EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mrs Suman Sharma	**v**	Slough Children's Services Trust

Heard at: Reading **On:** 17 and 18 March 2020 and 19 March 2020 (in chambers)

Before: Employment Judge Hawksworth
Mrs R Watts Davies
Mr J Appleton

Appearances
For the Claimant: In person
For the Respondent: Mr G Turner (solicitor)

RESERVED JUDGMENT

The unanimous judgment of the tribunal is:

1. The claimant's complaint of breach of contract succeeds. The respondent breached the claimant's contract when it failed to comply with its contractual Probation Policy and Procedure.

2. The claimant's complaint of direct discrimination because of pregnancy and sex contrary to section 13 of the Equality Act 2010 is well-founded and succeeds. The respondent directly discriminated against the claimant:

    a. when it decided on her return from pregnancy-related sickness absence not to allocate cases to her, to put her in the duty role for a month and to require her to assist others;
    b. when it failed to allow the claimant a fair opportunity to improve her performance;
    c. by failing to provide the claimant with weekly supervision meetings in April 2018; and
    d. by dismissing her.

3. The claimant's complaint of harassment related to sex contrary to section 26 of the Equality Act 2010 is well-founded and succeeds. The respondent subjected the claimant to harassment related to sex in respect of:

a. The behaviour of Mr Makoni in April 2018 set out in paragraph 265 of the reasons; and
b. Ms Jacob attending the claimant's final probation meeting without notice to the claimant.

4. The claimant is awarded compensation of £3,775.58 in respect of financial losses and £10,000 in respect of injury to feelings. Interest is awarded of £328.53 on the financial loss and £1,740.27 on the injury to feelings award. There is no additional award in respect of the complaint of breach of contract. The total award payable to the claimant is £15,844.38.

5. The claimant's other allegations of direct discrimination and harassment fail and are dismissed. Her complaints of victimisation and automatic unfair dismissal because of protected disclosures fail and are dismissed.

REASONS

Claim, hearing and evidence

1. The claimant worked as a Family Support Worker for Slough Children's Services Trust from 25 April 2017 to 27 April 2018.

    1.1. The claimant presented her employment tribunal claim on 9 September 2018 after a period of Acas Early Conciliation from 10 July 2018 to 10 August 2018. The claimant complains of breach of contract, direct pregnancy or sex discrimination, harassment related to sex, protected disclosure dismissal, and post-employment victimisation.

    1.2. The respondent presented its response on 23 November 2018. The respondent defends the claim.

2. The hearing took place on 17 to 19 March 2020.

    2.1. On the first day of the hearing we took the morning for reading and case management including clarifying the issues between the parties.

    2.2. During initial reading, one of the tribunal members, Mr Appleton, became aware that the claimant (who was representing herself before us) had previously been assisted by a union representative who is a member of the same union as Mr Appleton (UNISON). Before he retired (18 months previously) Mr Appleton was a branch representative at Oxford Brooks University. Before the tribunal started hearing evidence, Mr Appleton raised this with the parties and said that he had had no involvement with the respondent or anyone involved in the claimant's claim. Neither party made any objection to Mr Appleton continuing as part of the panel hearing the claim.

2.3. We heard the claimant's evidence on the afternoon of 17 March 2020 and the first hour of 18 March 2020. On 18 March 2020 we heard from the following witnesses for the respondent:

- Ms Katherine Wilson, formerly Head of Service with the respondent; and
- Ms Kate McCorriston, the respondent's Head of HR.

2.4. The parties made submissions on the afternoon of 18 March 2020. The tribunal reserved judgment and deliberated in chambers on 19 March 2020.

2.5. We were provided with a bundle of 373 pages which had been prepared by the respondent. The claimant had some additional documents which were numbered 374 to 402. The respondent did not object to these documents being included. During the course of the hearing, two of the claimant's payslips were added and these were numbered 403 and 404.

The issues

3. The issues that we have to decide were identified at a case management hearing on 3 April 2019 and are set out below. There are some footnotes which include clarifications made following discussions with the parties at the start of the hearing. The sections referred to in issues 5, 6 and 7 and the footnotes are sections in the Equality Act 2010.

4. ***Public interest disclosure***

4.1. What did the claimant say or write?

4.1.1. At the final probation review meeting on 27 April 2018 the claimant informed the respondent that it was not caring for the emotional well-being of staff

4.2. Did the claimant disclose information? The claimant will say that she disclosed information which in the claimant's reasonable belief tended to show a person, the respondent through its servants or agents, had failed to comply with a legal obligation to carry out a general duty of care to its employees.

4.3. If so, did the claimant reasonably believe that the disclosure was made in the public interest? The claimant relies on the following as going to show the reasonable belief:

4.3.1. An employee of the respondent in the claimant's role needs to be able to do their job properly otherwise there is an impact on services users which can result in harm.

Unfair dismissal complaint

4.4. Was the making of any proven protected disclosure the principal reason for the dismissal?

5. ***Section 26: Harassment related to [sex][1]***

5.1. Did the respondent engage in unwanted conduct as follows:

5.1.1. Failed to provide notes of the final probation meeting to the claimant when she requested the same;
5.1.2. Failed to provide notes of the investigation meeting held in January 2018 to the claimant when she requested the same;
5.1.3. Failed to provide notes of the appeal and grievance meeting in June 2018 to the claimant when she requested the same;
5.1.4. Failed to comply with the claimant's request made on 4 April 2018 for the respondent to provide information to the Indian Embassy, the respondent refused to do so on 19 April 2018;
5.1.5. Failed to pay the claimant her pay in lieu of notice and holiday pay when it was properly due (the claimant will say that the payment was eventually made c.8 months after the payment should have been made);
5.1.6. The challenging behaviour of Mr Makoni in April 2018[2];
5.1.7. Ms Jacob's attendance at the final probation review meeting without any notice to the claimant or any request to the claimant for her to be in attendance.

5.2. Was the conduct related to the claimant's [pregnancy or maternity and was that 'conduct related to the] protected characteristic [of sex']?

5.3. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.4. If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.5. In considering whether the conduct had that effect, the Tribunal will take into account the claimant's perception, the other circumstances

[1] This complaint was originally described as a complaint of harassment related to pregnancy or maternity, however pregnancy/maternity is not a relevant protected characteristic for the purpose of section 26. Sex is a protected characteristic for the purpose of section 26. Conduct related to pregnancy/maternity may be conduct related to sex. This point was discussed and agreed with the parties at the start of the hearing. The heading and issue number 5.2 have been amended as shown with square brackets to clarify this.

[2] Further information about this complaint was ordered to be provided by the claimant and this was sent in an email to the respondent's solicitor dated 30 April 2019 (page 400 to 402) and set out in paragraphs 84 to 104 of the claimant's witness statement. The fifteen acts of challenging behaviour relied on by the claimant are set out at paragraph 205 below.

of the case and whether it is reasonable for the conduct to have that effect.

6. ***Section 13: Direct discrimination because of pregnancy or maternity [or sex][3]***

6.1. Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act, namely:

6.1.1. By failing to carry out a return to work interview in April 2018;
6.1.2. By failing to allocate cases to the claimant;
6.1.3. By requiring the claimant to be a 'duty worker' for the whole month of April;
6.1.4. By failing to give the claimant a fair opportunity to improve her performance -after the claimant had lost one month of her extended probation period;
6.1.5. By requiring the claimant to complete other care workers' tasks;
6.1.6. By failing to provide the claimant with weekly supervision as agreed at the 2nd extension of probation;
6.1.7. By dismissing the claimant;
6.1.8. Any of the treatment not found to have been harassment.

6.2. Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators?

6.3. If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of [pregnancy/maternity or sex]?

6.4. If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

7. ***Section 27: Victimisation***

7.1. Has the claimant carried out a protected act? The claimant relies upon the following:

7.1.1. That on 31 May and 7 June 2018 the claimant complained that her treatment by Mr Makoni was discrimination against her on the grounds of maternity.

[3] This complaint was originally described as a complaint under section 13 of direct discrimination because of pregnancy or maternity. It is not brought under section 18 because it relates to treatment said to be because of pregnancy/maternity outside the protected period. An alternative is that such complaints are complaints of direct discrimination because of sex. This was discussed with the parties at the start of the hearing. The heading of this complaint and issue number 6.3 have been amended as shown with square brackets to reflect this alternative.

7.2. If there was a protected act, has the respondent carried out any of the treatment identified below because the claimant had done a protected act?

7.2.1. In failing to address the claimant's concerns in the appeal and grievance report;
7.2.2. Upholding the decision to dismiss the claimant;
7.2.3. Failing to provide a standard reference for the claimant[4];
7.2.4. Continuing to fail to pay to the claimant the payment in lieu of notice and holiday pay that she was entitled to receive.

8. ***Breach of contract***

8.1. The claimant will say that the respondent was in breach of contract. The claimant will rely on section 5 of her contract of employment which the claimant will say gave rise to an obligation to comply with the respondent's probation policy and procedure. The claimant will say that the respondent failed to follow that procedure as set out below.

8.2. Failing to carry out a first probation review in accordance with paragraph 3.6 of the probation policy and procedure;

8.3. Failing to carry out 1-2-1 meetings, in the first four months, between the claimant and line manager as required by paragraph 3.2 of the probation policy and procedure;

8.4. Failing to provide the claimant with an induction and personal development plan as outlined in paragraph 3.1 of the probation policy and procedure;

8.5. Failing to inform the claimant that she was being invited to a final probation review meeting in accordance with paragraph 3.8 of the probation policy and procedure;

8.6. Failing to allow the claimant to be accompanied by a trade union representative at the final probation review meeting in accordance with paragraph 3.8 of the probation policy and procedure;

8.7. Failing to provide reasons explaining the alleged unsatisfactory performance as required by paragraph 3.8 of the probation policy and procedure.

8.8. The claimant will say that the above-mentioned breaches of contract resulted in the claimant being wrongfully dismissed by the respondent. Has the respondent breached the claimant's contract of employment?

[4] Further information about this complaint was ordered to be provided by the claimant and this was sent in an email to the respondent's solicitor dated 30 April 2019 (pages 398 to 399).

8.9. If so, to what if any remedy is the claimant entitled?

9. ***Remedies***

9.1. If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy.

9.2. There may fall to be considered a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings, breach of contract and/or the award of interest.

Findings of Fact

10. We make the following findings of fact. Page references are references to the bundle.

11. The respondent is a trust. It was established in 2015 after Ofsted found Slough Borough Council's child protection services to be below standard and intervened. The respondent took over the service to ensure the safeguarding of vulnerable children on urgent timescales. Many of the respondent's systems and procedures were largely adopted from Slough Borough Council and implemented in haste. The HR department of the respondent was under considerable pressure from the time the respondent took over the services, and this remained the position at the time the claimant was employed by the respondent.

12. The claimant began working for the respondent on 25 April 2017 as a Family Support Worker. Her statement of employment particulars (page 41) starts by saying

> *"This statement sets out your personal terms and conditions of employment"*

13. The statement includes clauses on work location, remuneration, hours of work, employment checks, non-solicitation and confidentiality.

14. Clause 5(i) of the statement of particulars says:

> *'5 SPECIAL CONDITIONS*
>
> *(i) <u>Probation</u>*
>
> *Confirmation of your appointment will be subject to the satisfactory completion of a six months probationary period. During this period you will be covered by the Trust's Probationary Policy and Procedure. Your work performance will be monitored closely and you will be expected to demonstrate your suitability for the post.'*

The respondent's Probationary Policy and Procedure

15. The respondent's Probationary Policy and Procedure (pages 55 to 63) sets out the process for evaluating and monitoring the performance of all new employees appointed to the respondent. It includes mandatory obligations, and does not that it is advisory, intended only as guidance.

16. The Probationary Policy and Procedure (the Policy) sets out steps to be taken during the probationary period. In the claimant's case, the respondent did not comply with some of the requirements of the Policy.

17. Induction and Personal Development Plan: This is provided for in paragraph 3.1 of the Policy. The employee's manager is responsible for ensuring the completion of a through and effective planned induction, and the agreement of a personal development plan.

18. The claimant did not have a personal development plan or an induction.

19. Supervision 1:1 meetings: These are provided for in paragraph 3.2 of the Policy which says that from the start of the employment and in addition to probationary assessment meetings, regular one to one supervision meetings should be diarised, to ensure proper support, guidance and training. Paragraph 3.2 says that a record of progress achieved and actions agreed should be kept.

