summary, it means subjecting someone to detrimental treatment because they have made a complaint of unlawful discrimination, or because they have done something else in connection with the Equality Act.

154. Section 27 of the Equality Act sets out this protection against victimisation. It says that it is unlawful to subject someone to a detriment because they have done a 'protected act'. Bringing proceedings under the Equality Act, doing something in connection with the Equality Act or making an allegation that someone has contravened the Equality Act count as protected acts, as explained in section 27:

"(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

a) B does a protected act…

(2) Each of the following is a protected act -

a) bringing proceedings under this Act
…
c) doing any … thing for the purposes of or in connection with this Act;
d) making an allegation (whether or not express) that A or another person has contravened this Act."

155. As explained above, 'detriment' is given a wide interpretation. It means putting under disadvantage, or doing something that a reasonable worker would consider to be to their detriment (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11).

Burden of proof in complaints of discrimination and victimisation

156. Sections 136(2) and (3) provide for a shifting burden of proof in proceedings under the act:

"(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) This does not apply if A shows that A did not contravene the provision."

157. This means that if there are facts from which the tribunal could properly and fairly conclude that there has been unlawful discrimination, the burden of proof shifts to the respondent.

158. If the burden shifts to the respondent, the respondent would normally be expected to produce "cogent evidence" to discharge the burden of proof. If there is a prima facie case and the explanation for that treatment is unsatisfactory or inadequate, then it is mandatory for the tribunal to make a finding of discrimination.

Conclusions

Who was the claimant employed by?

159. The claimant accepts that from 1 February 2020 she was employed by the second respondent. Her continuous employment with the first respondent from 26 February 2018 was preserved.

160. When we use the term respondent, where that relates to matters which occurred before 1 February 2020 we are referring to the first respondent, and where it relates to matters which occurred on or after 1 February 2020 we are referring to the second respondent.

Protected period

161. All of the factual matters the claimant complains about happened during the protected period for the purposes of pregnancy discrimination under section 18 of the Equality Act. In the claimant's case the protected period runs from November 2020, the start of the pregnancy, to 18 August 2021, the date which is two weeks after the birth of the claimant's baby.

162. We have dealt with issues a to w in broadly chronological order, rather than in alphabetical order.

Issue a: On/after 7 January 2021 C was presented with a new employment contract containing less favourable terms, in particular: reduced hours (20 hrs per week instead of 37.5 hrs per week); reduced pay (pro-rata for 20 hrs per week); and an earlier start time (8 a.m. instead of 9 a.m.).

163. This issue is an allegation of pregnancy detriment (under the Employment Rights Act) and pregnancy discrimination (under the Equality Act). We need to consider whether the treatment we have found to have occurred was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy.

164. We have found that the claimant was presented with a new employment contract on 7 January 2021, and that it did show an earlier start time, 8am instead of 9am. It did not contain less favourable terms as to reduced hours or reduced pay (those matters were raised by the second respondent on a later occasion).

165. The claimant perceived the provision of a new contract as a detriment or unfavourable treatment. A reasonable worker would have seen this as a detriment, especially a worker who had not previously received the respondent's standard contract. The claimant did not know the new contract was in line with the respondent's standard terms. Even though the contract dealt with her unusual start time, because the contractual term as to start time included the words 'or as otherwise agreed', the claimant noted that the start time expressly recorded was wrong, and this caused her concern. She was unclear about whether the start time provision was correct. She worried about it. This was a justified concern. The claimant asked to meet with Mr Griffin to discuss it, but the meeting did not take place.

166. We have concluded that providing the claimant with a new contract which did not expressly record her start time correctly was a detriment and was unfavourable treatment.

167. The respondent gave the claimant the new contract two days after she told Mr Griffin about her pregnancy. The timing is a fact from which we could conclude that the detriment/unfavourable treatment was because of pregnancy; the burden shifts to the respondent to satisfy us that pregnancy was not a reason for this treatment.

168. The respondent has not met this burden. The respondent said that the reason the claimant was provided with a new contract was because all staff

were given new contracts at this time. We have not found that any other staff were given new contracts at the same time. The claimant was singled out in this regard. We have found that the decision to present the claimant with a new employment contract on 7 January 2021 was prompted by the notification of the claimant's pregnancy. We conclude that it was therefore because of pregnancy.

169. The complaints of pregnancy detriment and pregnancy discrimination in respect of issue a succeed.

Issue f: On 3 February 2021 C was refused entry into the office and was made to sit on the floor in the corridor.

170. This issue is an allegation of pregnancy detriment and pregnancy discrimination. We need to consider whether the treatment we have found to have occurred was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy.

171. We have found that the claimant was refused entry into the office on 3 February 2021. This was a not detriment or unfavourable treatment. The claimant felt disadvantaged by not being able to do go into the office but that sense of grievance was unjustified in the context, namely during the covid pandemic at a time when social distancing was required, and when the office was too small to allow appropriate distancing with someone who was already in the office.

172. We have found that the claimant sat on the floor in the corridor for a short time but not because she was made to. We found that she was offered a chair but chose to sit on the floor. That was not a detriment or unfavourable treatment by the respondent, it was the claimant's choice.

173. In any event, we are entirely satisfied that the claimant's pregnancy did not play any part in her colleague's refusal to allow her to work in the office. The refusal of entry was not because of pregnancy but was because of the measures that were in place during the pandemic which the claimant's colleague was particularly concerned to observe for personal reasons. The claimant would have been refused entry at this time whether or not she was pregnant.

174. The complaints of pregnancy detriment and pregnancy discrimination in respect of issue f fail.

Issue c: On 12 February 2021 C was told by Mr. Griffin of R to take annual leave to attend her antenatal classes.

175. This issue is also an allegation of pregnancy detriment and pregnancy discrimination. We need to consider whether the treatment we have found to have occurred was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy.

176. We have not found that Mr Griffin, in a meeting on 12 February 2021, told the claimant to take annual leave to attend her antenatal classes. Rather, he asked the claimant whether she would be using annual leave for antenatal appointments; she told him it would be illegal to do so. At this time, she had already had two antenatal appointments in January for which she had been paid and not required to take annual leave. Very shortly after the meeting Mr Griffin confirmed to the claimant that he did not expect her to take annual leave to cover antenatal appointments. She was not in fact expected to do so at any stage and all her antenatal appointments were paid in full.

