EMPLOYMENT TRIBUNALS

Claimant: Ms L Doyle

Respondent: Associated Training Solutions Ltd

HELD AT: Manchester **ON:** 30 & 31 May 2017; 25 September 2017; 27 October 2017
30 October 2017 (In Chambers) ;

BEFORE: Employment Judge Holmes
Mrs P Corless
Mrs J Harper

REPRESENTATION:

Claimant: Mr R Ryan, Counsel
Respondent: Mr J Boyd, Counsel

RESERVED JUDGMENT

It is the unanimous judgment of the tribunal that:

1. The claimant's application to join Andrew Fairbrother as a respondent is refused.

2. The respondent discriminated against the claimant on the grounds of her pregnancy in dismissing her, in the comments made to her by Andrew Fairbrother about when she should return to work, and in not being permitted to carry out work-based assessments.

3. The claimant's claim of victimisation is not well – founded, and is dismissed.

4. The respondent unfairly dismissed the claimant for the automatically unfair reason of her pregnancy, contrary to s.99 of the Employment Rights Act 1996.

5. The respondent wrongfully dismissed the claimant, and she is entitled to damages for breach of contract in the form of notice pay, and damages for failure to follow the contractual dismissal procedure.

6. The claimant is entitled to a remedy. The parties are invited to consider whether remedy can be agreed, or, in default, whether agreement as to any elements of the issues relating to remedy can be agreed so as to limit and define the issues to be determined by the tribunal on remedy, and to notify the tribunal by **22 December 2017** as to whether a remedy hearing is required, and, if so, specifying the issues to be determined, the estimated length of hearing, and dates to avoid, and seeking any further case management orders as are considered necessary for the determination of remedy by the tribunal.

REASONS

1. By a claim form presented to the Tribunal on 14 December 2016 the claimant complained of pregnancy or maternity discrimination, and of wrongful dismissal , arising out of, firstly her suspension, and then the termination of her employment with the respondent on 12 October 2016. The initial claim form contained some details in box 8.2, but by letter of 30 January 2017, the claimant's new solicitors sought to amend those particulars and her amended grounds of claim were submitted (pages 11 to 12 of the Bundle).

2. The respondent did not submit a response within the original time limit specified by the tribunal, and an application was made for the response to be accepted out of time. A preliminary hearing was held on 6 March 2017 , in which permission was given to the respondent to file the response out of time, the claims were identified, and case management orders were made. A complaint of direct sex discrimination was withdrawn, and the hearing was listed for 30 and 31 May 2017.

3. The hearing commenced on 30 May 2017, with the claimant being represented by Mr Ryan of Counsel, and the respondent by Mr Boyd of Counsel. The tribunal initially read, then heard evidence from the claimant , which continued into the following day. No further live evidence was called on behalf of the claimant, though her partner, Lee Burns, made a witness statement, dated 18 May 2017, which the tribunal read. On 31 May 2017, the respondent called Andrew Fairbrother. His evidence, however, could not be completed, and the tribunal adjourned, part – heard to 25 September 2017.

4. By letter of 13 July 2017, however, the claimant's solicitors made an application to join Andrew Fairbrother as a respondent. The respondent (and by implication, Andrew Fairbrother as well) objected to that application. After correspondence on the subject, the Employment Judge determined that the application could not be dealt with until Andrew Fairbrother had finished giving evidence, given the restrictions upon him whilst still giving evidence. Consequently, when the hearing was resumed on 25 September 2017, Andrew Fairbrother's evidence was concluded, and he was released from the witness box.

5. The tribunal proceeded then to consider and determine the application to join Andrew Fairbrother as a party. The application was refused, and reasons were given orally on the day. If those reasons are required in writing, a party may apply for them within 14 days of this judgment. Suffice it to say, for present purposes, the tribunal considered that the application was made far too late in the proceedings for it to be

granted, given that , as a party, Andrew Fairbrother would be entitled to seek his own legal advice and representation, file his own response, and generally respond to the claims against him with the full range of options which would and should have been available to him had he been a party from the start, or at a much earlier stage.

6. Having made that determination, there was insufficient time in which to hear the rest of the evidence, and the hearing was further adjourned, part heard to 27 October 2017, when Stephen Harrison was called by the respondent, the evidence was concluded, and submissions were made by both Counsel.

7. There was an agreed Bundle, and for the respondent April Fairbrother had made a witness statement which was not signed or dated , but was considered as part of the evidence. In the light of the personal information relating to them which came out in the hearing, whilst they are not believed to be minors or vulnerable adults, and no request was made for any order under rule 50, the tribunal considers that two learners referred to in the course of the evidence relating to the events which led to the claimant's dismissal need only be identified by their initials.

8. On 30 October 2017, the tribunal re- convened in Chambers, and deliberated. Having heard the evidence of the witnesses, read the documents in the bundle, and considered the submissions of the parties, the Tribunal finds the following relevant facts:

8.1 The claimant was employed as trainer/assessor by the respondent , which provides training for apprentices in the hairdressing industry, trading under the style of "VL Lancs." or "VLL". Her role was to provide hairdressing training to Levels 2 and 3 NVQ standard. Her employment commenced on 4 November 2014.

8.2 Stephen Harrison is, and was at all material times a Director of the respondent company, which was incorporated in June 2012. Andrew Fairbrother was involved in the running of the company , certainly from late 2014, for it was he who interviewed the claimant. His title was the Business Operations Director, though he holds, and has never held, any formal directorship of the respondent company. April Fairbrother, Andrew Fairbrother's wife, (also April Mann), worked for the respondent from June 2012 as Head of Delivery.

