EMPLOYMENT TRIBUNALS

Claimant: Mrs K Farmer

Respondent: Fresh Cut Video Ltd

Heard at: Reading in public in person **On:** 1, 2, 3, 4 December 2025

Before: Employment Judge McCooey

REPRESENTATION:

Claimant: Mr Okhiria, Consultant
Respondent: Mr Megara, Solicitor

JUDGMENT having been given orally to the parties on 4 December 2025 and reasons having been requested in writing by the claimant on 10 December 2025 in accordance with Rule 60(3) of the Employment Tribunal Procedure Rules 2024:

WRITTEN REASONS

Introduction

1. The final hearing in this matter took place in four days, having originally been listed for five. The claimant requested written reasons for her own record on 10 December 2025. The request was processed and forwarded to me by the Tribunal's administrative team on 29 December 2025. A remedy hearing is listed for 2 February 2026 by CVP.

2. By a claim form dated 3 May 2024, the claimant brought claims of automatically unfair dismissal; pregnancy discrimination and failure to deal with a flexible working request. The ACAS process was entered into between 24 February 2024 and 3 April 2024. The respondent filed an ET3 form and Grounds of resistance.

3. During proceedings, the claimant withdrew claims of direct sex discrimination, victimisation and wrongful dismissal. These were therefore dismissed upon withdrawal.

Procedure

4. I considered a 1097-page bundle. I heard oral evidence from the claimant and Mr Young in support of her case. For the respondent, I heard oral evidence from Miss Neil, Mr Pill and Mr Temple.

5. I considered the witness statement of each witness who gave oral evidence, and also witness statements prepared by Ms Singarum and Mr Steyn, for whom the respondent did not have cross-examination. We resolved an issue of without prejudice communication in some of the documents by agreement, along with some listing issues.

6. I heard oral closing submissions from both parties and received written submissions from the respondent which I considered before reaching my decision.

Issues

7. The issues in this case (as amended by the withdrawals and with original numbering) were agreed at a Case Management Hearing on 19 March 2025 before EJ George as follows:

1. Automatically Unfair dismissal

1.1 It is admitted that the claimant was dismissed.
1.2 Was the reason or principal reason for dismissal related to the claimant's pregnancy?

If so, the claimant will be regarded as unfairly dismissed.

5. Pregnancy and Maternity Discrimination (Equality Act 2010 "EqA" Section 18)

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

5.1.1 Invite the Claimant on January 29, 2024, to a disciplinary meeting highlighting purported concerns with her performance;
5.1.2 Assert that the Claimant had fallen short of required standards of performance;
5.1.3 On February 2 2024, lock the Claimant out of her work email and other devices, which meant that she could not access her documentation (including financial details and work related documents) and was prevented from speaking with the external HR in relation to the disciplinary meeting;
5.1.4 Disregard the claimant's fit note from their GP and expressed health concerns on February 5 2024;
5.1.5 Refuse the claimant the right to be represented on February 1 2024;
5.1.6 Dismiss the Claimant on February 19 2024.

5.2 Did the unfavourable treatment take place in the protected period?
5.3 Was the unfavourable treatment because of the pregnancy?

5.4 Was the unfavourable treatment because of illness suffered in that protected period as a result of the pregnancy?

8.Failure to deal with a flexible working request in a reasonable way (s.80G(1) ERA)

8.1 Was the claimant an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996 and, if so, from what date? The claimant alleges that she was an employee from 16 January 2023 onwards. The respondent states that the period from 16 January 2023 to 17 September 2023 was a period of self-employment during which the claimant was not an employee of the respondent. They admit that she was an employee from 18 September 2023 onwards.

8.2 Was the claimant an employee with at least 26 weeks' continuous service as at 17 January 2024? The claimant says that she was continuously employed from 16 January 2023. The respondent says that continuous employment started on 18 September 2023.

8.3 If so, did the claimant make a written application for a permanent change to her terms and conditions of employment within the meaning of s.80F ERA 1996 on 17 January 2024?

8.4 If so, did the respondent fail to deal with that application in a reasonable manner, in breach of s.80G(1) ERA?

8.5 If the claimant is successful,

8.5.1 should the tribunal order the respondent to reconsider the application for flexible working; and

8.5.2 what compensation under s.80I(2) ERA would be just and equitable for the tribunal to award to the claimant in all the circumstances?

The Law

A. <u>Automatically unfair dismissal (Section 99 of the Employment Rights Act 1996)</u>

1. Section 99 of the ERA says:

> *An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—*
> *(a)the reason or principal reason for the dismissal is of a prescribed kind, or*
> *(b)the dismissal takes place in prescribed circumstances.*
>
> *(3)A reason or set of circumstances prescribed under this section must relate to—*
> *(a)pregnancy, childbirth or maternity,*

2. Regulation 21 of the Maternity and Parental Leave Regulations also applies.

3. In determining the "principal reason" for dismissal, the Tribunal asks itself whether the claimant's pregnancy was the, "operative and substantial reason" for her dismissal.