177. We do not find that putting this question to the claimant in a meeting amounted to a detriment or unfavourable treatment, in circumstances where the claimant immediately gave her contrary view, the respondent confirmed shortly afterwards that the claimant's view was correct, and where the claimant was not at any stage required to take annual leave for antenatal appointments. A reasonable worker would not have regarded the putting of this question to the claimant as a detriment. It was not unfavourable treatment.

178. The complaints of pregnancy detriment and pregnancy discrimination in respect of issue c do not succeed.

Issue d: In February 2021 Mr. Griffin refused to pay C overtime and issue e: R1/R2 refused to pay C's reasonable and legitimate work-related travel expenses.

179. These issues are also allegations of pregnancy detriment and pregnancy discrimination. We need to consider whether the treatment we have found to have occurred was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy.

180. We have found that Mr Griffin refused the claimant's claim for overtime made on 22 February 2021. We have not found that the respondent refused to pay travel expenses; Mr Griffin said that they would be paid as a gesture of goodwill, but the respondent then failed to make the payment.

181. The refusal of the claimant's overtime claim and the failure to pay her travel expenses were detriments and unfavourable treatment.

182. The timing of these matters, shortly after the claimant's notification of her pregnancy, and the sending of new terms and conditions to her alone, are facts from which we could conclude that these additional detriments/unfavourable treatment were because of the claimant's pregnancy. We could infer that all the claimant's interactions with the business were being more closely scrutinised because of her pregnancy. The burden shifts to the respondent to satisfy us that pregnancy was not the reason for this treatment.

183. We are satisfied that the claimant's pregnancy was not the reason why her overtime claim was refused. We accept that the overtime claim was refused because overtime working by the claimant had not been authorised in

advance by the respondent. The difference with the previous occasions of overtime working by the claimant which had been paid is that they were requested by the respondent in advance.

184. We are also satisfied that the failure to pay travel expenses after Mr Griffin had agreed that they would be paid was not because of the claimant's pregnancy. The respondent had been experiencing administrative difficulties on a wider scale over the previous 12-15 months, stemming from the sudden death of the respondent's founder, and the significant additional pressures brought by the pandemic. Overlooking the payment of the claimant's travel expenses was a minor error which was the result of that wider background, it was not because of the claimant's pregnancy.

185. The complaints of pregnancy detriment and pregnancy discrimination in respect of issues d and e fail.

Issue b: C was repeatedly asked to sign the new contract and was told it would be assumed that she had agreed to it notwithstanding her express objections.

186. In respect of conduct up to and including 23 February 2021, this issue is an allegation of pregnancy detriment and pregnancy discrimination. We need to consider whether the treatment we have found to have occurred up to that date was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy. Conduct after 24 February 2021 is also put as a complaint of victimisation.

187. We have found that, factually, this allegation is made out. It refers to Mr Griffin's letter to the claimant of 23 February 2021. In addition to asking the claimant to sign the new contract, the letter informed her that it would be assumed that she had agreed to the contract if she did not reply. It also refers to a letter on 19 March 2021 which confirmed that the respondent had treated the claimant as accepting the new terms and conditions.

188. The letter of 23 February 2021 also told the claimant that Mr Griffin thought that her job could be done in a maximum of 20 hours per week rather than being the full-time role that she had been undertaking since March 2020.

189. We accept that the letter amounted to a detriment and unfavourable treatment. The letter informed the claimant that her job was to be reduced from 37.5 hours to 20 hours per week, without any discussion or consultation with her. We have found that the letter was not intended to open discussions with the claimant about changes to her role but was clarifying the respondent's expectations and telling the claimant what would happen. That was treatment which was disadvantageous to her. It was treatment which a reasonable worker would have regarded as a detriment, and it was unfavourable treatment.

190. We have already concluded that the reason why the claimant was given a new contract to sign two days after she informed Mr Griffin of her pregnancy, was because of the claimant's pregnancy. The timing of the

issue of the new contract is a fact from which we could conclude that the continued chasing up of the contract was also because of the claimant's pregnancy.

191. We accept that the burden shifts to the respondent to satisfy us that the repeated requests to sign the new contract, which included a unilateral decision to revise the claimant's hours, was not because of the claimant's pregnancy.

192. Mr Griffin said, and we accept, that it was the claimant's request for overtime made on 22 February 2021 which led him to send the letter on 23 February 2021. However, the claimant's pregnancy was a key part of the background which led to sending of the contract and chasing up of signature of the contract. That process had begun before the claimant's overtime claim. Mr Griffin had raised the scope of the claimant's role with Ms Taylor about 10 months previously, but he did not raise it with the claimant until after she told him about her pregnancy. We are not satisfied that the claimant's pregnancy played no part in the decision to send the letter of 23 February 2021. We have concluded that while the claimant's overtime request played a part in Mr Griffin's decision to send the letter of 23 February 2021, it was also because of the claimant's pregnancy.

193. We reach the same conclusion in respect of the letter of 19 March 2021. That letter was also sent as part of a series of acts by the respondent in respect of the claimant's contractual terms and working hours and was because of pregnancy. That series of acts was already happening by the time the claimant brought her grievance on 24 February. The grievance was not the reason the letter of 19 March 2021 was sent.

194. The complaints of pregnancy detriment and pregnancy discrimination in respect of issue b, specifically the sending of the letters on 23 February 2021 and 19 March 2021, succeed. The complaint of victimisation in relation to the letter of 19 March 2021 fails.

Issue 16(a): the claimant's first protected act

195. We have found that the claimant made a grievance on 24 February 2021 and that in her grievance she alleged that she had been discriminated against because of maternity and pregnancy. This was a protected act within section 27(2)(d) of the Equality Act because in her grievance the claimant made an allegation that the respondents had contravened the Equality Act.

Issue g: C's grievance in relation to the above matters was not upheld, save in two respects.

196. This issue is an allegation of pregnancy detriment, pregnancy discrimination and victimisation contrary to section 27 of the Equality Act. We need to consider whether the treatment we have found to have occurred was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy and/or because of the claimant's grievance.

197. This allegation is made out factually. The claimant's grievance was considered by Mr Griffin. The outcome was sent to the claimant on 8 March 2021. It was only upheld in relation to two matters: the failure to provide the claimant with a Christmas turkey in December 2019 and the failure to pay the claimant's travel expenses claimed on 22 February 2021.

