# EMPLOYMENT TRIBUNALS

**Claimant:** **Mrs. N Hefford**

**Respondents:** **(1) Dr M Jack**
**(2) Dr A Sivaprasad**
**(3) Dr J Sorouji**
**(4) Dr O Aderonmu**
**(5) Dr S Azeem**

**Heard at:** **East London Hearing Centre (by Cloud Video Platform)**

**On:** **11 – 14 and 18 – 20 August 2020**

**Before:** **Employment Judge McLaren**
**Members:** **Ms. L Conwell- Tillotson**
**Mrs. B Saund**

**Representation**
**Claimant:** **In person**
**Respondent:** **Mr. R Chaudhry, Solicitor**

# JUDGMENT

**The unanimous decision of the tribunal is that:-**

1. **The claim of automatically unfair dismissal under s 99 Employment Rights Act 1996 succeeds. The reason or principal reason for the claimant's dismissal was her pregnancy.**

2. **The claimant was the subject of a number of acts of unfavourable treatment during the protected period because of her pregnancy. Her claim of pregnancy discrimination under s18 of the Equality Act 2010 succeeds.**

3. **The claim under s27 of the Equality Act 2010 succeeds. The claimant was subjected to detriment having done a protected act.**

4. **The claim for unpaid bonus cannot be determined and will be considered at a remedy hearing.**

**5. The claims for breach of contract for 3 months' notice pay and unpaid overtime succeed.**

# REASONS

Form of hearing

1. At a preliminary hearing the case had been listed for a CVP hearing. Following that the respondent had objected to the case taking place in that format, and instead the case was converted to an in-person hearing. On the first day of the hearing the tribunal were unable to accommodate the claimant's needs. The claimant is a nursing mother and, while the building could provide private space for breast feeding, the tribunal was unable to provide any milk storage facilities. For obvious reasons, the claimant does not wish to bring her very young child to the employment tribunal, and in any event would have no one to leave her with and there is no suitable space for a small child in the building.

2. Nonetheless, the respondent submitted that a face to face hearing was preferable because of the size of the bundle, 700 pages, and the number of witnesses, together with the fact that the claimant is representing herself.

3. We considered this and concluded that the case was no more complex than many others. We now had hardcopy bundles which could be used by all parties to avoid having to deal with such a large bundle electronically. While there were a number of witnesses, the most significant evidence would be given by the claimant and the five named respondents. The other witnesses were likely to be relatively short as they were on discrete points. As the claimant's needs could not be accommodated with a face to face hearing, and there were no significant obstacles for this being dealt with by CVP, we agreed that the case would continue remotely, although the panel would continue to attend in person.

Preliminary application

4. The claimant made an application that the respondent's case be struck out under rule 37. She explained that the respondent had not complied with the employment tribunal orders to provide certain documents and have been vexatious in the way they have conducted the litigation. She also submitted that they have no reasonable prospect of success.

5. I explained that in order to determine the prospect of success we would need to hear evidence. It was clear there was a dispute between the parties about the reason for her employment being terminated, and therefore any application for strike out on the grounds of no prospect of success would not succeed.

6. The claimant's specific complaint was that the respondent had been given additional time to finalise the bundle and still missed the deadline. The same is true of witness statements, although the claimant confirmed that she has received statements some three or four weeks ago. She felt she had not had

enough time to prepare because the last version of the bundle was only received around 5th August 2020. While the bundle had been sent to her on 23rd July 2020, the respondent had moved documents around, added two documents in, and she had not been able to properly read and absorb all the documents until this weekend.

7. The respondent's representative stated that two additional documents had been put in since 23rd July, these were two emails, one of which was from the claimant. As to the moving around of documents this was to accommodate the claimant's requests and Employment Judge Ross's order as to what should be done with disputed documents. The bundle index and the order of documents had therefore changed, but the bundle was substantively the same now as the one sent on 23rd July.

8. Having considered the parties submissions the panel concluded that the respondent had not breached any orders. Its conduct did not meet the required threshold of unreasonable conduct for the purposes of striking out the claim or any part of it. Any prejudice to the claimant could be overcome as we were adjourning the first day of the hearing. The claimant indicated that she did not want an adjournment in general and would prefer to continue rather than to adjourn. We therefore dismissed the claimant's application and agreed to continue the case.

Background

9. We heard evidence from the claimant and from Ms Kelsey Davey. All 5 respondents gave evidence and we also heard from Louise Wells, Janet Squires and Emma Sivey. Kal Gazaleh, Racheal Giles, Janet Cabby, Maxine Kinder and Barbara Bridge were available to be cross examined, but the claimant confirmed she had no questions for them, and we accepted their statements as read. We were provided with a bundle of 667 pages. In reaching our decision we have considered all the evidence we heard and those parts of the documents in the bundle to which we were directed. We were assisted by helpful submissions from both parties.

10. During the hearing, the claimant requested further documents. Some of these were located and provided. A question also arose as to whether the respondent had waived privilege in respect of its reference to legal advice and had gone further than referring to its existence and had sought to use it to further its case. I considered each of these incidents and accepted the respondent's position that the reference was brief and reflected the individual's view, not the legal advice.

Issues

11. The issues between the parties which potentially fall to be determined by the Tribunal are as follows:

*Unfair dismissal*

11.1 It is admitted that the Claimant was dismissed on 10 June 2019. The Claimant admits that she has insufficient continuity of service to bring an ordinary unfair dismissal complaint under section 98 ERA 1996, but relies on automatic unfair dismissal under section 99 ERA 1996.

11.2 What was the reason or principal reason for dismissal? The Claimant contends that the reason, or principal reason, for dismissal was her pregnancy. The Respondent asserts that it was a reason relating to the Claimant's conduct.

*Section 18 EQA: pregnancy & maternity discrimination*

It is admitted that the Claimant informed the Respondents that she was pregnant on 6 November 2018.

11.3 Did the Respondents treat the Claimant unfavourably as follows:

11.3.1 By planning the dismissal of the Claimant on false grounds, from February 2019;

11.3.2 Failing to carry out a pregnancy risk assessment;

11.3.3 By subjecting the Claimant to unnecessary disciplinary investigation and meetings from February 2019;

11.3.4 By suspending the Claimant on 17 April 2019 on false grounds, with the grounds for the suspension changing, and carrying out the acts complained in the table at paragraph 5 of the attachment to the ET1;

11.3.5 On or about 17 April 2019, by stopping the Claimant from contacting anyone at her place of work, the CCG or any neighbouring surgery, and blocking her access to work emails;

11.3.6 By not carrying out a proper and genuine disciplinary process and relying allegations that were untrue or exaggerated as set out in paragraph 8 of the attachment to the ET1;

11.3.7 By dismissing the Claimant on 10 June 2019;

11.3.8 By deliberately notifying the Claimant of her dismissal when she was in hospital with complications of her pregnancy;

11.3.9 By failing to pay the Claimant £9,300 which she had earned for her work for the CCG;

11.3.10 By failing to pay the Claimant a bonus payment due to her in or about May 2019;

11.3.11 By failing to pay the Claimant notice pay.

11.4 Did the unfavourable treatment take place in a protected period and/or was it in implementation of a decision taken in the protected period?

11.5 Was any unfavourable treatment because of the pregnancy?

*Section 27 EQA: victimisation*

11.6 Did the Claimant do a protected act, and/or did the Respondent believe that the Claimant had done or might do a protected act, under section 27(2) EQA 2010? The Claimant relies upon the following:

11.6.1 In February 2019, the Claimant raised a written grievance raising concerns about pregnancy discrimination by the Respondents.

11.7 Did the Respondents subject the Claimant to any detriments as follows:

11.7.1 By withholding earnings from the Claimant, of £9,300, which she was entitled to be paid for her work for the CCG.

11.8 If so, was this because the Claimant did a protected act and/or because the Respondents believed the Claimant had done, or might do, a protected act?

