EMPLOYMENT TRIBUNALS

Claimant: Mrs L Llewelyn

Respondent: UK Industrial Controls Ltd

Heard at: Manchester **On:** 27-29 February 2024

Before: Employment Judge Phil Allen
Ms K Fulton
Ms B Hillon

REPRESENTATION:

Claimant: In person
Respondent: Ms Peckham, solicitor

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The complaint of direct discrimination on grounds of pregnancy is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant was employed by the respondent as an Administrator from 1 March 2022 until she resigned on 23 September 2023 (effective on 23 October 2023). The claimant informed the respondent that she was pregnant on either 11 or 16 September 2022. She alleged that she was treated unfavourably because of her pregnancy in a number of ways set out in the list of issues. She commenced maternity leave, from which she did not return, on 22 May 2023.

Claims and Issues

2. A preliminary hearing (case management) was conducted on 10 August 2023. At the preliminary hearing a List of Issues was identified and included as an annex to the case management order. Neither party raised any objections to that list of issues as they were told they could do in the case management order; they were to raise any points if they believed the list was not accurate or complete within fourteen days

of that order. At the start of this hearing, it was confirmed with the parties that those issues remained the ones which needed to be determined and both parties confirmed that they were. Those issues are confirmed below.

3. After we had taken the morning to read the documents and at the start of the first afternoon, we raised a concern that it appeared that the list of issues might not address all of the complaints which appeared to have been raised in the claim form. When we asked the claimant, she confirmed that she did wish to pursue a claim that the respondent bringing misconduct charges was also an act of unfavourable treatment because of pregnancy (something which did not appear in the list of issues). The respondent's position was that leave to amend was required if that issue was to be considered. As the claimant was not legally represented, we gave her the opportunity to apply for leave to amend and also gave the respondent's representative the opportunity to explain her objections to the amendment sought. We then adjourned briefly before returning and informing the parties of our decision on the application for leave to amend the claim, and we provided summary reasons. Those reasons are confirmed below.

4. The additional information included in box fifteen of the claim form stated that part of the complaint was gross misconduct charges. We raised the potential issue, based upon what was said in that document. The claimant had subsequently provided an amended claim form, but she had not been given leave to amend her claim to include what was said in the amended claim form. In her verbal application, the claimant sought to amend the claim to include a claim that bringing gross misconduct charges that were calculated, was an allegation of unfavourable treatment. The respondent objected, pointed out that the allegation put forward verbally was not written in the claim form or the amended form, and referred to the case of **Selkent Bus Company** and the things which needed to be considered for an amendment application set out in the Judgment in that case. In considering the application made, we considered the factors mentioned in that case. In particular we noted that, applying the balance of prejudice, if an amendment was refused the potential prejudice to the claimant was significant as she would be unable to pursue a potentially meritorious claim; and whilst there was prejudice to the respondent in the late amendment, the prejudice was limited because the respondent had in fact prepared for the hearing with evidence about the potential issue. We also noted what had been alleged in the claim form and the guidance (from case law) that we should not slavishly adhere to the list of issues. On that basis, we refused the application to amend the claim in the way in which the claimant asserted verbally, but we granted the application to amend (if leave to amend was required) to include the allegation that bringing gross misconduct charges was an allegation of unfavourable treatment because of pregnancy (as had been stated in the claim form). That was accordingly added to the list of the issues we would determine.

5. The issues identified were, accordingly, as follows:

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

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

1.1.1 Not carrying out a pregnancy risk assessment, including a lone working risk assessment.

1.1.2 Failing to review, consider and act upon the risk assessment competed by the claimant and given to Mrs Chadwick on 16 September 2022.

1.1.3 Requiring the claimant to undertake increased lone working during her pregnancy.

1.1.4 Failed to hold the claimant's second appraisal on 14 September 2022 and failed to provide management training to her after she informed them she was pregnant on 11 September 2022.

1.1.5 In December 2022, Mrs Chadwick and Mr Cadman failed to act upon and respond to the claimant's complaint that another employee had been repeatedly stealing her lunches on at least 15 occasions.

1.1.6 Mrs Alexandra Chadwick on Friday 10 February 2023 placed undue pressure on the claimant to provide maternity documents by Monday 13 February 2023.

1.1.7 Mrs Alexandra Chadwick on Friday 10 February 2023 required the claimant to list daily all tasks she was carrying out and over the following six week period pressured the claimant constantly for the detailed task lists.

1.1.8 In February 2023 prevented the claimant from taking her dog to work as had been previously agreed.

1.1.9 Blocked the claimant from using the respondent's software which was needed to carry out her role.

1.1.10 Reassigned the claimant's tasks and instead required her to do the [menial] task of moving files.

1.1.11 Locked the claimant out of essential electronic files without good reason.

1.1.12 Bringing gross misconduct charges.

1.2 Did the unfavourable treatment take place in a protected period?

1.3 If not, did it implement a decision taken in the protected period?

1.4 Was the unfavourable treatment because of the pregnancy?

1.5 Was the unfavourable treatment because of illness suffered as a result of the pregnancy?

2. Remedy

2.1 What financial losses has the discrimination caused the claimant?

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

Procedure

6. The claimant represented herself at the hearing. Mrs Peckham, solicitor, represented the respondent.

7. The hearing was conducted in-person with both parties and all witnesses in Manchester Employment Tribunal.

8. Three bundles of documents were prepared in advance of the hearing. The core bundle ran to 422 pages. Where a number is referred to in brackets in this Judgment, that is reference to the page number in the core bundle. A supplemental bundle was provided by the respondent, to which limited reference was made, which ran to 309 pages. A third small bundle containing a transcript was also provided, but no reference was made to its content during the hearing. We read only the documents in the bundles to which we were referred, including in witness statements, or as directed by the parties.

9. The claimant provided a witness statement for herself and one for Ms Danielle Howard. Ms Howard did not attend the hearing and therefore her evidence could only be given limited weight. It was notable that the claimant's statement was very short and did not provide any evidence about some of the things which the claimant alleged. During cross-examination, the claimant referred to not understanding that the statement needed to include all of her evidence. The case management order made following the hearing on 10 August 2023, in the section which addressed witness statements (14), expressly stated that it was important that the statements contained all the facts which the witness could provide which were relevant to the case. After confirming the accuracy of her witness statement, the claimant was offered the opportunity to add anything to her evidence which she had omitted to mention, and she referred only to the WhatsApp messages in the bundle in general terms. In any event, during cross-examination, the respondent's representative addressed each of the allegations of unfavourable treatment (as listed) with the claimant and the claimant gave evidence about those matters in the answers provided.

10. The Tribunal heard evidence from the claimant, who was cross examined by the respondent's representative, before being asked questions by the Tribunal.

11. The following each gave evidence for the respondent, were cross examined by the claimant, and were asked questions by the Tribunal: Mrs Aleksandra Katarzyna Chadwick, operations director; Mr Garry Chadwick, managing director; and Mr David Cadman, director.

12. After the evidence was heard, each of the parties made submissions (written submissions being provided by the respondent). Judgment was reserved. This document provides the Judgment and the reasons for it.