198. Mr Griffin did not uphold the complaints that the claimant felt pressured by the sending of the new contract, or that she was upset that her position had been identified as part time.

199. In determining the claimant's grievance on these points, Mr Griffin was considering complaints against himself. He chose not to ask an independent person to carry out a grievance investigation (as he did with the disciplinary, when he appointed Mr Bristow to carry out an investigation). We have found that the claimant's pregnancy played a part in the decisions to send her a new contract and to send the letter which identified her role as part-time. These are facts from which we could conclude that the claimant's pregnancy played a part in Mr Griffin's decision on the claimant's grievance. We could infer that Mr Griffin dealt with the claimant's grievance himself and did not uphold the claimant's complaints because he did not want anyone else to scrutinise his earlier decisions, because the claimant's pregnancy had played a part in them. We have concluded that the burden shifts to the respondent in respect of this issue.

200. We are not satisfied that pregnancy played no part in the outcome of the grievance relating to the claimant's contract and working hours. Mr Griffin did not give any cogent explanation in the grievance outcome or his evidence to us as to why he reached the conclusions he did on the claimant's complaints about the new contract and the letter of 23 February 2021. The respondent has not met the burden of proof on this issue. We make the inference we identified above.

201. We are satisfied that the claimant having made a grievance (her protected act) was not a reason for Mr Griffin's decision not to uphold her grievance in these respects. That is a conceptually a difficult argument, as it is inherently circular. We have concluded that it was the claimant's pregnancy, rather than her complaint about pregnancy discrimination, which was the reason for Mr Griffin's decision on these aspects of her grievance.

202. There was no pregnancy detriment or discrimination in respect of the other elements of the claimant's grievance.

203. The complaints of pregnancy detriment and pregnancy discrimination in respect of issue g, specifically the failure to uphold the claimant's grievance in respect of the sending of the new contract, and identification of her role as part time, succeed. The complaint of victimisation in respect of issue g does not succeed.

Issue h: In respect of the two matters which the grievance was upheld (£25 voucher and payment of travel expenses) R failed to comply and failed to provide the voucher and make repayment of the expenses.

204. This issue is an allegation of pregnancy detriment, pregnancy discrimination and victimisation contrary to section 27 of the Equality Act. We need to consider whether the treatment we have found to have occurred was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy and/or because of the claimant's grievance.

205. The allegation is made out factually. The respondent failed to provide the voucher or pay the travel expenses it had agreed to pay. This was a detriment and unfavourable treatment of the claimant. Our conclusion that other outcomes of the claimant's grievance were related to pregnancy is a fact from which we could conclude that the failure to follow up the aspects of the grievance which were upheld was also related to pregnancy. We find that the burden of proof shifts to the respondent on this issue.

206. On this issue, we accept the respondent's explanation that the reason for this treatment was an administrative error by the respondent which was nothing to do with pregnancy or the claimant having made a grievance. This was consistent with the evidence before us that there were administrative difficulties in general at this time.

207. The complaints of pregnancy detriment, pregnancy discrimination and victimisation in respect of issue h do not succeed.

Issue 16(b): the claimant's second protected act

208. We have found that the claimant notified Acas for early conciliation on 11 March 2021. Notification to Acas for early conciliation is a mandatory step which (unless an exemption applies, which was not the case here) a potential claimant is required to take before bringing proceedings under the Equality Act (as well as other specified legislation). Notifying Acas for early conciliation is something done 'for the purposes of or in connection with' the Equality Act. It is an act which falls within the scope of section 27(2)(c). This was therefore a protected act under the Equality Act.

Issue j: From March 2021 Alina Osborne withheld information from C which prevented her from being able to carry out her role. In particular, Ms. Osborne refused to provide C with relevant paperwork relating to the hours worked by employees that should be charged to each of R1 and R2, and deleted all the financial backups for the previous six years.

209. This issue is an allegation of pregnancy detriment, pregnancy discrimination and victimisation contrary to section 27 of the Equality Act. We need to consider whether the treatment we have found to have occurred was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy and/or because of the claimant's protected acts (her grievance and/or her notification to Acas).

210. The first part of this allegation is not made out on the facts. We have found that Ms Osborne did not withhold information from the claimant which prevented her from being able to carry out her role. In fact, Ms Osborne tried to assist the claimant to carry out her role but met with resistance from the claimant.

211. The second part of this allegation is made out on the facts: we have found that Ms Osborne deleted the second respondent's financial backups.

212. However, there is no evidence from which we could conclude that the claimant's pregnancy, grievance or notification to Acas played any part in Ms Osborne's actions in this respect. The burden does not shift to the respondent in respect of this allegation.

213. Even if the burden on this issue had shifted to the respondent, this complaint would not succeed. That is because we accept entirely that Ms Osborne's reason for deleting the files was to save space on the respondents' server. The claimant's approach to Ms Osborne's request to delete backup information to save space on the server was disproportionate; Ms Osborne made a reasonable business request of the claimant which could easily have been resolved by discussions between them, rather than the claimant escalating matters to Mr Griffin. This was an example of the difficult working relationship and difference of views between the claimant and Ms Osborne, not of pregnancy detriment or discrimination, or victimisation.

214. The complaints of pregnancy detriment, pregnancy discrimination and victimisation in respect of issue j do not succeed.

Issue i: On/around 23 March 2021 Alina Osborne and Mr Griffin of R attempted to contact C with work-related queries and requests (for example asking for her key fob and bank login passwords) when she was on sick leave which was connected with her pregnancy

215. This issue is an allegation of pregnancy detriment, pregnancy discrimination and victimisation contrary to section 27 of the Equality Act. We need to consider whether the treatment we have found to have occurred was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy and/or because of the claimant's protected acts.

216. We have found that Ms Whitford and Mr Griffin attempted to contact the claimant while she was on sick leave. This was to make entirely reasonable management requests for information and items that were required to assist the respondent to cover the claimant's duties while she was on sick leave. In making these requests, the respondent did not subject the claimant to a detriment or unfavourable treatment.