*Unauthorised deductions from wages*

11.9 Did the Respondents make unauthorised deductions from the Claimant's wages in accordance with section 13 ERA by failing to pay her the alleged bonus payments and if so how much was deducted? This includes the following sub-issues:

11.9.1 Did the Respondents have any bonus scheme in place, whether contractual or otherwise?

11.9.2 If so, what were the terms of the scheme?

11.9.3 If so, was the bonus a guaranteed annual bonus or did the Claimant meet the requirements for payment of a bonus?

11.9.4 If so, how much was properly payable by way of bonus in May 2018?

11.9.5 If so, how much was properly payable by way of bonus in May 2019?

11.10 Did the Respondents make unauthorised deductions from the Claimant's wages in accordance with section 13 ERA by failing to

pay her the alleged payment in relation to the CCG work that she undertook and if so how much was deducted? The Claimant contends that she is owed £9,300.

*Breach of contract*

11.11 In the alternative to the above, whether in June 2018, the Respondents agreed to pay to the Claimant the sums received by the Respondents for her work for the CCG as Local Lead. The Claimant claims the sum of £9,300 as damages for breach of contract.

11.12 To how much notice was the Claimant entitled? The Claimant contends that she was entitled to 3 months notice.

11.13 Did the Claimant fundamentally breach the contract of employment by an act of so-called gross misconduct? [N.B. This requires the Respondent to prove, on the balance of probabilities, that the Claimant actually committed the gross misconduct];

11.14 If so, did the Respondents affirm the contract of employment prior to dismissal?

*Limitation issues*

11.15 Were each of the Claimant's discrimination complaints presented within the three month time limit set out in section 123(1)(a) Equality Act 2010 ("EQA")? If not, was each complaint presented within such further time as was just and equitable? Dealing with this issue may involve consideration of whether there was an act extending over a period. The Respondent does not advance a positive case that the Tribunal lacks jurisdiction for the complaints of pregnancy discrimination under section 18 EQA 2010.

11.16 Were the Claimant's complaints of unlawful deduction from wages presented within the three month time limit set out in sections 23(2) Employment Rights Act 1996? This requires consideration of:

(a) Was it presented before the end of 3 months beginning with the date of payment of wages from which the deduction was made?

(b) If the complaint is in respect of a series of deductions, was it presented before the end of 3 months beginning with the date of payment of wages from which the last in the series of deductions was made?

(c) If not, was it reasonably practicable to present the complaint within that three month period?

(d) If not, was it presented within such further period as the Tribunal considers reasonable?

*Remedy*

11.17 If the Claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and in particular, if the Claimant is awarded compensation and/or damages, will decide how much should be awarded.

11.18 The Claimant does not seek reinstatement or re-engagement.

11.19 If the Claimant was unfairly dismissed and the remedy is compensation:

11.19.1 What compensation would be just and equitable?

11.19.2 Did the Respondent unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to increase any compensatory award, and if so, by what percentage, up to a maximum of 25%, pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992?

11.20 If the Claimant is found to have been subjected to pregnancy discrimination and/or victimisation:

(a) What award for injury to feelings should be made?

(b) What monetary loss has the Claimant suffered because of the discrimination found proved?

(c) If it is possible that the Claimant would still have been dismissed at some relevant stage even if there had been no discrimination, what reduction, if any, should be made to any award as a result?

(d) What, if any, recommendation should be made?

11.21 The Claimant seeks a declaration and damages for breach of contract and/or an award for unlawful deduction from wages.

Finding of facts

Initial employment

12. The respondent is a GP practice and the claimant was employed by them on 6th November 2017 in the role of practice manager. She was the successful of two final candidates. The other was a man.

13. The claimant tells us that during her interview, which took place with all 5 partners, she was asked whether she had any children, and, when she said no, whether she planned to have any children. The respondent denies that such comments were made.

14. While the claimant recollects the interviewers making notes at the time no interview notes were disclosed as part of the litigation. Dr Jack told us he had found the scoring comparison document stored in a filing cabinet in the practice but not the notes. He found the comparison document with apparently little effort during the hearing. If these had been retained it seems surprising that the interview notes were not retained as well.

15. Dr Jack in his evidence had noted that the practice employed 47 women and he characterised 12 of these as between 18-35, which he explained was a reference to childbearing age. We find that the issue of childbearing was in his mind and, in the absence of the interview notes, we conclude that on the balance of probabilities this question was asked at interview.

16. The claimant was provided with a contract of employment. This stated that her position had the benefit of a performance-related bonus, further details of which were available separately. These were not provided at the time of hiring. The contract also provided that in the course of her employment the claimant may have access to see or hear confidential information and that on no account should such information be disclosed or discussed. Breach of confidence was said to result in disciplinary action which could lead to dismissal.

<u>The bonus</u>

17. On 4th May 2018, the claimant was given details of a new bonus structure (page 109). She explained that she had been concerned that the respondent had not given her the bonus targets straight away so that she had lost six months bonus potential. Despite that, because the new bonus scheme quadrupled her bonus earning potential, she did not raise any complaint or issue about this.

18. The bonus letter, which is at page 109 of the bundle, states that if employment is terminated for any reason partway through the financial year, then the right to receive any payment in line with the bonus structure is forgone. Dr Azeem believed that the bonus would not start until after probation was confirmed. The letter does not say that and there was no written evidence to support this.

19. The bonus letter also says that the bonus will be based on specific targets and will be earned on the following basis: for every 1,000 patients added to the list size the claimant would receive £5,000 and for every £10,000 additional enhanced service income over and above the previous financial year's accounts, she would receive £1,000. The claimant told us that she thought the specific targets referred to in the letter were those two bullet points, namely adding patients and bringing in additional enhanced service income. She thought that any additional income that she brought in qualified for the bonus.

20. Dr Azeem had a different view. In his evidence it was all about the enhanced services that a GP practice had to offer. Patient welfare was not just about increasing the practice income, but about enhanced services to patients. He referred to pages 163-167 which were prepared on 10th July 2018. This was a table which he said listed all the enhanced services that the claimant was to work on and as far as he was concerned it was only these services that were part of the bonus arrangement. Looking at the accounts which had also been disclosed, these services have not significantly increased and therefore on that basis the claimant was not eligible for a bonus.

21. Looking at the bonus letter we conclude that the word "additional" would be given its usual English meaning. That is anything extra. We therefore agree with the claimant that the intention of the bonus letter was that she would be financially rewarded for all extra monies that she would bring into the practice and these were not limited the items set out at schedule 4 (p706) of the accounts. We prefer the claimant's view because this seems to us to accord with an objective understanding of the terms of the letter, the clarification that Dr Azeem refers to was provided after the bonus structure letter had been given to the claimant and does not refer back to the bonus, and because we find Dr Azeem's view that the bonus was conditional on passing probation was not stated in the letter. We conclude that his recollection was inaccurate.

22. We are unable to determine whether, using the targets we have found were set, the claimant was eligible for any bonus.

Early performance concerns / confirmation of probation

23. At the same time the claimant was given the new bonus scheme, her probationary period was confirmed as passed. From the claimant's perspective no complaints or concerns had been raised about her employment and her probationary period had been confirmed. Not only that, but she had been offered a much more generous bonus scheme. As far as she was concerned everything was going well.

24. Dr Jack told us that, to the contrary, there had been concerns about the claimant's performance during her probationary period. There was much good to recommend, and he described the claimant as a breath of fresh air, but this was balanced against some negative experiences.

25. We were referred to pages 122-3, emails of 27th February 2018. This is an exchange of email about changes to the appointment system. Dr Sorouji takes exception to the changes that he feels are being imposed upon him without his agreement. He considered that the claimant was attempting to change clinic durations without his agreement. This email of 27th February concludes that "if we can't agree on the above, I would recommend we escalate to partners on this." The claimant was also clearly frustrated by the situation. In an email at page 125 she writes to Dr Jack setting out her position and complaining that Dr Sorouji doesn't want to have normal sessions put on the rota. Dr Jack replies making no comment on this point, although he does respond to other points.

26. The bundle contained an exchange of emails between the partners on 26th April 2018, pages 141-144. In an email from Dr Aderonmu the claimant is told that at the next partners meeting, which will take place that week, the agenda would be altered to allow them to discuss with the claimant "practice management and to hear from her how she was finding it, the challenges, the good things, what needs to be improved and how to make things work". This is copied to the partners and provokes some debate.