20. The claimant did not have any one to one supervision meetings for the first four months of her employment. The first supervision meeting she had was on 4 September 2018.

21. First Review Meeting: This is provided for in paragraph 3.6 of the Policy and should be arranged within one week of the employee having completed two months' service.

22. The respondent failed to comply with this requirement as the claimant did not have a First Review Meeting at the point of reaching two months' employment.

23. Second Review Meeting: This is provided for in paragraph 3.7 of the Policy and should be arranged within one week of the employee having completed four months' service.

24. The claimant had a Second Review Meeting on 23 August 2017 (pages 134 to 137).

25. Final Review Meeting: This is provided for in paragraph 3.8 of the Policy and must take place within two weeks of the employee completing six months employment. A detailed procedure for this meeting is set out in paragraph 3.8. Requirements include:

    25.1. The final review meeting is to be carried out by the employee's line manager;

25.2. The line manager must send a letter to the employee at least a week before the final review meeting informing them of the date and purpose of the final review meeting;
25.3. The letter must also inform the employee whether their performance to date is satisfactory, and if not, the manager must provide reasons why this is the case;
25.4. If dismissal or extension of probation is contemplated, the employee must be informed of their right to be accompanied.

26. Outcomes at Final Review: Paragraph 3.9 of the Policy provides that where following the six month formal review or extended probationary period the outcome is termination of employment, the employee's manager shall inform the employee of their intention to recommend to their senior manager and HR that the employee's contract be terminated.

27. Where the outcome is extension of the probationary period, the line manager should seek appropriate advice and guidance from HR and also discuss the matter with their own manager.

The claimant's probationary review and supervision meetings

28. The claimant did not have a First Review meeting. Her Second Review Meeting took place on 23 August 2017 with her line manager Ms Rajasansi (a consultant social worker). A record of the meeting was completed (pages 134 to 137).

29. Ms Rajasansi highlighted some areas for the claimant to develop such as updating case summaries and completing up to date chronologies on cases. Ms Rajasansi's overall assessment of the claimant was 'Meets job requirements'.

30. By 4 September 2017 the claimant's line manager had changed. Her new line manager was Mr Makoni. He was also a consultant social worker. The claimant had a supervision meeting with Mr Makoni on 4 September 2017 (page 140 to 142). This was the first supervision meeting the claimant had had. Mr Makoni identified some issues with the claimant including missed training. He said that the claimant's next review would be when the claimant had six months' service.

31. In early October 2017, there was a misunderstanding between the claimant and Ms Hughes, a Lead Family Support Worker. The Lead Family Support Worker provided supervision and assistance to Family Support Workers including the claimant. The claimant spoke to Ms Hughes for advice because she was being asked to attend home visits with social workers to act as an interpreter. The claimant understood Ms Hughes' advice to be that she should not act as an interpreter, and that social workers should book interpreters via the interpreting services for their home visits. On 5 October 2017 the claimant declined a request from a social worker to attend a home visit to interpret. Ms Hughes emailed the claimant twice on 6 October 2017 to say that she had not advised the claimant not to support colleagues with interpreting (pages 175 and 176).

Ms Hughes copied her emails to the claimant's line manager Mr Makoni, Head of Service Ms Jacob and Mr Thompson (the respondent's Troubled Families Coordinator and Early Help Programme Manager).

The first extension of the claimant's probation

32. This incident seemed to bring the claimant to the attention of Ms Hughes and Mr Thompson. Ms Hughes had been providing the claimant with supervision and advice prior to this (for example, page 174), but after the issue about interpreting, the claimant came under an increased level of supervision (pages 182, 202-204, 207-209, 217, 226, 241).

33. On 10 October 2017 Ms Hughes sent the claimant a list of recommendations and queries about cases which were flagged because they were over three months old. The email was copied to Mr Thompson, Ms Jacob and Mr Makoni.

34. Also on 10 October 2017, Mr Thompson sent an email to the claimant (page 179). It said,

> *"I would like to meet this week to discuss [Ms Hughes'] recommendations and queries… and more generally on how things are for you."*

35. The claimant's meeting with Mr Thompson was scheduled for 24 October 2017. The day before the meeting, Mr Thompson emailed the claimant (page 184) and said,

> *'…Could you please review [Ms Hughes'] recommendations and queries before tomorrow's supervision?'*

36. The claimant's meeting with Mr Thompson took place on 24 October 2017. The claimant understood it was a supervision meeting. At the start of the meeting Mr Thompson said he was the claimant's line manager. The claimant said, and we accept, that at this time Mr Makoni was her line manager. Mr Thompson was a higher-level manager (the respondent's Troubled Families Coordinator and Early Help Programme Manager). He had at around this time taken on a senior management role overseeing all Family Support Workers. However, there was no record of a formal change to the claimant's line manage. All of the claimant's line managers were consultant social workers. Mr Thompson was not a consultant social worker and therefore could not give case directions to a Family Support Worker. We find that Mr Makoni remained the claimant's line manager

37. In the meeting, Mr Thompson discussed the claimant's cases with her. At the end of the meeting he said he had decided to extend the claimant's probationary period, which was due to end on 25 October 2017. He extended the claimant's probationary period by two months to 22 December 2017. No note or minute was taken of this meeting.

38. Mr Thompson completed a Probationary Assessment Form which said that the meeting on 24 October 2017 had been the claimant's six month assessment (ie, in the terms of the Probationary Policy and Procedure, her Final Review Meeting) (page 127 to 131). However, various requirements of the Policy for Final Review Meetings had not been met: the meeting had been carried out by someone other than the claimant's line manager, no letter had been sent in advance of the meeting informing the claimant of the purpose of the meeting, the claimant was not told before the meeting whether her performance was satisfactory and if not why not, and the claimant was not informed of her right to be accompanied to the meeting.

The claimant's concerns about the first extension

39. On 25 October 2017 the claimant met with Ms Wright, the respondent's then Head of HR, to raise her concerns that her probation had been extended without the Policy being followed. Ms Wright told the claimant to email Ms Rao (the respondent's HR Advisor) which she did.

40. On 27 October 2017 Mr Thompson wrote to the claimant to confirm the extension of her probationary period (page 193 to 194). He set out four objectives for her to achieve. He said that he would have an end of probation review meeting with the claimant on or around 22 December 2017.

41. On 30 October 2017 the claimant wrote to Ms Wright (page 195) and to Mr Thompson (page 232) to raise her concerns about the process again.

42. On 16 November 2017 the claimant met with Ms Rao. The claimant said that she would like to raise a grievance against Mr Thompson because he had extended her probation in breach of contract and without complying with the Probationary Policy and Procedure.

43. Rather than treating the claimant's complaint as a grievance, Ms Rao suggested that she facilitate a meeting between the claimant and Mr Thompson (page 237). When the claimant asked if she could bring her union representative to the meeting, Ms Rao responded:

> *"You mentioned bringing a union rep, however, this is an informal meeting and bringing a union rep would make it formal. I suggest therefore that just you, [Mr Thompson] and myself meet in the first instance."*

44. The claimant wrote to Mr Thompson on 21 November 2017, again raising her concerns about the probationary review meeting (page 213 and 216).

45. On 23 November 2017 the claimant emailed Ms Rao and again said that she would like to be accompanied by her union representative to the proposed meeting with Mr Thompson and Ms Rao. Ms Rao replied on 24 November 2017 repeating what she had said previously, that 'bringing a union rep makes the situation more formal'. She said, 'I would like this to

be an informal meeting…Are you OK for the three of us to meet[?]' (page 222).

46. The meeting took place on 12 December 2017. The claimant was accompanied by her union representative.

47. On 13 December 2017 an email was sent to all staff informing them that Mr Thompson had left the respondent and would not be returning to work there (page 229). In January 2018 the claimant was asked to attend an interview to give a statement in connection with an investigation into allegations against Mr Thompson by another member of staff (page 249). The claimant was told that she would be provided with notes or a draft statement following this meeting, but she was not sent any, despite chasing.

The second extension of the claimant's probation

48. The claimant's extended probationary period was due to come to an end on 22 December 2017. On 21 December 2017 the claimant attended another probationary review meeting. This meeting was with Ms Jacob, the Head of Service.

49. No note or minute was taken of the meeting. At the meeting Ms Jacob extended the claimant's probation.

50. The respondent failed to comply with the Probationary Policy and Procedure in respect of this meeting. The meeting was not conducted by the claimant's line manager, Mr Makoni. The claimant was not informed of whether her performance was satisfactory and if not why not, and she was not informed of her right to be accompanied to the meeting.

51. After the meeting, on 22 December 2017, the claimant's union representative raised the claimant's case with the respondent's HR. She was told that HR were unaware of the extension to the claimant's probation. The requirement in the Policy that advice and guidance should be sought from HR in cases of extension of the probationary period had not been met.

52. A letter to confirm the extension of the claimant's probationary period was emailed to the claimant on 4 January 2018 (page 247). The letter itself was dated 19 December 2017, 2 days before the meeting took place (page 243 to 244). Although it was from Ms Jacob, the contact name in the header was Mr Makoni. We find that a draft of the extension letter was prepared by Mr Makoni before the meeting.

53. The heading of the letter that was sent to the claimant said that the claimant's probationary period was being extended to 28 February 2018. However, the text of the letter said that the claimant's performance would be reviewed and monitored until 28 March 2018 and that an end of probation review would take place around 21 March 2018. The claimant understood that the extension was for three months. Dates were set for

supervision meetings with the claimant up to 28 March 2018 (page 144). We find that the claimant's probation was extended for three months.

54. The claimant was set eight objectives to achieve which were recorded in the letter. One of them was that the claimant should have 100% engagement with all families.

55. In January 2018 the claimant had regular weekly supervision sessions with Mr Makoni. These took place on 5, 12, 19 and 26 January 2018 (page 144).

56. The claimant attended her interview in connection with the investigation into the other allegations against Mr Thompson on 26 January 2018. In the interview the claimant raised the concerns about Mr Thompson's failure to comply with the Policy in her case. Kate McCorriston, the respondent's Head of HR, was in the meeting and told the claimant that she would arrange a separate meeting to discuss her issues. No meeting was arranged and the claimant did not receive any notes from the interview.

<u>The claimant's sickness absence</u>

57. On 29 January 2018 the claimant fell severely ill and attended the Accident and Emergency department. It was found that she was in the early stages of an ectopic pregnancy. She had to have emergency surgery on 2 February 2018.

58. The claimant reported her sickness absence to Mr Makoni by phone on 29 January 2018. He emailed staff to say that she was off sick and making arrangements for cover (page 260).

59. On 4 February 2018 the claimant emailed Mr Makoni (page 263). She said that she had had a miscarriage and had to undergo surgery. She asked Mr Makoni to keep the reason for her sickness confidential as she did not want to talk about it on her return to work.

60. The claimant attached a sick note to her email (page 374). This had been completed by the hospital doctor. It said that the claimant had a 'gynaecological condition'. The part of the form which said 'This will be the case for' had been completed by the doctor writing, '2 wks (two weeks)'. The box marked 'You are not fit for work' had not been ticked.

61. Mr Makoni responded on 5 February 2018 to say that he would have to tell Ms Jacob about the claimant's miscarriage (page 375). On 7 February 2018 Mr Makoni emailed the claimant again. He said that the sick note had not been completed well as the box stating that the claimant was not fit for work had not been ticked. He asked the claimant to arrange to get this resolved and sent back to him (page 376).

62. The claimant was on sick leave and recovering from surgery. She went back to hospital on 8 February 2018 and got the sick note completed. She sent this to Mr Makoni on the same day (page 377).

63. On 19 February 2018 Mr Makoni emailed the claimant again about her sick note. He asked her to get the doctor to countersign the change made on the sick note she had sent in on 8 February 2018. He said this was an organisational requirement (page 267).

64. The claimant went back to the hospital again and got the amendment to the sick note countersigned. She sent it back to Mr Makoni on 20 February 2018.

65. The claimant found it very difficult having to go back to the hospital twice while she was on sick leave to get her sick note corrected. She felt that it was insensitive of Mr Makoni to ask her to get her sick note corrected twice while she was on sick leave, as it made her relive her worst moments. She was shocked, sad, upset and tearful. She said, and we accept, that Mr Makoni's requests suggested that he did not trust what she was saying about her pregnancy-related sickness absence.