4. No minimum period of qualifying service is required for this type of claim. Essentially, an employer can dismiss a pregnant employee, but it must be able to show that this is for a fair reason unconnected with her pregnancy. A dismissal for an "inadmissible" reason, such a pregnancy, cannot be rectified by following a fair procedure.

5. An employer must provide a woman with written reasons for her dismissal, whether or not she requests it and regardless of her length of service, where her employment is terminated during her pregnancy or maternity leave (section 92(4), ERA 1996).

6. In **Kuzel v Roche Products Limited [2008] EWCA Civ 380** the Court of Appeal held, in a whistleblowing context, that it is for the respondent to prove that it had a potentially fair reason for dismissing an employee, or to prove that the reason asserted by the employee was not the real reason.

B. Pregnancy discrimination - Section 18 of the Equality Act 2010

7. Section 18(2) EqA states, "*a person discriminates against a woman if in the protected period in relation to a pregnancy of hers, that person treats her unfavourably (a) because of the pregnancy, or (b) because of illness suffered by her as a result of it".*

8. Section 18(5) states:

> *"For the purposes of sub-section (2) if the treatment of a woman is an 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) 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 or*
> *(b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy."*

9. The protected period is the start date of the pregnancy (in this case starting November 2023) to the end of the claimant's maternity leave. Here there was no dispute that the acts complained of fell within the protected period because the events of her complaints took place in January and February 2023.

10. For a discrimination claim to succeed under Section 18 EqA, the unfavourable treatment must be because of the employee's pregnancy or maternity leave. In considering whether there has been pregnancy or maternity discrimination, the employer's motive or intention is irrelevant.

11. The test under Section 18 is whether the woman has been treated unfavourably, rather than the less favourable treatment test for direct discrimination under section 13. This means that a comparator is not required ie to compare treatment with a man.

12. The meaning of "unfavourable treatment" in the context of a disability discrimination claim was considered in **Williams v Trustees of Swansea University Pension & Assurance Scheme [2018] UKSC 65, [2019].** This case is authority for the proposition that "unfavourable" treatment is to be measured against an objective sense of that which is adverse as compared with that which is beneficial. As was held in the EAT by Langstaff P in **Williams**, *"treatment which is advantageous cannot be said to be "unfavourable" merely because it is thought it could have been more advantageous … Persons may be said to have been treated unfavourably if they are not in as good a position as others generally would be."*

13. The consequences of pregnancy for the employer, financial or otherwise, are irrelevant in considering whether there has been pregnancy discrimination.

14. The provisions of the EqA are supplemented by the Maternity and Parental Leave Etc. Regulations 1999.

15. The Equality and Human Rights Commission has also produced guidance on the EqA in the form of a statutory Code of Practice on employment.

16. Regarding detriment, Regulation 19 of the Maternity and Parental Leave Etc. Regulations 1999 and Section 47C of the Employment Rights Act 1996 make it unlawful for an employer to penalise or dismiss an employee for exercising rights afforded to her in relation to pregnancy, childbirth, maternity or maternity leave.

Burden of proof

17. Section 136 sub-sections (2) and (3) of the Equality Act 2010 contains the test in respect of the burden of proof. Various case law establishes guidelines regarding the application of this two-stage test.

18. In the case of **Igen Ltd and Others v Wong [2005] IRLR 258,** as approved in **Madarassy v Nomura International Plc [2007] IRLR 246, CA** and later approved in **Efobi v Royal Mail Group Ltd [2021] ICR 1263,** guidance regarding the two-stage test and the shifting burden of proof was established.

19. The first stage of the test requires the claimant to prove facts from which the

Employment Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an unlawful act of discrimination.

20. This requires an analysis of what inferences it is proper to draw based on the primary facts found by the Tribunal from the evidence in each case.

21. Where the claimant satisfies this part of the test, on the balance of probabilities, the burden of proof then shifts to the respondent to prove that the treatment of the claimant was in no sense whatsoever on the prohibited ground. If the respondent cannot provide such an explanation, the Tribunal must infer discrimination.

22. The switching of the burden of proof is set out in the Code at paragraph 15.34:

> *"If a Claimant has proved facts from which a Tribunal could conclude that there has been an unlawful act, then the burden of proof shifts to the Respondent. To successfully defend a claim, the Respondent will have to prove, on the balance of probabilities, that they did not act unlawfully. If the Respondents explanation is inadequate or unsatisfactory the Tribunal must find that the act was unlawful."*

23. In **Amnesty International v Ahmed [2009] ICR 1450** the EAT clarified that the subject of the Tribunal's inquiry is the ground of, or reason for, the employer's action, not his motive. A benign motive was irrelevant.

24. The central question is whether, objectively, the treatment complained of was on the ground of pregnancy or maternity leave. The protected characteristic does not need to be the only factor, simply a significant influence and it does not need to be conscious, as subconscious motivation is sufficient, if proved, **Onu v Akwiwu and anor [2014] ICR 571, CA**.