8.3 No contract of employment, or written statement of particulars of employment were provided to the claimant. Whilst a sample contract has been provided by the respondent (pages 28 to 32 of the Bundle) no contract signed by the claimant, or other proof that the claimant ever received such a contract has been produced by the respondent, and the tribunal accepts the claim's evidence that she was never provided with a contract of employment or any written particulars of her employment. The respondent, however, contends, and the tribunal accepts that these terms, whether formally provided to the claimant or not, were the standard terms upon which trainer/assessors were employed, and the tribunal accordingly accepts that these terms were the express terms of her contract of employment.

8.4 The respondent issued an Employee Handbook, which was accessible online. A copy is at pages 33 to 51 of the Bundle. The claimant accepts that this was available online from some point in 2016. It contains 7 sections, including , in section 6 , under Company Procedures a Disciplinary procedure (pages 42 to 44

of the Bundle) . After a paragraph headed "Purpose", there appears the following (page 42 of the Bundle)

"Please read the following principles and procedures carefully as they form an important part of your terms and conditions of employment:"

8.5 Under the heading "Principles" , (page 42 of the Bundle), the following provisions appear:

"Apart from an informal warning, you have the following rights in relation to disciplinary action:

- *to be informed of the allegations of misconduct or poor performance to be addressed at any disciplinary hearing*
- *to be accompanied by a work colleague or trade union official*
- *to appeal against any disciplinary action."*

8.6 Under the heading "Dismissal" (page 43 of the Bundle) the following is provided:

"Dismissal will normally result if you still fail to achieve the standard or conduct or performance required by the Company. You will be given every opportunity to offer an explanation for your failure to meet the required standards at a final disciplinary hearing. As with all previous stages of the disciplinary procedure you will be offered the right of a witness and the right to appeal against the decision."

8.7 Under the heading "General" , the following provisions are set out (page 43 of the Bundle):

"You will always be given as much information as possible regarding the allegations of misconduct , or any documentation detailing shortfall in performance or capability that will form the basis of the disciplinary hearing. You will also be given fair and reasonable notice of the date and time of the hearing and whenever possible the disciplinary hearing will be held during your normal hours of work."

8.8 The Employee Handbook contains a section on Dress code policy (page 49 of the Bundle). Reference is made in that section to "Kudos corporate colours". Kudos was a company of which Andrew Fairbrother had previously been a Director . This Handbook was thus an adaptation of one that he had previously used, and been familiar with when running that company.

8.9 The claimant by May 2016 was working a four day week, with no work on a Friday. The respondent had training centres at Preston and Blackpool, and the claimant used to work at the Preston site one day per week until mid 2016.

8.10 In or about May 2016 the claimant discovered that she was pregnant. She initially told her friend and colleague Leanne Gudgeon, but did not want to disclose her condition to anyone else at work until after her 12 week scan. She told Leanne Gudgeon not to tell anyone else at work.

8.11 On 14 June 2016, when the claimant was 7.5 weeks' into her pregnancy, she saw Andrew Fairbrother and asked him if she could leave early to attend a doctor's appointment. He asked her if she was pregnant, which she confirmed, but asked that he keep this to himself, as she was not ready to tell her colleagues.

8.12 Shortly after this, the claimant and Leanne were asked to go to Blackpool on Thursdays, instead of the Preston training centre.

8.13 On 5 July 2016 Leanne Gudgeon sent a text message to the claimant to tell her that Yvonne Ellis (the Head of Operations) "knew", meaning that she knew of the claimant's pregnancy. She added that it was not her (Leanne) who had told her. She went on to speculate that it was Andrew Fairbrother who told her, which prompted the claimant to observe "So much for him keeping it quiet!". This exchange of text messages is at page 55j of the Bundle.

8.14 The previous day Yvonne Ellis had discussed with Leanne Gudgeon the possibility of her carrying out work based placements, in which a trainer/assessor would visit a learner in their workplace, and carry out assessment of them in that placement. She had suggested that Leanne would be offered the chance to do this.

8.15 The claimant had previously stated to the respondent how she would like to carry out this type of work. She learned, however, that Leanne had been offered it, rather than herself, which prompted her, in this text exchange (page 55K of the Bundle) to say to Leanne:

"I like how she asked you & not me yesterday though !!XX"

8.16 Leanne replied (same page) , saying:

"Well she was sayin 'think it will b u doing work based' I sed I'd love it but I know Louise wants it more. N she sed 'yea but Going off her situation…'Then smiled .. I sed wat situation ? She sed THE situation … I sed wat? And she did the bump thing.Xx"

8.17 The claimant went on in this exchange to say that the company could not discriminate against her, and got "better and better". The claimant was not offered work based placements, and Leanne Gudgeon did indeed carry them out.

8.18 The claimant had her 12 week scan on 13 July 2016, and went into the Preston training centre with a photograph. She found that some of her colleagues already knew about her pregnancy. She was told that Andrew Fairbrother had told them.

8.19 The claimant was on holiday, but returned to work on 18 July 2016. She saw Andrew Fairbrother, and spoke to him about Yvonne Ellis not asking her to undertake work based placements. He said that he had made this decision, and that she could not do them without a chaperone attending with her, which the respondent could not afford. The claimant noted this conversation shortly afterwards (page 55p of the Bundle) . He said she was better off in the workplace, where there were other members of staff to look after her if anything

happened, and how it was safer that she drive to Blackpool each day in case she had an accident. No risk assessment was carried out or offered.

8.20 Around this time Andrew Fairbrother did, the tribunal finds, make comments to the claimant as to when she would be back at work, and suggested that she should come to work after three months , otherwise she would "go crazy" at home, as hairdressers needed to be around people. These comments were made on more than one occasion, and made the claimant feel under pressure to return from her maternity leave early.