66. The claimant was on sick leave for two months. Her GP completed a sick note for 18 February to 11 March 2018 (page 109). On 12 March 2018, after the period on the sick note ended, Ms Jacob tried to contact the claimant by telephone but was unable to reach her. The claimant provided the respondent with a second sick note on or about 14 March 2018. The second sick note was completed by the GP on 13 March 2018 and covered the period from 12 March 2018 to 1 April 2018 (page 110). Both the GP's sick notes said that the claimant was unfit to work because of polycystic ovaries.

<u>The claimant's return to work</u>

67. The claimant returned to work on 3 April 2018 (2 April 2018 was a bank holiday). Her GP certified that she was fit to return but advised that she should work reduced hours, 4.5 hours per day instead of 8 for the first month (page 114). She still had back pain and hip pain due to the miscarriage and surgery.

68. The claimant did not have a formal return to work interview.

69. At 8.36am on 3 April 2018 Mr Makoni sent the claimant an email (page 269). It said

> *"Hi Suman,*
>
> *If you are in the office today can you cover duty all day. I will see you later on.*
>
> *Regards"*

70. The claimant was due to start at work at 9.00am. For an email sent by a manager to a member of their team at the start of their first day back at work after two months on sick leave, this was very abrupt. Mr Makoni's email did not contain any enquiry about the claimant's health or how she was feeling, any words of support or a welcome back. He showed no empathy or sympathy for the claimant.

71. The claimant told Mr Makoni that she did not feel comfortable performing the duty role after being away for a long time. Mr Makoni asked her to explain why not. Mr Makoni did not ask the claimant whether she needed any support to settle back into the workplace. The claimant felt that, despite knowing the reason for her absence, Mr Makoni did not understand her emotional state and expected her to behave as if nothing had happened. She felt the respondent was unprofessional, insensitive, unsympathetic and unsupportive in terms of her emotional well-being.

72. The claimant said, and we accept, that after her pregnancy-related sickness absence Mr Makoni's attitude and behaviour towards her had changed. He treated her differently in April than he had in January. An example of this is that he stopped having one-to-one supervisions with her. We return to this below. The change in behaviour made the claimant feel humiliated, degraded and helpless.

Occupational Health referral

73. At around this time Ms Jacob referred the claimant to occupational health for a report (page 111). The referral form (which is undated) said that the reason for the request was:

> *"Suman has been off sick since 29 January 2018 to date. The fit notes that we have received from Suman have mentioned the reason for her sickness is Polycystic ovaries and that she is not fit for work.*
>
> *However, Suman has since informed her manager that she had an ectopic pregnancy which resulted in a miscarriage and laparoscopic surgery….*
>
> *This information provided from Suman caused some confusion as the fit notes did not mention surgery and also the line manager was not aware that Suman was pregnant."*

74. The reason for the referral was because Mr Makoni and Ms Jacob did not accept the reasons the claimant had given for her absence and they wanted to investigate this further. They did not raise any queries with the claimant herself. They did not trust what the claimant was telling them about her pregnancy.

75. The claimant was seen by the occupational health advisor on 5 April 2018 and he prepared a report on the same day (page 115). He said that the

claimant's absence was related to emergency surgery for an ectopic pregnancy. He endorsed the GP's recommendations of altered hours. He suggested two weeks of 4 hour days, increasing to 5 hours a day in the third week, 6 hours a day in the fourth week 4, and a return to full hours in the fifth week. The report concluded by saying that from a physical perspective (with the exception of likely post-surgery pain) the claimant had largely recovered.

The claimant's work during April 2018

76. In her absence on sick leave, the claimant's cases had been reallocated to other staff. When the claimant returned to work, she was not given those cases back and she was not allocated any new cases to work on. Instead, she was allocated to the Duty Family Support Worker role.

77. On her first day back, 3 April 2018, the claimant was asked by Mr Makoni to perform the Duty Family Support Worker role. She told Mr Makoni that she could not do that on her first day, as she needed some time to settle back in, renew her log in details and check the emails which had come in in her absence. On 4 April 2018 Mr Makoni kept an eye on what the claimant was doing, looking over her shoulder at her computer screen. He noted in a report later that on this day the claimant read her previous cases, completed mileage forms and asked whether she could assist with other work (page 153). On 5 April 2018 the claimant had her Occupational Health interview.

78. From 6 April 2018 the claimant performed the Duty Family Support Worker role. This is a role requiring a Family Support Worker to respond to emergencies and urgent enquiries (which mostly come in by telephone) and to take on urgent tasks on cases where the person with conduct of the case is not there.

79. Normally, the duty role is performed by Family Support Workers on a rotating basis. The duty rota for May 2018, for example (page 294), shows that Family Support Workers were allocated to the duty role no more than once a week. The rest of the time Family Support Workers would be working on their own caseload.

80. In contrast, the claimant was allocated to perform the duty role every day from 6 April 2018 until 27 April 2018 when she was dismissed. In the response to the claimant's grievance, the respondent's Head of Service Katherine Wilson said that the exact reasoning for placing the claimant in the duty role for a month was not clear, but that the cases the claimant had previously conducted were being worked by other members of the team as they had been reallocated in the claimant's absence on sick leave (page 334). There were only two cases still in the claimant's name in April 2018, and this was an error as they were both cases which were concluded and should have been closed on the system. We find that it is likely that Mr Makoni did not allocate cases to the claimant because he had formed the view that she would be dismissed at her next probationary review, and that

would mean that any cases which had been allocated to her would then need to be reallocated.

81. During April 2018, in addition to performing the Duty Family Support Worker role, the claimant was asked to carry out tasks to support other staff with their cases, including interpreting (page 277), shopping (page 29) and preparing chronologies (pages 271, 275, 276 and 281). However, the claimant did not have any active cases in her own name; she had no caseload. This additional work supporting others was fitted in around the urgent duty work.

82. Mr Makoni assigned new cases to other Family Support Workers during April 2018 but did not assign any cases to the claimant. He told her that he had no cases to allocate to her. When the claimant saw him allocate a case to a colleague and asked him about this, Mr Makoni said that he was allocating the case to the claimant's colleague because was suitable for that colleague, and he said he had no cases to allocate to the claimant. The other Family Support Workers in the team were told by Mr Makoni that the claimant was not being allocated any cases and they did not have to perform the duty role during this time as this would be covered by the claimant.

83. On one occasion when the claimant asked a colleague for advice to complete a task, Mr Makoni challenged the claimant about this, asking her why she was seeking help from a colleague when the task had been allocated to her.

84. The claimant had not had weekly supervision sessions with Mr Makoni during February and March when she was on sick leave. After she returned to work, Mr Makoni did not arrange any weekly supervision sessions with the claimant. She had no one-to-one supervisions in April 2018. We find that it is likely that he had formed the view that the claimant would be dismissed at her next probationary review, and he did not think it was necessary to conduct supervision meetings with her.

<u>The claimant's request for letter of confirmation of employment</u>

85. On 4 April 2018 the claimant asked the respondent's HR manager to provide her with a letter confirming her employment (page 270). She needed this for an application for a visa to travel to India. On 11 April 2018 the HR manager replied to say that she would email the letter to the claimant in pdf format (page 278).

86. The claimant did not receive the letter. She chased it up by phone and email on 19 April 2018 and told the HR manager that she had a visa appointment at the Indian Embassy on 20 April 2018 (page 285).

87. On 19 April 2018 at 5.03pm the HR manager emailed the claimant again. She said that she could not provide any confirmation of the claimant's post until her probation was confirmed (page 285). As this email was sent after

working hours, the claimant had no opportunity to follow it up in time and was not able to attend her appointment at the Indian Embassy.

The claimant's probation review report

88. On 9 April 2018 Mr Makoni completed a Probationary Assessment Form for the claimant (pages 143 to 157). At this point, the claimant had been back at work for less than a week. It was a lengthy report.

89. Mr Makoni recorded in the report that the claimant had been on sick leave from 29 January 2018 (page 153). He said:

> *"When she started her sick leave work was incomplete on files and cases had to be reallocated to provide a service to families. With work being incomplete on files this left new workers unclear of the intervention that Ms Sharma had provided and some workers had a difficult job of explaining to families the reasons for repetition of some of the visits and intervention."*

90. Mr Makoni also said that the claimant had failed to comply with the respondent's Sickness Absence Policy and the respondent had to chase the claimant to find out whether she was on leave, sick leave or returning to work (page 153). This was referring to the period around 12 March 2018 when the respondent tried to contact the claimant after the expiry of her first sick note. Ms McCorriston confirmed in her evidence to us that the Sickness Absence Policy does not apply to employees in their probationary period.

91. Mr Makoni also mentioned in the report that the claimant had a weekend job with another organisation, working 4 hours on a Sunday. He said she anticipated returning to work with them from 8 April 2018 (page 154).

92. The report included the dates of Mr Makoni's four supervision meetings he had had with the claimant in January, and the 9 scheduled meetings that had been missed because of the claimant's sickness absence (page 144). There were no dates for any meetings in April. Mr Makoni said (page 157):

> *"Ms Sharma attended a Probationary Review Meeting on 21 December 2017 where a Probation extension was agreed. The extension was based on Ms Sharma having weekly supervision with the [Consultant Social Worker] to ensure that she had the appropriate support to be able to make and sustain significant practice improvements.*
>
> *…*
>
> *It is acknowledged that Ms Sharma has been on sick leave and therefore has not been able to complete the agreed supervision sessions and has not had the opportunity to evidence any change..."*

93. Mr Makoni recorded that since returning to work the claimant was experiencing back and hip pain and was walking with difficulty.

94. The report concluded by saying that it was unclear whether the claimant would be able to make sustainable changes even if another extension was agreed, considering that she had been employed for almost a year, her probation had lasted 11 months and her practice remained below expected standards.

95. On 18 April 2018 Mr Makoni handed the Probationary Assessment Report to the claimant. As he did so, he told the claimant it was bad. She asked whether that was due to her sickness. He replied, 'Could be'. The claimant said that her sickness was pregnancy-related. Mr Makoni said he was aware, but he could not do anything as the report was already drafted. The claimant felt pressured to discuss the report with Mr Makoni.

96. The claimant said, and we accept, that three other Family Support Workers were in their probationary period and did not have any probationary review meetings. They were NA, OC and SB (page 391). Of these, SB had a period of sickness absence with a physical injury. When she returned to work, SB was not required to perform the duty role all the time, and was allocated her own cases.

The claimant's dismissal

97. On 18 April 2018 Mr Makoni handed the claimant a letter inviting her to a final probationary review meeting on 26 April 2018. The letter said that the meeting would be attended by Mr Makoni and Ms Rao (HR advisor). The letter informed the claimant of her right to be accompanied but it did not meet the requirements of the Probationary Policy and Procedure in that the letter did not say whether the claimant's performance was satisfactory, and if not, why not.

98. On 25 April 2018 an email was sent to all staff in the team in which the claimant worked (page 293). It enclosed a Duty Rota showing staff allocated to duty roles (including the Duty Family Support Worker role) for the month of May 2018 (page 294). The claimant was no longer allocated permanently to the duty role, and she was not included on the rota at all. We find that it was likely that the respondent had already decided that the claimant was going to be dismissed at her probation review meeting which was scheduled for the following day, and that this is why the claimant was not included on the duty rota.

99. The meeting took place on 26 April 2018, the claimant was accompanied by her union representative. On arrival at the meeting, despite what had been said in the invitation letter, the claimant found that it was being conducted by Ms Jacob, the Head of Service (a level above Mr Makoni). Mr Makoni and Ms Rao were also there. The claimant was under emotional stress at the time because of her miscarriage, and the unexpected attendance of Ms Jacob made her feel intimidated, shocked

and stressed. The Probationary Policy and Procedure provided that the review meeting should be held by the employee's line manager.

100. During the meeting, the claimant asked if she would get minutes of the meeting. The invitation letter said that Ms Rao would take notes, but at the meeting Ms Rao said that she was not taking minutes, but she would take a note of anything appropriate. The claimant asked Ms Rao to note her concerns. Ms Rao declined to do so, and said the claimant should send an email to the respondent's Head of HR to raise her concerns.