Facts

13. The claimant was employed by the respondent as an administrator from 1 March 2022. The respondent is a small business (in the response form it said it had nine employees, albeit it was suggested in evidence that there might have been fewer employees at the relevant time). At the time that the claimant was recruited, Mrs Chadwick (operations director) was due to commence a period of maternity leave shortly afterwards. There were no other administration staff employed by the respondent. The other employees were senior directors, or managers, or engineers. The claimant was the only person permanently working only from the respondent's offices, albeit that other staff would visit and undertake some work at the premises, Mr Cadman would unlock and lock the premises and work there for some of his time, and Mr Chadwick would work from the premises for some of his working time. The claimant knew that there would be some lone working required when she accepted the role.

14. We were provided with the claimant's contract of employment (80). The respondent also has a handbook (87) which included a section on maternity rights (94), an equal opportunities and discrimination policy (118), a policy on email and internet use (122), and a grievance procedure.

15. The respondent shared its premises with another company, Tate Systems. We were provided with a floor plan (416) which showed the office areas occupied by the respondent, the shared workshop space, and areas occupied by Tate Systems. The evidence which we heard was that there were always employees of Tate Systems on the site when the claimant was present.

16. The claimant's employment went well. We were shown a performance review dated 26 May 2022 (403) completed by the claimant and Mr Chadwick. That was a positive review. On the form it was recorded that leadership and team motivation were an opportunity, and the words leadership opportunity were written in the column which recorded the specific areas the reviewee would like to develop. The evidence of Mrs Chadwick was that there was the possibility that the respondent could recruit an apprentice or assistant to the administrator, in the future after she personally had returned from maternity leave (which could have resulted in the claimant having management responsibilities). There was no timescale recorded on the review document and it was clear from Mrs Chadwick's evidence that she had not envisaged that arising in the short term. There was no one employed by the company at the relevant time who could have been managed by the claimant.

17. The Tribunal had the benefit of being provided with a WhatsApp chat which showed all the WhatsApp messages exchanged between the claimant and Mrs Chadwick throughout the claimant's employment. The chat was very lengthy and recorded exchanges many times a day and exchanges about matters outside of employment as well as work-related matters. There had clearly also been telephone conversations between the claimant and Mrs Chadwick, meetings, conversations in the office, and also emails. However, it was clear that a major channel of communication was the WhatsApp chat. There was no dispute that the chat was accurate and complete. It was also clear from the chat that the claimant and Mrs Chadwick were friendly and amicable, with the chat including details about things such as a spa day and details about their children (the claimant offered a play date).

It was Mrs Chadwick's evidence, that the claimant and her husband had visited her house for a barbeque, and she had complimented the claimant on her parenting.

18. The claimant was provided with a significant amount of training by the respondent (296). The claimant did not dispute that she was provided with training for the role she undertook. During her cross-examination, it became evident that she drew a distinction between training which supported her role; and training which would have enabled her to fulfil a different role or a managerial role (the lack of which was the source of her complaint).

19. At some point in 2022, Mr Chadwick agreed that the claimant could bring her dog to work during the day. The claimant explained the circumstances in which that came about. She lived locally, the dog was old, and she was concerned about leaving him all day. The dog had visited the premises and had been liked by those he met. There was no evidence that the agreement that the claimant could bring the dog to work was in any way related to lone working or pregnancy, albeit that it was self-evident that where the claimant spent time alone in the office she would find the dog being there comforting.

20. The claimant was trained in undertaking risk assessments. The claimant undertook a pregnancy risk assessment for Mrs Chadwick on 3 May 2022 (417). She identified hazards arising from occupational stress, mental or physical fatigue, travelling, working with computers, and/or standing or sitting for long periods. Some limited control measures were identified.

21. On 16 September 2022 the claimant completed her own pregnancy-related risk assessment (136). It was the claimant's evidence that she used Mrs Chadwick's risk assessment as a base. However, notably, the hazards identified were different. The hazards identified were identified as arising from shift work or working alone or at night, working with computers, and/or standing or sitting for long periods. The control measures were unchanged from those identified for Mrs Chadwick. The box, which was intended to be a discussion record, said simply that it was all of the above. The form was apparently signed by Mrs Chadwick, but in fact the signature on the document had been placed there by the claimant. The claimant had also signed it.

22. The claimant emailed the risk assessment to Mrs Chadwick on 16 September at 10.22 (298). She said "*I've attached a copy of the risk assessment (I've already put your signature on) for my pregnancy…. Maybe we could/should schedule a meeting over the next few months to get a plan in place?*". No formal meeting took place to discuss the claimant's risk assessment, or the health and safety risks identified for her as a pregnant employee. It was Mrs Chadwick's evidence, that she considered the risk assessment herself and did not disagree with what the claimant had included, and the risk assessment was discussed with the claimant, but not in a formal way. Mrs Chadwick did not update the risk assessment. There appeared to have been no discussion specifically about the claimant lone working, and the added risks that might have arisen from doing so because she was pregnant.

23. There was a dispute between the parties about when it was that the claimant told Mrs Chadwick that she was pregnant. It was the claimant's evidence (albeit not referred to in her brief witness statement) that she telephoned Mrs Chadwick on

Sunday 11 September and told her she was pregnant. The claimant said that was on the same day when she telephoned others to tell them. She said Mrs Chadwick told her to get it confirmed by the Doctor first, as she had not at that stage had confirmation from a medical professional. Mrs Chadwick denied that was when the claimant had told her. It was Mrs Chadwick's evidence that she was first informed by the claimant in a telephone conversation at approximately 10 am on 16 September. Mrs Chadwick described how they had spoken after Mrs Chadwick had dropped her child at nursery and had the time to telephone.

24. In the WhatsApp chat, there was no mention whatsoever of the claimant's pregnancy, or of her having spoken to Mrs Chadwick about it, prior to 16 September 2022. There were conversations about work issues on 14 and 15 September. At 8.08 on 16 September the claimant messaged to say (357):

> "*Morning aleks.. I could do with chatting to you today could you give the office a call when you get a min xx*"

25. At 8.19 Mrs Chadwick responded to say she would call after nine, after the school run. The claimant replied, "*No probs xx*".

26. At 11.34 Mrs Chadwick messaged to say, "*Your first appointment whoop whoop!!*".

27. We found the WhatsApp messages to be entirely consistent with Mrs Chadwick's evidence about when she was informed about the pregnancy. The claimant did not provide any other explanation for the call sought that morning. We found the absence of any reference to the pregnancy in the messages prior to 11.34 on 16 September to not support the claimant's evidence about when she told Mrs Chadwick, particularly in the light of the content of the messages generally and the fact that they were not purely of a professional and work-related nature. As a result, we found that the claimant first informed the respondent about her pregnancy on 16 September.

28. There was a dispute about whether or not a second appraisal meeting took place with the claimant on 13 September 2022. The claimant's evidence was that no meeting took place (albeit she did not refer to this at all in her witness statement). Mrs Chadwick and Mr Cadman said in evidence that they were personally present at the meeting. There was a performance review document prepared for the meeting and there was no dispute that almost all the content of that document was the claimant's (408). There were no reviewer comments and neither of the reviewers signed it. A date on the fifth page (of 13 September 2022) (412) was clearly included in a different pen and in what appeared to be different handwriting. It was Mrs Chadwick's evidence that she wrote the date on the page, it was her handwriting, she had done so during the appraisal meeting, and she explained how the "*2*" was written because it had corrected a "*1*" she had written in error. There was no dispute that the claimant saved or downloaded the form on 16 September (414).