27. Dr Jack, in his response to Dr Aderonmu's suggested approach, asked whether or not the partners had changed their mind as he had thought that the difference of opinion was much more acute than the friendly update that had been set up. He commented that it would be hard to have a constructive updating kind of conversation and then bring up a probationary period increase. He was still unclear what the planned objective of the meeting was. Dr Aderonmu reassured him that the issues raised by Dr Sorouji would be addressed. The only concerns expressed by Dr Sorouji as evidenced in the bundle at this point are those relating to the appointment/rota sessions issue.

28. Dr Azeem also replies to Dr Aderonmu's email (page 144) and says that he thinks the concerns should be raised with the claimant without Dr Sorouji present as it is the first time these will be raised. He states that he thinks they are obliged to give the claimant time to achieve the required improvement with adequate support to minimise the risk of any unfair dismissal claim et cetera. He adds, even though it is the probationary period you could argue she may have valid points and reasons for her actions which were never explored with her and this reaction is only hearing the details of one party alone. The email goes on to say ideally the probationary period would be extended for three months with the partners looking for evidence of an improved relationship. He notes that the focus of these apparent issues is from Dr Sorouji and comments "I think there is no formal concern raised by anyone else (even though we suspect things could be handled differently by her in other examples the fact we have not actually spoken to NH about these means an assumption and not fact)." At this point Dr Sorouji is the only one raising formal issues.

29. The claimant contends that she was not made aware of any concerns. There was no evidence from Dr Aderonmu about any concerns she raised with the claimant in this planned meeting. There were no notes of the meeting and she did not give evidence about what was said. The probationary period was not extended, and we find that, despite Dr Sorouji's views, the partners had agreed that any issues were not significant enough to warrant this. We also find that there was no reason for the claimant to understand there were any performance concerns at this point. To have a meeting about what could be improved would be a standard part of a probation period discussion and if the improvement required was significant then we find the probationary period would have been extended.

30. After this had occurred, the respondent's case was that the issues continued. Pages 156-169 contain some further complaints raised by the partners to each other, but not to the claimant. These start on 15th May 2018, with an email from Dr Aderonmu saying that she had concerns about the tone of some of the claimant's emails and asked if there was a plan to address that. On 16th May Dr Azeem responds that issues should be raised with the claimant at a

partners meeting. This email refers to "when we last spoke to her, we made it clear she should bring issues to the table to discuss…". This sounds as if it is for the claimant to bring her concerns, not the other way around. It was agreed that this would be added to the agenda.

31. On the 21st May Dr Soruji adds his thoughts which included some detail about his concerns with the claimant. He remains concerned about the rota issue which he had raised prior to the probationary confirmation. He said he had never seen a partner treated in this way. It had been agreed that the claimant was not to alter his times and she had gone against this without authorisation and gone against what all partners had stated. He concluded that she had been altering his working patterns without proper authorisation. It was agreed that these issues would be added to the agenda to discuss in the near future.

32. On 22nd May (p 162) Dr Jack agrees that the claimant undermined Dr Sorouji on more than one occasion. His email states that a discussion is to be had with her, which he believed that Dr Sivaprasad was going to do, followed by a formal letter .We were not directed to any minutes of the partners meeting which indicated that this had been discussed, nor did any of the respondent's witnesses confirm that it had been. The claimant had no recollection of these matters ever having been put to her, no formal or informal letter was disclosed, and we therefore conclude that this did not occur, and it was not as serious an issue as the emails suggested. If it had been there would have been some action.

33. We were also directed to pages 171-3 as examples of the respondent's concerns about the claimant. This related to an email of 15th August 2018 the claimant had sent, she says on Dr Sivaprasad's instructions, asking Dr Jack not to talk to patients while he was off sick as he did not have appropriate insurance. We accept Dr Sivaprasad agreed this course of action as he did not tell us otherwise. Dr Jack clearly did not take too kindly to this and he responds that he would appreciate in future one-to-one discussion via phone email or text if she had an issue relating to decision-making. We find that in the circumstances the claimant's actions in reminding a doctor not to contact patients without active indemnity insurance were reasonable and were agreed with one of the partners. This would be part of her role as Practice Manager.

34. On 22nd August 2018 (p180-181) Dr Jack writes to the partners that he is concerned about the claimant not progressing the health and safety action plan. The claimant's job description was at page 94. It included the statement that job included supporting the assistant practice manager in advising on HR, health and safety and information governance and that the role would act as a mentor and support for these areas.

35. Dr Jack's evidence was that this meant the claimant had overarching responsibility for health and safety and therefore it was within her job role to press forward with the health or safety action plan. It was a failure to do this that in his view amounted to a breach of contract. His email referred to advice taken from Peninsula and said that "we could go to a final written warning, or following proper procedures dismiss her. I am more than". Dr Jack could not recall what he

meant by the phrase "I am more than". Dr Sorouji responded and also complained again about the claimant in an email of 23rd August.

36. Dr Jack confirmed in his evidence that no action had been taken about this health and safety concern. There was no warning, informal or otherwise. He also confirmed that it was possible that there were emails that were complimentary about the claimant passing from the partners which had not been disclosed. We find that the partners had shared concerns about the claimant's conduct and behaviour, but that these had not been shared with her in any formal way. While the emails suggest that the HR advice the partnership received is that the claimant could be dismissed, not even a formal letter is given to the claimant at that time. This concern is not raised as part of the investigation meeting on 19th February 2019 and appears never to have been taken up with the claimant.

37. Dr Jack told us that he considered that the claimant's emails could be rude. He gave as an example an email from 30th October 2018, at page 201, in which he characterised the claimant's response as condescending and unpleasant. He was unable to point to anything expressly rude in the document but said that as a partner he raised a simple request and had not expected it to be responded to in such a patronising manner. We accept the email could be received in this way.

38. We find that prior to the 6th November and the claimant's announcement of her pregnancy, while there had been what looked like serious concerns from the partner's emails, nothing had been done about these. The claimant had not been spoken to and we conclude that this lack of action suggests these were not concerns that the respondent considered serious enough to warrant any formal or informal action at the time. We conclude that these were in reality minor irritations to be expected in an office environment. Had they been more, then the respondent would at least have spoken to the claimant.

<u>The events of 9th November 2018</u>

39. On 6th November the claimant advised the respondent that she was pregnant. While the claimant's pregnancy ended happily with the birth of her daughter, it was a high-risk pregnancy and therefore the claimant announced the news to the respondent at a relatively early stage.

40. On 9th November, the claimant had attended a meeting about GP trainees along with five colleagues in one of the practice meeting rooms. It was her custom to use her mobile phone to record meetings so that when she had to write minutes, she had a recording to assist. We can see that she suggests digital recording of the meetings on the 17th April 2018 (page 134). There was no response to this and certainly no negative reaction. Dr Aderonmu in her reply to this email compliments the claimant on her minutes but says nothing about how they might be captured. The claimant considers that she was authorised to record the meetings by an email from Dr Jack of 20th April 2018 which talks about someone doing the minutes, recording them, typing them (page 140). Dr Jack was adamant that this email was a discussion about how the minutes of the partners meeting should be taken and was not an authorisation for electronic

recording. By recording he meant somebody taking notes. We accept he had not authorised recordings.

41. Nonetheless, the claimant said it was her habit to record notes to play them back to herself to make sure she had followed and used them to write minutes. These were for her personal use only and were deleted once they had been used for the purpose for which they were recorded. Dr Sorouji told us that in January 2019, partners' meetings were moved off site because he had concluded that the claimant was recording their meetings because her minutes were so thorough. He does not raise this as a concern or ask the claimant about this.

42. We accept that recording to use for minutes and then deleting was the claimant's practice. No one had objected to her proposal to record, although we accept it was not agreed. We find that the claimant had been recording notes of the meeting that she had been attending on 9th November. The claimant was called away unexpectedly to deal with an engineer who had arrived on site leaving her phone and notebook in the meeting room. She had been away longer than she expected, and she returned to the room may be some two hours later to collect her belongings. In approaching the door, she says that she heard three voices talking about her. These were Dr Sivaprasad, Dr Azeem and Dr Aderonmu.