101. The meeting took place in two parts, with the second part on 27 April 2018. At the second part of the meeting on 27 April 2018, the claimant told Ms Jacob, Mr Makoni and Ms Rao that the respondent had been negligent and unsupportive in terms of her emotional well-being in April 2018, that senior management's negative behaviour and attitude can have a huge impact on an employee's emotional well-being and that it could affect the employee's ability to support families and children. She said that she was sceptical about the respondent safeguarding children if it could not safeguard staff.

102. We find that in saying this, the claimant believed that she was disclosing information which tended to show that the respondent was not complying with its general duty of care towards employees and that it was failing to comply with its legal obligation to protect the health and safety of its employees, including protecting their mental health. We also find that the claimant believed the disclosure was made in the public interest, as it was information about the possible effect on the service the respondent provided to families and children. (We return in our conclusions to whether the claimant's beliefs were reasonable.)

103. At the end of the meeting on 27 April 2018, the claimant was dismissed with immediate effect.

104. The claimant was not provided with any notes or minutes of the meetings on 26 and 27 April 2018 and there were none in the bundle. We did not hear evidence from anyone who attended these meetings other than the claimant. We accept the claimant's evidence as to what she said at these meetings. It was consistent with what she said at the grievance meeting on 7 June 2018, and there was a note of that meeting.

105. Ms Jacob wrote to the claimant on 30 April 2018 confirming her dismissal with immediate effect on 27 April 2018 (page 302 to 303). She said that dismissal was due to a failure to meet the required standards of the role. She set out the ways in which the claimant had failed to meet the standards. She said that the claimant would be paid one week's pay in lieu of notice and pay for accrued untaken annual leave.

106. The claimant's annual leave compensation was paid in May 2018 (page 403) but her pay in lieu of notice was not paid until December 2018 (page 404). This was because of an administrative error.

The claimant's grievance and appeal against dismissal

107. On 27 April 2018 the claimant emailed the respondent's interim Chief Executive Officer to complain about her treatment (page 297).

108. On 30 April 2018 the claimant raised a grievance against Ms Rao, Ms Jacob and Mr Makoni (pages 304 to 305). In her grievance the claimant complained about her treatment over the period from October 2017 (the first extension of her probation) to 27 April 2018 (her dismissal).

109. On 1 May 2018 the claimant appealed against the dismissal decision (page 307).

Reference requests

110. On 17 May 2018 a recruitment agent who was working with the claimant asked the respondent for a reference; the claimant had received a job offer subject to references. The request was directed to Mr Makoni. He refused to provide a reference. He said that the respondent's policy was not to provide references and he could only provide employment dates (pages 319). The prospective employer requested more information.

111. The claimant wrote to the respondent's interim Chief Executive Officer about this on 23 May 2018 (page 319). He confirmed to the claimant in an email on 24 May 2018 that the respondent does offer references for all employees, although often these are simply factual, outlining the post held and dates. He said,

> *"There does appear to have been some confusion in terms of this and a clarification email will be sent out to all managers to ensure that they are aware of the correct process. Should you wish for a reference to be provided, then please ask for all requests to be sent to the HR team… this will ensure that the correct reference is released."*

112. We find, based on this email, that Mr Makoni was not aware of the correct process and that he had not sent a correct reference for the claimant. The claimant was told that any further reference requests should be directed to HR, not to Mr Makoni.

113. The recruitment agent went back to the prospective employer on 1 June 2018 to provide confirmation of the respondent's reference policy (page 339). However, the claimant's job offer was withdrawn on 4 June 2018 because the respondent's reference was considered to be inadequate (page 338).

Hearings of the claimant's grievance and appeal against dismissal

114. The claimant's appeal against dismissal was heard on 31 May 2018 by Katherine Wilson, Head of Service. Minutes of the meeting were taken by Ms McCorriston, Head of HR (pages 327 to 331).

115. The hearing of the claimant's grievance complaint was on 7 June 2018. It was also heard by Ms Wilson, with Ms McCorriston attending and taking minutes. The notes of the grievance hearing are at pages 343 to 347. There is not a full note for this meeting because the typed notes of the meeting became corrupted. From around the second page of the notes they are based on handwritten notes only (page 351).

116. We find that towards the end of the meeting the claimant made a complaint of discrimination, bullying and harassment. This is recorded in the notes by Ms McCorriston as 'disk, bullying and harassment' (page 347). We find that, in circumstances where the claimant was complaining about aspects of her treatment during and on her return from pregnancy-related sickness absence, an allegation of discrimination and harassment was an allegation which could be understood as an allegation of a contravention of the Equality Act 2010.

117. The respondent had decided to treat the grievance and appeal against dismissal together. The grievance and appeal outcomes are both contained in a document headed Confidential Investigation Report (pages 332 to 336). The conclusion was that the dismissal was upheld. The Confidential Investigation Report was sent to the claimant on 13 July 2018 (page 351).

118. In her investigation report, Ms Wilson comments:

> *"Ms Sharma's sick leave appears to have stopped the momentum of Probation work however, based on the information provided to me I cannot see an indication of significant improvements from October 2017 to January 2018."*

119. Ms Wilson did not consider the claimant's work in April 2018 because the claimant was covering duty in April 2018. This made it harder for Ms Wilson to make any enquiries into the claimant's work in April 2018, because she would not have known which cases the claimant was working on and there would not be a separate supervision note.

120. Ms Wilson had access to the note of the claimant's supervision meeting with Mr Makoni on 4 September 2017 but she did not have access to any other personal supervision notes (page 335).

121. Ms Wilson's understanding was that the claimant's grievance was basically that the claimant viewed her dismissal as unfair because there were no concerns about her work and she had not received the appropriate level of support. Ms Wilson's report said that the salient points of the claimant's grievance were: 'The probation policy had not been followed' (page 332). Ms Wilson considered that her decision that the dismissal was upheld also constituted the response to the claimant's grievance.

122. Ms Wilson's report did not address whether the respondent's Probation Policy and Procedure had been followed or any of the other grounds for

the claimant's grievance. She did not address the complaints the claimant made in the meeting of discrimination, bullying and harassment.

123. The claimant was disappointed, upset and frustrated by the respondent's failure to respond to any of the detail of her grievance complaint.

The claimant's losses

124. We accept the evidence in the claimant's schedule of loss that her net weekly pay was £532.94 (pages 372 and 373).

125. The claimant was dismissed on 27 April 2018 and she received pay in lieu of one week's notice.

126. The claimant obtained new employment which started on 23 June 2018. She does not claim any loss of salary/benefits after that date.

The law

Breach of contract

127. An employee may bring a breach of contract claim in the employment tribunal under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, where the claim arises or is outstanding on the termination of the employee's employment. Article 3 provides:

> *"Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if-*
>
> *(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*
> *(b) the claim is not one to which article 5 applies; and*
> *(c) the claim arises or is outstanding on the termination of the employee's employment."*

128. Article 5, which excludes some claims from the tribunal's jurisdiction, is not relevant in the claimant's case.

129. The time limit within which a breach of contract must be brought in the employment tribunal is set out in article 7 which says that:

> *"…an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented-*
>
> *(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim."*

130. Article 8B provides for extensions of time in respect of Acas early conciliation.

Direct discrimination

131. Section 13 of the Equality Act 2010 prohibits direct discrimination. It provides:

> *"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*

132. Protected characteristics are set out in section 4 of the Equality Act 2010 and include i) pregnancy and maternity and ii) sex.

133. Establishing 'less favourable treatment' for the purposes of section 13 requires a comparison with someone who is more favourably treated than the claimant where there is no material difference between their circumstances and the claimant's circumstances (section 23). The person who is more favourably treated is known as the comparator. They can be a real person or a hypothetical person.

134. Section 39(2) is also relevant to direct discrimination claims. It provides that an employer must not discriminate against an employee in relation to a number of different features of the workplace and working relationship, including by subjecting the employee to any detriment.

135. Pregnancy and maternity discrimination at work is expressly prohibited by section 18 of the Equality Act. Any unfavourable treatment because of pregnancy or because of illness suffered as a result of pregnancy is prohibited. Unlike complaints under section 13, section 18 does not require any comparison with a comparator. If treatment because of pregnancy is unfavourable, it will amount to discrimination under section 18.

136. However, section 18 only applies to treatment during what is known as the protected period. Where there is no right to ordinary and additional maternity leave, the protected period ends two weeks after end of the pregnancy (section 18(6)).

137. Complaints of direct discrimination because of pregnancy or maternity which relate to treatment which happens outside the protected period have been made under section 13 as complaints of direct discrimination because of sex, rather than as complaints of direct discrimination because of pregnancy or maternity. This may be for historic reasons, because the legal protection against sex discrimination pre-dates the express protection against pregnancy or maternity discrimination. Section 18(7) deals with the overlap between section 13 complaints of direct sex discrimination and section 18 complaints of pregnancy and maternity discrimination. However, neither section 13 nor section 18 expressly prevent a complaint

of direct discrimination because of pregnancy and maternity which relates to treatment outside the protected period being brought under section 13.

Harassment

138. Harassment is another type of prohibited conduct. Under section 26 of the Equality Act, a person (A) harasses another (B) if

> *"a) A engages in unwanted conducted related to a relevant protected characteristic, and*
>
> *b) the conduct has the purpose or effect of –*
> *i) violating B's dignity, or*
> *ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B."*

139. In deciding whether conduct has the effect referred to, the tribunal must take into account:

> '*a) the perception of B;*
> *b) the other circumstances of the case;*
> *c) whether it is reasonable for the conduct to have that effect.'*

140. The protected characteristics which are relevant to claims of harassment are set out in section 26(5). There are fewer than in section 4. Pregnancy and maternity is not a relevant protected characteristic for the purpose of section 26. However, conduct which is related to pregnancy or maternity may be conduct related to sex. Sex is a protected characteristic for the purpose of section 26. A complaint of harassment related to pregnancy or maternity may only be brought as a complaint of harassment related to sex.

Victimisation

141. Another type of discrimination which is prohibited under the Equality Act is victimisation. Under section 27:

> *"(1) A person (A) victimises another person (B) if A subjects B to a detriment because*
>
> *B does a protected act…"*

142. A protected act is defined in section 27(2) and includes:

> *"(d) making an allegation (whether or not express) that A or another person has contravened this Act."*

Overlap between the different types of discrimination

143. Section 212(1) of the Equality Act provides that detriment does not include conduct which amounts to harassment. Therefore any conduct which amounts to harassment cannot also amount to a detriment for the purpose of a direct discrimination or victimisation claim.

Burden of proof in complaints under the Equality Act

144. Sections 136(2) and (3) of the Equality Act provide for a reverse or shifting burden of proof:

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

145. In a case of direct discrimination, this means that if there are facts from which the tribunal could properly and fairly conclude that less favourable treatment was because of the protected characteristic, the burden of proof shifts to the respondent.

146. In Igen v Wong [2005] ICR 931 the court set out 'revised Barton guidance' on the shifting burden of proof. The court's guidance is not a substitute for the statutory language and that the statute must be the starting point.

147. In direct discrimination cases, the bare facts of a difference in status and a difference in treatment between a claimant and a comparator only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent has committed an unlawful act of discrimination. "Something more" is needed, although this need not be a great deal: "In some instances it will be furnished by non-response, or an evasive or untruthful answer, to a statutory questionnaire. In other instances it may be furnished by the context in which the act has allegedly occurred..." (Deman v Commission for Equality and Human Rights [2010] EWCA Civ 1279.)

148. Where the burden shifts, the respondent must prove on the balance of probabilities that the treatment was in no sense whatsoever because of the protected characteristic. The respondent would normally be required to produce "cogent evidence" of this. If there is a prima facie case and the respondent's explanation for that treatment is unsatisfactory, then it is mandatory for the tribunal to make a finding of discrimination.

149. The burden of proof applies to other forms of discrimination, including harassment and victimisation. In a complaint of harassment, if the claimant establishes that she has been subjected to unwanted conduct which has the purpose or effect of violating her dignity or creating an intimidating,

hostile, degrading, humiliating or offensive environment for her, and there is evidence from which the tribunal could conclude that this conduct was related to the claimant's relevant protected characteristic, then the burden will shift to the employer to satisfy the tribunal that the conduct is no sense whatsoever related to the protected characteristic.

150. In a complaint of victimisation, it is for the claimant to establish that she has done a protected act and has then suffered a detriment, and there is evidence from which the tribunal could conclude that there was a causal link between the protected act and the detriment, including that the employer was aware of the claimant's protected act. If those elements are established, the burden of proof shifts to the employer.