217. Even if we had found there to have been a detriment, there was no evidence from which we could conclude that the burden on this complaint

shifted to the respondent. And in any event, we are satisfied that the respondent's requests for the laptop, bank fob and log in passwords while the claimant was on sick leave were not made because of the claimant's pregnancy (or her pregnancy-related sickness or her protected acts). They were made because the respondent needed the information and items for normal work purposes. The respondent's actions in respect of these issues were not in any way because of the claimant's pregnancy or pregnancy-related sickness.

218. The complaints of pregnancy detriment, pregnancy discrimination and victimisation in respect of issue i do not succeed.

Issue k: From March 2021 R1 / R2 failed to provide C with a replacement laptop or other computer to enable C to carry out her role effectively.

219. This issue is an allegation of pregnancy detriment, pregnancy discrimination and victimisation contrary to section 27 of the Equality Act. We need to consider whether the treatment we have found to have occurred was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy and/or because of the claimant's protected acts.

220. This allegation is not made out on the facts. We have not found that the problems with the claimant's laptop meant that she could not carry out her role effectively. While there were some problems with the laptop, these were mainly to do with the camera and microphone and would not have prevented the claimant from doing her work.

221. In any event, if we had found that the problems with the claimant's laptop were such that they amounted detriment/unfavourable treatment, we have not found any evidence from which we could conclude that the respondent's actions in relation to the claimant's laptop were anything to do with pregnancy, her grievance, or her notification to Acas. The claimant was unhappy about the problems with her laptop and thought she should have been provided with a better laptop, but that was a general criticism of the respondent by the claimant; the respondent's approach to the claimant's laptop was not because of her pregnancy, her grievance or her notification to Acas.

222. The complaints of pregnancy detriment, pregnancy discrimination and victimisation in respect of issue k do not succeed.

Issue l: On 24 March 2021 C was informed by Mr. Griffin that her salary would thereafter be reduced to the pro-rata equivalent of 20 hours per week. The pro-rata calculation of pay was also inaccurate in that it assumed her full-time salary had been based on 42.5 hours rather than 37.5 hours per week.

Issue m: In March and April 2021 R1 / R2 failed to pay C her full wages.

223. This issue is an allegation of pregnancy detriment, pregnancy discrimination and victimisation contrary to section 27 of the Equality Act. We need to

consider whether the treatment we have found to have occurred was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy and/or because of the claimant's protected acts.

224. We have found the facts alleged in these issues to be proven (other than in relation to pay in March 2021 where there was no failure to pay full wages). Mr Griffin told the claimant that her salary would be reduced to reflect a 20-hour week rather than a full-time week and the claimant's pay was in fact reduced in April 2021. The reduction in the claimant's pay was corrected in May 2021, however the claimant still had the worry and anxiety of the reduction in pay and a period of weeks when she was paid less than her usual pay.

225. We have also found that Mr Griffin incorrectly based his calculation on a 42.5 hour full time working week, when the claimant's full time working week was in fact 37.5 hours. This error was an additional worry for the claimant.

226. Issues l and m as we have found them to have occurred amount to detriments and unfavourable treatment of the claimant.

227. We have found facts from which we could conclude that informing the claimant that her pay was to be reduced was because of pregnancy, or was a pregnancy detriment. The timing of the issue of a new contract to the claimant closely after she announced her pregnancy is a fact from which we could conclude that continuing to chase up the contract and, in the course of that chasing up, unilaterally deciding to revise the claimant's working hours, was also because of the claimant's pregnancy. The burden shifts to the respondent on this issue.

228. The respondent has not met the burden on this issue of satisfying us that the decision to reduce the claimant's salary was nothing to do with pregnancy. We have not accepted the explanation that this was an attempt to open dialogue with the claimant. We have concluded that the claimant's pregnancy played a part in the issue of the new contract, in the chasing up of the new contract, and in Mr Griffin's unilateral decision to reduce the claimant's hours. This conduct by the respondent was a series of acts prompted by the claimant's notification of her pregnancy.

229. We have found that the email informing the claimant of the decision to reduce her pay to reflect a 20-hour working week and the decision itself was influenced by the claimant's pregnancy and amounts to pregnancy discrimination. Mr Griffin's actions in deciding not to pay the claimant her full-time pay in April 2021 was an act of pregnancy detriment and pregnancy discrimination.

230. This conduct was not because of the claimant's grievance or notification to Acas: the course of conduct of which this act was a part began before the claimant did her protected acts.

231. We have not found facts from which we could conclude that relying on a 42.5 hour full-time working week to calculate reduced pay when the

claimant actually worked 37.5 hours a week was because of pregnancy or the claimant's protected acts. That was simply a mistake by Mr Griffin. He did not deliberately use the wrong figure in order to reduce the claimant's pay even further.

232. The complaints of pregnancy detriment and pregnancy discrimination in relation to the email informing the claimant that her pay would be reduced (the first part of issue l) and the reduction in her pay in April 2021 (issue m) succeed. The complaint in relation to the reliance on the incorrect figure for the claimant's full-time working week does not succeed, as that was a mistake, not an act of pregnancy detriment or discrimination.

233. The complaints of victimisation in respect of issues l and m do not succeed.

Issue o: In/around April 2021 R failed to conduct a suitable, sufficient and/or accurate risk assessment (as required by Management of health and safety at work regulations 1999 reg 19(3)).
Issue p: In / around April 2021 C was required to attend work without adequate PPE or safety equipment when the work environment was unsafe, and was told she would not be paid if she did not attend.
Issue q. From April 2021 C was required to attend work when the environment was unsafe and no maternity risk assessment had been carried out and was criticised and subjected to a disciplinary process when she refused to do so.

234. We have not found any of these allegations to be proven on the facts. We have accepted that the respondent carried out risk assessments, including a suitable maternity risk assessment for the claimant. We did not find that the claimant was required to attend work without adequate PPE or safety equipment or that the environment she was asked to work in was unsafe. We found that the claimant was issued with safety shoes, that the site was marked out with safe walkways and that the engineering manager was ready to meet the claimant to take her to the Inspection Lab. The concerns raised by the claimant with the Health and Safety Executive were closed after initial communications from the second respondent.