43. The claimant's account of the conversation was set out in her witness statement, referred to in her grievance letter at page 276, set out in some detail in the grievance investigation meeting at page 320, referred to again at page 348 of the bundle and discussed as part of the grievance appeal hearing at page 398.

44. Her recollection was that the words were these. "If we are going to sack her, we can't possibly do this locality work. We're going to be too busy steadying the ship after we have sacked her". "No no no, we need to forget all of this. We need to look at our mapping. We need to get together and have a meeting to talk about mapping". "We need to focus now. We need to focus on sacking her and then steadying the ship because that's going to take up an awful lot of time". In the conversation with the grievance investigator the claimant also explained that she had heard the female voice saying that "if we are going to do this what will be our excuse?". It was that point the claimant says she became very upset and ran away because she was scared that the people in the room were going to hear her.

45. In the claimant's witness statement, she added that after the comment made by the female voice, (Dr Aderonmu) she also heard the phrase "mother hen" and it was after these words that she left the vicinity.

46. In the grievance investigation meeting the investigator records the claimant also recalling that she heard someone saying "she is pregnant, what are we going to do? We've got to get rid of her". In the grievance appeal outcome, the claimant clarified that the notetaker had misquoted her evidence. Those last sentences were not her quoting what she had heard, rather they were her paraphrasing what she understood was the intention of the conversation. The claimant does not say at any point that she expressly heard anybody say they

were looking to dismiss her because she was pregnant. She did hear people talk about sacking her and what excuse they could make.

47. The claimant said that she went straight back to the room where she had been working in tears and relayed the conversation to Rachael Giles and Janet Cabby. She also spoke to Louise Wells. Rachael Giles was asked for her account as part of the grievance investigation and gave this at page 358 of the bundle. Rachael states that when the claimant returned to the room, she seemed flustered and said she had just overheard the partners talking about getting rid of her. Rachael recalls that she and Janet tried to persuade the claimant that she could not have heard the whole conversation, or exactly what was said and maybe she got the context wrong.

48. The claimant explained that she was very panicked by this conversation and therefore telephoned a colleague at the CCG to talk to her about whether there was a job for her there. She called this individual as a friend and not in any official capacity. She explained to this individual what she had heard, and her friend recommended that she write everything down and keep a diary from then on. The claimant therefore made a note of what she had heard. She created this and stored it on her work PC.

49. At some point in the day the claimant retrieved her phone which had been left in the meeting room. It occurred to her that her phone might have accidentally recorded some of this conversation. She therefore checked and found the conversation and heard again Dr Aderonmu asking “what will be our excuse”. She said she did not listen to the whole conversation again because it made her feel so unwell.

<u>The respondent’s evidence about the conversation</u>

50. The respondents were adamant that they had not had any such conversation in which the claimant’s pregnancy and the termination of her employment had been linked and discussed.

51. Dr Aderonmu confirmed that she had been in a meeting on 9th November and that when it had concluded she remained behind with some colleagues and there was a discussion about the claimant. It was not about dismissing her for pregnancy, but about a plan to meet with the claimant to discuss concerns.

52. As to the reference the claimant heard to mapping, Dr Aderonmu thought that this phrase could be a reference to the road map the claimant had proposed as Dr Aderonmu was very keen to see how things were planned for the year ahead.

53. Dr Sivaprasad did not recall any discussion about the claimant on this date but did confirm that there had been conversations about the claimant’s performance and what should be done.

54. Dr Azeem was still unsure what this conversation was but recalls that there were many discussions about the claimant and their concerns and he gave

evidence that " we had discussions about what measures we should take to address our concerns about her in light of her pregnancy and even sought advice from Peninsula about this but we never had any discussions that would entail discrimination due to pregnancy". Dr Azeem was particularly concerned that they did not do anything that could be misunderstood by the claimant as discrimination.

55. He was asked about the words the claimant heard at this meeting. He said that sacking is not a word he generally used, but "steady the ship" is a phrase that he had used a few times. In using that phrase, he had been looking at the wider concerns if any action was taken which resulted in an adverse outcome.

56. In his witness statement he refers to pages 171–173 and 201 as the triggers for this concern. The first of these is an email of 15th August 2018 relating to Dr Jack characterised as rude. We have already found these to be minor concerns which had not been raised with the claimant and not serious enough to warrant any formal action.

57. Of the three doctors who were said by the claimant to be present, Dr Aderonmu did recall a conversation that day about the claimant. The discussion about mapping and the concern about meeting on this subject would reflect Dr Aderonmu's interest and concern on this subject and would be consistent with her evidence. Dr Azeem gave evidence that there were general conversations at that time about the claimant. Dr Azeem tells us that conversations were about how to address concerns in the light of pregnancy. Louise Wells evidence was that she heard Dr Azeem on the recording of the meeting and from her account Dr Azeem did not feel he could even look the claimant in the face and Dr Aderonmu was planning a meeting with the claimant.

58. We find that the claimant did overhear the conversation about herself in the terms she describes through the door. The words she says she heard are consistent with language used by those speaking. She immediately goes to tell colleagues this and her actions that day are consistent with this having been the case. We note that Emma Sivyer gave evidence that she worked in the room next the meeting room and in the two years that she had been working there she had never heard any conversations at her desk or the lobby area with the door shut. She also confirmed that when a confidential meeting was taking place in that space a notice to that effect was put on the door. We conclude that this would only be done if there was thought to be a risk that matters could be overheard from outside, otherwise there would be no need for such a notice.

59. We accept therefore that the meeting on 9th November did take place and that these three individuals were present. We find that the claimant did overhear a conversation in the terms she described in which her performance and dismissal were discussed alongside her pregnancy. We accept that reference was made as to what excuse could be found which suggests that there were no grounds for the dismissal which was being discussed and some excuse was being sought to mask the real reason. As we have found that there were no significant concerns about the claimant's performance at this time, the only change in circumstance was the claimant's pregnancy.

60. It was put that it was inappropriate for the claimant to ventilate what she had heard with others and that she was gathering witnesses when she should have spoken to the partners instead about what she had heard. As we have found that the partners were planning to find an excuse to sack her, we accept that it would have been difficult for the claimant to raise this with them and speaking to people while distressed is an understandable reaction.

Conversations with Louise Wells

61. The claimant was emotional and therefore asked Louise Wells, a person she considered to be a friend as they had socialised outside work, if she might have time for a chat after work. The pair went to a pub around the corner where the claimant told Ms Wells that the partners were going to sack her because she was pregnant. The claimant apologised to Ms Wells about the possibility that she would be left there without the claimant to protect her from Dr Sorouji, who had historically upset and frustrated Ms Wells.

62. The claimant's account before the tribunal is that when they drove back to the surgery car park before leaving the car she played Ms Wells a very small snippet of the recording, the bit where Dr Aderonmu said "if you do this, what will be our excuse".

63. Ms Wells account was different. She provided an email to Dr Jack on 5th March 2019 (page 357 of the bundle). In that email she agreed that the two of them went to the pub and that the claimant told her she knew the partners were going to get rid of her because she had a phone recording of this. Ms Wells said that the claimant played that recording and that she heard Dr Sorouji, Dr Aderonmu and Dr Azeem. In cross examination she clarified that she thought she heard Dr Sorouji, but as it was not a video recording, she did not see him.

64. She was unable to really hear the recording because they were outside and she said the claimant again played this through the car's speakers when they were in the surgery car park and she heard Dr Azeem saying he can't walk up the stairs and look the practice manager in the eye. She also heard Dr Aderonmu saying she did not trust the claimant and they were planning on asking her to stay behind for a meeting on the following Friday. Ms Wells was adamant that she did not hear anything about the partners planning on getting rid of the claimant because she was pregnant.

65. Ms Wells provided a further email to Dr Jack on 14th April (p 470) in which she said she was very worried about what she had heard in the appeal meeting. She said that she knew that the claimant did not overhear the partners planing to sack the claimant because of her pregnancy because after the meeting the claimant came down and spoke to her about time owing. In cross examination she agreed that the claimant had told her on the day that she had overheard the conversation as well as recorded it. She told us she had just missed that part out when she made this second statement. Ms Wells accepted that the way her second statement was worded suggested that the claimant had not overhead the conversation. She clarified that at the time, presumably on the 9th November 2018 she had believed the claimant had overheard the conversation as the claimant had told her this, but by 14th April 2019 she no longer believed her.