8.21 Between July and September 2016 the claimant noticed that she appeared to have fewer students in her class compared with Leanne Gudgeon. The tribunal has not been satisfied that this was in fact so, though it accepts that this was the claimant's perception. There was, however, around this time a reduction in the number of new students enrolling with the respondent. This was due to changes in government policy, whereby the participation age was raised from 16 to 18 with the result that more and more 6 plus students chose to stay on in college or sixth forms, and did not enrol upon apprentice courses until they were 18. The respondent was affected by this change, and mid – 2016 saw these changes impact upon the numbers of students enrolling.

8.22 On 22 September 2016 the claimant had a discussion with another trainer/assessor, Luke Shaw (who was not an employee, but a self – employed sub – contractor) , about a learner, DH. This discussion was in a staff room, at lunchtime. The context was that the learner had asked Luke Shaw for more time in which to complete his course, due to personal circumstances which had been particularly traumatic for him, in that he had found the dead body of a 16 year old boy, who had committed suicide. The claimant did not teach the learner, but gave Luke Shaw her opinion on the matter, which was that she did think that such an allowance would be given at that stage, but this would have to be considered further. Luke Shaw had previously told the claimant about the learner in question making compensation claims, and the claimant had experience herself of being approached by another, female, former learner, ST, his girlfriend , with a view to providing information to her solicitor in connection with potential proceedings against a hairdresser, in which the claimant did not wish to become involved. This was a private conversation between two colleagues about a particular learner, and it was Luke Shaw who brought up , as he had done previously, the making of potential compensation claims by DH.

8.23 Luke Shaw did not refer the claimant's comments to the respondent, but subsequently, on 29 September 2016 spoke with the learner DH , and in the course of this conversation informed him of the discussion he had had with the claimant, in which he told DH that she had implied that DH was weak for taking two weeks off college following the incident, and that she had suggested he was "milking it for paid time off work"

8.24 DH then telephoned the respondent to complain about what he was told by Luke Shaw. He initially spoke to Yvonne Ellis on 29 September 2016. Andrew Fairbrother was then informed about the complaint.

8.25 Andrew Fairbrother questioned Luke Shaw about the complaint the same day. He apparently told Andrew Fairbrother that he had told DH that the claimant had

indeed said that she did not consider that he had a valid reason for having time off, that he was "milking the system", everyone had seen a dead body, and that DH was weak and should "man up". He also referred to the claimant's comments about ST, but was unclear as to whether he had passed these onto DH as well. He acknowledged that his own behaviour was not professional , and that he should not have said anything to DH about what the claimant had said, and that he should have followed procedure, and seen the Head of Department about the matter.

8.26 Later the same day Luke Shaw sent an e-mail to Andrew Fairbrother. It is not in the Bundle. It was, however, purportedly reproduced in a "timeline" document produced by Andrew Fairbrother at pages 63 to 70 of the Bundle, at page 64. That e-mail , if that is an accurate and complete transcription , gives a rather less detailed account of what was said to DH, and omits the specific details given in Andrew Fairbrother's interview with Luke Shaw. He ends by apologising for the situation he had caused, and stating that he understood that he had acted in an incorrect manner.

8.27 Andrew Fairbrother also questioned the claimant about this complaint on 29 September 2016. It is unclear precisely when this took place, but it was probably after he spoke to Luke Shaw, but before 18.46, because at that time the claimant sent an e-mail to Andrew Fairbrother to which she attached a full account of what she had said to Luke Shaw, and the background of her previously receiving a request to assist ST's solicitor , which she supported by attaching screen shots of text messages. The claimant's e-mail, and the statement she made, with attached screen shots are at pages 56 to 58 of the Bundle.

8.28 On 3 October 2016 DH attended the Blackpool site and made a written complaint on a "Cause for Concern" form , with Phil Stone, page 59 of the Bundle. In it he referred to the comments that Luke Shaw had told him the claimant had made , implying that he was weak, and that he was milking it. He alleged that this had caused him to lose sleep and take more time off work. He said that the claimant had been slanderous and unprofessional.

8.29 The following day ,4 October 016, Andrew Fairbrother suspended the claimant from work by letter , which he handed to her (page 60 of the Bundle). The claimant was informed that a grievance had been raised by a learner, and that a formal investigation would have to take place in accordance with the procedure laid out for learners. The claimant was told that the matter would be investigated as quickly and efficiently as possible, and that she would be informed of the results "and any subsequent actions if any" (sic). There was no indication that this process may lead to the claimant's dismissal, or any other form of disciplinary sanction, and no further details of the allegations were given in this letter.

8.30 Luke Shaw was not suspended , or otherwise told to keep away from work.

8.31 The claimant sought advice, and wrote a letter , dated 6 October 2016, (pages 61 to 62 of the Bundle) complaining about her suspension, seeking the reasons for it, and responding to the suggestion that her comments may have been slanderous. She also made reference to the timing of her suspension, pointing out that she was currently pregnant, and referring to s.18 of the Equality Act

2010, and the protection afforded to her by it. She went on to state that the suspension was causing her anxiety and distress, which led to concerns about her health and that of her unborn child. In the event that she suffered any complication in her pregnancy, traceable to the anxiety and distress caused by the suspension, she would explore all avenues of redress.

8.32 That letter, dated 6 October 2016, was sent by "signed for" delivery. The envelope containing it is at page 62a of the Bundle. It was delivered and signed for at 11.02 a.m on 12 October 2016, as can be seen from the tracking record at page 62b of the Bundle.

8.33 The person signing for the claimant's letter was employed at Salon 142, which shares the respondent's address, but is located below it. This is where post is received. It is therefore unclear as to at what time on 12 October 2016 Andrew Fairbrother or Stephen Fairbrother (to whom the letter, but not the envelope, was addressed) saw it and read its contents..

8.34 Between 4 October and 12 October 2016 Andrew Fairbrother carried out enquires and interviewed persons who had been present when the claimant had her discussion with Luke Shaw.