C. Failure to deal with a flexible working request

25. Section 80F Employment Rights Act 1996 reads:

(1)A qualifying employee may apply to his employer for a change in his terms and conditions of employment if—

(a)the change relates to—

(i)the hours he is required to work,

(ii)the times when he is required to work,

iii)where, as between his home and a place of business of his employer, he is required to work, or

(iv)such other aspect of his terms and conditions of employment as the Secretary of State may specify by regulations.

(2)An application under this section must—

(a)state that it is such an application, and

(b)specify the change applied for and the date on which it is proposed the change should become effective.

26. Section 80G Employment Rights Act 1996 reads:

(1)An employer to whom an application under section 80F is made—

(a)shall deal with the application in a reasonable manner,

(aza)shall not refuse the application unless the employee has been consulted about the application,

(aa)shall notify the employee of the decision on the application within the decision period, and

(b) shall only refuse the application because he considers that one or more of the following grounds applies [set out in 80G(1)(b(i-ix)] and

(b) may refuse the application only if—

(i)the employer considers that the application should be refused on a ground or grounds listed in subsection (1ZA), and

(ii)it is reasonable for the employer to refuse the application on that ground or those grounds.

Factual background

27. The respondent is a company offering video production and related services for businesses and educational institutions. It had been operating for around seven years at the time of these complaints. Mr Pill is the founder and director of the business, and also line-managed the claimant during the relevant period.

28. At the time she came into contact with the respondent, the claimant was living in South Africa working as an international consultant.

29. On 16 January 2023, the claimant began her role with the respondent as a remote worker while still living in South Africa. At this time, three consecutive contracts were entered into titled “Consultancy Agreement”.

30. There was a factual dispute about whether the claimant's status was that of an employee or of a self-employed consultant upon commencement of her role. The relevant disputed time period was 16 January 2023 to 17 September 2023. I did not consider it proportionate or sufficiently relevant to resolve that factual dispute in the context of these complaints, in particular, the flexible working request, for reasons outlined below.

31. On 18 September 2023, it is agreed that the claimant became an employee in the UK under a Skilled Worker visa employed by the respondent. Her role was for three days a week, and her job title was Video Editor/Operations Manager. A fuller job description for Home Office purposes was outlined in her visa application. She was also referred to as a 'project manager' and 'production manager' at times by the respondent's witnesses.

32. On 26 September 2023, the claimant is said to have given post-production work to a South African friend named Robin, costing the business £20,000–£30,000. It was agreed that the claimant mentioned Robin's name to Mr Pill. I do not find the cause of any financial loss to be a deliberate or blameworthy act in the context of events, nor did Mr Pill at that time, as in his statement he described it as, "an innocent mistake".

33. On 3 October 2023, the claimant joined the Oxford-based office, having arrived from South Africa to Reading. It was hoped by the respondent that she would move to Oxford and therefore have a greater physical presence in the office. Discussions were had between them about her commute and buying a car to assist in that.

34. Mr Pill says the claimant was getting distracted from her work at the time by Mr Young, which is likely true, as she acknowledged jokingly in messages to Mr Young that he was going to be a distraction in the office.

35. There was difference of expectation between the claimant and Mr Pill that had not been articulated directly: Mr Pill was expecting the claimant to manage Mr Young in the sense of giving him firm deadlines for his editing work; he expected this because of the claimant's CV and previous roles. The claimant did not accept that this was within her remit, based on her interpretation of her job description submitted to the Home Office.

36. On 24 October 2023, Mr Pill sent the claimant an invitation to her first probation review meeting entitled, "*Spoiler alert! You are doing great!".* He said this wording was intended to be encouraging rather than genuinely reflecting the quality of the claimant's work, and by the time of the meeting, other concerns had come to light that meant it was not true. I find when he wrote that sentence, he genuinely meant that the claimant was doing well, rather than it being a baseless reassurance.

37. The claimant received a bonus that month of £500, which Mr Pill describes as a welcome bonus and not linked to her performance, but rather to make up the extra £3,000 of her salary, as per their contract negotiations.

38. The claimant said it was not labelled as a welcome bonus, and she took it to reflect her performance. Similarly, the December bonus was not labelled as a Christmas bonus.

39. I accept Mr Pill's explanation for the bonuses, though he did not tell the claimant they were unrelated to her performance.

Probation review meeting

40. On 6 November 2023, a probation review meeting took place in a pub and was informal, as were all meetings between Mr Pill and the claimant. A key document was produced for that meeting, a table of prompts prepared by Mr Pill for his own use, which we considered at length.

41. Mr Pill accepts that he did not read out these items to the claimant verbatim or in the way they are logged down during the meeting; they are not, in that sense, accurate notes or minutes, and the claimant did not have sight of this document at the time or after the meeting.

42. A factual dispute arose regarding the extent to which all items were discussed at all, as per the table. I find that while Mr Pill may have had each item in mind, he did not present them as concerns to the claimant in the way that they read in the document. I find that this meeting had a similar informal tone to previous meetings, and the claimant did not come away thinking there were serious concerns about her capability or performance.