29. On the issue of the second appraisal meeting, we preferred the respondent's evidence that it took place on 13 September, to the claimant's evidence that it did not. We noted that the claimant did not include in her witness statement any evidence that the meeting did not take place, which in our view reduced the

credibility of her assertion in the hearing that it had not. We preferred the evidence of Mrs Chadwick and Mr Cadman to that of the claimant, as we found both of their evidence to be genuine and credible (and it was their evidence that the meeting had taken place). We found Mrs Chadwick's evidence about dating the document to be entirely credible and accorded with the date on the document being in different handwriting and the way it was written. We also found that the fact that the claimant had saved or downloaded the completed review document on 16 September, entirely supported the respondent's case that the meeting had taken place, as we did not believe that the claimant would have done so if the meeting had not taken place.

30. In terms of what was said in the document, the claimant recorded that she still believed that learning/undertaking the banking would be beneficial. Leadership and team motivation were described as an opportunity. There was no reference to management. The agreed action plan was to switch to one hundred percent use of Odo (a new system being introduced by the respondent) and the proposed action was to complete training practice (recorded next to the entry regarding Odo).

31. There was no dispute that, subsequent to the date when the respondent contended the review had taken place, the claimant did undertake training on the Odo system. She was dismissive of that training in evidence because she said it was training required for her job.

32. The claimant alleged that her lone working increased during her pregnancy. She did not say that in her witness statement, but she did allege it during cross-examination. There was no explanation of any measure or quantified amount for the way in which it was she said it increased. The respondent denied that it increased. It was the respondent's case that lone working had been discussed at the outset and the extent of it remained consistent throughout the claimant's employment, at least after Mrs Chadwick commenced maternity leave. Some limited evidence was heard about some work-related travel which Mr Chadwick had undertaken, and it appeared that, clearly, he would not have attended the office during the dates when he was working/travelling abroad.

33. An apprentice was employed for a short period of time. As a result of lateness and absence, his employment was ended by the respondent. The claimant contrasted the process followed for that apprentice with that later followed for her own circumstances. She said he had more meetings before he was dismissed. Mr Cadman confirmed that he did have more meetings before dismissal (three) than the claimant had prior to suspension. Mrs Chadwick's evidence was that the circumstances were fundamentally different.

34. During the time when the apprentice was employed, the claimant's allegation was that her lunch was stolen on at least fifteen occasions. The claimant said she raised it as an issue twice, in verbal conversations. The respondent's witnesses denied that she did so. In the lengthy WhatsApp chat provided, there was a reference to a breakfast, but no mention of lunches being stolen. It was the claimant's evidence that she believed it was the apprentice who had stolen her lunches and the lunches stopped being taken before he left, in part because she stopped bringing in food which she needed to leave in the fridge. Some evidence was provided about an occasion when someone else had eaten a salad which was

not their own, but in cross-examination the claimant's evidence was that did not relate to her because she did not bring in salads for lunch.

35. On 10 January 2023 Mrs Chadwick sent the claimant a letter about maternity and asked the claimant to provide her MAT B1 form (139). She said she would need it in due course and said she understood it would be provided around approximately week twenty of the pregnancy. It was clear from Mrs Chadwick's evidence, that the wording used was from a template letter provided to her by the respondent's advisors.

36. In the same letter, the following paragraph was included regarding risk assessments. As with the earlier paragraph, the wording appeared to be from a template. The meeting referred to had been due to take place in March 2020 and was moved forward to 27 February, after the claimant asked for it to be moved forward. The meeting did not in fact take place (because of the events described below). The letter said (139):

> "*As your employer I want to make sure that your health and safety as a pregnant mother are protected while you are working, and that you are not exposed to risk. We have already carried out an assessment to identify hazards in our workplace that could be a risk to any new, expectant, or breastfeeding mothers. Now you have told me you are pregnant I will arrange for a specific risk assessment of your job so that we can then discuss what actions to take if any problems are identified. If you have any further concerns, following this assessment and specifically in relation to your pregnancy, please let me know immediately"*

37. On 10 February, in the WhatsApp chat, Mrs Chadwick asked the claimant to write down the tasks she was completing. The message (399) referred to trying to see if things could be done by the engineers or whether help would be required while the claimant was off. Mrs Chadwick explained why she wanted the list when giving evidence. There was no other reference to the need for a list in the chat. It was the claimant's evidence that she provided the list. The claimant also alleged that the list was requested on further occasions in emails, but no emails which contained any such requests were provided.

38. In the same message on 10 February, Mrs Chadwick also asked the claimant whether she had got her maternity certificate. A short WhatsApp discussion followed, because the claimant had not done so. Mrs Chadwick said:

> "*I would rather have it sooner rather than later, legally as per that letter we need to have it think be end of next week? It says online your midwife and your doctor can fill in application you as soon as you're pregnant and then you get a digital certificate emailed to you as soon as they've done the application so shouldn't take long at all, if you ask them about in on your last visits maybe they've done it already?"*

39. The claimant responded to that message less than an hour later and said:

> "*I have emailed you the MAT B1 Form. The midwives tell me to let you know though that legally, this form can be handed in up to 12 weeks after the baby is born x"*

40. Mrs Chadwick responded:

> "*Ok but you can't get SMP without it? So why would you do that"*

41. The claimant and Mrs Chadwick's messages then continued very shortly afterwards as follows:

> *"Well I wouldn't I've already emailed it to you x"*
>
> *"I know so midwife says that to people that's not very good then lol. I want to get it to our accountant so he can put in writing what you'll be getting and I can draft next letter for you"*
>
> *"I think its because I've had such trouble getting hold of it and every person I was speaking to was profusely telling me to wait til March so I did the only thing I hadn't done.. went and stood in the middle of the midwifery and asked everyone who walked by for my MATB1 form I think they were trying to make me feel silly. They failed cz I got it!"*

42. As recorded, in the message detailed at paragraph 38 above, Mrs Chadwick referred to "*legally*". She accepted, in cross-examination, that may not have been the correct word to use. It is relevant that, whilst Mrs Chadwick speaks English well, it is not her first language.

43. In early February 2023, a dog had an accident in the premises where the claimant worked. It was not disputed that occurred. The claimant's evidence was that it was not her dog, as he had not been in the office on the day(s) when it occurred. Mr Chadwick accepted, in cross-examination, that it had not been the claimant's dog who had fouled the premises.

44. A director of Tate Systems had also been bringing his dog to work. On 15 February, the claimant was informed in the WhatsApp chat (400) that she was not allowed to bring her dog to work again, as the lads had found dog wee and poo in the workshop that morning. The claimant responded on the chat by saying it wasn't her dog, and she was not happy because her dog had done nothing wrong. She said it was unfair and an overreaction.

45. It was Mrs Chadwick's evidence to the Tribunal that she and Mr Chadwick had discussed the issue initially and decided that the claimant should not bring her dog to work anymore. Tate Systems (or at least one of that company's directors) were the respondent's landlord for the premises. There was also a conversation between Mr and/or Mrs Chadwick and two senior members of Tate Systems, and it was agreed that dogs should not be brought into the shared workshop.