235. These allegations fail on the facts.

Issue r: In April and May 2021 R1 / R2 criticised and subjected C to a disciplinary process.
Issue s: In April and May 2021 R1 / R2 criticised and subjected C to a disciplinary process for failing to respond to work-related queries and requests when she was on sick leave which was connected with her pregnancy.
Issue t: R1 / R2 required C to provide written responses to matters raised at the investigation meeting on 27 April 2021 within an unreasonably short time frame (3 days).

236. These issues are allegations of pregnancy detriment, pregnancy discrimination and victimisation contrary to section 27 of the Equality Act. We need to consider whether the treatment we have found to have occurred

was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy and/or because of the claimant's protected acts.

237. In our findings of fact, we have found that the respondent did criticise the claimant and subject her to a disciplinary investigation, and that one of the allegations was failing to respond to queries when she was on pregnancy-related sick leave. This was detrimental and unfavourable treatment.

238. In relation to issue t, while we have found that the respondent asked the claimant to respond to matters raised at the investigation meeting within 3 days, this was not a detriment or unfavourable treatment, because the claimant provided a written response after 7 days and this was accepted. This allegation fails on this basis.

239. As to issues r and s, we have considered whether there are facts from which we could conclude that the respondent's decision to start a disciplinary process and the conduct of that process was related to the claimant's pregnancy or her protected acts. These issues may be related to the earlier matters, namely the provision of a new contract, the chasing-up of that contract, the unilateral decision that the claimant's full time role was a part-time role and that she should be paid for a part time role, and the decision not to uphold the claimant's grievance on those matters. An allegation that the claimant had been paid for a full time role when only two days were needed was one of the allegations in respect of which the claimant which was investigated. We have decided that these are facts from which we could conclude that the disciplinary process was linked with the earlier contractual issues, and that the pregnancy or the claimant's protected acts played a part in the later disciplinary treatment in addition to the earlier matters.

240. This means that the burden shifts to the respondent to satisfy us that these issues relating to the disciplinary process were not because of pregnancy or the claimant's protected acts. We have given very careful thought to this question, to consider whether the claimant's announcement of pregnancy played a part in all of the respondent's treatment of her after that. We bear in mind in particular that one of the allegations considered in the investigation was the question about the claimant's working hours.

241. However, we are satisfied that the respondent's conduct in respect of the disciplinary matters was not because of the claimant's pregnancy and protected acts, and that the respondent has met the burden. There is cogent evidence of what led to the disciplinary investigation and subsequent disciplinary steps. The investigation was prompted by Ms Osborne who was not involved with the issues concerning the claimant's contract and working hours. We accept that the written complaints by Ms Osborne were genuine and substantiated complaints, and that she had non-discriminatory reasons to make these complaints in the circumstances. We understand why Ms Osborne was concerned about the tone used by the claimant in the emails she sent her on 25 March 2021. We have accepted that Ms Osborne discovered serious concerns about the claimant's work when asked to carry out year-end work by Mr Griffin. These were not issues that either Ms

Osborne or the respondents went looking for. Ms Osborne had genuine and documented concerns that the claimant had not been carrying out her duties for a period of some months. We accept that it was the receipt of the complaints from Ms Osborne which led to Mr Griffin's decision to ask Mr Bristow to conduct an investigation, to the disciplinary proceedings against the claimant and ultimately to her dismissal.

242. The claimant's pregnancy, pregnancy-related sickness and protected acts were not the reason for Ms Osborne's complaint, or for any of the steps in the disciplinary process which followed.

243. We are satisfied that issues r, and s were not related to the claimant's pregnancy or protected acts. The complaints of pregnancy detriment, pregnancy discrimination and victimisation in respect of these issues fail.

244. Issue t has failed as we have not found it to have amounted to a detriment or unfavourable treatment. If we had found it to have been a detriment, we would have found that it was not because of the claimant's pregnancy, pregnancy-related sickness or protected acts.

Issue u: with effect from 4 May 2021 C was suspended.

245. This allegation is of pregnancy detriment, pregnancy discrimination and victimisation contrary to section 27 of the Equality Act. We need to consider whether the treatment we have found to have occurred was a detriment, and/or unfavourable treatment, and, if so, whether it was because of pregnancy and/or because of the claimant's grievance/notification to Acas.

246. We have found that the claimant was suspended. This was a detriment and unfavourable treatment.

247. For the same reasons explained in relation to the allegations concerning the disciplinary process, we have concluded that the burden of proof shifts to the respondent to satisfy us that the reason for the suspension of the claimant was not her pregnancy or protected acts.

248. We accept that the respondent has met this burden; we accept that Mr Griffin's decision to suspend the claimant was prompted by the conclusions in Mr Bristow's investigation report and that the claimant's pregnancy and protected acts did not play a part in it.

249. The complaints of pregnancy detriment, pregnancy discrimination and victimisation in respect of issue u fail.

Issue v: C was dismissed on 14 May 2021.

250. This is an allegation of pregnancy discrimination and victimisation. (We return below to the complaints of unfair dismissal, and wrongful dismissal in respect of notice pay.)

251. We have found that the claimant was dismissed. This was a detriment and unfavourable treatment.

252. For the same reasons explained in relation to the allegations concerning the disciplinary process, we have concluded that the burden of proof shifts to the respondent to satisfy us that the reason for the dismissal of the claimant was not her pregnancy or protected acts.

253. Again, for the same reasons explained in relation to the disciplinary investigation issues, we accept that the respondent has met this burden. We accept that Mr Griffin's decision to dismiss the claimant was because of her conduct as found by Mr Bristow. We are satisfied that the disciplinary process and dismissal would have been conducted by the respondent in the same way, irrespective of the claimant's pregnancy and protected acts. The claimant's pregnancy and protected acts did not play a part in Mr Griffin's decision to dismiss.

254. The complaints of pregnancy discrimination and victimisation in respect of issue v (dismissal) fail.

Issue n: In April / May 2021, C having raised the underpayment of her wages, Ms Osborne instructed Mr Griffin not to provide C with a breakdown of the payments being made to C.

Issue w: R1 / R2 refused to pay C's Statutory Maternity Pay until required to do so by HMRC.

255. These allegations about pay are of pregnancy detriment, pregnancy discrimination and victimisation.

256. On issue w: we have not found that the respondent refused to pay the claimant's SMP until required to do so by HMRC. The respondent did not at any stage refuse to pay the claimant SMP. Mr Griffin told the claimant that the respondent would look into her entitlement and come back to her. The claimant was paid SMP from June 2021 to February 2022. This allegation fails on the facts.