43. I find some discussion of Mr Young was had. Given what Mr Pill told me of his management style and wanting to be liked, I find this was unlikely to have been in a particularly direct way and it was not apparent to the claimant Mr Pill had a key concern related to Mr Young and the claimant's working relationship.

44. Ms Neil was a credible witness. She said that when she conducted her review of the dismissal decision, she had understood the table to accurately reflect what the claimant was told by Mr Pill at that meeting, contrary to what in fact took place. This was a genuine misunderstanding.

45. Some goals for the claimant are also mentioned in the document with a review period of six months.

Probation extension advice

46. On 24 November 2023, Mr Pill had a discussion with Amanda Pill, his mother who took on a Human Resources role at the time, about extending the claimant's probationary period and sought advice from Peninsula. Their concern is expressed in an email the same day to Peninsula:

> "*While KF works hard, she tends to focus on the administrative aspects of her role rather than the leadership elements.*"

47. I find that at this time, Mr Pill did want to extend the claimant's probationary period based on some of the concerns outlined in the table, though this was not communicated to the claimant as concerns sufficient to warrant such an extension and he did not mention it to her; I do not find that he was seriously thinking of dismissing the claimant at this point.

48. Peninsula advised that the clause referenced could be relied on only for a short period of time after the contractual probation period ended. The claimant's probation period was two months and due to end in November 2023.

49. That issue remained unresolved and no further action was taken at this stage by the respondent until the issue of probation was revisited on 16 January 2024.

Events of January 2024

50. The claimant had been on sick leave on 6 and 7 December 2023. She worked remotely between 8 to 16 January 2024 and was due to return to the office on 16 January for an important client call scheduled the next day.

51. On 16 January 2024, the issue of extending probation resurfaced because the claimant did not come in as planned, as she was still off sick.

52. I find Mr Pill tended to downplay his concerns to the claimant, giving the impression that things were fine with him when, in reality, they were not.

53. For example, on 16 January 2023 when the claimant told him she was unlikely to be better the following day (on 17 January 2024) but could still join the meeting, he replied: *"Hi Kaila, no problem – let's have a call at 11:30am and don't worry about the meeting with Said, Justin will cover it."*

54. Later that day, the claimant emailed to confirm she was not feeling well, possibly with, "*Covid or something picked up before leaving South Africa*". Mr Pill then replied: "*Sorry to hear you are unwell. Really hope you feel better tomorrow."*

55. He then texted Mrs Pill*: "Time to check about that probation on K and if we need to put a PIP in place to extend – not noticing/caring an emergency like that call and telling me about it today at 7:20am instead of last night – doesn't care about me at all."*

56. About this incident, Mr Pill said, 'it is what it is" and "Mr Temple could cover."

57. He also text Mrs Pill, "*Sounds like more sick leave to come*".

58. On reviewing Asana in preparation for the client call, Mr Temple said he noticed some improvements that could be made in how the claimant used it and did her role.

59. Mr Pill was in contact with Peninsula the same day in connection to concerns around the claimant being on sick leave and working remotely. The advice back from Peninsula that evening was to explore extending her probation:

> *"I would advise to have the conversation with the employee and see what the conversation with the doctor was. Once this is done send across to advice so we can assist further. If we have not had a probation review meeting with the employee, you can look to invite them into one and explain the reasons for having it now and you can see if she challenges".*

Pregnancy disclosure

60. On 17 January 2024, at 11.30am, the claimant had a Zoom call as planned in which she told Mr Pill she was pregnant. She was excited and the claimant said Mr Pill appeared to receive the news positively. She told him her GP advised her to work from home, and Mr Pill said that was fine.

61. I do not consider that Mr Pill in fact thought this was 'fine' based on his concerns about the claimant's remote working which are documented in the bundle, and his text to Mrs Pill.

62. At 12:34pm, the claimant sent a follow-up email in writing to confirm her pregnancy and her GP's advice to work from home:

> *"Hey Harry,*
> *As per our conversation earlier I just wanted to write this out to you to formalize as per the GP's instructions.*
> *I am pregnant and expecting to give birth at the end of July/early August 2024. I have a scan and blood test scheduled on Monday at 9am at Royal*
> *Berkshire hospital to confirm the more precise dating and viability of the pregnancy so we can take it from there.*
> *Because of my age and severe nausea and vomiting, the GP has recommended that I keep all stress and commuting low and work from home until my nausea and vomiting subsides (could be 6 weeks). They prescribed me meds to help, but all it does is make me drowsy and dehydrated. They have sent through the recommendation to work from home to their system, but it will only be written up in Feb and backdated to tomorrow.*
> *Thanks again for understanding. We will chat more tomorrow. After Monday's scan we will know more, and we can take it from there."*

63. The claimant remained on sick leave from this time but was able to work from home, as her fit note later outlined. The claimant's absence at the time was related to pregnancy, as evidenced by the GP sick note.

64. This email is also said to constitute the flexible working request by the claimant. Mr Pill did not reply to that email.