Time limit for complaints of direct discrimination, harassment and victimisation under the Equality Act

151. The time limit for bringing complaints of direct discrimination, harassment and victimisation under the Equality Act is set out in section 123. A complaint may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates. Conduct extending over a period is treated as done at the end of the period. Section 140B includes provisions extending time to take account of periods of Acas Early Conciliation.

Protected disclosures

152. Section 43A of the Employment Rights Act 1996 provides that a protected disclosure is:

- a 'qualifying disclosure' (a disclosure of information that, in the reasonable belief of the worker making it, is made in the public interest and tends to show that one or more of six 'relevant failures' set out in section 43B has occurred or is likely to occur);

- which is made in accordance with one of six specified methods of disclosure set out in sections 43C to 43H.

153. In relation to 'qualifying disclosure', in this case the relevant failure relied on by the claimant is set out in sub-section 43(1)(b). Sub-section 43(1)(b) is a disclosure of information that, in the reasonable belief of the worker making it, is made in the public interest and tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject.

154. The method of disclosure relied on by the claimant is section 43C. This section provides that a qualifying disclosure is a protected disclosure if it is made to the worker's employer.

155. In Kilraine v London Borough of Wandsworth [2018] IRLR 846 the Court of Appeal held that the concept of 'information' used in section 43B(1) is capable of including statements which might also be characterised as

'allegations'; there is no rigid dichotomy between the two. Whether an identified statement or disclosure in any particular case amounts to 'information' is a matter for the tribunal to evaluate in the light of all the facts.

156. In Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 the EAT held that reasonableness under section 43B(1) requires both that the worker has the relevant belief, and that their belief is reasonable. This involves applying an objective standard to the personal circumstances of the worker making the disclosure.

Automatic unfair dismissal

157. Section 103A of the Employment Rights Act provides that the dismissal of an employee is unfair where the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

158. A dismissal which is contrary to section 103A is 'automatically' unfair. The tribunal does not need to consider whether the dismissal was reasonable in the circumstances.

159. Where there is more than one reason for a dismissal, the tribunal must be satisfied that the principal reason is that the employee made a protected disclosure. The protected disclosure must be the 'primary motivation' for the dismissal (Fecitt and others v NHS Manchester [2012] IRLR 64, CA).

Burden of proof in automatic unfair dismissal

160. In a complaint of automatic unfair dismissal because of a protected disclosure, the claimant must produce some evidence to suggest that the dismissal was for the principal reason that she has made a protected disclosure. The tribunal must decide what was the reason or principal reason for the dismissal, on the basis that it is for the employer to show the reason. If the tribunal does not accept the employer's asserted reason, then the tribunal may (although not 'must') go on to find that the principal reason is the reason asserted by the employee. The burden of proof in unfair dismissal cases, including claims under section 103A, is not the same as in the discrimination legislation (Kuzel v Roche Products [2008] IRLR 530, CA).

161. The tribunal may draw 'reasonable inferences from primary facts established by the evidence or not contested in the evidence', although, unlike in a complaint brought under the discrimination legislation, it is not obliged to do so (Kuzel v Roche Products).

Conclusions

162. We have applied these legal principles to our findings of fact and reached the following conclusions on the issues which we had to decide. We have set out our conclusions in a different order to that in the list of issues,

because we found it more helpful to go through the issues in a broadly chronological order. For ease of reference, we have used the original numbering of the issues (as used in the issues section above).

Issue number 8: breach of contract:

163. This issue relates to the claimant's complaint that the respondent breached her contract of employment by failing to comply with its Probationary Policy and Procedure during the period from June 2017 to April 2018.

164. The claimant seeks damages for breach of contract. The breach of contract claim was outstanding at the time the claimant's contract ended on 27 April 2018. The tribunal therefore has jurisdiction to consider the claimant's breach of contract complaint under article 3 of the Employment Tribunals Extension of Jurisdiction Order.

165. The claimant's claim was presented on 9 September 2018, after a period of Acas early conciliation from 10 July 2018 (Day A) to 10 August 2018 (Day B). The claimant's date of dismissal was 27 April 2018; the time limit to bring a complaint of breach of contract would (if not extended by article 8B) have expired on 26 July 2018. This date falls during the period beginning with Day A and ending one month after Day B so the time limit is extended by article 8B(4) to the date one month after Day B, ie 10 September 2018. The claim was presented before that date. The tribunal therefore has jurisdiction to consider the complaint of breach of contract under article 7 and 8B of the Employment Tribunals Extension of Jurisdiction Order.

166. We next have to consider whether the respondent's Probationary Policy and Procedure ('the Policy') was part of the claimant's contractual terms. We conclude that the procedure set out in the Policy (section 3) was incorporated into the claimant's contract of employment, for the following reasons:

    166.1. the Policy is referenced in the claimant's statement of personal terms and conditions of employment under the heading 'Special Conditions';
    166.2. the claimant's statement of personal terms and conditions of employment says that the claimant will be 'covered by' the Policy during her probationary period;
    166.3. the other terms contained in the claimant's statement of terms and conditions are clearly intended to be contractual;
    166.4. the Policy does not say that it is advisory, intended only as guidance or similar;
    166.5. the terms of the Policy are appropriate for incorporation in a contract, the procedure is set out in clear and certain terms;
    166.6. the Policy uses language such as 'the line manager must', 'the manager shall' and 'the letter must', suggesting clear mandatory obligations rather than guidance or recommendations.

167. The claimant says that the respondent failed to follow the procedure set out in the Policy in that the respondent:

    167.1. (issue 8.2) failed to carry out a first probation review in accordance with paragraph 3.6 of the Policy;
    167.2. (issue 8.3) failed to carry out one-to-one meetings, in the first four months, between the claimant and line manager as required by paragraph 3.2 of the Policy;
    167.3. (issue 8.4) failed to provide the claimant with an induction and personal development plan as outlined in paragraph 3.1 of the Policy;
    167.4. (issue 8.5) failed to inform the claimant that she was being invited to a final probation review meeting on 24 October 2017 in accordance with paragraph 3.8 of the Policy;
    167.5. (issue 8.6) failed to allow the claimant to be accompanied by a trade union representative at the final probation review meeting on 24 October 2017 in accordance with paragraph 3.8 of the Policy;
    167.6. (issue 8.7) failing to provide reasons explaining the alleged unsatisfactory performance prior to the meeting on 24 October 2017 as required by paragraph 3.8 of the Policy.

168. It was clarified at the hearing that the 'final probation review meeting' referred to in issues 8.5, 8.6 and 8.7 was the meeting on 24 October 2017 with Mr Thompson. This was a Final Review Meeting in the sense used in paragraph 3.8 of the Policy, not in the sense that it was the final review meeting which the claimant had.

169. The respondent's representative accepted that the respondent had failed to comply with the Policy in each of these respects. The claimant did not have an induction, a personal development plan or a first probation review after two months. She also had no one-to-one meetings prior to 4 September 2017.

170. In respect of the meeting on 24 October 2017 with Mr Thompson, the claimant had no letter in advance of the meeting informing her of the purpose of the meeting, informing her of her right to be accompanied and setting out how her performance was said to be unsatisfactory. The claimant understood that the meeting was a supervision meeting, not a Final Review Meeting under the Policy.

171. These were breaches of the Policy. We have concluded that the parts of the Policy which were breached by the respondent were incorporated into the claimant's contract and each of these failures to comply with the policy was a breach of the claimant's contract. This complaint therefore succeeds.

<u>Issue number 6: Direct discrimination because of pregnancy and maternity or sex</u>

172. This issue relates to the claimant's complaints about her treatment by the respondent during the period from 3 April 2018 when she returned to work up to her dismissal on 27 April 2018.

173. In the claimant's case, her direct discrimination complaint falls to be considered under section 13 of the Equality Act, not section 18. This is because the treatment she complains about occurred after the end of the protected period, which in the claimant's case ended on 16 February 2018, before her return to work. The effect of this is that we need to consider whether, because of her pregnancy, the claimant was less favourably treated than a real or hypothetical comparator was or would have been treated, not whether she was unfavourably treated because of her pregnancy.

174. We have to consider, in respect of each allegation of direct discrimination,

    174.1. whether the treatment complained of occurred;

    174.2. whether it was less favourable treatment by the respondent compared with the treatment of a real or hypothetical comparator;

    174.3. whether the claimant has proved facts from which the tribunal could properly and fairly conclude that the difference in treatment was because of pregnancy/maternity or because of sex;

    174.4. whether the respondent proves a non-discriminatory reason for the treatment.

175. We have dealt with the allegations in turn, and have considered some together.

176. Issue 6.1.1: The respondent accepted that it had failed to carry out a formal return to work interview after the claimant returned to work on 3 April 2018.

177. There was no evidence before us that the claimant was treated less favourably in this respect than a comparator was or would have been because of her pregnancy and maternity or because of sex. We conclude that the claimant has not proved facts from which we could conclude that the failure to carry out a formal return to work interview was because of her pregnancy, pregnancy-related sickness absence or her sex. The burden of proof does not shift to the respondent.

178. Even if the burden had shifted to the respondent, we would have accepted that the failure to carry out a formal return to work interview was in no sense whatsoever because of the claimant's pregnancy, pregnancy-related sickness absence or her sex. The Sickness Absence Policy which included the requirement to carry out a return to work interview did not apply to the claimant as she was still in her probationary period. Also the respondent regularly failed to comply with the requirements of its own policies (for example the failure to comply with the Probationary Policy and

Procedure dealt with above). This was an example of the respondent's failure to comply with policy or best practice, but we are satisfied that it was not because of a protected characteristic of the claimant.

179. Issue 6.1.2, issue 6.1.3 and issue 6.1.5: We have taken these three issues together. The respondent accepted that it did not allocate any cases to the claimant from the date of her return to work on 3 April 2018 until her dismissal on 27 April 2018 and that the claimant was required to perform the duty role from 6 April 2018 until her dismissal on 27 April 2018. The respondent accepted that it required the claimant to complete other workers' tasks as well as performing the duty role.

180. We find that being required to perform the duty role all the time, not being allocated cases and only conducting casework on cases allocated to other staff were detriments for the purposes of section 39(2) of the Equality Act. The claimant's colleagues were told that she was not being allocated her own cases, and this may have suggested to them that her managers did not trust her to conduct her own cases. Also, the duty role she was given meant she was not able to do any work which demonstrated her working towards the objectives she had been set to pass her probationary period.

181. We have accepted the evidence of the claimant that another Family Support Worker (SB) who returned from a period of sick leave was not required to perform the duty role all the time, and was allocated her own cases after her return. SB was an appropriate comparator as she was someone who was in her probationary period and who returned to work after a period of sickness absence which was not pregnancy-related. The claimant was treated less favourably than SB.

182. We conclude that there is evidence from which we could properly and fairly conclude that the difference in treatment between the claimant and SB was because of pregnancy and maternity, namely:

    182.1. SB was absent from work because of a physical injury, not pregnancy or maternity;
    182.2. we have found that Mr Makoni's two requests of the claimant to get her sick note amended and then re-certified suggested that he did not trust what she was saying about her pregnancy-related sickness absence;
    182.3. we have found that an OH referral was made because Mr Makoni and Ms Jacob did not accept the reasons given by the claimant, which were pregnancy-related;
    182.4. the OH referral said 'the line manager was not aware that [the claimant] was pregnant'. Again, we have found that suggested suspicion on the part of the claimant's managers about the reason she gave for her sickness absence. As the claimant was in the very early stages of pregnancy at the time of her surgery, it is understandable that she had not told her manager about her pregnancy;

182.5. when asked by the claimant whether his assessment of the claimant's performance as poor in his report of 9 April 2018 was because of the claimant's sickness absence, Mr Makoni replied, 'Could be', and indicated that he was aware that the sickness absence was pregnancy-related;

182.6. there is a suggestion in the report of 9 April 2018 that the claimant was at fault for going on sick leave, as work was left uncompleted and her cases had to be allocated to other staff as a result. This would be likely to be the case for any unforeseen sickness absence of this length;

182.7. it was unusual for a Family Support Worker to be rostered to perform the duty role all the time, it was more usual for the role to be done once a week.

183. The respondent's explanation for the claimant not being allocated cases and being rostered to perform duty and assist other staff was because she was on a phased return to work, and it was easier to support her and maintain shorter hours in the duty role rather than in a casework role. It was suggested that if she had her own cases she may have to deal with urgent matters which required her to stay after her earlier finish time during her phased return.