66. We find that a third party reading this email would conclude that Ms Wells was saying that the claimant had not spoken to Ms Wells after the meeting, which is not the case.

67. Dr Jack then passed this email to the appeal grievance investigator who did not show it to the claimant but quoted passages from it for the claimant to comment on.

68. None of the doctors whose voices were on the recording were interviewed as part of the grievance. Dr Sorouji was interviewed because Louise Wells said that he was part of the meeting. In her evidence, however, she did not hear his voice on tape but believed that the claimant had told he was present. The claimant told us that the discussion in the pub was about Dr Sorouji and her concern about Ms Wells being left in the practice to deal with this individual. We conclude that Ms Wells was therefore confused and incorrectly thought that Dr Sorouji was part of the conversation.

69. Ms Wells statement contains another inaccuracy. She refers to the claimant being tipped off by a partner about a meeting and believes this to be the one she recorded. We accept that is not correct. The recorded meeting was 9th November 2018, the meeting where the claimant was forewarned in very general terms was 19th February 2019.

70. It was put to Ms Wells that she had been part of a "pact" to resign if the claimant was sacked. She denied any such pact and denied that she was aware of or had been part of any "WhatsApp" group called "the pact". The claimant provided us with a screen shot of the group named "the pact" which shows Ms Wells leaving the conversation.

71. It was put that the claimant had been inconsistent in in her account about what she had played to Ms Wells. In her claim form she had said she had not shared the recording, played the recording out loud and had not used it. It was submitted that this was inconsistent with Ms Wells who maintained that she had played more than a single sentence and that the recording was played outside at the pub and in the claimant's car on the loudspeaker.

72. The claimant has been consistent in her account of what happened throughout. She has recalled additional details on further questioning but has not altered her account in any substantive way. Ms Wells written accounts have clear inaccuracies and her oral evidence was contradicted by documents produced. We conclude that where there is a conflict between Ms Wells and the claimant, we prefer the evidence of the claimant.

73. We accept that the claimant did overhear the meeting on the day, and that she also recorded the conversation and that she played only a very small snippet from this to Ms Wells as she explained. She did not share it generally, she did not play it out loud and did not use it in the broadest sense, limiting it to playing a single sentence to a friend. It was not played in a public place.

74. We also do not accept that the claimant warned Ms Wells that she could be sacked if she revealed the recording. It was suggested that the claimant had

decided to invite Ms Wells to the pub and involve her because she considered Ms Wells to be easy to influence.

The diary entries / notes of the conversation

75. The claimant explained that after her conversation with her friend at the CGC, from then on, she kept a diary which took the form of a word document with date entries and text. An extract from the diary was including the bundle at pages 664-665. The claimant said this was not the full version. This was a copy she had emailed herself at home. The full version had been left by her on her work PC when she was suspended and had to leave the premises with no notice. Similarly, the claimant told us that her notes made on the day that she heard the conversation were also left in her work PC. Neither had been found or disclosed by the respondent. The claimant also recalled during cross examination that she had given a copy of these notes to a Peninsula consultant, she thought to be as part of the grievance appeal, although she was not certain it was not as part of the initial investigation.

76. The claimant was confused as to whether the notes of the conversation were separate or had been amalgamated into her diary. She had not referred to these notes in her witness statement. Her explanation was that she had forgotten about this until her memory was jogged by being taken to the transcript of her interview with the Peninsula consultant. It was suggested that while she referred to these notes, she had not provided them at any time and their existence was questioned.

77. The grievance hearing report prepared by Eki Omeregie records the claimant referring to her diary as if the document is in the room with them. It is not noted as one of the documents considered as part of the grievance procedure. While the claimant is recorded as having told the investigator she had a three-page document she was not asked about that.

78. The report prepared by Sophie Young for the grievance appeal hearing does not list as documents that were considered any documents provided by the claimant. It also does not expressly list the statement from Louise Wells in the section relating to documents considered, although it does refer to the statement received in the list of people spoken to. Ms Wells was not spoken to.

79. It is clear from the reports that there are additional documents that were shared by the claimant during the process. Page 388 paragraph 24 refers to a version of the ACAS guide on conducting workplace investigations having been provided to the consultant, highlighting various areas where best practice guide had not been met. This is neither referred to by the appeal chair nor disclosed by the respondent. Reference is also made at page 391 paragraph 39 to evidence submitted by the claimant bout avoiding stress during pregnancy. This document is not referred to by the appeal chair nor disclosed by the respondent. Reference is made at paragraph 47 page 392 to an email the claimant has sent as evidence to demonstrate bias against pregnant women by the doctors. At paragraph 49 the claimant also provides the grievance appeal chair the list of attendees at the locality meeting. These documents are not referenced as those considered by the appeal chair, nor have they been disclosed by the respondent. The claimant

sent a recording of a call and this cannot be opened by Peninsula. The claimant is not told this and no reference is made in the report to the fact.

80. The case report prepared by George Hickman sets out the documents he considered but does not refer to Ms Wells statement of the 14th April 2019 which he confirms he had sight of.

81. The respondent has said that these documents were not provided to them, but we have not been given any direct evidence from any of the reports' authors. A search had been made by Peninsula, but these documents could not be located, and we were told that all documents are scanned into a central system so should be retrievable if they had been provided. As the grievance report, grievance appeal report and the disciplinary investigation report on their face clearly do not reference all the documents that were referred to, we accept the claimant's account that she also handed over a copy of her diary and the notes that she had made as one integrated document. We accept that they existed at the time and were provided to Peninsula but have not been retained in their central systems.

82. Much was made of the fact that the claimant had deleted the recording. We accept the claimant's evidence on this point, she had made the recording inadvertently, did not think it was something that she should have. She was also upset by hearing its contents. She did not at that time imagine that she was embarking on a litigation journey and did not feel that she needed to keep it. She had in any event shared her feelings about what she'd heard in the meeting immediately with three colleagues and further had made notes of what she had heard.

83. The respondent suggested that the claimant deliberately withheld the fact of the recording during the grievance process and only confessed she had done so after she became aware that Ms Wells had informed the respondent of this. It was further suggested that the claimant had chosen to confide in Ms Wells and to ask her to accompany her to the grievance appeal meeting because she was confident that she could influence her to keep the recording a secret,

84. This was not put to the claimant who gave evidence, which was supported by Ms Wells, that at the time they were friends. It was for this reason the claimant asked for her support.

85. It was suggested the claimant had tried to keep Ms Wells from being spoken to by the investigator to avoid the recording becoming known. The reason the claimant gave at the time was that Ms Wells didn't want to be involved. We note that the claimant continued to observe confidences (her conversation with Dr Azeem) throughout the internal process and accept concern was her motive and not a desire to conceal the recording.

<u>The pregnancy self-assessment</u>

86. On 29th November 2018 the claimant conducted her own pregnancy risk assessment by completing a checklist - pages 207-209 of the bundle. Two weeks later Janet Squires conduct a further risk assessment on 11th December 2018 at

page 210. Ms Squires said that she did so on her own initiative. All parties therefore agree that the partnership did not request any such assessment to be carried out and Ms Squires confirmed she did not share her assessment with the partners. No senior figure was involved in the risk assessment

87. The claimant as practice manager and with experience of HR carried out pregnancy risk assessments for most staff herself. Her point was, however, that as she was the employee being assessed it was not appropriate for her to do her own risk assessment. The partners as her employer should have carried this out. They should have enough basic HR knowledge to be able to do so and it was inappropriate that she had to do her own. It was also inappropriate that Janet Squires who reported to her to carry out her assessment. As far as the claimant was concerned this was a failure on behalf of the partnership.

The CQC inspection

88. Nothing further occurred after the claimant overheard the meeting on 9 November, but she tells us that about a week later she was called to say that the surgery was to have a CQC inspection. This took the claimant and Dr Azeem, with whom she paired up to prepare for the inspection, a considerable amount of work throughout December 2018. The outcome was published in late January 2019 and all nonclinical areas, those which the claimant was responsible were passed with flying colours, while the clinical aspect the surgery needed a lot of attention. Her thoughts were that she and the partners had worked together well to deal with this inspection and the claimant hoped that the partners had moved on from their plan to dismiss her.