8.35 At some point, it is unclear precisely when, but on or about 5 october 2016, Andrew Fairbrother contacted ACAS. He did not , the tribunal finds, tell ACAS that the claimant was pregnant. Quite what he told ACAS, and the advice he received , is unclear, but he has stated that he understood that advice to mean that if the claimant had been guilty of gross misconduct , she could be dismissed without any need for a hearing. The tribunal does not accept that he discussed the claimant's length of service with ACAS, it being doubtful that he was even aware at that time that she had just under two years' service. The tribunal does not accept that Andrew Fairbrother was told that he could dismiss the claimant without any disciplinary procedure because she had less than two years' service. In his timeline document at page 69 of the Bundle, Andrew Fairbrother has recorded this entry for 5 October 2016:

"AF confirmed policy and process being followed is correct with ACAS help-line

ACAs (sic) *confirmed that as it was a grievance filed by a student, that following our company policy was correct.*

In the event of the panel finding for disciplinary measures to be brought , then to follow Disciplinary process. AF confirmed in the event of Gross Misconduct , is there a requirement for full disciplinary and ACAS confirmed no in – line with Gov.UK information."

8.36 The tribunal accepts that a meeting was held of a panel , comprising of Andrew Fairbrother, Ann Fairbrother and Leanne Doherty , to consider the grievance by DH was convened on or about 7 October 2016. The claimant was not invited to it, or given the chance to make any representations to it. This was not a disciplinary panel, but a student grievance panel. The view was taken that the claimant should be dismissed, but the decision whether or not to dismiss her was ultimately Andrew Fairbrother's. There was no discussion y the panel of any action to be taken in relation to Luke Shaw.

8.37 Andrew Fairbrother did not follow, or refer to , the disciplinary procedure in the Employee Handbook referred to above. The claimant was not, prior to her dismissal, provided with any information about the allegations of misconduct, or any documentation in support of the allegations, was not called to any disciplinary hearing, or afforded the right of accompaniment or representation.

8.38 By letter dated 11 October 2016 Andrew Fairbrother wrote to Luke Shaw. Its relevant terms are as follows:

"Due to circumstances beyond our control, we will be releasing you from your provision of services with our company effective immediately."

8.39 By letter dated 12 October 2016 Andrew Fairbrother (pages 71 to 72 of the Bundle) dismissed the claimant, without notice. In this letter he set out the previous interview and suspension meetings on 29 September and 4 October 2016. He referred to the suspension and the procedure that would be followed. He summarised what the claimant had told him, and the investigation he had undertaken. He then said:

"The panel agreed unanimously , that your conduct the severity of the things said, constitute gross misconduct and that your admission of the items said and the lack of remorse shown was not acceptable, because you were speaking about a matter that you had no permission , knowledge or training to make such comments on the psychological impact and trauma the learner had or had not gone thru (sic). *Having taken all of the facts and circumstances in to consideration, the company has decided to summarily dismiss you from your employment with immediate effect."*

8.40 No statements, minutes, notes, timeline or other documents were included with this letter.

8.41 Andrew Fairbrother concluded the letter by notifying the claimant of her right of appeal, which had to be made to Stephen Harrison within 7 days of receipt of the dismissal letter. He said that this was *"In line with the company procedures.."*.

8.42 The respondent's disciplinary appeal procedure (page 44 of the Bundle) provides for an appeal within 5 working days of receipt of the written confirmation of the disciplinary decision, and is predicated upon an appeal hearing being held. Andrew Fairbrother's final paragraph in his dismissal letter, however, makes no mention if any hearing, but says that , in the event of an appeal, Stephen Harrison would *"look at all the facts given to the panel and the grounds you give for your appeal. He will then deliberate on the matter and his decision will be sent via post to you within a further 7 days from the date of your appeal letter."*

8.43 By letter dated 17 October 2016 (pages 83a 83c of the Bundle) Andrew Fairbrother wrote to DH, informing him of the result of his grievance. This is very detailed letter, in which all the steps taken in relation to the claimant, including her suspension, were set out. Other than to mention that he was interviewed, nothing was said about what action the respondent had taken in relation to Luke Shaw.

8.44 The claimant appealed against her dismissal by letter of 19 October 2016 (pages 73 to 76 of the Bundle). She made reference to her "contract of

employment", the company handbook, and implied terms of employment law, and noted that she had the right to a disciplinary hearing, to review the evidence against her and be accompanied by a colleague or trade union representative. She complained that the proper procedure had not been followed, there had been no hearing, Andrew Fairbrother had both investigated and carried out the dismissal She argued that her dismissal was a nullity, and that she remained employed by the respondent.

8.45 She went on to advance 6 specific appeal points, the first relating to her exemplary record and previous appraisals, the second that the correct procedure was not complied with (also she had been prescribed medication for anxiety), the third that the allegations related to comments made to a colleague, privately, and she was not responsible for their repetition to the learner, the fourth that she had not admitted doing anything wrong, the fifth related to her alleged lack of remorse, and the sixth, that her dismissal was discriminatory, stating that the real motivation behind her dismissal was her pregnancy. She went on to cite Andrew Fairbrother's treatment of her in relation to work – based assessments, and other matters.

8.46 Stephen Harrison did not convene an appeal hearing. He took the view that the claimant's appeal had been received outside the time limit, and that the respondent was not obliged to consider her appeal at all. That was, in fact not correct, as Andrew Fairbrother's dismissal letter stated that the claimant should appeal within 7 days of receiving the dismissal letter , which was not received by the claimant, having been sent recorded delivery, on 14 October 2016. Her appeal letter of 19 October 2016, therefore was within that time limit.

8.47 Stephen Harrison nonetheless did deal with the appeal, and he sent an outcome letter dated 26 October 2016 (pages 80 to 83 of the Bundle) to the claimant. In it he went through the claimant's grounds of appeal, and responded to them, refuting each one, and in particular denying any allegations that her pregnancy played any part in the decision to dismiss her.