46. In the WhatsApp chat with the claimant, Mrs Chadwick explained in part that the reason why the claimant was not to bring her dog to work was because Mrs Chadwick could not tell Tates that they could not bring their dog to work, if the claimant's dog was there.

47. It was also Mr and Mrs Chadwick's evidence that they thought about insurance and the risk to the equipment in the workshop (which would not be covered if damaged in that way), as well as the risk to users of the premises, something they had not considered before. Mr Chadwick emphasised the valuable equipment in the workshop and the risk identified (and he said that with hindsight he should not have allowed the claimant to bring her dog to work at all). It was not entirely clear when that was considered.

48. It was the evidence of Ms Howard, that the relevant director at Tate Systems continued to bring his dog into Tate Systems' office space after the dog-ban. Mrs Chadwick did not know whether that was true, but drew a distinction between what Tate Systems chose to do with their own office space, and the agreed dog-ban in the shared workshop space.

49. Mrs Chadwick identified the dog issue as being the moment when the relationship with the claimant changed. The claimant did not agree, contending it had changed at an earlier date. In her grievance document (203), dated 7 March 2023 but handed to the respondent on 15 March, the claimant recounted a number of issues but said herself of the dog issue, "*This brings me onto the point that has caused me the most stress: the catalyst for what can only be described as a mental and physical crisis on my part*". Mrs Chadwick denied that the decisions made about the claimant's dog had anything to do with pregnancy.

50. On 17 February, the claimant was blocked in the office by employees of Tate Systems leaning heavy boxes in the office doorway. She could only get out by physically shoving them out of the way. She needed to do so to use the toilet. The claimant messaged Mrs Chadwick about it. Mrs Chadwick responded by highlighting the lack of common sense and saying that was not good at all (400).

51. The respondent transferred its operations from one or two systems used, to a new one. Whilst doing so, it was decided that everyone should stop using the previous system(s), except for Mrs Chadwick. This included all employees and directors, including the claimant. It had a significant impact upon the claimant's ability to work for the time when the access was stopped, because she was largely computer-based. It was Mrs Chadwick's evidence that it was expected to last a couple of days.

52. The respondent was also due to have an ISO reaccreditation process. We were provided with some emails which showed that it was due at that time. It was the evidence of the respondent's witnesses that such accreditation was very important (and ultimately took a significant amount of time). During the time when the systems were down, the claimant was asked to begin collating and, where required, redating, the documents required for the process. The claimant and Mrs Chadwick exchanged WhatsApp messages about it on 22 February 2023 (401). The claimant asked some questions and Mrs Chadwick responded to them.

53. On 23 February 2023 the claimant sent a WhatsApp message to Mrs Chadwick which said she could not find the personnel file documents and she asked what had happened to them. She was informed there had been a breach of security a few weeks before and the respondent had been asked to protect sensitive data. Further messages were exchanged about the breach and the implications of it. The

messages concluded with the following exchange after Mrs Chadwick identified that she had received an email that the claimant's bank details had been changed:

> "*Yes I deleted them. I don't know what's going on im having little to no explanation on anything. I'm totally stressed and I'm not doing mh job and I don't know why"*
>
> *"Little to ono explanation on anything? Why do we need to explain about security breach, it's been dealt with so I can't see why we need to worry you about that? I've explained I'm moving stuff to Odoo I don't want you involved at this stage and I can't monitor what has been done in Quickbooks it's just easier for one person to deal with it. Plus this way I can actually see how much stuff there is to do and if we can deal with everyday tasks without getting admin cover for your maternity. What are you stressed about?"*

54. The claimant sent an email to Mr and Mrs Chadwick at 10.50 am on 23 February (162). The email referred to the fact that there were things stopping the claimant from working, including that the access to QuickBooks had been denied. She referred to the security breach and described being increasingly stressed by the situation. She said "*This series of events has led to me being redundant in my position as my daily tasks have been reassigned to Aleks. I'm feeling isolated and frankly, pushed out at the moment. There are other elements of this position that I feel has arose that I'm becoming increasingly desperate to discuss. The toll this is taking on me simply isn't worth the potential risks I face. As I explained the issues that need discussing do not end with what has been said in this email. I'm going home today and tomorrow: feel free to use my holidays for these days. I will come in for the meeting on Monday*". The letter contained no reference to the claimant's pregnancy or to anything which the claimant identified as being connected to her pregnancy.

55. The claimant left her workplace on the morning of 23 February after the above messages. It was the respondent's evidence that she packed up her belongings and took them with her (the claimant said only that she packed up as she usually did). The claimant did not attend work the following day.

56. A breach of security had been identified by the respondent. They asked their IT consultant to review their systems. The IT consultant identified that some information was accessible to all when it should not have been. It was Mrs Chadwick's evidence that all employees could access personnel files. Unsurprisingly, the respondent was advised to restrict access to those files. All employees, including the claimant, had their access restricted. It was the claimant's evidence that she required access to personnel files to undertake some of her duties.

57. It was identified that the claimant had both used the respondent's systems and (in some way) downloaded to the respondent's systems a significant amount of documentation during her employment. The supplemental bundle provided to us recorded the documents which were identified by the respondent. We were also provided with other printouts which showed the documents identified. We do not need to record in this Judgment all that was identified. Some of what was identified was, clearly, matters personal to the claimant. The claimant had sent emails to an

organisation making complaints, using the respondent's email system. Most significantly, the documents showed that the claimant had undertaken an accounting course using the respondent's computer and systems (at least in part). The relevant course was one which Mrs Chadwick had previously undertaken. It was Mr Chadwick's evidence that it had taken her hundreds of hours to do. The understandable impression which Mr and Mrs Chadwick initially drew from the documents identified, was that the claimant had undertaken the course (at least in part) during working time and when she should have been carrying out other duties. There were also concerns about the data breach, what had caused the breach, and the information which the claimant had downloaded to (or otherwise transferred to) the respondent's systems.

58. On 27 February 2023 the claimant was suspended by the respondent. A letter was sent to the claimant confirming the discussion and the process that would be followed (163). The letter set out two allegations, which were described as potential gross misconduct:

> "*Alleged breach of company procedures, specifically, it is alleged that on 23rd and 24th Feb 2023 you have taken unauthorised absence*
>
> *Alleged breach of company policies, specifically over a period from 20/12/2022 to 21/02/2023 you have engaged in excessive downloading and personal use of work PC during working hours and without authorisation"*

59. The letter listed attached information which included screenshots. It stated that it was necessary to suspend the claimant. It said, "*Your suspension is precautionary and should not be regarded as a penalty or imply any pre-judgement of the allegations. Nor does your suspension constitute disciplinary action in itself*". The letter confirmed that Citation Ltd had been engaged to facilitate and conduct a meeting. The letter concluded by re-stating that the meeting did not suggest that the claimant was "*guilty of any offence*".

60. The claimant was invited to attend an investigation meeting on 2 March. On 1 March she declined to attend as she said the meeting needed to be face-to-face. The meeting was rescheduled to be a face-to-face meeting and took place on 15 March 2023. We were provided with the notes of that meeting (192). During that meeting the claimant provided an envelope which it was identified contained a grievance (dated 7 March but first provided to the respondent at that meeting). As a result, the investigation was not progressed pending the outcome of the claimant's grievance. The investigation was ultimately not further progressed as a result of the claimant's absence on maternity leave, and then her resignation.