Overtime / CCG payment

89. It was agreed that the claimant was involved in locality work for the CCG. This was setting up the east central hub service, a service that involves applying clinical resources such as face-to-face reviews and home visiting eight practices. The claimant estimated this took her 7.5 hours a week, that is one working day. It was accepted that no one else was brought in to cover either this locality work at practice manager level, nor to backfill any other tasks that the practice manager might be expected to carry out.

90. In September 2018 the claimant contacted the CCG and agreed that they would make a payment to compensate for these hours. She explained that she had calculated precisely how much time she was spending on this work and based on her hourly rate had calculated some that would cover the cost of her time. On 26th September 2018 (page 196) the claimant sent an email to Dr Sivaprasad asking how much of the income she generated would it felt to be fair to pass on to her?

91. The claimant recollects that there was a discussion between the two of them at which two options were outlined. Either, the claimant could claim overtime the additional work she was putting in, as she told us that she was unable to complete her work for the practice as well as additional one day a week task without doing overtime, or some or all of the monies provided by the CCG

could be paid to her. It was her evidence that Dr Sivaprasad told her not to log over time and that he would speak to the partners about this.

92. All agreed that this item was never put on any partnership meeting agenda. Dr Sivaprasad raised this as a fault by the claimant. He said that she could have raised the question any time as the CCG work was discussed at partners meetings. The claimant's perspective was that she had been told by him that he would raise it and she did not think it was appropriate to do this at a partners meeting at which other people were also present. We accept that the claimant did chase this payment and therefore there is no criticism that she did not raise it at partners meetings.

93. On 27th February 2019 the claimant sent a second email (page 293-295) requesting that some of the £9,342.52 money be paid to her. The email refers to the fact that Dr Sivaprasad had communicated that it would be fair to consider whether some of this payment to be passed to her. The claimant says that when she sent this email Dr Sivaprasad told that her that this payment would be withheld because she had raised a grievance. He denies that he made this comment. His written witness statement refers to the fact that the payment was discussed with partners and it was not clear what the payment was intended for and therefore it was decided that Dr Sorouji would write to the CCG for clarification. We find that Dr Sivaprasad's recollection of events was a little hazy. He had not appreciated that it was a year after the request for the money that the partnership spoke to the CGC. On balance, therefore we prefer the claimant's account that she did understand she was not required to log over time as this matter would be dealt with in a different way.

94. Dr Aderonmu also recalls Dr Sivaprasad mentioning in passing that the claimant had asked about this payment and they had agreed that this should be clarified with the CCG. Dr Sorouji contacted the CCG about this (629– 630) who confirmed it was a reimbursement to the practice of the time they had lost the practice manager in order to provide the service to the locality. Dr Sorouji's evidence was that the claimant carried out this work while working for the respondent and so the payment was for the respondent to reimburse management time lost. The CGC confirmed the money was for work amounting to 1 day a week so, despite Dr Sorouji being unaware of this, we conclude the work was done and took this time.

95. While no overtime records were kept, we accept that the sums calculated by the CCG represented their and the claimant's best estimate of the time that she would spend on this task. We conclude that it is highly likely that any individual undertaking a project that amounted to one day's work would have to work overtime for which they should be reimbursed.

96. The contract of employment at page 52 makes reference to overtime. It specifies that the salary is set at such a level as to compensate for the need for occasional additional hours, however, additional hours worked when authorised by the partnership may be paid a basic rate of pay or given as time off in lieu at the discretion of the partners. We accept that Dr Sivaprasad had in effect agreed the claimant did not have to log overtime and so had agreed to overtime being done.

97. We also note that the claimant raised her request to Dr Sivaprasad in February 2019, but the respondent took no action to clarify this with the CCG until a year later in February 2020. We therefore conclude that the practice did not take any action following the claimant's request and we conclude that the reason for this lack of action was that the claimant had raised a grievance.

Concerns in 2019

98. In January 2019 Dr Jack returned to the practice. The claimant reported that by the end of that month / early February the partners' mood appeared to have worsened again and there were off site meetings when she was kept in the dark.

99. Dr Sivaprasad told us that there were increasing concerns with the claimant's tone and manner of her emails. At page 221 on 3rd January Dr Aderonmu emails the claimant to tell her it was not appropriate to send an email as the claimant had done 2nd January. The claimant responded apologising. Dr Sorouji on 6th January also commented on this email by saying "I thought I'd add some valuable feedback." The emails are taking issue with something the claimant has done, but they are moderate and simply talk about getting her to check with them first. This is expressed as feedback.

100. We were directed to page 232–233. This starts with an email from the claimant of 21st January to Dr Sorouji asking him not to bypass her. Dr Aderonmu forwarded this to the partnership on 22nd January saying she was very concerned about the tone of the email and suggesting there should be a formal meeting with the claimant to discuss her email instruction. This email says, "I suggest we act quickly on our dismissal plans; we have again let this drag on for too long". Dr Azeem replies. He does not take any issue with the reference to dismissal plans. He replies agreeing that now they need a formal meeting and a written warning about her conduct. He also appears to have reached a conclusion about a disciplinary outcome before any investigation has started. Dr Azeem told us that they did not mean dismissal at this point, they are doctors not HR experts and do not necessarily use these words correctly.

101. On 23rd January (page 237–8) there is an email from Dr Sorouji asking the partnership to have a look at the email the claimant had sent him. He says that this is a simple example of day-to-day working.

102. We find that by January 2019, the partners had determined to dismiss the claimant as Dr Aderonmu set out. We also find that there while the emails that have been disclosed show discontent with the claimant, we have found that the concerns in 2018 prior to the pregnancy announcement were minor. The concerns raised in 2019 are also minor matters. They are raised to further the dismissal plan.

The investigation

103. It is unclear when the decision was taken but all of the respondents told us the partners collectively decided to hold an investigation into the claimant's conduct on 19th February 2019.

104. Dr Azeem gave evidence that on 18th February the claimant approached him, and they spoke. During this conversation both the claimant and Dr Azeem agree that the claimant told him she was aware that, he says two of the partners, had discussed their wish to sack her. This was a reference to the November meeting. Dr Azeem did not ask the claimant exactly how she knew this, but this he tells us started to create a suspicion the claimant may have recorded partners private discussions or meetings. He and the claimant were both agreed that he warned her an investigation, or a meeting were coming but he did not tell her when any meeting would take place. Dr Azeem told us he broke confidence with his partners to tell the claimant this much as he was not supposed to have warned her.

105. Janet Squires gave a statement on 5th March, some weeks later, about what she said occurred on this day. She also described the events in her witness statement prepared for this hearing. The accounts are not the same. They give different details of what the claimant said. Her evidence was that on the morning of 19th February the claimant was boasting to her, Maxine Kinder and Louise Wells that Dr Azeem had warned her that the partners were going to ambush her at their meeting that day. It is not possible that she could have heard the claimant be precise as to the date of this meeting as neither the claimant nor her informant knew when it was to be.

106. We also note that the other 2 witnesses attribute no such comments to the claimant. Ms Kinder's statement makes no reference to the claimant making boastful statements but simply that they were planning to find a reason to sack her. Louise Wells in her evidence also references that the claimant had told her she been tipped off by her partner about a meeting again does not refer to any of the comments Ms Squires attributes to the claimant. Further, Ms Wells confuses this with the meeting which she recorded which is clearly incorrect. We find that the claimant did not make the statements attributed to her by Ms Squires. These are denied by the claimant and not recollected by the others who were present.

107. The claimant was invited to attend the usual weekly meeting, but on arrival she was instead told this was to be an investigation meeting. It was accepted that she was given no formal warning of the purpose of this meeting or provided with any written or verbal allegations in advance. Dr Azeem told us that because he had, in a breach of confidence to his fellow partners, warned the claimant that an investigation was coming that the claimant was on notice of this meeting. We do not agree that a secret tip of about an unspecified event at an unknown time can amount to notice. Instead she took part in a meeting chaired by Dr Sorouji in the presence of the other doctors.