8.48 Whilst Andrew Fairbrother has produced and asserted that the timeline document at pages 63 to 70 had been created as a working document , at the time of the events referred to in it, Stephen Harrison did not see it, it was not disclosed until disclosure in these proceedings, and the tribunal finds that this was not a document in existence at the date of the dismissal, or the appeal.

8.49 Further, whilst Stephen Harrison purported to deal with the appeal, the tribunal finds that in reality Andrew Fairbrother did, or substantially did, , and he drafted, authored or substantially contributed to the appeal outcome letter .

8.50 Andrew Fairbrother and Stephen Harrison were both of the belief that if the claimant was no longer employed by the respondent, she would not be entitled to be paid SMP by the respondent. The claimant was not paid SMP following the termination of her employment, The claimant made enquiries about her entitlement with HMRC, and as a result, she wrote to Stephen Harrison on 20 October 2016 (page 77 of the Bundle) , informing him of the advice she had received that the respondent was still obliged to pay her SMP, regardless of the outcome of her appeal against her dismissal.

8.51 The respondent subsequently contacted HMRC on 2 November 2016 to enquire about the position, and a record of the claimant and the respondent's enquiries, and the advice given is at page 98 of the Bundle. The respondent subsequently has paid the SMP due to the claimant.

8.52 He respondent has, since the dismissal of the claimant recruited and employed another assessor, who was pregnant at the time she was recruited.

9. Those are the relevant facts as found by the tribunal. Where there were conflicts, the tribunal has preferred the evidence of the claimant, and has generally found the evidence of the respondent unreliable, for a number of reasons. Firstly, the tribunal found Andrew Fairbrother an unreliable historian. From para. 1 of his witness statement, it became apparent that his written account in his witness statement was not the whole truth. For example, he sought to underplay his involvement in the respondent company, suggesting that he did not start "formally working" for it until March 2016. This is clearly not accurate, as it was he who interviewed the claimant in October 2014, when he was described as Business Operations Director. There was much discussion as to whether he was disqualified from holding Directorships, which he agreed he had been. This was it seems, likely to have been a consequence of being made bankrupt, rather than a specific disqualification order. He was, however, wholly unable to give even an approximation of when this occurred. Given that, the tribunal assumes, this would be an unusual life event, some idea of when this occurred would be expected, but he was unable, or unwilling to divulge this information. Whilst the tribunal does not, as Mr Boyd exhorted it to, hold this against him, as many people go bankrupt for all sorts of reasons , and they are not to be stigmatised for this, it was the manner in which Andrew Fairbrother answered the questions relating to these issues, and not the fact of his bankruptcy, that raised serious questions as to his credibility generally.

10. Further, in relation to the quality of the evidence adduced by the respondent, the tribunal would observe, that Stephen Harrison's witness statement, is very brief (two pages), in contrast to his appeal outcome letter , even allowing for the inclusion of the claimant's grounds of appeal within it, and gives hardly any account of his reasons for not holding an appeal hearing, and for not upholding the appeal, even by reference to the appeal outcome letter. Additionally, whilst April Fairbrother sat on the panel, which allegedly decided to dismiss the claimant, her statement is similarly very short and gives no detail of the discussion that was held. She was not called to give live evidence, so these , and any other issues , could not be explored further with her.

11. For all these reasons, the tribunal has been unconvinced by the evidence of the respondent, finding the two live witnesses called , frankly, less than impressive in terms of their recall of detail, and the surprising lack of reliable, corroborative, documentary evidence. Even when notes had taken, they had not been retained.

The Submissions.

12. The parties made submissions. Both Counsel had prepared written submissions, which are on the tribunal file, and which it is not intended to repeat here. Counsel spoke to their written submissions, but nothing additional was relied upon.

The Law.

13. This was not controversial, and is adequately summarised in Counsels' submissions. Counsel agreed the relevant law to be applied to the claims, and it would be otiose to rehearse it again in this judgment.

Discussion and Findings.

The dismissal : automatically unfair and/or discriminatory?

14. Whilst the tribunal has been reminded of the slight difference in the burden of proof provisions for automatically unfair dismissal, where the claimant lacks qualifying service, and discrimination claims, both claims it seems to the tribunal, turn on a simple question of fact , namely does the tribunal accept the respondent's case that the claimant's dismissal was not by reason of, or not principally by reason of, her pregnancy? As Elias P. (as he then was) said in ***Laing v Manchester City Council [2006] IRLR 748*** , when discussing whether it was always necessary for a tribunal to take the two stage approach under ***Igen v Wong*** , there is no single right answer, and tribunals can waste much time and become embroiled in highly artificial distinctions if they always feel obliged to go through those two stages. Whilst this case is in a different context, it will be apparent that our findings are on the basis of our findings of fact, which will remain the same regardless of where the burden of proof lies in respect of any particular claim.

15. There a number of instances where the evidence of Andrew Fairbrother , and his explanation of his conduct of the process by which the claimant was dismissed from the employment of the respondent are highly unsatisfactory, such as:

His selective reproduction in his timeline document of the claimant's e-mailed statement setting out her full account of her experience of DH and ST, the first part of this account being wholly omitted from his timeline document;

His inclusion in that document of what appears to be an e-mail from Luke Shaw on 29 September 2016 , but the actual e-mail from which it has been extracted has not been produced .

16. Further, the "timeline" document is highly suspect. It has been the cornerstone of the respondent's case, designed to give an appearance of some form of due process. Whilst Andrew Fairbrother claimed that he had made this document from other handwritten notes that he made as he was conducting his investigation, he has never produced those notes, and was unable to locate any such notes during a period of adjournment. No metadata or any other evidence has been put before the tribunal which would corroborate the evidence of Andrew Fairbrother that this was a working document, that had evolved during the course of his investigation. Whilst dates are supplied for most of the entries, and the alleged decision taken by "the Panel" was taken on 7 October 2016, the final entries , which purport to record further contact with ACAS, and the issuing of the result to the claimant, and to the learner, are undated, and said simply to be "over the course of the next week". No reference, however is made in it of the letter to Luke Shaw, allegedly terminating his contract, which makes either that letter, or the timeline document, or indeed, both, suspect.