257. On issue n: we have found that Ms Osborne advised Mr Griffin to wait until the claimant's payslip was due before confirming his intentions in relation to pay. She said that giving the claimant the information earlier would create more fuss, dispute and distraction. That was not a detriment or unfavourable treatment, as the claimant did not know about it at the time, and by the time the claimant became aware of Ms Osborne's email, her SMP had been paid and she had received her payslips explaining how she had been paid.

258. If we had found issue n to have amounted to a detriment or unfavourable treatment, we would have found that the fact that the pay issue was about SMP and the reference in Ms Osborne's email to 'fuss, dispute and distraction' to have been facts from which we could conclude that pregnancy and/or the claimant's protected acts had played a part in the sending of this

email. We would have found that the burden on issue n had shifted to the respondent.

259. We would however have accepted that the reason for Ms Osborne's email was because she was not aware that the respondent had already been sent the MAT B1 form and she thought the respondent did not have the information to carry out the calculations. She advised Mr Griffin to tell the claimant about her pay once the respondent was legally required to do so. That was not related to the claimant's pregnancy or protected acts.

260. The complaints of pregnancy detriment, pregnancy discrimination and victimisation in relation to issues w and n fail for these reasons.

The claimant's claim in the round

261. The need to focus on a large number of individual incidents as we have had to do in this claim can risk leading to a failure to see the claim in the round, or a failure to see the 'big picture'. We should not treat the individual incidents in isolation from one another, because the big picture may shed light on individual complaints. To avoid an overly fragmented approach we have 'stepped back' and considered the full picture of all the claimant's complaints.

262. We have decided that the respondent's acts which form the basis of the claimant's complaints fall broadly into two categories, what we have called two series of acts.

263. We have concluded that the first series of acts, Mr Griffin's actions in respect of the claimant's new contract and working hours in the period from January to February 2021, and his decision to address the claimant's grievance about this himself, were prompted by and influenced by the claimant's announcement of her pregnancy.

264. However, the respondent's second series of acts, those in respect of the disciplinary process and the claimant's dismissal were not influenced by the claimant's pregnancy. We accept that this was a different series of actions. These matters came to light as a result of the year-end work Ms Osborne was asked to do. We are satisfied that these matters would have arisen and would have been dealt with in the same way even if the claimant had not been pregnant.

265. We accept that the claimant's conduct at around this time was obstructive and uncooperative towards her colleague and towards the respondent in general.

266. We have thought carefully about the division between these two series of acts and considered whether the respondent's attitude to the claimant's pregnancy which was demonstrated in relation to the first series of actions was repeated in, or consciously or subconsciously affected or led to, the respondent's decisions in the second series. We are satisfied that it was not.

267. We are also satisfied that the claimant's protected acts did not play any part in the respondent's treatment of her.

268. For completeness, we record that it was not clear to us whether the pregnancy discrimination complaints were put in the alternative as complaints of sex discrimination contrary to section 13 of the Equality Act 2010 (section 13 is mentioned a heading in the list of issues but not in the paragraphs below the heading). If they were, those do not succeed.

Automatic unfair dismissal

269. In relation to the complaint of automatic unfair dismissal for pregnancy or maternity under section 99 of the Employment Rights Act, we have found that the reason for the claimant's dismissal was not the claimant's pregnancy or maternity or any of the prescribed reasons under section 99 and the related regulations. The reason for the dismissal was the conduct allegations which were found proven against the claimant. The complaint of automatic unfair dismissal therefore fails.

Ordinary unfair dismissal

270. In relation to the complaint of unfair dismissal, we apply the tests in section 98 of the Employment Rights Act. We do not consider whether we would have dismissed the claimant in these circumstances as that would be to substitute our view for the respondent's.

271. We have found that the reason for the dismissal was the claimant's conduct. This is a potentially fair reason for dismissal. In relation to the Burchell issues:

    271.1 Mr Griffin had a genuine belief that the claimant was guilty of the conduct alleged, namely the matters set out on page 545. Many of the outstanding work matters had been admitted by the claimant;
    271.2 There were reasonable grounds for that belief, namely the findings of the report by Mr Bristow which concluded that the claimant's core work had not been carried out correctly, that the claimant had been obstructive and uncooperative with Ms Osborne, that she had ignored requests to drop off the bank fob and laptop, and had been dishonest and obstructive by failing to respond to WhatsApp messages about this, and that she had refused to come into work when her laptop was being repaired.
    271.3 We find that at the time Mr Griffin formed his belief, the respondent had carried out as much investigation as was reasonable in the circumstances. Mr Bristow's investigation was thorough and detailed and overall the investigation fell within the range of reasonable responses.

272. The respondent adopted an otherwise fair procedure when reaching its decision to dismiss. The claimant was interviewed by Mr Bristow and given an opportunity to see the investigation notes. She was invited to a disciplinary hearing at which she was told that she could be accompanied. It

was not unfair for Mr Griffin to decide to proceed with the hearing when the claimant did not attend; she gave no indication of when she might be able to attend if the hearing was postponed. Mr Griffin took the claimant's written response into account. The claimant was provided with notes of the hearing and offered an appeal. It was not unfair for Mr Musella to decide to proceed with the appeal in the claimant's absence, and to conclude that as she had not provided any evidence, the dismissal would be upheld. It was reasonable for the respondent to assume that the claimant did not want to pursue her appeal when she did not come back to them after July.

273. We do not find that the claimant was treated inconsistently with other employees. One employee was ultimately dismissed by the respondent. The circumstances of the other employee's case were entirely different to the claimant's. It was a one off incident, the employee was contrite and offered an immediate apology.

274. The claimant's dismissal was fair in the circumstances of the case. The respondent concluded that the volume of outstanding work the claimant had was unacceptable and amounted to misconduct, rather than a performance issue. That was a decision which was open to the respondent to reach, particularly when viewed in conjunction with the findings that the claimant had been uncooperative and obstructive. That was a view which was open to the respondent to reach, in that it was within the range of reasonable responses to view the claimant's actions as a conduct matter.

275. The respondent acted reasonably in treating the claimant's conduct as a reason for dismissal. Dismissal was a decision which was within the range of reasonable responses of an employer in these circumstances.