108. Dr Sorouji chaired the investigation meeting. He provided her at the meeting with copies of 4 emails but not in advance. He had a series of pre-prepared questions that he asked her. He told us that this was an investigation meeting to get the claimant's side of the story to take it forward. He also said that he felt that the emails were abrasive and that while his mind was not set in stone, he had previously found that the claimant had been undermining. He also said that he had tried to give the claimant feedback, but this had no effect. He told us that the issues with the claimant were long-standing and that his relationship with the claimant was dysfunctional. He knew the situation well.

109. We find that Dr Sorouji was not an impartial chair of this investigation process and, while he told us he had not fully made of his mind, nonetheless he was personally involved in the complaints. It is clear from the email trail that he was concerned about the claimant's conduct to a greater extent and earlier than his partners. We also find that this was not a genuine investigation and that the respondent had already determined that disciplinary action was going to be required. A number of the respondents told us they did not have HR experience as an excuse for the shortfalls in their HR process. We do not accept that excuses ambushing the claimant into a meeting led by an individual who has already concluded that the emails he is putting to her are abrasive and inappropriate.

110. We find that this was at best a heavy-handed meeting. It did not allow the claimant any time to consider in advance the allegation to be put to her or the evidence on which these were based. The lack of notice, format of the meeting and the manner in which it was conducted were not in accordance with ACAS best practice. We conclude that it would clearly put an individual with a high-risk pregnancy under an unnecessary degree of stress.

111. The claimant felt under attack, ambushed with a meeting disguised as a different purpose and asked to comment on random emails, at least one of which went back to August 2018. When she left the room was extremely upset and concerned about the pregnancy and the impact of this stress on the baby. The claimant says that she spoke to both citizens advice bureau and equality advisory support service and was advised to raise a grievance.

<u>The grievance and appeal</u>

112. The claimant raised a grievance (page 274-277) which sets out her concerns. Once this grievance had been raised, the claimant was advised by Dr Jack that the investigation that had started on 19th February would be paused pending the outcome of this grievance. The respondent then appointed a third-party HR consultant (Eki) from the face 2 face service, part of Peninsula, to hear the grievance and to make recommendations to the respondent.

113. The face to face service are consultants who work separately from either the advice or the litigation teams. Nonetheless, it was accepted that the information from the consultant was routed through the same contact point as all other advice from Peninsula.

114. As part of the grievance investigation/outcome the third-party consultant interviewed the claimant and Dr Sorouji. A report was prepared at pages 296–351 in the bundle which includes the interview notes and the findings and recommendations.

115. The report dismisses the claimant's grievance. In particular Eki found that the conversation that the claimant say she overheard which amounted to her being sacked for being pregnant had not occurred. We have found that the partners were indeed discussing her and Eki did not interview any of the relevant doctors about this. Dr Sorouji was not present. Interviewing him was not relevant to this critical conversation.

116. The claimant appealed against the grievance outcome and a further consultant, Sophie, from the same organisation was appointed to carry out the appeal. She dismissed the grievance appeal.

117. During the grievance it is clear that Sophie was given Louise Wells's statement of 14th April and chose to believe her. This statement was misleading because it does not refer to the claimant having overheard the conversation but refers only to the recording. This statement also suggests that Louise Wells knows the claimant is lying. Sophie does not interview Ms Wells and simply puts this misleading statement to the claimant.

Events leading up to suspension

118. Dr Jack's evidence was that further information about the claimant came to light while the grievance was being investigated. Ms Squires provided a statement on 5th March (page 353–355). He said that this was an unsolicited statement, that she had spoken to him and had asked her to put this in writing. This indicated that the claimant was using instant messaging and listening to private messages.

119. On the same day Louise Wells also came forward, having spoken to Ms Squires about the position, and told Dr Jack the claimant had recorded a meeting of the partners discussing her, this was 9th November conversation. Again, Dr Jack recalled that he asked her to put this in writing. Dr Azeem also chose at this point to disclose his conversation with the claimant on 18 February, including that he suspected she had recorded private discussions.

120. On 14th April, Ms Wells sent another email reconfirming she had heard a recording that was made and played by the claimant but also saying the claimant had accessed Dr Sorouji's personnel file and showed it to her (page 70 of the bundle).

121. Dr Jack was extremely concerned about this and concluded that, while balancing the interests of the claimant as a pregnant employee, he also needed to protect the practice, because there was information which suggested that she was making unauthorised recordings and disclosing confidential information about the partners to undermine the practice. He decided that the claimant should be suspended, and a disciplinary investigation initiated.

122. On 18th April the claimant was therefore suspended with immediate effect, she was asked to leave the practice immediately and was not able to collect for example documents stored on her work PC. Terms of the suspension was set out in a letter her page 478.

Disciplinary meeting

123. The respondent had concerns about four allegations, alleged breach of confidentiality, HR protocols, breakdown of the working relationship and breach of health and safety. On 26th April 2019 the respondent sent the claimant an investigation invitation meeting. The meeting took place on 1 May and a further

third-party consultant, George, conducted this. The claimant was interviewed, and George provided a report setting out his conclusions and recommendations (page 482–500).

124. On 16th May 2019 respondent wrote to the claimant inviting her to a formal disciplinary hearing scheduled 21st May 2019 attaching a copy of this investigation report.

125. The disciplinary meeting took place on 22nd of May. The case report sets out the allegations against the claimant. These were not the same as the investigation .The claimant was accused of 11 breaches of confidentiality, conducting return to work meeting with Debbie Jennings in an intimidating manner, displaying rude and objectionable behaviour towards Dr Sorouji an email of 11th February 2019 and failing to follow a reasonable management instructions by not actively engaging with Peninsula. The claimant provided a typed statement of the meeting (page 574–577). A fourth consultant, Joy, chaired this meeting. A report and recommendations were at page 578-592. It concluded that the allegations were upheld and recommended dismissal.

126. We reach a different conclusion. We have accepted the claimant's account and have found the recording of the 9th November was unintentional. We have also accepted the claimants account of what occurred in the pub with Louise Wells and do not find that she played this in a public space or played it out loud.

127. The claimant accepted that it was her practice to record meetings as a matter of routine to enable her to ensure minutes were accurate. We have noted earlier that she suggests this on at least two occasions to the partnership who do not react. She also pointed out that the GDPR legislation was not in force at the time of these recordings. We again accept the claimant's position; she cannot be disciplined for breach of legislation which is not in force. We find that the claimant's recording was as she has said entirely to assist with minute taking. One of the allegations is that she had made covert recordings on personal mobile phones that may now be in the public domain. The claimant said that she still had all her old mobile telephones in the house and had not disposed of any. We also accepted that the claimant routinely deleted recordings and did not retain them,

128. Louise Wells was the only individual who suggested that the claimant had accessed a Dr's personnel file. She set this out in her statement of 14th April. We have already concluded that where there is a conflict on the evidence between Ms Wells and the claimant, for the reasons we are set out above, we prefer the evidence of the claimant. We accept the claimant's account therefore that she may have pointed to some training records and made an inappropriate joke about Dr Sorouji, but she did not disclose the contents of his personnel file or any confidential information.

129. The second allegation concerned a meeting that the claimant had held with Debbie Jennings. Ms Jennings was not called as a witness by the respondent. The appellant's report concludes that the allegations are upheld based on statements by Ms Jennings and by Louise Wells. There is little information in the report on which to evaluate the finding. It appears that the claimant's account was not considered. The claimant was not given an

opportunity to put questions to Ms Jennings and to test her account before the Peninsula consultant reached their conclusion. We find that this is an unfair process and that the decision is tainted by this. It is not sufficient to merit dismissal or any disciplinary sanction.

130. The allegation was that the claimant displayed rude and objectionable behaviour towards Dr Sorouji in her email of 11th February 2019. Dr Sorouji had emailed some members of staff regarding staffing rota. The claimant clicked reply all and stated that operational management of the surgery was her remit and she had not been invited to this discussion. The claimant's evidence was that while her "reply all" had been forwarded to Dr Jack, there was another email from Dr Sorouji which was also to reply all and this had not been included in the bundle or put as part of the disciplinary process. This is the only emails respondent says is inappropriate that was ever put to the claimant in a formal disciplinary setting. We find that on its own it is insufficient to justify a disciplinary sanction and that a process of informal and formal warnings should have been deployed first so that any legitimate concerns with the claimant's emails could be addressed by her.