61. The claimant's grievance was set out in a lengthy letter (203). It is not necessary to reproduce the content in this Judgment. Within it she raised her issues with what she said was the lack of a completed risk assessment. She also raised other matters which were the subject of these proceedings. We have already referred to the way in which the claimant introduced her complaints about the decision that she should not bring her dog to work. She concluded her grievance by making the following assertion:

> "*Due to a string of messages I have received from my line manager, I know that they are seeing if they can 'manage' without administration 'whilst I am on maternity'. I can only describe this as confirmation of what has become my worst fear. How this has been explained into justification is beyond my knowledge. It is the only reason that such a blatant cry for help has been categorised as 'gross misconduct', being that the only characteristic of gross misconduct is that it can spark immediate dismissal. I genuinely believe the connective tissue between all of these events is the fact that I am no longer needed, nor am I welcome at UK ICS"*

62. A grievance meeting was held on 13 April 2023 conducted by Francis Scoon (from whom we did not hear evidence). The hearing was attended by Mr and Mrs Chadwick. The claimant was accompanied by her father, Mr Broome. Some witness statements had been taken in advance of the meeting, including one from Mr Cadman (about the appraisal meeting) and Mr Wood (about eating a lunch). Notes of the meeting were provided (225). The outcome was provided in a letter of 21 April (232). The decision was that the grievance was unsubstantiated.

63. The claimant appealed (239). The appeal hearing was held on 9 May 2023 conducted by Mr Cadman (from whom we did hear evidence). Mrs Chadwick took notes (245). In relation to the risk assessment, the claimant said that she had completed it and inserted Mrs Chadwick's signature on it due to "*Convenience*", and she said "*The document was there so I did it. At the time I didn't know I had no right to do it*". She said she did not know what risks she thought there were and explained her reason for completing the document (if she did not know the risks) as being due to "*Convenience, naivety*".

64. A grievance appeal outcome was sent to the claimant dated 12 June 2023 (257). It was provided by Mr Cadman. It upheld the claimant's grievance on one point but did not uphold her grievance on any other grounds. With regard to risk assessments, Mr Cadman said:

> "*I accept that your risk assessment should have been conducted by us as your employer. I also accept your comments that you were naïve to complete it on our behalf and put Aleks' signature on. This could indicate that you may have been doing this as a tick box exercise and due to your training on risk assessments, the fact that you had completed a risk assessment for one of the Directors (Aleks) when she was pregnant, the company trusted that you had done this adequately. You should have left this for us to complete with you, but you decided to do this for us. I accept your assertion about your employer doing the assessment, but I find it difficult that you are blaming the company for something you decided to do for us and trusted you to do so…*
>
> *You completed the risk assessment and therefore assessed the risk to yourself in the building. Again, I don't disagree that we should have done this, but you decided to take this upon yourself. Aleks assures me that she reviewed your risk assessment…*
>
> *I believe we should have sought further advice from a health and safety perspective regarding your condition and what our requirements were…*

I am aware that there were occasions you were lone work. I agree that a lone worker assessment should have been completed. You highlighted lone working in your pregnancy risk assessment but do not suggest any control measures for this in the assessment completed…

Based upon the above, I partially uphold some of your points i.e I believe that we should have completed the risk assessments, but you should accept responsibility for doing this on our behalf and we trusted you to ensure it was correct and safe for you to work. As per the risk assessment, this could have been reviewed at any time and have no evidence to suggest you have asked for this …

The only point that I agree with you is that we should have completed your risk assessments, but in my view, you must take responsibility here also"

65. It was the claimant's evidence that she only intended to take approximately four months of maternity leave. We were provided with a letter of 10 May 2023 which confirmed the details of the claimant's maternity leave (254). During the maternity leave, the claimant resigned. The claimant had sought to take a number of KIT days during her maternity leave, and the letter confirmed agreement to ten KIT days but only if the claimant's suspension had been lifted by the first such KIT day.

66. We heard a lot of evidence. This Judgment does not seek to address every point about which the parties have disagreed. It only includes the points which we considered relevant to the issues which we needed to consider in order to decide if the claims succeeded or failed. If we have not mentioned a particular point, it does not mean that we have overlooked it, but rather we have not considered it relevant to the issues we needed to determine.

The Law

67. The relevant subsections of section 18 of the Equality Act 2010 provide that:

"**(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.**

(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 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).

(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 or additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after pregnancy ..."

68. Subsection 18(2) makes unfavourable treatment because of the pregnancy (or a pregnancy-related illness) unlawful. That subsection applies during the protected period, which (for the purposes of this case) covers the period of pregnancy. Subsection 18(4) provides that unfavourable treatment is unlawful if it is because the person has exercised or sought to exercise the right to maternity leave. There is no requirement for a comparison in cases of pregnancy discrimination as the requirement is only for unfavourable treatment.

69. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee. It sets out various ways in which discrimination can occur and these include any other detriment. The characteristics protected by the provision includes pregnancy and maternity.

70. Section 136 of the Equality Act 2010 sets out the manner in which the burden of proof operates in a discrimination case and provides as follows:

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

71. At the first stage, we must consider whether the claimant has proved facts on a balance of probabilities from which we could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination. This is sometimes known as the prima facie case. It is not enough for the claimant to show merely that she has been treated unfavourably. In general terms "*something more*" than that would be required before the respondent is required to provide a non-discriminatory explanation. At this stage we do not have to reach a definitive determination that such facts would lead us to the conclusion that there was an act of unlawful discrimination, the question is whether it could do so.

72. If the first stage has resulted in the prima facie case being made, there is also a second stage. There is a reversal of the burden of proof as it shifts to the respondent. We must uphold the claim unless the respondent proves that it did not commit (or is not to be treated as having committed) the alleged discriminatory act. To discharge the burden of proof, there must be cogent evidence that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

73. There are of course many decisions in which the correct approach to the burden of proof has been outlined. In her submissions the respondent's representative referred to **Igen Limited v Wong** [2005] ICR 931; **Royal Mail v Efobi** [2021] UKSC 33; **Ayodele v Citylink** [2017] EWCA Civ 1913; **Brown v Croydon LBC** [2007] IRLR 259; and **Madarassy v Nomura International PLC** [2007] ICR 867.

74. In most cases there is a need to consider the mental processes, whether conscious or unconscious, which led the alleged discriminator to do the act.

Determining this can sometimes not be an easy enquiry, but we must draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). The subject of the enquiry is the ground of, or the reason for, the alleged discriminator's action, not his or her motive. In many cases, the crucial question can be summarised as being, why was the claimant treated in the manner complained of?

75. We need to be mindful of the fact that direct evidence of discrimination is rare, and that Tribunals frequently have to infer discrimination from all the material facts.

76. The protected characteristic does not have to be the only reason for the conduct, provided that it is an effective cause or a significant influence for the treatment. The explanation for the unfavourable treatment does not have to be a reasonable one. Unfair or unreasonable treatment by an employer does not of itself establish discriminatory treatment (**Bahl v The Law Society** [2004] EWCA Civ 1070).