184. We do not accept this explanation. We note that Ms Wilson, who conducted the claimant's grievance and appeal against dismissal, said that the reasoning for placing the claimant on duty for a month was not clear to her. We note that the OH report of 5 April 2018 said that the claimant had 'largely recovered'. In any event, during April 2018 the claimant was still required to perform some casework, but on cases which were being conducted by other people. Also, the work the claimant had to do in the duty role was very much focused on urgent matters. If she had been allocated her own cases and not performed the duty role all the time, and an urgent matter had come up on one of them at a time when she was due to leave work, this would have fallen within the role of the duty Family Support Worker. We conclude that the respondent has not satisfied us that the claimant's pregnancy-related sickness absence and her pregnancy played no part in the respondent's treatment of her on her return to work.

185. We have concluded that the respondent's decision not to allocate the claimant cases, to put her in the duty role for a month and to require her to assist others on her return from pregnancy-related sickness was less favourable treatment because of pregnancy and maternity under section 13 of the Equality Act. Because of the gender-specific nature of pregnancy, it also amounts to direct sex discrimination contrary to section 13 of the Equality Act.

186. Issue 6.1.4 and issue 6.1.7: We have dealt with these two issues together. The claimant was unable to work from 29 January 2018 to 2 April 2018 (2 months) because of pregnancy-related sickness absence, and this cut short the three month extension to her probationary period which she was given on 21 December 2017. After that extension, the claimant only had a

period of a little over one month at work (21 December to 29 January) in which to demonstrate an improvement and meet the objectives which she had been set. The claimant lost two months of her extended probation period. She was then dismissed for failing to meet the standards of the role. Mr Makoni emphasised in his Probationary Assessment Form that the extension of the claimant's probationary period in December 2017 was 'based on' her having weekly supervision to ensure appropriate support to make improvements in her performance.

187. We have also found that the Probationary Assessment Form, which was relied on at the meeting at which the claimant was dismissed, was prepared on 9 April 2018, when the claimant had only been back at work for 5 working days. Further, we have found that when conducting the claimant's appeal against dismissal, Ms Wilson only took into account her work up to January 2018.

188. Therefore, there was no supervision or support provided to the claimant after 29 January 2018 when she went on pregnancy-related sick leave and little to no assessment of her performance after 29 January 2018 as part of her probationary review on 26/27 April 2018. Her dismissal was very largely based on her performance up to 29 January 2018. The period of assessment of the claimant's work was significantly reduced from the period the respondent had considered appropriate in December 2017. We conclude that the claimant was not given a fair opportunity to improve her performance and was then dismissed. This was a detriment and less favourable treatment.

189. We have found that other staff (SB, NA and OC) did not have probationary review meetings and were not dismissed. We find that they are appropriate comparators.

190. We conclude that the evidence set out above in paragraphs 182.2 to 182.6 is evidence from which we could properly and fairly conclude that the claimant's pregnancy played a part in the respondent's failure to give her a fair opportunity to improve, and the decision to dismiss her.

191. The respondent did not explain why, after the claimant lost two months of her extended probationary period because of pregnancy-related sickness, it did not allow her more time before deciding to dismiss her. Mr Makoni's report of 9 April 2018 expressly noted that the claimant had not had the opportunity to evidence any change because of her sick leave. We accept that the respondent had been raising concerns about the claimant's performance for some time. However, the respondent has not provided us with cogent evidence as to why it did not, before considering whether to dismiss her, allow the claimant more time to make up for the time she missed as a result of her pregnancy-related absence, when it had previously considered that three months would be an appropriate period over which to assess her performance. We infer from the matters set out in paragraph 182 above, and in particular the suspicions that the claimant's managers demonstrated about her pregnancy, that the claimant's

pregnancy played a part in the respondent's decision not to extend her probationary period again, and to dismiss her.

192. We are therefore not satisfied that the respondent's treatment of the claimant was 'in no sense whatsoever' because of the claimant's pregnancy. We conclude that the failure to allow the claimant a fair opportunity to improve her performance and her dismissal were less favourable treatment because of pregnancy under section 13 of the Equality Act. Because of the gender-specific nature of pregnancy, it also amounts to direct sex discrimination contrary to section 13 of the Equality Act.

193. Issue 6.1.6: We have found that the claimant had weekly supervisions for four weeks in January 2018, but she did not have any weekly supervisions during the period from her return to work on 3 April 2018 until her dismissal on 27 April 2018. Mr Makoni said in his report of 9 April 2018 that the claimant's probationary period extension on 21 December 2017 was based on the claimant having weekly supervision to ensure that she had the appropriate support to make and sustain significant improvements.

194. We conclude that the failure to provide the claimant with one-to-one supervision meetings during April 2018 was less favourable treatment. It impacted on the claimant's ability to improve her performance and to demonstrate to her manager that she was improving. We conclude that it was less favourable treatment than a hypothetical comparator, by reference to the treatment of the claimant herself in January 2018.

195. We conclude that the claimant has proved facts from which we could properly and fairly conclude that the failure to provide one-to-one supervisions in April 2018 was because of her pregnancy related sickness absence. We base this on the evidence set out in paragraph 182.2 to 182.6.

196. The respondent did not provide any explanation for the failure to give the claimant one-to-one supervision meetings in April 2018. We have explained above that we have concluded that the claimant's pregnancy played a part in the respondent's assessment of her performance and the decision to dismiss. We also conclude that the respondent has not provided cogent evidence to satisfy us that the failure to provide the claimant with one-to one supervision meetings in April 2018 was in no sense whatsoever because of her pregnancy and we find that it was less favourable treatment because of pregnancy under section 13 of the Equality Act. Because of the gender-specific nature of pregnancy, it also amounts to direct sex discrimination contrary to section 13 of the Equality Act.

197. The acts that we have found amounted to direct discrimination because of pregnancy and sex took place during the period from 3 April 2018 (the date of the claimant's return to work) to 27 April 2018 (her dismissal). The claimant's claim was presented on 9 September 2018, after a period of Acas early conciliation from 10 July 2018 (Day A) to 10 August 2018 (Day

B). Any acts or omissions which occurred prior to 11 April 2018 fall outside the primary three month period (as extended by the dates of Acas early conciliation).

198. The respondent's acts set out in issues 6.1.2 to 6.1.7 are of a similar nature, as they relate to the work to be carried out by the claimant, supervision and management of her and assessment of her work. They were all carried out by the claimant's line manager and/or his line manager. We find that the respondent's acts set out in issues 6.1.2 to 6.1.7 are conduct extending over the period 3 April 2018 to 27 April 2018. As the claim was presented before the end of that period, the complaint of direct discrimination has been brought within the time limit set out in section 123 of the Equality Act 2010.

199. In summary in relation to the direct discrimination complaint, the claimant's complaints of direct discrimination because of pregnancy (and sex) set out in issues 6.1.2 to 6.1.7 succeed. The complaint in issue 6.1.1 does not succeed.

200. We have dealt with issue 6.1.8 after our consideration of the allegations of harassment.

Issue number 5: Harassment related to sex

201. This issue relates mainly to notes of meetings, the conduct of Mr Makoni in April 2018 and the claimant's dismissal meeting.

202. In relation to each of the allegations of harassment, we have to consider:

202.1. our findings as to whether the conduct occurred;
202.2. was the conduct unwanted?
202.3. did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
202.4. if not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for it to have that effect)?
202.5. was the conduct related to pregnancy and if so was that related to sex?

203. We have dealt with issues 5.1.1, 5.1.2, 5.1.3 and 5.1.5 together.

204. Issue 5.1.1, issue 5.1.2 and issue 5.1.3: The respondent accepted that the claimant was not provided with notes of the probation meetings on 26 and 27 April 2018, or of the investigation meeting held in January 2018. On 13 July 2018 the respondent provided the claimant with notes of the appeal against dismissal which was held on 31 May 2018. Notes of the grievance meeting held on 7 June 2018 were corrupted, and were sent to the claimant later than 13 July 2018.

205. Issue 5.1.5: We have found that the claimant's holiday pay was paid in May 2018 but there was a delay in paying the claimant her pay in lieu of notice which was not paid until December 2018.

206. We conclude that the failure to provide some notes, and the delays in providing other notes and in paying the claimant her notice pay were unwanted conduct. The claimant was keen to have the notes so that she could follow up with the respondent what had happened to her. She understandably wanted to be paid her notice pay without delay.

207. However, we conclude that these failures and delay did not have the purpose of purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Further, they did not have those effects. Although it was unwanted conduct, the nature of the conduct was not of a type that would have the required purpose or effect. It was the kind of administrative problem which, we have accepted, had been common at the respondent since the respondent took over conduct of the service from the council.

208. In any event, we have concluded that there is no evidence from which we could conclude that this unwanted conduct which was, in the main, conduct by the respondent's HR department, was related to the claimant's pregnancy or sex such that the burden of proof would shift to the respondent.

209. If the burden had shifted to the respondent, we would have concluded that the respondent's failures and delays in providing notes and in paying the claimant for her notice period were in no sense whatsoever related to the claimant's sex (or pregnancy), but were because of wider operational issues which the respondent was experiencing which caused delays and administrative problems across the board. The HR department was under considerable pressure at the time. Again, these were examples of the respondent's failure to comply with policy or best practice, but we are satisfied that they were not related to a protected characteristic of the claimant.

210. Issue 5.1.4: the respondent accepted that on 19 April 2018 it did not provide the claimant with a letter to the Indian Embassy.

211. We conclude that this was unwanted conduct. The claimant needed the letter to make a visa application and because she did not have it, she was unable to attend the visa appointment.

212. This conduct was certainly frustrating for the claimant, especially as she was initially told that the letter could be provided and then this decision seemed to be reversed. However, it was not conduct which had the purpose or the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. This allegation of harassment does not succeed.

213. Issue 5.1.6: the challenging behaviour of Mr Makoni in April 2018. This issue comprises 15 separate allegations of harassment which were set out in an email to the respondent's representative dated 30 April 2019 (pages 400 to 402) . Of the complaints identified by the claimant in that email, we have found that the following conduct by Mr Makoni took place:

213.1. on 3 April 2018 at 8.36am Mr Makoni sent the claimant an email asking her to cover duty for the day on her first day back at work;

213.2. (a) Mr Makoni was aware of the claimant's health issues however no support was offered, and (b) the claimant was asked to cover duty for the month of April;

213.3. on the claimant's return to work, Mr Makoni did not ask the claimant if she needed support to settle back into the workplace;

213.4. (a) in April 2018 Mr Makoni's attitude and behaviour towards the claimant changed, and (b) her duties were changed and she had to work as a support worker for other Family Support Workers and social workers;

213.5. Mr Makoni showed no empathy or sympathy for the claimant's loss;

213.6. Mr Makoni asked the claimant to explain why she could not cover the duty role on her first day back at work;

213.7. Mr Makoni stated (in his report of 9 April 2018) that the respondent was not aware whether the claimant was on leave, sick leave or returning to work (on 12 March 2018);

213.8. Mr Makoni spoke to the claimant about her Sunday job with another employer and included information about it in his report of 9 April 2018;

213.9. Mr Makoni became upset with the claimant when she asked for a colleague's advice to complete a task, asking why she sought help from a colleague if the task was allocated to her;

213.10. Mr Makoni refused to allocate cases to the claimant, however he assigned cases to other Family Support Workers in April 2018;

213.11. Mr Makoni told other Family Support Workers that the claimant was not being allocated any cases and they should let her cover the duty;

213.12. Mr Makoni did not provide any one-to-one supervision meetings with the claimant in April 2018 to support her during her probationary period;

213.13. On 4 April 2018, Mr Makoni kept an eye on the claimant, looking at her computer screen over her shoulder to see what she was doing;

213.14. On 18 April 2018, Mr Makoni said that the claimant's probation report was bad. When asked by the claimant whether this was because of her sickness, Mr Makoni replied, 'Could be'. He said that he was aware that the sickness absence was pregnancy-related. In the report, Mr Makoni said the claimant had not followed the respondent's sickness policy, and had left her work incomplete due to being off sick;

213.15. On 18 April 2018, the claimant felt pressured by Mr Makoni to discuss the probation report with him.

214. The matters which form the substance of the harassment allegations at paragraphs 213.2(b), 213.4(b), 213.10 and 213.12 have already been found by us to be direct discrimination because of pregnancy and sex. In reaching this conclusion, we found that those matters were detriments for the purpose of section 39(2).