131. Allegation four related to the claimant's apparent failure to engage with Peninsula. It was said that the claimant had called Peninsula after four days in her role and informed them that the respondent would not be renewing their contract when it came up for expiry in October 2018. While it was accepted the claimant was an experienced HR manager the partners wanted to continue to use Peninsula's advice and renewed the contract in September 2018 ahead of the expiry date.

132. We conclude that this was perhaps a difference in opinion between the claimant and the respondent. The Peninsula contract was renewed and never in fact expired. The partners were aware that the contract was going to come to an end. Had they not been aware they would not have been able to renew it themselves prior to its expiry. We find that this is part of normal day-to-day interactions within an office and is not an act of misconduct. It does not merit a disciplinary sanction.

133. We find that on the balance of probabilities the claimant had not committed gross misconduct.

<u>The communication of the disciplinary outcome</u>

134. On 9th June 2019 the claimant was admitted to hospital. She said that she received an email from Dr Azeem asking to have a telephone conversation. She replied telling him that she was in hospital and it was not a good time. Despite this, Dr Azeem sent a copy of this report to the claimant on 10th June 2019, together with a letter terminating her employment. Dr Azeem says that he did not know the claimant was in hospital when he terminated her employment in this way, she could have ben attending a routine appointment. The respondents were very keen to ensure that the claimant was given the news as soon as possible. They appreciated that this was a very difficult situation and they wanted to resolve it. Dr Jack's evidence was that they positively wished to bring the matter to a conclusion before the claimant's baby was born. He considered it would be even harder for a new mother to deal with the outcome and any possible appeal

and it was therefore better that the matter was concluded prior to this. We find that Dr Azeem had been on notice that she was in hospital at least the day before and it would have been prudent to enquire.

135. The termination letter set out a five-day appeal deadline. The claimant asked for this to be extended but did not hear anything and therefore discharged herself from hospital and met the deadline for responding. She set the respondents a similar five-day deadline to respond to her. The respondent replied the day after this deadline setting another six-week timetable. However, the claimant had already decided, her deadline having been missed, to raise this matter with ACAS and the employment tribunal.

136. By this time, she had reasonably lost faith in the respondent.

Relevant Law

137. The claims are brought under s 13 and s 99 of the Employment Rights Act 1996 and s 18 and 27 of the Equality Act 2010. A claim for breach of contract is also brought as the claimant was summarily dismissed.

138. Section 99(1) ERA provides that an employee shall be regarded as having been unfairly dismissed if the reason or principal reason for the dismissal is of a prescribed kind, or the dismissal takes place in prescribed circumstances. S.99(3) sets out the prescribed reasons or set of circumstances caught by these provisions, which expressly include reasons related to 'pregnancy, childbirth or maternity'

139. The relevant prescribing regulations in this context are the MPL Regulations, Reg 20(1) of which provides that an employee who is dismissed will be regarded as unfairly dismissed under s.99 ERA if the reason or principal reason for the dismissal are reasons connected with, among other things, the pregnancy of the employee — Reg 20(3)(a).

140. Connected with has been construed widely but there must be a causal link and it means more than simply associated with.

141. S18 of the Equality Act provides that a woman is discriminated against if she is treated unfavourably because of her pregnancy at any time between the start and end of the pregnancy.

142. S 27 provides that a person is victimised if they are subjected to a detriment having done a protected act.

Burden of proof

143. There is no qualifying period to claim automatically unfair dismissal under S.99, but the effect of an employee having less than two years' continuous service is that the employee bears the burden of proof in showing that the reason for dismissal was a prescribed reason within the meaning of s.99. Once it is found that the reason for dismissal was an inadmissible reason, the employer is

not able to argue that the dismissal was nonetheless reasonable in all the circumstances and therefore fair.

144. We considered the burden of proof for s 18. In Igen v Wong ltd [2005] EWCA Civ 142, Conclusion[2005] ICR 931, CA. remains the leading case in this area. There, the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place. Only if such facts have been made out to the tribunal's satisfaction (i.e. on the balance of probabilities) is the second stage engaged, whereby the burden then 'shifts' to the respondent to prove - again on the balance of probabilities - that the treatment in question was 'in no sense whatsoever' on the protected ground.

145. The Court of Appeal explicitly endorsed guidelines previously set down by the EAT in Barton v Investec Henderson Crosthwaite Securities Ltd 2003 ICR 1205, EAT, albeit with some adjustments, and confirmed that they apply across all strands of discrimination.

Conclusion

146. We have considered the relevant law and our finding of facts and we conclude as follows:

Automatic unfair dismissal

147. The principal reason for the claimant's dismissal was her pregnancy. We have found that the concerns about the claimant's conduct were trivial up to the date on which she announced her pregnancy. Thereafter, a meeting took place which discussed her potential dismissal. The process from then on which ultimately led to her dismissal was connected to her pregnancy. This was the catalyst that started the chain of events. Her claim for automatically unfair dismissal succeeds.

148. We have considered the limitation point raised by the respondent but find that there was a chain of events set off from the 9th November and therefore there is no issue as to time limits.

Breach of contract / Wrongful dismissal

149. We have found that the respondent had determined to dismiss the claimant at least by January 2019. The dismissal which occurred later that year was said to be based on four allegations of gross misconduct. We have found that the allegations of breach of confidence did not occur. We have concluded that the remaining three allegations are very minor and do not in constitute a disciplinary issue.We conclude that the claimant did not commit any acts of gross misconduct and the claim for breach of contract /wrongful dismissal succeeds.

S18 Pregnancy discrimination

150. We have considered the various items set out as unfavourable treatment in the issues list and have concluded that the claimant was treated unfavourably because of her pregnancy as set out below.We have found that her dismissal was planned on false grounds as the principal reason was her pregnancy. We find that while the claimant and her subordinate carried out a pregnancy risk assessment for the claimant's pregnancy, this was not done by anyone senior was not brought to the partners attention. We conclude that this was less favourable treatment.

151. We conclude that the claimant was subjected to unnecessary disciplinary investigation meetings in 2019. The respondent had determined the process and the outcome in advance. We have accepted that the claimant's dismissal was for pregnancy.

152. The disciplinary process that led to her dismissal was based on four allegations. We have found that most of the allegations of breach confidentiality should not have been upheld. The remaining allegations two, three and four, are insufficient to merit disciplinary action. We therefore conclude that the respondent was relying on allegations that were exaggerated.

153. We have found that the refusal to pay the claimant the CCG money was because she had raised a grievance which was connected to her pregnancy.

154. Failure to pay the claimant notice pay is also an act of unfavourable treatment. It arises from exaggerated allegations with a predetermined outcome based on pregnancy.The claim under s18 therefore succeds as set out above.

155. We do not agree that the following were unfavourable treatment. The claimant was suspended on 17th April. While we have concluded that there was no breach of confidentiality, we accept that the respondent's thought that at that point that there might be. Suspension ,while very delayed, was not an inappropriate response to this and it was also reasonable to issue the instruction it did about contacting staff or third parties. We do not find that the claimant was deliberately notified of her dismissal when she was in hospital. This was badly managed by the respondent but not intentional. These 2 issues are not upheld.

S27 Victimisation

156. We accept that the claimant raised a written grievance in 2019 and this amounted to a protected act. We have found that it was because she raised a grievance that the respondent then refused to consider paying her the £9,300. Accordingly we uphold her claim under this head.

Unauthorised deductions from wages / breach of contract – bonus scheme / CCG payment

157. We have made findings of fact about the bonus scheme and concluded that scheme was in place and that monies were payable in relation to patient

numbers and in relation to any new income that the claimant brought into practice. We are unable to determine how much should be payable and this must be dealt with at remedy.

158. We have found that the terms of the bonus related to patient numbers and to any new income brought in by the claimant.

159. We have found that the claimant worked overtime which was authorised and she is entitled to receive payment for this in an amount to be calculated.

**Employment Judge McLaren**
**Date: 25 August 2020**