77. In deciding what was the cause of the unfavourable treatment, we must ask what was the effective and predominant cause, or the real and efficient cause, of the act complained of? It is the motivation of the decision-maker which is the issue to be determined, in considering the cause.

78. In her submissions, the respondent's representative addressed what could be unfavourable treatment and relied upon three cases: **Trustees of Swansea University Pension and Assurance Scheme v Williams** [2015] IRLR 855; **Chief Constable of Devon and Cornwall Police v Town** [2021] IRLR 235; and **Interserve FM v Tuleikyte** [2017] IRLR 615.

79. Regulation 16 of the Management of Health and Safety at Work Regulations 1999 requires all employers, where the persons working include women of an age when they might have children, to include an assessment of risk where the work is of a kind which could involve risk by reason of her condition to the health and safety of an expectant mother or her baby from (amongst other things) any processes or working conditions. Regulation 10 requires every employer to provide his employees with comprehensible and relevant information on the risks to their health and safety identified by an assessment. Regulation 3(1) sets out the general duty. The respondent's representative relied upon what was said in **Day v T Pickles Farms Ltd** [1999] IRLR 217 as authority for the fact that what is required is only for employers to identify commonplace hazards and not more remote risks. Regulation 3(3) provides that a risk assessment must be reviewed by the employer if there is reason to suspect that it is no longer valid, or there has been a significant change in the matters to which it relates.

80. Failure to carry out a risk assessment in respect of pregnant workers can amount to pregnancy discrimination (**Hardman v Mallon t/a Orchard Lodge Nursing home** [2002] IRLR 516). It is not necessary for the treatment to be compared to the treatment of a comparable male employee or a non-pregnant female employee. However, where the work is not found to involve risk by reason of the individual being an expectant mother, the failure to carry out a risk assessment is not discrimination (**Madarassy v Nomura International plc** [2007] ICR 867). There

is not an automatic right for a specific risk assessment for pregnant workers, the work must be of a kind that could involve a risk of harm or danger to the health and safety of the expectant mother or her baby (or other risks are present which do not apply to this case) (**O'Neill v Buckinghamshire County Council** [2010] IRLR 384, that is also a case upon which the respondent relied when contending that there is nothing in the Regulations that legally requires a meeting). We, of course, accepted that we were bound to follow those decisions being decisions of higher courts, including the principle determined in **Hardman**.

81. In her submissions, the respondent's representative highlighted the decision of the Employment Appeal Tribunal in **Stevenson v JM Skinner & Co** UKEAT/0548/07 and what was said by McMullen HHJ about the requirements for pregnancy-related risk assessments in that decision. In reaching our decision we took particular note of what he said in the following part of that Judgment:

> "*The first issue relates to whether or not there was a risk assessment. The Tribunal held there was. It is important to understand what a risk assessment is. We are not given any definition in the Regulations apart from the generic description in Regulation 1(2) that "an assessment means the assessment made or changed by him in accordance with Regulation 3". Risk is exposure to some sort of harm or danger. Assessment as used in the Regulations is an empirical evaluation of when that risk is likely to occur and what the consequences of it will be on, for example an employee in the employer's business. The assessment is one of judgment, evaluation and examination of all of the circumstances. There is no requirement under the Regulations that the assessment must be in writing. It is a thought process. It is best conducted with the employee herself when the assessment is in relation to an individual pregnant employee so that any particular difficulties which she may encounter can be addressed specifically."*

82. In her submissions, the respondent's representative also relied upon **Bates v Booker Cash and Carry Ltd** 2601799/04. Whilst we noted what she said and that Judgment, as a first instance decision by another Employment Tribunal, the decision did not assist us in reaching our decision.

83. We considered all that was included in both parties' submissions, even though we have not set out in this Judgment everything that was said.

Conclusions – applying the Law to the Facts

84. In the list of issues, issue 1.2 asked whether the alleged unfavourable treatment took place in the protected period. For all of the unfavourable treatment alleged, the answer to that question was yes, it did occur during the protected period. Issue 1.3 did not need to be answered, as it only needed to be considered where the allegations did not occur in the protected period.

85. It was not part of this case that the unfavourable treatment occurred because of illness suffered as a result of pregnancy, so issue 1.5 did not apply.

86. That meant that, for each of the allegations of unfavourable treatment, what we needed to determine was: what occurred; whether that treatment was

unfavourable; and was it because of pregnancy? We considered those questions (as set out in issues 1.1 and 1.4) for each of the allegations of unfavourable treatment listed as issues 1.1.1-1.1.12 in turn (issue 1.1.12 being the issue added as a result of the amendment granted at the start of the hearing).

Maternity risk assessment

87. Allegation 1.1.1 was that it was unfavourable treatment because of pregnancy to not carry out a pregnancy risk assessment, including a lone working risk assessment.

88. We considered very carefully the facts in this case as they related to pregnancy-related risk assessments. The key facts we found were that:

a. The claimant was the person within the respondent's small business was who was trained to undertake risk assessments;

b. The claimant undertook Mrs Chadwick's maternity risk assessment and completed the risk assessment form;

c. At the time when the claimant informed Mrs Chadwick that she was pregnant, Mrs Chadwick was on maternity leave, albeit that (as Mr Chadwick explained in evidence) she was not really absent on maternity leave, as was also clear from the WhatsApp chat;

d. The claimant filled in her own pregnancy-related risk assessment form within an hour of her informing Mrs Chadwick that she was pregnant. She had already added Mrs Chadwick's signature to it;

e. In her email attaching the document, the claimant proposed scheduling a meeting over the next few months;

f. Mrs Chadwick read and considered the risk assessment (and we accept her evidence that she did so);

g. There was some (limited) discussion about the risk assessment document between the claimant and Mrs Chadwick;

h. The letter of 10 January stated that a further risk assessment meeting would take place; and

i. A meeting was later arranged for 1 March but was moved forward to 27 February at the claimant's request. That meeting never took place as the claimant had left the workplace (and then been suspended) before it was due.

89. The claimant completed her own pregnancy risk assessment form. Nobody else at the respondent completed a form for her. Mrs Chadwick considered the form and discussed it with the claimant. She did not amend the form. She did not have a formal meeting with the claimant to discuss it.

90. It is fair to say that the law as it applies to pregnancy related risk assessments and pregnancy discrimination, is not straightforward, and it is certainly not easy to understand. It is, of course, always the case that an employer would be well advised to hold a meeting with a pregnant employee to discuss the risk-assessment. Any employer would be best advised to complete a form itself identifying what had been considered, identified, and discussed with the employee. However, that is not what is required by the law, as we have set out in the section of this Judgment on the law above. That is why, in particular, we have set out the passage from the Judgment in **Stevenson** (a case relied upon by the respondent's representative) and emphasised that we took particular note of what it said. That Judgment said that the requirement of the Regulations was for the respondent to undertake an assessment, but that could be a thought-process and it did not have to be in writing. On that basis and on the facts of this case, we found that the respondent did undertake a pregnancy-related risk assessment for the claimant. It did so when Mrs Chadwick evaluated and considered what the claimant had written on the risk assessment form and agreed with it. In doing so, Mrs Chadwick (and therefore the respondent) undertook the risk assessment required, even though she did not complete a separate form herself.