215. Section 212(1) provides that conduct which is harassment is not a detriment. We conclude that the purpose of this provision is so that the same conduct is not unlawful under both section 13 and section 26; conduct will fall either under section 13 or under section 26.

216. We consider that the treatment at paragraphs 213.2(b), 213.4(b), 213.10 and 213.12 is more readily considered as less favourable treatment under section 13 rather than harassment under section 26. As we have already found the matters which form the substance of the complaints at paragraphs 213.2(b), 213.4(b), 213.10 and 213.12 to be direct discrimination, we do not go on to consider whether that treatment is also harassment, because of section 212(1).

217. We have considered whether the other allegations (those set out in paragraphs 213.1, 213.2(a), 213.3, 213.4(a), 213.5, 213.6, 213.7, 213.8, 213.9, 213.11, 213.13, 213.14 and 213.15) about the challenging behaviour by Mr Makoni amount to harassment, considering first whether they are unwanted conduct. We have found that Mr Makoni's conduct included a change of attitude towards the claimant, a lack of support and sympathy and increased scrutiny. The claimant had been out of the workplace for over 2 months and was returning on reduced hours and in pain. Mr Makoni was aware of the reasons for her absence. In those circumstances, his change in attitude, lack of support and sympathy and increased scrutiny were unwanted conduct. He also told her colleagues that she was not being allocated cases, and this was unwanted conduct as it may have suggested to them that her managers did not trust her to conduct her own cases.

218. We also conclude that Mr Makoni's behaviour at paragraphs 213.1, 213.2(a), 213.3, 213.4(a), 213.5, 213.6, 213.9, 213.11, 213.13, and 213.14 had the effect of violating the claimant's dignity or creating an intimidating, hostile or humiliating environment for her. We have reached this conclusion taking into account the claimant's perception, and in particular her recent return from a long period of sick leave. She was not shown any sympathy. She was treated differently to the way she had been treated before her sick leave. She was less supported and more scrutinised. We conclude that in these circumstances, it was reasonable for Mr Makoni's conduct to have that effect on her.

219. We reach a different conclusion in relation to the conduct outlined at paragraphs 213.7 and 213.8. These allegations relate to the inclusion by Mr Makoni in his report of 9 April 2018 of the fact that on 12 March 2018 the respondent was not aware whether the claimant was on leave, sick leave or returning to work, and of the position regarding the claimant's

Sunday job with another employer. These are matters which were factually correct, and which were of relevance to the assessment of the claimant's position in a probationary review. We also reach a different conclusion in relation to paragraph 213.15, that is Mr Makoni discussing the probation report with the claimant when he handed it to her. That seems to be an appropriate step for a manager to take in the circumstances, and one which it is not reasonable to expect would have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

220. In relation to the allegations at paragraphs 213.7, 213.8 and 213.15 therefore, we do not conclude that these aspects of Mr Makoni's conduct had the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. We do not conclude that they had that effect, or, if they did, we conclude that it was not reasonable for them to do so.

221. We have next considered whether there is evidence from which we could conclude that the unwanted conduct that we have found had the effect of violating the claimant's dignity or creating an intimidating, hostile or humiliating environment for her, was related to the claimant's pregnancy and whether that was related to the relevant characteristic of sex such that the burden of proof shifts to the respondent. We have concluded that there is, namely the evidence set out at paragraphs 182.2 to 182.6 above, in particular that Mr Makoni was suspicious of the claimant's pregnancy related sickness absence. These are facts from which we could draw the inference that the claimant's pregnancy, and therefore her sex, was part of the reason for Mr Makoni's behaviour towards the claimant after her return from pregnancy-related sickness absence.

222. We conclude therefore that the burden shifts to the respondent to satisfy us that the conduct was in no way related to the claimant's sex and specifically in the claimant's case that it was in no way related to her pregnancy.

223. We have not heard cogent evidence that Mr Makoni's behaviour towards the claimant in April 2018 was not in any way related to her pregnancy. We did not hear any evidence from Mr Makoni. His attitude to the claimant's pregnancy as demonstrated in his approach to the claimant's hospital sick note, what was said in the Occupational Health referral and in his report of 9 April 2018 was conduct from which we could infer that his conduct was related to the claimant's pregnancy. As pregnancy is a gender-specific state, such conduct is conduct related to sex.

224. We conclude therefore that the respondent has not provided evidence to satisfy us that the conduct of Mr Makoni was in no way related to the claimant's sex; this complaint of harassment succeeds in relation to the complaints set out above at paragraphs 213.1, 213.2(a), 213.3, 213.4(a), 213.5, 213.6, 213.9, 213.11, 213.13, and 213.14.

225. Issue 5.1.7: We have found that Ms Jacobs attended the claimant's last probation review meeting without notice to the claimant or any request for her to be in attendance.

226. We conclude that this was unwanted conduct. The claimant had been told that the probation review meeting would be conducted by Mr Makoni, and she had not prepared for it to be dealt with by a more senior manager.

227. We also conclude that this had the effect of violating the claimant's dignity or creating an intimidating environment for the claimant, and that it was reasonable for the conduct to have had that effect.

228. Ms Jacob's OH referral for the claimant which we have found was suspicious of what the claimant said about her reasons for her absence is evidence from which we could conclude that Ms Jacob's attendance at the claimant's probation review was related to the claimant's pregnancy and therefore her sex. Further, Ms Jacob conducting the meeting was not in line with the respondent's Probationary Policy and Procedure, which provided for the final review meeting to be carried out by the employee's line manager. We conclude that the burden therefore shifts to the respondent.

229. We did not hear any evidence from Ms Jacob. The respondent has not provided us with cogent evidence that Ms Jacob's attendance at the probationary review meetings on 26 and 27 April 2018 was not related to the claimant's pregnancy, and therefore her sex.

230. The respondent's acts set out in issues 5.1.6 and 5.1.7 took place during the period from 3 April 2018 to 27 April 2018. They are of a similar nature, as they relate to the work to be carried out by the claimant, supervision and management of her and assessment of her work. They were all carried out by the claimant's line manager and/or his line manager. We find that the respondent's acts set out in issues 5.1.6 and 5.1.7 are conduct extending over a period for the purposes of section 123(3)(a) of the Equality Act. This period was from 3 April 2018 to 27 April 2018 and as the claim was presented before the end of the period, the complaint of harassment has been brought within the time limit set out in section 123 of the Equality Act 2010.

231. The claimant's complaints of harassment set out at issues 5.1.6 and 5.1.7 succeed. In relation to issue 5.1.6, the complaints set out at paragraphs 213.1, 213.2(a), 213.3, 213.4(a), 213.5, 213.6, 213.9, 213.11, 213.13, and 213.14 above succeed. We conclude that this conduct amounted to harassment related to sex contrary to section 26, because it was unwanted conduct which had the effect of violating the claimant's dignity or creating an intimidating, hostile or humiliating environment for the claimant and which was related to the claimant's pregnancy and therefore her sex.

Issue 6.1.8 direct discrimination because of pregnancy and sex

232. At this point, we come back to issue 6.1.8. This issue requires us to consider each of the allegations made by the claimant under the heading of harassment which have not succeeded, and to consider whether they would succeed instead as allegations of direct pregnancy or sex discrimination.

233. We have found that issues 5.1.1, 5.1.2, 5.1.3, and 5.1.5 were not harassment. These were allegations relating to failures and delays, mainly by the respondent's HR, in providing notes to the claimant and in paying her notice pay. For reasons similar to those set out above in relation to harassment, we have concluded that this treatment was not less favourable treatment because of the claimant's pregnancy or sex. There is no evidence from which we could conclude that the treatment was related to the claimant's pregnancy or sex such that the burden would shift to the respondent.

234. If the burden had shifted to the respondent, we would have concluded that the respondent's failures and delays in providing notes and in paying the claimant for her notice period were in no sense whatsoever related to the claimant's pregnancy or sex, but were because of wider operational issues which the respondent was experiencing which caused delays and administrative problems across the board.

235. Issue 5.1.4 was the failure to provide the claimant with a letter of support for her visa application. There was no evidence from which we could conclude that this treatment was related to the claimant's pregnancy or sex, and we conclude that the burden did not shift to the respondent in respect of this allegation. While it would have been possible for the respondent to provide a letter explaining the current position, rather than refusing to provide any letter, there was no evidence from which we could have concluded that the decision not to provide the claimant with this letter was related in any way to the claimant's pregnancy or sex.

236. Finally, we have found that some of the 15 allegations which fall under issue 5.1.6 (Mr Makoni's challenging behaviour) did not amount to harassment because they were in essence the same as complaints that we have already found amounted to direct pregnancy or sex discrimination. This includes the allegations at 213.2(b), 213.4(b), 213.10 and 213.12. We do not need to reconsider whether these amount to harassment.

237. We also concluded that the conduct outlined at paragraphs 213.7 and 213.8 (the inclusion by Mr Makoni in his report of 9 April 2018 of the fact that on 12 March 2018 the respondent was not aware whether the claimant was on leave, sick leave or returning to work, and of the position regarding the claimant's Sunday job with another employer) and at paragraph 213.15 (that is Mr Makoni discussing the probation report with the claimant when he handed it to her) did not amount to harassment. For similar reasons, we conclude that this did not amount to less favourable treatment for the purposes of section 13. The information included in the probation report was factually correct. Discussing a report with an

employee when handing it over does not appear to us to amount to less favourable treatment.

238. Therefore, none of the allegations which we concluded did not amount to harassment amount in the alternative to direct sex discrimination. They do not succeed under either section 26 or section 13.

Issue 4: Protected disclosure dismissal

239. We have found that at the probation review meeting on 27 April 2018 the claimant said to the respondent that in April 2018 it had been negligent and unsupportive in terms of her emotional well-being, that senior managements' negative behaviour and attitude can have a huge impact on an employee's emotional well-being and could affect the employee's ability to support families and children. She also said she was sceptical about the respondent being able to safeguard children if it could not safeguard staff.

240. We have found that the claimant believed that what she said on 27 April 2018 tended to show that the respondent was not complying with its legal obligation to protect the health and safety of its employees, including protecting their mental health. Emotional well-being is an aspect of mental health. We conclude that the claimant's belief was reasonable.

241. We have found that the claimant believed the disclosure was made in the public interest. We have to consider whether that belief was also reasonable. The claimant disclosed information about the possible effect on the service the respondent provided to families and children. She said she was sceptical about the respondent being able to safeguard children if it could not safeguard staff. We conclude that the claimant's belief that the disclosure was in the public interest was reasonable because she was highlighting something which could impact on service users and result in harm.

242. We conclude that the claimant made a qualifying disclosure within section 43B(1)(b) of the Employment Rights Act 1996 in the meeting on 27 April 2018. As it was made to her employer, it was a protected disclosure under section 43C.

243. We next need to consider whether that protected disclosure was the principal reason for the dismissal. The test is different to the test for the complaint about dismissal under the Equality Act, where we have to consider whether the dismissal of the claimant was in no sense whatsoever because of her pregnancy or sex. In the protected disclosure dismissal complaint, we consider the reason or the principal reason for dismissal. It is for the claimant to produce some evidence to suggest that the dismissal was for the principal reason that she has made a protected disclosure. We conclude that claimant has not done so and therefore the burden does not shift to the respondent.

244. If the burden had shifted to the respondent, we would have concluded that the disclosure made by the claimant on 27 April 2018 was not the reason

or the principal reason for her dismissal: we have found that it was likely that the respondent had already decided by 25 April 2018 (before the protected disclosure) that the claimant was going to be dismissed, and for this reason it had not included her on the duty roster for May 2018. The reason asserted by the respondent for the claimant's dismissal was the view taken by the respondent, that is by Ms Jacob, that the claimant had failed to meet the required standards of her role. The respondent had been raising performance concerns for some time. We would have accepted that this was the reason or the principal reason for the dismissal of the claimant.

245. The complaint of protected disclosure dismissal therefore fails.

Issue 7: post-employment victimisation

246. This issue concerns allegations about actions taken by the respondent in the course of the claimant's appeal and grievance and other post-employment matters. The claimant says that these amounted to acts of victimisation, namely detriments to which she was subjected because of protected acts she made at meetings on 31 May 2018 and 7 June 2018.