17. Further, and most significantly in the tribunal's view, whereas in para. 5 of his witness statement Stephen Harrison said clearly that he considered the appeal against dismissal on the papers and "in particular Andrew's report , which appears at pages 63 – 70 of the Bundle", in cross – examination, he said he had not seen that document before. As it is such a significant and extensive document, it cannot be the case that Stephen Harrison has forgotten about it. He makes no reference to it in "his" appeal outcome letter, and the tribunal finds that he did not see it. The reason he did not see it, the tribunal is satisfied, is that it did not then exist. It is indeed, an after the event creation, for the purposes of resisting these claims, which have been threatened by the claimant, of course, since her grievance letter of 6 October 2016, received at the latest on 12 October 2016.

18. That, the tribunal considers is also the explanation for the rather extraordinary letter to DH, of 17 October 2016 which at great length, and in great detail , sets out the respondent's case in relation to the actions taken on the grievance and the dismissal of the claimant. That it contains phrases such as , in relation to the claimant's suspension :

". In – line with current legislation, not to punish her or condemn her, but to protect her from the undue stress or pressure of the investigation"

and that reference was then made to the terms of her suspension, and subsequently details of her dismissal, how it was carried out, and the right of appeal were also included in this letter which is in response to a student grievance, all smacks of after the event justification, at a time when the respondent had clearly by then received her grievance letter, and was well aware that she was claiming that her treatment was by reason of her pregnancy. The tribunal also finds it significant that no mention is made in this letter to DH of the fact (as the respondent alleges) that Luke Shaw's contract was also ended , and no apology is made for any upset and distress that his words or actions may have caused. The focus is solely upon the claimant.

19. Finally, the hand of Andrew Fairbrother , perhaps almost literally if he physically drafted the appeal outcome letter , as opposed to merely, as Stephen Harrison suggested , checked it for grammar and spelling , is all over the documentation. He wrote the timeline document , the suspension letter, and the dismissal letter. That the appeal letter in the penultimate paragraph on page 83 of the Bundle contains the same misspelling of the word "wholly" – "holy" , as appears in the penultimate bullet point for the entry for 7 October 2016 in his timeline document at page 69 of the Bundle ("Both panel members felt that the matter was holy beyond ….") rather reveals the extent of his involvement in the drafting of the appeal outcome letter.

20. All of this, of course, it is submitted is merely unfair, and the point is made forcibly by Mr Boyd that, however inept, or even unfair, the tribunal should not infer from these facts that the reason or principal reason for dismissal was the claimant's pregnancy. He relies upon the ***Glasgow City Council v Zafar [1998] IRLR 360*** line of cases, and the tribunal takes his point that bad reasons are not necessarily discriminatory ones. There was, clearly, a complaint from the learner, DH, and the respondent was entitled to take action upon it. That it then unfairly dismissed the claimant does not mean that her pregnancy was a factor at all in that dismissal. Against that , Mr Ryan, however, cites a passage from the judgment of Langtsaff, P.

in ***Zietek v Lancashire Teaching Hospitals NHS Fundation Trust (UKEAT/0269/15/JOJ)*** in which the tribunal is counselled against too ready acceptance of any "bad but not discriminatory" explanation for the claimant's treatment. The passage bears recital in full:

*"The logic of the approach taken in **Zafar** is clear : that unreasonable , even unpleasant , behaviour is not of its nature essentially and necessarily behaviour adopted because of a protected characteristic of the Claimant. Where there is an approach towards all which creates an equality of misery it is particularly clear that it is unlikely to be because of a protected characteristic peculiar to only one of a few of them. However, the "unreasonable not discriminatory" defence may be less applicable in a case in which the evidence shows that only one employee has in particular been made miserable. In that latter case, though it remains logically right that the individual may have been the unwilling victim of a mistake or oversight, there is much greater reason to consider carefully and with particular scrutiny whether this might simply be too easy an explanation. It may call, in an appropriate case, for evidence as to how others have been treated equally badly. That point did not arise in this case - it was not taken - but I mention it in case this case and its reasoning give any support to a view that it is easy to avoid by confessing to having made a mistake or an error. A Tribunal should examine any such statement critically."*

21. In this case there is no evidence of any other person being treated equally "badly" as the claimant. The only person with whose treatment hers can be compared is Luke Shaw. He was, the respondent contends, treated similarly, as his engagement was terminated. He could not be dismissed, as he was self employed. He, however, was not suspended, and his termination letter makes no mention of the grievance by DH, or any form of misconduct. No mention is made of his fate in the extensive outcome letter to DH, nor was there any discussion by the panel about his position.. A further point of interest is how Andrew Fairbrother was concerned to be meticulous in terms of how he dealt with the grievance by the learner, expressly referring to, and adhering to, the relevant policies, but showed no such similar degree of concern with following procedure when dealing with the claimant, when there were procedures , even at the appeal stage, which Andrew Fairbrother expressly referred to in the closing paragraphs of his dismissal letter, which were not adhered to, and which cannot be blamed on advice from ACAS. .

22. The tribunal has considered these arguments, and has weighed up the evidence. It is satisfied that pregnancy was a major, indeed, the principal reason for, the claimant's dismissal. A number of factors combine to drive the tribunal to that conclusion. Firstly, the tribunal accepts the claimant's evidence of remarks made by Andrew Fairbrother at an early stage in her pregnancy, suggesting that she would need to get back to work, encouraging her to return early, indicating that her impending maternity leave would be an issue for the respondent.