Holiday pay during suspension

276. The claimant said that the annual leave she had pre-booked which fell during her period of suspension should have been automatically treated as suspension on full pay rather than annual leave. If this is correct, it would mean that those annual leave days would have been accrued but untaken and due to be paid to the claimant at the time of her dismissal. The claimant claims unpaid annual leave on this basis.

277. We conclude that the employer was entitled to treat the claimant's absence as annual leave even though it fell during the suspension period. The claimant had booked the holiday before her suspension began. She did not ask to cancel it. Even during a period of suspension the claimant would be entitled to take annual leave. A day's annual leave would be treated differently to a day on suspension, for example the respondent would not be able to require the employee to work on a day's annual leave, whereas they would be able to require her to work on a suspension day.

278. We find therefore that the respondent was correct to treat the claimant's annual leave as taken during suspension. There was no underpayment in relation to holiday pay during the period of suspension.

Unauthorised deductions from wages

279. The claimant's pay claim in respect of statutory sick pay for April 2021 succeeds. This underpayment arose because the respondents counted a Monday and a Tuesday as waiting days for SSP purposes when the claimant was sick on the previous Saturday and Sunday. The Saturday and Sunday (together with the previous Friday) should have been treated as waiting days. Therefore the claimant is entitled to two days' pay at SSP rates, £19.17 per day, that is £38.34 in total.

280. The claimant's pay claim in respect of 22 to 25 March 2021 fails. We have found that she was paid in full pay for those days and the respondent did not recover pay for those days from the claimant as an overpayment.

Wrongful dismissal

281. The claimant claims wrongful dismissal in respect of notice pay. We have to consider whether the claimant's conduct as we have found it to have occurred was such that the respondent was entitled to dismiss the claimant without notice. We consider this objectively, not using a range of reasonable responses test.

282. We have found that the claimant accepted that substantial parts of her work had not been completed. Ms Osborne had to complete the claimant's work. We conclude that the claimant's conduct in relation to the exchanges with Ms Osborne on the payroll and year end activity and in relation to the requests for information and items while she was on sick leave was obstructive and uncooperative. She also refused requests to work in the Inspection Lab while her laptop was being repaired

283. We conclude that this conduct, viewed objectively, was of a sufficiently serious nature to amount to a repudiatory breach justifying summary dismissal. The volume and nature of the work the claimant had left outstanding was discovered by Ms Osborne when she was conducting year end activities. It was a serious failure on the claimant's part to leave so many tasks uncompleted for such a long period of time. This, together with the occasions on which she displayed an obstructive and uncooperative approach and the refusal of a management request to attend work undermined the trust and confidence between the employer and the employee to the extent that the respondent was entitled to dismiss her.

284. We find that the claimant was guilty of gross misconduct justifying summary dismissal. The complaint of wrongful dismissal fails.

Summary

285. The claimant's complaints of pregnancy discrimination and pregnancy detriment therefore succeed against the second respondent (the claimant's employer) in relation to:

285.1 Issue a: on 7 January 2021 the respondent presented the claimant with a new employment contract containing an earlier start time;

285.2 Issue b: the respondent asked the claimant on 23 February 2021 and 19 March 2021 to sign the new contract and told her that it would be assumed that she had agreed to it if she did not reply;

285.3 Issue g: on 8 March 2021 the respondent did not uphold the claimant's grievance in respect of the identification of the claimant's role as part time and sending the claimant a new employment contract;

285.4 Issue l: on 24 March 2021 the respondent informed the claimant that her salary would be reduced to the pro-rata equivalent of 20 hours per week;

285.5 Issue m: In April 2021 the respondent failed to pay the claimant her full wages.

286. The complaint of unauthorised deduction from wages succeeds in relation to the non-payment of 2 days statutory sick pay in April 2021 in the sum of £19.17 per day.

287. The claimant's other complaints fail and are dismissed.

288. The claims were presented on 16 April 2021 and 23 June 2021, after early conciliation against the second respondent from 15 March 2021 to 6 April 2021. Claims in relation to acts on or after 12 December 2020 in relation to claim one and on or after 20 February 2021 are in time.

289. The acts in relation to the complaints which succeeded took place during the period from 7 January 2021 and April 2021 and are therefore all in time.

290. A remedy hearing will be held to determine the award of compensation and any other remedy. Notice of that hearing and case management orders for that hearing will be sent separately.

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Employment Judge Hawksworth

Date: 21 June 2024

Sent to the parties on: 24 June 2024

For the Tribunal Office

Recording and Transcription:
Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Public access to employment tribunal decisions:
All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Appendix – list of issues (after withdrawal of complaints and amendment of dates by the claimant at the start of the hearing)

The Claims

1. The claimant is making the following complaints:
   a. Automatic Unfair dismissal – Section 99 ERA 1996;
   b. Ordinary Unfair Dismissal
   c. Pregnancy and Maternity Detriment – Section 47C ERA 1996
   d. Pregnancy and Maternity Discrimination – Section 18 EQA 2010
   e. Victimisation
   f. Unlawful deductions from wages
   g. Wrongful dismissal

Parties

2. At the relevant time was C employed by R1 or R2?

Time limits

3. For claims brought under the Equality Act 2010:
   a. Are any of the allegations in those claims out of time?
   b. If so, did they form part of a continuing course of conduct under Section 123(3)(a), the last act of which was in time?
   c. If not, would it be just and equitable to extend time under Section 123(1)(b), and if so, to when?

4. For claims brought under the Employment Rights Act 1996, including those referable to the MPL Regulations 1999:
   a. Are any of the allegations in those claims out of time?
   b. If so, did they part of a series of allegations, the last of which was in time?
   c. If not, was it reasonably practicable for the Claimant to have brought her claims in time?
   d. If not, within what period would it have been reasonably practicable for the Claimant to bring her claims?
   e. Did the Claimant bring her claims within that period?

Automatically Unfair dismissal

5. What was the reason (or, if more than one, the principal reason) for C's dismissal? Was it for a reason that is deemed to be automatically unfair?
   a. C alleges that she was dismissed for reasons connected with pregnancy, or maternity (section 99 ERA 1996 and regulation 20 MPL Regs 1999)
   b. The Respondent asserts that the Claimant was lawfully dismissed on grounds of conduct (section 98(2)(b) ERA), which was in no way related to pregnancy or PID.