91. We found that it was not incumbent on the respondent when undertaking the pregnancy-related risk assessment, to put the form to one side which the claimant had already populated, and to write a new one afresh. What Mrs Chadwick did when she thought-through the form completed by the claimant, was to undertake the risk-assessment required.

92. We would add that the legal requirement is to undertake a pregnancy-related risk assessment (and discrimination occurs when an employer does not). Discrimination is not shown (or at least does not necessarily arise), if later a party to the risk assessment contends that some risk was not fully identified, or some step not recorded which otherwise should have been. We noted what the respondent submitted in reliance upon the **Day** Judgment and the fact that failing to consider remote risks was not a failure to undertake a risk assessment.

93. The other issue which arose in relation to the pregnancy-related risk assessment was whether one was required at all in this case. That is the point which was addressed in **Madarassy**. In this case, that turned upon whether there were risks associated with the claimant's working arrangements. She contended that those risks arose from what she described as lone working. The respondent in practice disputed that she was genuinely lone working. As we have found that the respondent did undertake a pregnancy-related risk assessment, we did not need to decide whether any failure to do so would otherwise have amounted to sex discrimination. The conclusion of Mr Cadman in the grievance appeal outcome was that there were occasions when the claimant was a lone worker and he agreed that a lone worker assessment should have been done (257). Based upon what he decided, it would appear that there were risks arising from the claimant's pregnancy which meant that a risk assessment was required to be undertaken and this case was not comparable to the circumstances found in **Madarassy** (when such an assessment was not required).

94. For the finding that a risk assessment which complied with what the law required was undertaken (based upon **Stevenson**), we have not found Mr Cadman's conclusions in the grievance appeal meeting to be determinative. He accepted that

the risk assessment should have been conducted by the employer and the claimant should have left the respondent to complete the form for her. The fact that he thought so (in practice reflecting best practice), did not mean that we were obliged to find that the respondent's failure to complete the form itself was sex discrimination. We would add that, we accepted as a general principle that an employer cannot place the obligation on the employee to undertake and complete a pregnancy related risk assessment themselves, but in the facts found in this case we found that Mrs Chadwick did do what was required to undertake a pregnancy-related risk assessment.

95. Allegation 1.1.2 was the respondent failing to review, consider and act upon the risk assessment competed by the claimant and given to Mrs Chadwick on 16 September 2022. That allegation has effectively already been addressed in the decision explained for allegation 1.1.1. We did not find that the respondent did fail to review or consider the risk assessment which the claimant completed, as we found that Ms Chadwick did so. We also did not find that there was a failure to act upon what was identified.

Lone working

96. Allegation 1.1.3 was requiring the claimant to undertake increased lone working during her pregnancy. As we have set out in our findings on the facts above, we did not find that there was any evidence that the claimant was required to undertake increased lone working during pregnancy save for her own assertion, which we did not accept as it was not sufficiently detailed to establish what was asserted as a fact. Clearly the claimant's lone working increased after Mrs Chadwick commenced maternity leave. Mr Chadwick would have attended the premises less (or not at all) during the periods when he travelled for work. We did not find that the claimant's lone working time increased during pregnancy, but to the extent that there was any increase in the time in which she was lone working, we did not find that was due to the claimant's pregnancy (we did not find that the claimant had shown the something more required to shift the burden of proof for this allegation).

The second appraisal and management training

97. Allegation 1.1.4 was that the respondent failed to hold the claimant's second appraisal on 14 September 2022 and failed to provide management training to her after she informed them she was pregnant on 11 September 2022.

98. Whether or not the second appraisal took place was an issue of dispute between the parties. As we have explained in the factual findings above, we found that the second appraisal did take place on 13 September as Mrs Chadwick and Mr Cadman evidenced, for the reasons we explained. As a result, the first part of this allegation was not found to be correct.

99. The allegation also had a second element, which was that the claimant alleged that the respondent failed to provide her with management training after she informed them that she was pregnant. There was no evidence that the respondent had committed to providing management training to the claimant within a specific timescale. It was Mrs Chadwick's evidence that, as the respondent expanded, they were looking in the future to employ an apprentice or administrative assistant. When

that occurred, that would have enabled the claimant to move into a managerial role (for which training was likely to have been required). Until that occurred, and it was clear from Mrs Chadwick's evidence that it was not envisaged to occur immediately, in a company the size of the respondent there was no possibility of the claimant managing anybody or requiring management training.

100. We were shown evidence that the claimant received a relatively large amount of training from the respondent. The September 2022 review form recorded that the focus was to be on the new system (upon which the claimant was to be trained). During the hearing, the claimant was dismissive of any training which was necessary for her role, and emphasised the absence of training which was not necessary but which she believed she should have received in any event. We found her evidence to be almost incomprehensible on this issue. The claimant seemed to demonstrate no understanding of why a small business would provide training to its employees. The claimant was entirely focused on herself and did not seem to see the bigger picture of fitting into an organisation, or receiving training which assisted that company. In any event, we did not find that the respondent committed to provide management training to the claimant in the short-term, nor did we find that the possibility of such training changed as a result of the claimant informing the respondent that she was pregnant.

Lunches

101. Allegation 1.1.5 was that, in December 2022, Mrs Chadwick and Mr Cadman failed to act upon and respond to the claimant's complaint that another employee had been repeatedly stealing her lunches on at least fifteen occasions. In evidence, the claimant confirmed that she had not raised stolen lunches on fifteen occasions, she explained that she raised it twice at most. There was no evidence in her witness statement that she had done so and the sole documented issue in the WhatsApp chat related to a missing breakfast, not lunch. It was Mrs Chadwick's evidence that the message was light and jovial and not a complaint. There was no evidence of a complaint about the lunches at the time. There was no evidence that the issue was raised prior to it being raised at the grievance appeal hearing with Mr Cadman, when the claimant confirmed that as the employee she alleged had stolen her lunches had left the company, this was now a non-issue.

102. The allegation was not about the actual lunches, but rather about Mrs Chadwick and Mr Cadman's alleged lack of response to complaints. There was no evidence of any such complaint, save for an informal issue raised in the chat (about breakfast). We did not find that the respondent ignored the complaint. Whether or not any such complaint was not responded to, we also found there was no evidence whatsoever that any lack of response was due to the claimant's pregnancy (that is, there was not the something more required to shift the burden of proof).

Maternity documents

103. Allegation 1.1.6 was that Mrs Chadwick, on Friday 10 February 2023, placed undue pressure on the claimant to provide maternity documents by Monday 13 February 2023.

104. On 10 January 2023 Mrs Chadwick sent the claimant a very standard template letter requesting the claimant provide her MAT B1 form. Over four weeks later, on 10 February, Mrs Chadwick followed up her request in the WhatsApp chat (399). She did so with an entirely courteous question. As recorded above, a WhatsApp conversation followed, and the claimant obtained and provided the MAT B1 form.

105. We did not find that undue pressure was placed on the claimant as alleged. We did not that any pressure was placed on the claimant at all. There was a request made, for something that every pregnant employee needs to provide. The request was entirely friendly. We did not find the respondent asking the claimant to provide her MAT B1 form to be unfavourable treatment of the claimant. The reason for the request was because it was required to access maternity pay/benefits.