23. Secondly, all this occurred against a background of reducing student numbers. The respondent's evidence on this was clear, 2016 was the first year when the effects of governmental policy changes on the participation age , the RPA, were felt. Indeed, as Andrew Fairbrother says in para. 30 of his statement , and has produced figures at pages 102 to 108 of the Bundle to support, there was a drop in the number of apprentices in retail and commerce from August 2016 to January 2017.

24. Thirdly, the respondent (in the person of Andrew Fairbrother and Stephen Harrison) believed that the company would not have to pay the claimant SMP once she was no longer employed by the respondent. That was an erroneous belief, which has now been dispelled, and SMP has been paid, but the tribunal finds that this informed and explained the thinking on the part of the respondent that if the claimant was no longer employed, it could save the SMP payable during what was anticipated to be a period of reducing student numbers, with the claimant not being in work, but remaining a financial liability during the period of her SMP.

25. Fourthly, and of some significance too is the contrast with the treatment of Luke Shaw. He it was, after all, who actually told the earner what the claimant had said, and caused this situation in the first place. He was, on any view, equally, if not more , culpable. He was not, however, the respondent alleges (though no evidence has been produced , but the claimant has not challenged this) an employee, and this is relied upon to explain any difference in treatment. His contract was, Andrew Fairbrother ,maintains, terminated. Reliance is placed upon the letter (page 70a of the Bundle) , somewhat curiously dated 11 October 2016, the day before the claimant's dismissal letter, in which he was "released from providing his services" , as it is put. Andrew Fairbrother says this shows that he was treated the same. With respect , he was not. Firstly, unlike the claimant, he was not suspended at all. The timeline records that on 29 September 2016 he was asked to "go home", but there is no suggestion that he was not allowed to return thereafter, and there is no equivalent letter to him of that sent to the claimant on 4 October 2016, suspending her. Further, his termination letter of 11 October 2016 makes no mention of his termination being because of his conduct, but rather is said to be "Due to circumstances beyond our control". Nothing suggests any form of misconduct on his part, and the door would appear to be open for him to return. That does not sit well with Andrew Fairbrother's evidence as to the reason for his termination.

26. There are a number of possibilities. One is that this letter was, in fact, not sent, or not sent at that time. As Mr Ryan points out, the respondent has not called Luke Shaw, and there is no evidence of when this letter (the claimant's was sent recorded delivery) was received by him. Another , of course, is that , if it was sent, this was no more than a smokescreen , again probably after the event, to make it appear that he had been treated the same as the claimant. The tribunal finds it significant too that there is no mention of how Luke Shaw was to be dealt with, or indeed was dealt with, given this was allegedly the same week, in any discussions noted in the timeline document. Nor does the outcome letter sent to the learner make any mention of the way in which Luke Shaw was dealt with, the focus being entirely upon the claimant. Thus, even on the respondent's own evidence, in not suspending Luke Shaw, and then terminating his contract, if it did, but not for gross misconduct, the respondent was treating him more favourably than the claimant, entitling the tribunal further to question whether the fact that she was pregnant played any part in her treatment.

27. Finally, and the point is well made by Mr Ryan, the tribunal is entitled, nay compelled to look at the explanations given by the respondent at various stages in the proceedings. In the response, filed on 3 March 2017 (with permission) , drafted by its solicitors at a time when the claimant's grievance and dismissal appeal letters, and the amended grounds of claim had been served, the sole explanation for the

respondent dismissing the claimant when it did, pleaded at para.14 of the Grounds of Resistance , is the respondent's understanding of advice received from ACAS that, in a case of gross misconduct, an employer could dismiss without convening a disciplinary hearing. In other words, it was the nature of the conduct which gave rise to that understanding, no other factor. No mention is made of the fact that the claimant lacked the requisite two years' service to present a complaint of unfair dismissal.

28. When witness statements were exchanged, some weeks later (Andrew Fairbrother's is dated 19 May 2017) , however, in para. 40, for the first time, Andrew Fairbrother expressly says that he was asked if the claimant had two years' service , and told the ACAS conciliator that she had not. He says that the conciliator (written as "conciliatory", in fact) advised that "*in those circumstances "* the respondent could dismiss the employee if gross misconduct was proven and a full disciplinary hearing was not necessary. He refers to his timeline document at page 69, but an examination of the relevant entry makes no reference to the two year rule being discussed. The fact that it is not recorded in that, allegedly more or less cotemporaneous, document, and is not pleaded in the response leads the tribunal seriously to doubt that it was ever discussed. Indeed, the tribunal believes Andrew Fairbrother did not even know whether the claimant did or did not have the requisite length of service at that time. He made no reference to any documents in which her start date would be apparent (and indeed, none have been produced, save in relation to he interview ,and Andrew Fairbrother made no reference to that) , or to her actual start date himself in any of the documentation he has prepared. His witness statement does not mention the start of her employment, despite the fact that he actually interviewed her in October 2014. When questioned about this in the hearing he was vague and unconvincing, and the tribunal finds that, at the time of the dismissal, the issue of whether the claimant did or did not have two years' service did not cross his mind.

29. What is clear, however, and Andrew Fairbrother accepted this, was that he is not inform ACAS that the claimant was pregnant . The tribunal finds this astonishing. It was a highly pertinent fact, and the tribunal cannot understand why he would not do so. It can hardly have slipped his mind, and as an employer with previous experience of maternity leave , and apparently aware of pregnant employees' rights, one would have expected him to mention it. That he did not, accepting at face value, (though Mr Ryan invites us not to do so) that he contacted ACAS at all, rather suggests that he did not want to inform ACAS of the potentially complicating factor of the claimant's pregnancy. In short, his purpose in contacting ACAS was to check how he could dismiss the claimant, and he did not want to give any information to ACAS which may have led to different advice being given. That seems to us, if we accept that ACAS contact was made at all (if it was not all this is a complete fabrication and smokescreen) , the only explanation for not mentioning a crucially relevant factor.