65. An oral conversation then took place between Mr Temple and Mr Pill, after which Mr Temple produced an email at 12.55pm outlining project management concerns, "*as discussed*:" Mr Temple was clear in oral evidence that Mr Pill did not mention the claimant's pregnancy to him in this call. I accept this; however I do find her pregnancy was on Mr Pill's mind at the time he made this call and at the time he was exploring the production management concerns which he asked Mr Temple to send to him in writing.

66. Mr Temple's says in the requested email, amongst other things, *"I think the project management side of things is falling slightly short at the moment" and "I suggest that you, me and Kaila sit down at some point and brainstorm what processes and procedures it would be helpful to introduce*." He ends, "*Hope that's helpful!"*

67. It does not read as disclosing serious concerns or that the blame lies solely with the claimant at this stage.

68. Mr Pill replies at 12.58pm: "*Thanks Justin, I agree! We can discuss in more detail soon."*

69. The client call then took place at 1.30pm, covered by Mr Temple.

70. Mrs Pill, having asked Mr Pill to approve the email, then contacted Peninsula at 20.47pm the same day, titled "Staffing issue". Extracts include:

    "We have consistently made it very clear to KF that the post is office-based with some work on location but managing the commute has been an ongoing challenge for KF...

    In the meeting today, KF advised Harry that she is pregnant and has some additional health challenges that will necessitate her working from home for the time being She has followed up the meeting with the email below which provides further details.

    KF provided other information in the meeting that is not in her email below regarding but not limited to the fact that she is planning to move to a part of Reading where it will be even more difficult for her to manage the commute to Oxford."

71. In oral evidence, Mr Temple was taken to notes from a meeting with Peninsula which said: "*Mr Temple will write a short report, we just need to brief what we want. To the effect of "I reviewed K's work on the project management tool and the associated tracking documents and it was full of holes, not easy to understand and didn't achieve the objectives."*

72. The same notes cite a list of performance issues from Mr Pill's notes and reflections gathered after disclosure of the pregnancy.

73. Mr Temple was credible in saying he himself was not directly told what to write about the claimant in his report, which I accept. Mr Pill's words do however

convey a sense of predetermination at this point and convey a sense of gathering evidence for dismissal.

74. On 23 January 2023, the respondent formally instructed Peninsula to assist in the upcoming probation review meeting that was planned.

75. On 23 January 2024, Mr Pill then emailed Mr Temple for further thoughts on the claimant's project management work as he was "*conducting a review*" of her work.

76. On that same day, the claimant is said to have downloaded information while on sick leave working from home. These files were presented in an Excel spreadsheet. Mr Pill described this as a "data breach" and "stealing data".

77. In his witness statement Mr Pill says: "*On 23 January 2024, I noticed that the Claimant had downloaded files to her personal laptop that contained highly confidential material relating to our internal processes.*"

78. Further data was said to be downloaded on 29 January 2024.

79. In oral evidence, Mr Pill said he first became aware for the data breach on 2 February 2024, the same day he denied access to the claimant's work account.

80. On 29 January 2024, the claimant was invited to attend what was titled a probation review meeting scheduled for the following day on 30 January 2024.

81. The claimant characterises this as a disciplinary meeting in her claims. While titled "Probationary Review Meeting", the invitation letter clearly indicated that a possible outcome was dismissal, it reads: *"I must advise you that the possible outcomes following this meeting include termination of your employment."*

82. It also warned: *"If you do not attend this meeting without good reason, the Peninsula Face2Face Consultant may proceed with this probationary review meeting in your absence."* The right to accompaniment was outlined in the letter. Despite being called the same type of meeting by the respondent, the tone and seriousness of this meeting was far different from that of the meeting in November 2023.

83. Based on the discussions with Peninsula before that meeting, I find that in reality, the respondent clearly viewed this meeting as a disciplinary hearing.

84. On 30 January 2024, the claimant asked for the meeting to be postponed, stating: *"I have just received a meeting request with a representative from Peninsula for a probationary review meeting at 3pm today and this is extremely distressing to see on top of my previous communication to you about my health concerns."* She had cited concerns for the health and wellbeing of her unborn baby. She also sought time to find someone to accompany her.

85. On 1 February 2024, the respondent wrote to the claimant stating that the "statutory maximum" for a postponement is "*five working days from the day following the originally scheduled meeting".* The claimant was told no further postponements would be granted and that if she failed to attend the rescheduled meeting, it would take place in her absence.

86. The meeting was then rescheduled to 6 February 2024. She was given the option to provide written submissions by 5pm on the date of the meeting.

87. On 2 February 2024, the claimant was locked out of her work email account and device. Mr Pill says this was due to the data breach discovered that day.

88. The claimant accepts downloading the data for work purposes and says it was usual for her to be permitted to use her personal laptop for work or at least never raised as a concern by Mr Pill who had knowledge of this.

89. In oral evidence, Mr Pill accepts he did not explicitly tell the claimant she should not use her personal laptop at work and that was to be assumed from the policies. The privacy policy relied on did not explicitly say personal laptops were not to be used, though that could arguably be interpreted.