Ordinary unfair dismissal

6. Was C dismissed for a potentially fair reason falling within section 98 of the ERA 1996? R contends C was dismissed for gross misconduct.

7. If the reason or principal reason for dismissal was misconduct, did R1/R2 act reasonably in treating that reason as sufficient to justify dismissing C?
   a. Did R1/R2 hold a genuine belief that C was guilty of the conduct alleged?
   b. Did R1/R2 have reasonable grounds for believing C was guilty of the conduct alleged?
   c. At the time R1/R2 held that belief, had it carried out a reasonable investigation?
   d. Did the respondent adopt a fair procedure / was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?
   e. Did R1/R2 act within the reasonable range of responses in treating the misconduct as sufficient reason to dismiss C?

Pregnancy/maternity detriment: section 47C ERA 1996 and reg. 19 MPL 1999

8. Was C subjected to the following conduct, and if so did it amount to a detriment?
   a. On / after 7 January 2021 C was presented with a new employment contract containing less favourable terms, in particular: reduced hours (20 hrs per week instead of 37.5 hrs per week); reduced pay (pro-rata for 20 hrs per week); and an earlier start time (8 a.m. instead of 9 a.m.).
   b. Thereafter C was repeatedly asked to sign the new contract and was told it would be assumed that she had agreed to it notwithstanding her express objections.
   c. On 12 February 2021 C was told by Mr. Griffin of R to take annual leave to attend her antenatal classes.
   d. In February 2021 Mr. Griffin refused to pay C overtime.
   e. R1/R2 refused to pay C's reasonable and legitimate work-related travel expenses.
   f. On 3 February 2021 C was refused entry into the office and was made to sit on the floor in the corridor.
   g. C's grievance in relation to the above matters was not upheld, save in two respects.
   h. In respect of the two matters which the grievance was upheld (£25 voucher and payment of travel expenses) R failed to comply and failed to provide the voucher and make repayment of the expenses.
   i. On / around 23 March 2021 Alina Osborne and Mr. Griffin of R attempted to contact C with work-related queries and requests (for example asking for her key fob and bank login passwords) when she was on sick leave which was connected with her pregnancy.
   j. From March 2021 Alina Osborne withheld information from C which prevented her from being able to carry out her role. In particular, Ms. Osborne refused to provide C with relevant paperwork relating to the hours worked by employees that should be charged to each of R1 and R2, and deleted all the financial backups for the previous six years.

k. From March 2021 R1 / R2 failed to provide C with a replacement laptop or other computer to enable C to carry out her role effectively.
l. On 24 March 2021 C was informed by Mr. Griffin that her salary would thereafter be reduced to the pro-rata equivalent of 20 hours per week. The pro- rata calculation of pay was also inaccurate in that it assumed her full-time salary had been based on 42.5 hours rather than 37.5 hours per week.
m. In March and April 2021 R1 / R2 failed to pay C her full wages.
n. In April / May 2021, C having raised the underpayment of her wages, Alina Osborne instructed Mr Griffin not to provide C with a breakdown of the payments being made to C.
o. In / around April 2021 R failed to conduct a suitable, sufficient and / or accurate risk assessment (as required by Management of health and safety at work regulations 1999 reg 19(3)).
p. In / around April 2021 C was required to attend work without adequate PPE or safety equipment when the work environment was unsafe, and was told she would not be paid if she did not attend.
q. From April 2021 C was required to attend work when the environment was unsafe and no maternity risk assessment had been carried out and was criticised and subjected to a disciplinary process when she refused to do so.
r. In April and May 2021 R1 / R2 criticised and subjected C to a disciplinary process.
s. In April and May 2021 R1 / R2 criticised and subjected C to a disciplinary process for failing to respond to work-related queries and requests when she was on sick leave which was connected with her pregnancy.
t. R1 / R2 required C to provide written responses to matters raised at the investigation meeting on 27 April 2021 within an unreasonably short time frame (3 days).
u. With effect from 4 May 2021 C was suspended.
v. C was dismissed on 14 May 2021.
w. R1 / R2 refused to pay C's Statutory Maternity Pay until required to do so by HMRC.

9. If so, was C subjected to this treatment because she was pregnant and / or had sought to take ordinary / additional maternity leave?

10. Has the Respondent shown that the reason for the treatment was not because she was pregnant and / or had sought to take ordinary / additional maternity leave?

Pregnancy and maternity discrimination – section 18 Equality Act 2010/sex discrimination – section 13 Equality Act 2010

11. Did the Respondent(s) treat the Claimant unfavourably by the conduct complained of in paragraph 14 above?

12. If so, was C subjected to that treatment during the protected period of her pregnancy, which commenced in or around November 2020 and ended on 18 August 2021.

13. Was C subjected to that treatment because of her pregnancy – section 18(2)(a)?

14. Equality Act 2010 and/or because of an illness resulting from the pregnancy – section 18(2)(b) Equality Act 2010?

15. Alternatively, was C subjected to that treatment because she was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave – section 18(4) Equality Act 2010?

Victimisation – section 27 EA 2010

16. Did C do a protected act? C relies upon:
    a. C's grievance dated 24 February 2021;
    b. C commencing ACAS early conciliation on 11 March 2021.
    c. C's presentation of a claim to the Employment Tribunal on 16 April 2021.

17. Did R subject the claimant to any detriments as alleged at paragraph (g) to (w) above.

18. If so, was this because the claimant did a protected act?

Burden of Proof Equality Act, section 136

19. Has the Claimant proved facts from which the Tribunal could properly and fairly conclude that the conduct was related to the protected characteristic?

20. If so, what is the Respondent's explanation? Does it prove a non-discriminatory reason for the conduct?

Unlawful Deduction of wages contrary to Section 13 Employment Rights Act 1996

21. Has C received all payments to which she was due?

22. C has not received a breakdown of the payments made to her since March 2021 and avers there may have been underpayments in relation to:
    a. Overtime
    b. Antenatal appointments
    c. Holiday pay
    d. Sick leave

Wrongful dismissal

23. It is accepted C was summarily dismissed by the Respondent.

24. Was C guilty of gross misconduct or did she do something so serious that the Respondent was entitled to dismiss her without notice?

25. If not, to what period of notice was C entitled?