List of daily tasks

106. Allegation 1.1.7 was recorded in the list of issues as being that Mrs Chadwick, on Friday 10 February 2023, required the claimant to list all daily tasks she was carrying out and, over the following six-week period, pressured the claimant constantly for the detailed task lists. While being cross-examined, the claimant said the issue was incorrectly recorded as it she was pressured for four weeks and not six. In fact, as the request was first made in a WhatsApp message of 10 February and the claimant last actively attended work on 23 February, the pressure could only have possibly lasted for no more than thirteen days (even had we found there was pressure).

107. We found that what the claimant alleged at 1.1.7 (at least in terms of it being pressured, repeated, or over a period) was completely untrue. As we have said, the periods asserted were inconsistent with the evidence about what occurred. There was no evidence of pressure even in the truncated period. We were not provided with any evidence of pressure in WhatsApp messages or emails. As a result, we found that no pressure whatsoever was placed on the claimant.

108. The claimant was (entirely reasonably) asked to write down during the day what tasks she was doing, and the claimant's evidence was that she did so. The respondent required that information to plan for the claimant's maternity leave and to see if her work could be covered by others. We understood that was particularly the case because the claimant was taking a short period of maternity leave and intending to work a number of KIT days even within that short period, and the respondent needed to decide whether it could cover her work with existing staff or whether it would need to employ someone else. We did not find that the request made was unfavourable treatment of the claimant.

Taking the dog to work

109. Allegation 1.1.8 was that in February 2023 the respondent prevented the claimant from taking her dog to work as had been previously agreed.

110. In considering this allegation we noted that the respondent was not a hard-nosed employer, it was a small company who treated the claimant in a very favourable way by allowing her to bring her dog to work when it initially said she

could do so from time to time. That was not an agreement that she always would be able to do so. The change arose from a dog fouling the premises. The decision was made to ban dogs. We found the dog ban to be entirely sensible. We found that, whilst the claimant did perceive it as unfavourable to her, it was because of the fact that a dog had fouled the premises and consideration of the risks and issues that arose. It was not because of the claimant's pregnancy.

Software change

111. Allegation 1.1.9 was that the respondent blocked the claimant from using the respondent's software which was needed to carry out her role.

112. In order to transition the respondent's business from two of its systems to a new one, all employees and directors (except for Mrs Chadwick herself) were stopped from using the existing systems. It was done to enable an essential upgrade to happen without issues. It was intended to last for two days. We did not find that this was unfavourable treatment of the claimant at all. It also had nothing to do with pregnancy.

Menial tasks

113. Allegation 1.1.10 was that the respondent reassigned the claimant's tasks and instead required her to do, what she described as the menial task of moving files (the word menial being corrected from the proposed list of issues). This allegation in practice arose from the previous allegation (1.1.9). While the transition took place, the claimant needed to be assigned other tasks which did not use the relevant systems. The claimant was asked to start preparing for the forthcoming ISO audit of which the respondent had been notified.

114. What the claimant was asked to do were not menial tasks. They were important. The ISO audit was important for the respondent and the tasks were an important starting point for that process. It was clear from the claimant's evidence to the Tribunal that she did not really understand what it was she was being asked to do, she told us that it felt unsuited to her. We did not find that was because the tasks were menial, it appeared to be because the claimant did not understand them or their importance. The WhatsApp chat also showed Mrs Chadwick endeavouring to respond to the claimant's enquiries about what was required in an appropriate manner. We found that what the claimant was asked to do, as an administrator, was an entirely reasonable management request/instruction.

115. We did not find that the claimant being asked to focus on the documents required for the ISO audit and to transfer and redate files required, while the normal operating systems were down, was unfavourable treatment for the claimant at all. We also did not find that the reason for the request was the claimant's pregnancy.

Locked out of files

116. Allegation 1.1.11 was that the respondent locked the claimant out of essential electronic files without good reason. During the hearing it became clear that this related to the claimant's access to the respondent's personnel files. The IT consultant who advised the respondent on the security issue, advised the

respondent that all employees should not have access to the personnel system. Accesses were changed for all staff. The claimant was unable to access the personnel system as a result. Even if the claimant required access for the duties she had been asked to do, the block had only been in place for a very short period. We did not find that this was unfavourable treatment of the claimant. In any event, it was not because of (and had nothing to do with) the claimant's pregnancy.

Misconduct

117. Allegation 1.1.12 was that bringing gross misconduct charges was unfavourable treatment because of pregnancy.

118. It was clear that facing gross misconduct charges was, from the claimant's perspective, detrimental or broadly unfavourable treatment. The key question for us was why the respondent suspended the claimant and commenced an investigation into alleged/potential gross misconduct? We found that the fact that they did so was nothing to do with pregnancy, but was for the reasons that Mr and Mrs Chadwick explained in evidence. We found that the respondent was entirely justified in suspending the claimant and in pursuing disciplinary proceedings against her as a result of what they identified in their initial investigation. We fully understood and accepted why it was that the respondent concluded that the claimant should be suspended, and a disciplinary investigation undertaken.

119. In the course of the hearing, the claimant focused upon the fact that the suspension letter (163) contained two allegations, one of which was her being absent without leave on two days. For that allegation, she contrasted her immediate suspension with the three meetings held with the apprentice who had been late and absent from work. We did not accept the claimant's arguments about this. The circumstances were incomparable. The claimant had endeavoured to delete files, packed up her belongings and left work during her working day, and not returned the following day. That was entirely different to the lateness and non-attendance of the apprentice. The most important distinction between the two circumstances was that the claimant was also the subject of the other allegation, which arose from the information she had downloaded to (or transferred to) the respondent's systems and the (potentially huge) amount of time which the respondent believed that she had spent during her working time undertaking course work unrelated to the respondent and/or dealing with personal matters. It was Mr Chadwick's evidence that the absence/non-attendance allegation alone would not, in and of itself, have resulted in suspension and/or potentially have led to dismissal for gross misconduct. We had no concerns whatsoever with a less serious allegation being included in the letter alongside the more serious one, and we did not find that doing so was because of pregnancy. The more serious allegation meant that the claimant's circumstances entirely differed from those of the apprentice.

120. Whilst not recorded in the list of issues, from the way in which the claimant pursued her case and the questions which she asked in cross-examination, there appeared to be a suggestion from the claimant that she should not have been suspended or have had disciplinary allegations investigated whilst she was pregnant because of the potential stress which doing so might have caused her as a pregnant employee. If that was a part of the claimant's case, we considered it to have been entirely misconceived. It is entirely appropriate for a disciplinary process to be

followed for a pregnant employee (provided that the reason for doing so is not their pregnancy or maternity leave).

121. In her submissions, the claimant explained that it was her case that the respondent had set out to make her life more difficult from when she announced that she was pregnant, in order to try to make the claimant leave the respondent's employment. We did not find that to have been the case at all.

Summary

122. For the reasons explained above, the claimant did not succeed in the claims which she brought. At the end of the hearing, we arranged a one-day remedy hearing for 27 August 2024 in case that was required. As the claimant has not succeeded in any of her claims, a remedy hearing is not required. That hearing has been cancelled.

Employment Judge Phil Allen

15 March 2024

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

26 March 2024

FOR THE TRIBUNAL OFFICE