90. Peninsula's advice to Mr Pill was that the data breaches and use of personal laptop were not serious concerns.

91. On 5 February 2024, the claimant submitted a GP fit note citing stress and pregnancy-related illness.

92. On 6 February 2024, the rescheduled probation review meeting took place without the claimant's attendance.

93. On 13 February 2024, Mr and Mrs Pill met with Peninsula to discuss its report.

94. On 14 February 2024, the claimant raised a grievance alleging discrimination by Mr Pill and a GDPR breach.

95. On 19 February 2024, the claimant was dismissed for poor performance and alleged misconduct by way of a termination letter.

96. On 13 May 2024, an appeal was conducted by Ms Neil, upholding the decision to dismiss her.

97. Mr Pill said in oral evidence that he was under stress at the time of these complaints and unsure what to do, which I accept.

Discussion

Automatically unfair dismissal

98. First, I consider what was the principle reason, in other words, the operative and substantial reason, for the claimant's dismissal. In this case, Mr Pill was the decision-maker.

99. The claimant asserts that the principal reason was her pregnancy. The respondent states it was for performance issues, and later data breaches characterised in evidence as akin to gross misconduct.

100. The respondent's case was that the claimant was incompetent in her role, as suggested by Mr Temple and Mr Pill. It was Mr Pill's case that he had significant concerns about her performance long before he learned of the claimant's pregnancy, and those concerns were the cause of her dismissal.

101. Against the respondent's narrative about her incompetency, the claimant points to evidence of positive feedback from Mr Pill, and the fact that she was not told about any serious concerns with her performance prior to her pregnancy disclosure. Nor was her probationary period ever in fact extended or a PIP implemented.

102. I give some weight to the two witness statements relied on by the claimant which confirm her professionalism and competence in her previous places of work. Whilst nor being privy to these complaints or this respondent, I do consider these witnesses corroborate the view that the claimant was overall a competent employee.

103. This is also consistent with Mrs Pill's view given to Peninsula that the height of the respondent's concern in November 2023 was that the claimant was "*working hard but lacking leadership qualities*". Mrs Pill may well have been "polite" but is unlikely to have said this if it was plainly untrue.

104. In terms of the weight I place on potentially discriminatory comments Mr Young says were made by Mr Pill previously, I only consider one relevant namely, the comment that maternity pay is "*unfair*".

105. It was clear from oral evidence that Mr Young and Mr Pill do not like each other, and that limits the credibility of statements either makes about the other. I also bear in mind Mr Young has his own ongoing discrimination claim against this respondent which could colour his evidence.

106. However, Mr Young did not strike me as someone who was overtly lying to fabricate the words of that comment. I note that regarding another comment by Mr Pill referencing the word 'alpha', Mr Pill initially denied this, saying it was not the sort of word he would use. However, he was then taken to a place where he had used the word 'alpha' in writing. I therefore find on the balance of probabilities that Mr Pill did make the comment regarding maternity pay being unfair. However, as it was one comment, likely made some time prior, I do not attach decisive weight to it and it is one point amongst many.

Timings

107. I remind myself that chronology and timings are not conclusive; a mere nexus in time does not equate to causation. However, I consider the timeline of events described in my findings relevant to the reason for Mr Pill's actions and decision to dismiss the claimant.

108. The claimant told Mr Pill that she was pregnant on the 17 January 2024. Only after this disclosure does Mr Pill appear to attach weight to the production management concerns raised by Mr Temple, asking him to note these in writing on two occasions. Mr Pill only sought to formally review the claimant's work on this point following disclosure of the pregnancy. The initial email itself from Mr Temple does not read as disclosing particularly significant concerns and his view was that any concerns could be remedied by 'brainstorming' with the three together.

109. The reference to Mr Pill planning to "brief" Mr Temple about what he wanted the report to contain does suggest that Mr Pill had an end in mind and was gathering evidence of performance concerns to use against the claimant.

110. On the 16 January 2024, the day before the disclosure, Mr Pill spoke to Peninsula about the claimant being on sick leave, which appears to have been triggered by her missing the client meeting. The advice back at this stage was to explore extending probation and nowhere does dismissal appear contemplated.

111. It is also relevant that Mr Pill's concerns prior to the disclosure, as voiced to Peninsula, were about sick leave and remote working, not the claimant's performance.

112. This was also true as at 17 January, when the respondent contacted Peninsula after the disclosure.

113. Mrs Pill writes: "*we have consistently made it very clear to [the claimant] that the post is office-based with work on location – managing the commute has been an ongoing challenge."*

114. At this time, the respondent was clearly unhappy with idea of the claimant not being physically present in the office as they would like and that was the key concern, not performance issues.

115. The email goes on to say: *"In the meeting today, Ms Farmer advised Harry that she is pregnant and has some additional health challenges that will necessitate her working from home for the time being."*

116. Pregnancy is explicitly mentioned in the context of the main concern, which is the post being office-based and of the claimant taking sick leave.

117. I therefore infer that the concerns about the role being office-based were significantly influenced and exacerbated by the disclosure of the pregnancy and

the claimant's current sick leave related to that pregnancy, which was set to last for at least 6 weeks.