247. There was insufficient evidence before us that the claimant made a protected act on 31 May 2018. The claimant did not say in her witness statement that she did any protected act during this meeting. Notes were taken of this meeting (pages 327 to 331) and they do not contain anything which could amount to a protected act.

248. We have found that the claimant made an allegation of a contravention of the Equality Act at the meeting on 7 June 2018. We have found that, in the context of her complaints about her treatment during and after her pregnancy-related sickness absence, the reference to discrimination and harassment could be understood as alleging a contravention of the Equality Act 2010 and that the claimant therefore did a protected act under section 27(2)(d) of the Equality Act 2010.

249. We next need to consider whether the respondent carried out any of the treatment identified below because the claimant had done that protected act.

250. Issues 7.2.1 and 7.2.2: these issues relate to the outcomes of the claimant's grievance and appeal against dismissal. These were conducted together by Ms Wilson. The claimant complains that the failure to address her concerns in her grievance and appeal and the decision to uphold the dismissal were because she did a protected act.

251. We have found that Ms Wilson did uphold the decision to dismiss the claimant.

252. Ms Wilson's decisions on the claimant's grievance and appeal against dismissal were set out in one document. The outcome focussed in large part on the appeal against dismissal. We have found that Ms Wilson failed

to address the concerns raised by the claimant in her grievance, for example, her report did not address whether the respondent's Probation Policy and Procedure had been followed and did not address any of the other grounds for the claimant's grievance. Also, Ms Wilson did not address the complaints the claimant made in the meeting of discrimination, bullying and harassment.

253. We have found that the claimant was disappointed, upset and frustrated by the appeal outcome and by the respondent's failure to respond to any of the detail of her grievance complaint. We conclude that the appeal outcome and the failure to respond to the claimant's grievance were detriments to which the claimant was subjected by the respondent.

254. The claimant has established that she did a protected act and that she was subjected to detriments. However, there is no evidence from which we could conclude that there was a causal link between the claimant's complaint of discrimination, bullying and harassment made on 7 June 2018 and Ms Wilson's decision to uphold the dismissal or her failure to respond in full to the claimant's grievance.

255. We conclude that the burden of proof does not shift to the respondent in respect of these two allegations.

256. Issue 7.2.3: this issue relates to the failure to provide a standard reference. We have found that Mr Makoni refused to provide a reference, that he was not aware of the correct process and that a correct reference was not released for the claimant. A job which had been offered to the claimant was withdrawn. We conclude that the failure to provide a correct reference which resulted in a job offer being withdrawn was a detriment.

257. The claimant has established that she did a protected act and that she was subjected to a detriment. However, there is no evidence from which we could conclude that there was a causal link between the claimant's complaint of discrimination, bullying and harassment made on 7 June 2018 and Mr Makoni's refusal to provide a reference. There is no evidence that Mr Makoni was aware of the protected act.

258. We conclude that the burden of proof does not shift to the respondent in respect of this allegation.

259. Issue 7.2.4: this issue is the continuing failure to pay to the claimant the payment in lieu of notice and holiday pay.

260. We have found that the claimant's holiday pay was paid in May 2018 (in her final pay) and therefore there was no failure to pay this. However, the claimant's notice pay was delayed and was not paid until December 2018. This was a detriment to which the claimant was subjected by the respondent.

261. However, there is no evidence from which we could conclude that there was a causal link between the claimant's complaint of discrimination,

bullying and harassment made on 7 June 2018 and the delay in paying the claimant's notice pay.

262. For reasons similar to those set out above in respect of the complaint of harassment, if the burden had shifted to the respondent, we would have concluded that the respondent's delays paying the claimant for her notice period was in no sense whatsoever related to the claimant's protected act, but was because of wider operational issues which the respondent was experiencing which caused delays and administrative problems across the board, and the considerable pressure which the HR department was under at the time.

263. The complaint of victimisation therefore fails.

Summary of our decision

264. We have concluded that the following complaints are well-founded and succeed:

264.1. Breach of contract: The respondent breached the claimant's contract when it failed to comply with its Probation Policy and Procedure (as set out in issues 8.2 to 8.7 in the issues section above);

264.2. Direct pregnancy and sex discrimination: The respondent directly discriminated against the claimant because of pregnancy and sex:

a. when it decided on her return from pregnancy-related sickness not to allocate her cases, to put her in the duty role for a month and to require her to assist others (issue 6.1.2, issue 6.1.3 and issue 6.1.5);
b. when it failed to allow the claimant a fair opportunity to improve her performance (issue 6.1.4);
c. by failing to provide the claimant with weekly supervision meetings in April 2018 (issue 6.1.6); and
d. by dismissing her (issue 6.1.7).

264.3. Harassment related to sex: The respondent subjected the claimant to harassment related to sex in respect of:

a. The behaviour of Mr Makoni (issue 5.1.6 and paragraph 265 below); and
b. Ms Jacob attending the claimant's final probation meeting without notice to the claimant (issue 5.1.7).

265. The behaviour of Mr Makoni which we have found was harassment related to sex is:

265.1. on 3 April 2018 at 8.36am Mr Makoni sent the claimant an email asking her to cover duty for the day on her first day back at work;

265.2. Mr Makoni was aware of the claimant's health issues however no support was offered;
265.3. on the claimant's return to work, Mr Makoni did not ask the claimant if she needed support to settle back into the workplace;
265.4. Mr Makoni showed no empathy or sympathy for the claimant's loss;
265.5. Mr Makoni asked the claimant to explain why she could not cover the duty role on her first day back at work;
265.6. Mr Makoni became upset with the claimant when she asked for a colleague's advice to complete a task, asking why she sought help from a colleague if the task was allocated to her;
265.7. Mr Makoni told other Family Support Workers that the claimant was not being allocated any cases and they should let her cover the duty work;
265.8. On 4 April 2018, Mr Makoni kept an eye on the claimant, looking at her computer screen over her shoulder to see what she was doing; and
265.9. On 18 April 2018, Mr Makoni said that the claimant's probation report was bad. When asked by the claimant whether this was because of her sickness, Mr Makoni replied, 'Could be'. He said that he was aware that the sickness absence was pregnancy-related. In the report, Mr Makoni said the claimant had not followed the respondent's sickness policy, and had left her work incomplete due to being off sick.

266. The claimant's other allegations of direct discrimination and harassment fail.

267. The claimant's complaints of automatic unfair dismissal because of protected disclosure and victimisation fail.

Remedy

268. We have first considered the remedy for the complaints of direct discrimination and harassment under the Equality Act 2010.

269. Under section 124(2)(b) of the Equality Act, where a tribunal finds that there has been a contravention of a relevant provision, as there has here, it may order the respondent to pay compensation to the claimant. The compensation which may be ordered corresponds to the damages that could be ordered by a county court in England and Wales for a claim in tort (section 124(6) and section 119(2)). There is no upper limit on the amount of compensation that can be awarded.

270. The aim of compensation is that 'as best as money can do it, the [claimant] must be put into the position she would have been in but for the unlawful conduct' (Ministry of Defence v Cannock and ors 1994 ICR 918, EAT). In other words, the aim is that the claimant should be put in the position she would have been in if the discrimination had not occurred. This requires the tribunal to look at what loss has been caused by the discrimination.

271. Loss may include financial losses and injury to feelings. (The claimant did not make any claim for personal injury.)

272. We have found that the claimant's dismissal was an act of direct pregnancy and sex discrimination. The claimant suffered financial losses as a result of her dismissal. The claimant seeks loss of salary arising from her dismissal for the period of two months after her dismissal. We have considered whether, if the discrimination had not occurred, the claimant would still have been employed by the respondent for that two month period.

273. In December 2017, prior to the claimant's pregnancy-related absence, the respondent considered that an extension of the claimant's probationary period by three months was an appropriate period to allow the claimant the opportunity to improve her performance. Because of her pregnancy-related absence, the claimant only benefitted from one month of that three month period. We have found that the failure to allow the claimant a fair opportunity to improve her performance was an act of direct pregnancy and sex discrimination.

274. We conclude that if the discrimination had not occurred, the claimant would have had an additional two months probation after her return to work, to replace the two months she had missed while on pregnancy-related sickness absence. That would have ended on around 3 June 2018. If the respondent had been considering dismissal at the end of that additional two month period, it would have to have had a meeting in accordance with the Probationary Policy and Procedure. We consider that this would have been likely to have taken at least three weeks to arrange (a similar length of time to that which it took to arrange the meeting on 27 April 2018 after the claimant's return to work on 3 April 2018). Therefore, if there had not been any discrimination, the claimant would have remained employed until 24 June 2018 at the earliest.

275. We have next considered the amount of the claimant's financial losses. The claimant was dismissed on 27 April 2018. She received one week's pay in lieu of notice. She mitigated her losses by finding new employment which started on 23 June 2018. She does not claim any financial losses after that date.

276. The claimant has financial losses arising from loss of salary during the period from 4 May 2018 (allowing for one week's pay in lieu of notice) to 22 June 2018, a period of 7 weeks. This all falls within the two month period during which we have concluded that, if there had been no discrimination, the claimant would have remained employed.

277. The claimant's net weekly pay was £532.94. Her loss of pay for 7 weeks is £3,730.58. The claimant also claims expenses in the sum of £45.

278. We make no award in respect of holiday pay as we have found that the respondent paid the claimant her holiday pay in May 2018.

279. The claimant's total financial losses, which she would not have suffered if there had been no discrimination by the respondent, are £3,775.58.

280. We award interest on this award. For an award of financial loss, interest is payable at a rate of 8% from the midpoint of the period which runs from the start of the discrimination to the date of calculation. The acts of discrimination we have found to have been proven started on 3 April 2018. The period from this date to the date of calculation (5 June 2020) is 794 days. The period from the midpoint to the date of calculation is 794/2 = 397 days. The daily rate of interest on the financial award is 0.08 x £3,775.58/365. The interest is calculated as 397 days x the daily rate of interest (0.08 x £3,775.58/365) = £328.53.

281. As to injury to feelings, we have found that the claimant suffered discrimination and harassment during a period of just over three weeks, from 3 April 2018 when she returned to work until 27 April 2018 when she was dismissed. This was a difficult time for the claimant as she was already under emotional stress because of her miscarriage. She felt the respondent was unprofessional, insensitive, unsympathetic and unsupportive in terms of her emotional well-being. The change in behaviour by her managers made her feel humiliated, degraded and helpless. When Ms Jacob attended the disciplinary hearing the claimant felt intimidated, shocked and stressed.

282. We have considered the Vento bands for awards of injury to feelings. This is not a 'less serious case' where the unlawful treatment was an isolated or one-off occurrence in which an award in the lower band would be appropriate. It is not one of the most serious cases requiring an award in the top band. The appropriate award for injury to feelings in the claimant's case is an award in the middle Vento band.

283. The Presidential Guidance of 5 September 2017 amended on 23 March 2018 provides that for claims presented on or after 6 April 2018, as this claim was, the middle Vento band is £8,600 to £25,700. We have decided that an award in the lower half of this band is appropriate. The claimant is awarded £10,000 in respect of injury to feelings.

284. We award interest on this award. For an award of injury to feelings, interest is payable at a rate of 8% for the whole period from the start of the discrimination to the date of calculation. The acts of discrimination we have found to have been proven started on 3 April 2018. The period from the start of the discrimination to the date of calculation (5 June 2020) is 794 days. The daily rate of interest on the injury to feelings award is 0.08 x £10,000/365. The interest is calculated as 794 days x the daily rate of interest (0.08 x £10,000/365) = £1,740.27.

285. The award to the claimant is therefore:

Financial loss	£3,775.58
Interest on financial loss	£328.53
Injury to feelings	£10,000.00

Interest on injury to feelings	£1,740.27
Total award	£15,844.38

286. Any financial losses arising from the breach of contract complaint would overlap with the financial losses arising from the discrimination complaints, which would lead to double recovery (being compensated twice for the same losses). For this reason we make no separate award in respect of the breach of contract complaint.

287. The employment judge apologises to the parties for the delay in sending the reserved judgment. The claim involved a large number of complaints which meant that preparation of the judgment has taken some time, and there were also delays arising from the Covid-19 measures.

_____

Employment Judge Hawksworth

Date: 5 June 2020

Sent to the parties on: 11.06.2020

.T. Yeo.....
For the Tribunals Office

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