118. Again, competency or performance issues are not mentioned in this second email to Peninsula; this narrative develops later, as mentioned.

119. The height of any performance concerns prior to that, as communicated to Peninsula on 23 November 2023, were the need to improve the claimant's "leadership qualities", stating she otherwise works hard. Again, an extension of probationary period was the expected next step for this, not dismissal.

Slack messages

120. Regarding other criticism of the claimant's performance, Slack messages were referred to with some emphasis by the respondent. But these were exchanged in August 2023 and so of limited value, being superseded by events and Mr Pill confirming that at that time, he was more concerned about the productivity of Mr Young, than the claimant, and nothing more came of it.

121. Similarly, the concern about the claimant handing work over to another person was in October 2023, some time before the dismissal, and treated as an innocent mistake at the time.

Asana

122. Another concern stated by the respondent as a key performance issue was the claimant's use of Asana. This was noted to be one of several goals to be working towards for the next six months following the Probation Review Meeting on 13 November 2023. Mr Pill said six months was an "arbitrary time". However, it does give the impression that the working relationship would be ongoing, at least for six months, notwithstanding this concern about Asana at that stage.

123. When taken to messages praising the claimant for inputting data on Asana, Mr Pill implied this was a small thing in the context of her role, and accordingly the praise could not be taken as evidence of her as doing a generally good job.

124. As mentioned, the concerns Mr Temple raised seem to have only been moved forward as a significant concern by Mr Pill after the pregnancy disclosure.

PIP/Probation extension

125. As mentioned, prior to the pregnancy disclosure, the agreed next step in terms of progressing any concerns about the claimant was to extend her probation and potentially put a PIP in place. This is evidenced explicitly by Mr Pill's text to his mother on 16 January 2024 and previous discussions with

Peninsula about extending probation. This would have included concerns about her failing to make the meeting and being absent.

126. It is agreed that no PIP was ever implemented, and I have found that the claimant was not formally told of Mr Pill's concerns prior to the disclosure. The Employee Handbook outlining the respondent's practice for performance issues, namely, issuing written warnings, etc. appears not to have been followed.

127. I consider that whilst Mr Pill did have some concerns about the claimant's performance prior to her disclosure of pregnancy, these were not of the serious nature he later presented, and the extent of action he was minded to take was to possibly implement a PIP and extend her probation.

Data breaches/laptop

128. In explaining why, following the pregnancy disclosure, a PIP did not happen but a dismissal did, Mr Pill relies on data breaches by the claimant and using her personal laptop for work. The data downloads are said to have taken place on 23 January and 29 January 2024.

129. Mr Pill said in oral evidence that he only became aware of the data breaches on 2 February 2024. This is consistent with the claimant being locked out of her work device and work emails that same day.

130. Assuming that date was merely an error, I consider that Mr Pill was worried about how the data may be used against him or the respondent generally, however, I do not consider it significantly influence his decision to dismiss because Mr Pill said he relied heavily on the advice of Peninsula regarding the dismissal, not making his decision until reading the report on 13 February 2024. Yet the advice on that point was it was not a serious concern unless the data had been used.

131. Further, if downloading data whilst working from home and using personal laptops was misconduct that could contribute to a dismissal, I would have expected that to be explicitly made clear in policies and communicated verbally to be credible.

132. I also consider, in any event, the disciplinary hearing and process to be well underway by the time of the planned meeting on 29 January 2024, with the reasons I have already discussed being the primary focus.

Dismissal

133. Documentary evidence suggests a greater deal of agency than Mr Pill suggests. For example:

> *"I want to give her the invite as late as possible."*

"if we can kind of wrap this up all in the next week or two…could we just close the book on that thing that might be the best way to approach it all.

"I think it might be a simpler process for everybody if she could just work from home for these last few days whilst she's with us". The adviser says *'that's completely your decision'* …discussions are then had about the meeting.

"Can we do it as late as the 6 February 2025?"

134. This does suggest the decision to dismiss the claimant was predetermined prior to the 6 February 2025 and prior to receiving the report from Peninsula. This undermines Mr Pill's credibility when it comes to looking at the real reason for the claimant's dismissal.

135. It also suggests an urgency to conclude the process, the reason for which was unclear, and also suggests Mr Pill had reached his decision to dismiss prior to 6 February.

136. The claimant asked for the meeting to be rescheduled for a further three weeks so that she could attend with a representative which was denied and it was instead stated that there was a "*5 day statutory limit"* for rescheduling.

137. Whilst three weeks in some contexts is a long time, I do consider it a reasonable period given the concerns she raised about her own health and that of her baby. This again is suggestive of Mr Pill having made his decision and wanting to implement it forthwith.

138. For all of the reasons, I therefore conclude that Mr Pill emphasised performance issues as a justification to dismiss the claimant, when in reality, her pregnancy and related sick leave was the principal reason for her dismissal.

Section 18 – Pregnancy discrimination

139. I first consider whether, on the balance of probabilities, the five acts of alleged unfavourable treatment listed at 5.1 in fact took place.

5.1.1 Invite the Claimant on January 29 2024, to a disciplinary meeting highlighting purported concerns with her performance.

140. I do find that the claimant was invited to attend a disciplinary meeting regarding alleged concerns with her performance, notwithstanding it was titled a 'probationary review meeting', for reasons listed in my findings.

5.1.2 Assert that the Claimant had fallen short of required standards of performance.

141. The respondent did assert that the claimant had fallen short of required standards (which seems a duplication to an extent of 5.1.2) in the context of the claimant's dismissal, and that was said to be their reason for dismissal.

5.1.3 On 2 February 2024, lock the Claimant out of her work email and other devices, which meant that she could not access her documentation (including financial details and work-related documents) and was prevented from speaking with the external HR in relation to the disciplinary meeting.

142. The respondent accepts it locked the claimant out of her devices. It says she could still communicate with external HR but acknowledges she could not access any documentation from her work devices, including work emails. I do not find she was actively prevented from speaking with the external HR regarding the meeting, as insufficient detail about that was before me.

5.1.4 Disregard the claimant's fit note from their GP and expressed health concerns on February 5 2024

143. The respondent accepts the meeting went ahead notwithstanding the claimant's request to postpone on health grounds and so I do find this happened.

5.1.5 Refused the claimant the right to be represented on February 1 2024.

144. The respondent did offer the claimant the right to be accompanied in its letter dated 29 January 2024. Whether this could be arranged in sufficient time to make it practical is an arguably different matter however, the right was recognised by the respondent. I therefore do not consider this to be made out.

5.1.6 Dismiss the Claimant on 19 February 2024.

145. It is agreed the claimant was dismissed.

146. It is agreed that the events described took place in the protected period.

147. The next question is whether the claimant has proved facts from which I could conclude, in the absence of an adequate explanation from the respondent, that the discrimination took place as alleged?

148. I rely on the findings and analysis I have referenced above under automatically unfair dismissal here. I consider they amount to facts from which it is appropriate for me to draw inferences that the reason for the claimant's dismissal was her pregnancy and pregnancy-related absence.

149. I bear in mind the chronology of events and the close proximity of the claimant's disclosure of her pregnancy with the escalation in concerns about her performance.

150. I bear in mind these concerns had never been formally raised with the claimant beyond the informal probation review meeting in the pub in November 2023. I bear in mind the comments made by Mr Pill in meetings with Peninsula and the summary of concerns conveyed by Mrs Pill that are at odds with the respondent's final narrative on why it dismissed the claimant.

151. I bear in mind the respondent's clear stance that they wanted the claimant to be physically present at the office at the time the claimant announced her pregnancy. I do consider, whether subconsciously or otherwise, that the claimant commencing sick leave because of her pregnancy materially influenced the respondent's decision to terminate her employment. It also explains why no PIP or extended probationary period was implemented, in contrast to the explicit plans of the respondent prior to the claimant's disclosure about her pregnancy.

152. The burden of proof then shifts to the respondent to prove that in no sense whatsoever was the decision to dismiss because of the claimant's pregnancy.

153. For the same findings and conclusions above, I do not consider the respondent has discharged this burden. The performance and conduct concerns raised by the respondent do not singularly or collectively amount to a convincing explanation as to why it dismissed the claimant for reasons unconnected to her pregnancy.

154. I also consider that the other acts of unfavourable treatment that took place prior to dismissal are inextricably linked with the dismissal decision itself, being connected with that process and the urgency with which Mr Pill wanted it concluded; accordingly, I consider they were also "because of" the claimant's pregnancy.

155. For these reasons, the pregnancy discrimination claim succeeds.

Flexible working request

156. This claim fails because the email sent by the claimant to Mr Pill on 17 January 2024 clearly fails to meet the statutory requirements set out in Section 80F ERA. For example, it does not say on its face is it is a statutory request for flexible working and does not specify the change applied for nor the date on which it is proposed the change should become effective. These points cannot be simply inferred.

157. I considered it disproportionate, having regard to the overriding objective, to resolve the issue of the claimant's employment status at the relevant time, given these clear defects, as even if an employee, the claim would have failed for these reasons.

Conclusion

158. The claimant's claim for automatic unfair dismissal on the grounds of pregnancy succeeds, as I conclude that her pregnancy and related sick leave was the principal reason for her dismissal. Relying on the same core findings, the claimant's pregnancy discrimination claim succeeds as the claimant was able to establish facts from which I drew inferences that the reason for dismissal was her pregnancy, and related leave. The respondent failed to discharge its burden of proof once shifted, for the reasons outlined above. The flexible working request fails as it does not meet the requirements of Section 80F(2) ERA. The remainder of the claims are dismissed upon withdrawal.

Approved by:

Employment Judge McCooey

Date: 28 January 2026

Judgment sent to the parties on:

28 January 2026

For the Tribunal:

Note

Public access to employment tribunal decisions
Judgments (apart from judgments under rule 52) 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.