30. A further issue is the degree to which Andrew Fairbrother professed to be strongly influenced by considerations of the likely views of Ofsted in respect of the claimant's behaviour. He made much of this in the hearing. In his witness statement, however, this factor is not mentioned at all. It is not mentioned in the dismissal letter, nor in the extensive appeal outcome letter. Indeed, the only reference to Ofsted in on page 69 of the Bundle, part of the "timeline" document, where it is recorded that

"both panel members" referred to the standards to which Ofsted hold all teachers and training organisations regarding the health and well – being of a student. That is the only reference to Ofsted, and came not from Andrew Fairbrother, apparently, but from other members of the panel. The tribunal is driven to the conclusion that this is another example of Andrew Fairbrother seizing upon a point that he has noticed, and advancing it, when it was not actually in his mind at the time.

31. Finally, there is another factor which the respondent can only seek to explain as a further instance of ineptitude rather than discrimination, and it is in relation to the appeal. On the respondent's case, the claimant had the misfortune not only to be dismissed without due procedure because of erroneous advice, or the erroneous understanding of advice, from ACAS. Stephen Harrison, however, did not hold an appeal hearing, not on the basis of any advice from anyone, but apparently because the claimant's appeal was out of time. In fact it was not. She was, however, not afforded the appeal hearing to which she was on any view entitled. The respondent's own procedure states that she would be entitled to an appeal hearing, but Andrew Fairbrother's dismissal letter, whilst expressly stating this to be " in line with company procedures" makes no mention of a hearing, and suggests that the appeal will be determined by Stephen Harrison, on the papers, without a hearing.

32. Can all this too be explained as yet more error, this time attributable to no third party advice ? The tribunal cannot so find. The respondent seeks to stretch this "comedy or errors" explanation too far.

33. In short, the tribunal has found that Andrew Fairbrother's justification of and rationale for the dismissal of the claimant has shifted as time has gone on. He has been inconsistent and unconvincing. This is more, the tribunal finds, than mere ineptitude, it is behaviour from which the inference can, and must, be drawn that all these various matters have been advanced to mask the real reason, which was the claimant's pregnancy.

34. The tribunal has taken into account the respondent's evidence that as working in an industry with a high proportion of female staff , and as employers with families of their own, they are not hostile to pregnancy in the workplace, but are more than happy to accommodate it. It is noted , as well, that a new assessor has been recruited, who was pregnant when taken on by the respondent. That may well be so, but it does not prove that the respondent did not discriminate against the claimant because she was pregnant in July to October 2016. Whilst the tribunal does not find that the respondent determined to dismiss the claimant as soon as it was discovered that she was pregnant, the tribunal is , however, quite satisfied that her pregnancy was unwelcome news for the respondent, coming at the time that it did. Against a background of falling student numbers, and with the prospect of the claimant taking maternity leave during which she would have to be paid SMP, with the potential for up to a year off before the respondent could know whether or not, and upon what basis, she intended to return to work, the tribunal is quite satisfied that the respondent was very unhappy at the news. Andrew Fairbother's remarks, which we find were made, support such a conclusion. When, therefore, an opportunity arose, through the complaint made by DH , the respondent seized it, and used this as pre-text to dismiss her, believing, wrongly, that it would thereby not have to pay her SMP. Whilst the complaint by DH was the opportunity for her dismissal, the tribunal is quite satisfied, on any burden of proof, that the reason for her dismissal was her

pregnancy. Her claims of automatically unfair dismissal, and of discrimination contrary to s.18 of the Equality Act 2010 , accordingly succeed.

The wrongful dismissal claim.

35. That disposes of the main claims. The remaining claim arising from the dismissal is that of wrongful dismissal. There is no issue but that the claimant was dismissed without notice. In order to justify that, the respondent has to show that it was entitled to dismiss without notice by reason of the claimant's conduct, and that it did so. In relation to the former, no direct evidence has been called, from DH, or Luke Shaw, as to what the claimant said. The claimant, of course, has given evidence about this, and there are documents. The crucial matter to bear in mind is that it was not the claimant who said anything to DH, it was Luke Shaw. At most the claimant made candid , if strong, views about a learner in a staffroom, with no expectation, indeed, the opposite, that they would be repeated to the learner. As Mr Ryan submits, the caselaw on summary dismissal makes it clear that the court or tribunal must make an objective assessment as to whether any particular conduct on the part of the employee is such that it goes to the root of the contract and entitled the employer to dismiss without notice. No express term was relied upon by the respondent, and looking at the examples in the specimen contract the tribunal cannot see how the claimant's conduct could be said properly to fall under any of them.. We are therefore to have recourse to first principles, as set out in cases such as ***Briscoe v Lubrizol Ltd [2002] IRLR 607*** and ***Neary and anor v Dean of Westminster [1999] IRLR 288*** .

36. Applying those, we cannot consider that the claimant's admitted discussion with Luke Shaw in the location, context and circumstances in which she had it, could reasonably be held to constitute gross misconduct, warranting summary dismissal. At most, it may be misconduct, worthy of a warning, or at most dismissal with notice, but it could not, in our view begin to amount to gross misconduct, largely because the conduct was not in public, or directed to the learner (Luke Shaw's however was), and hence it could not begin to satisfy the contractual test . Mr Boyd did not address this issue particularly, and it may be no surprise to the respondent that the tribunal makes this finding.

The other discrimination claims.

37. That leaves the remaining discrimination claims, which precede and are clearly less serious than the claimant's dismissal. They relate to :

a) Andrew Fairbrother's comments when the claimant had disclosed her pregnancy;

b) Not being allowed to carry out work – based assessments;

c) Being given fewer new starters than Leanne Gudgeon.

38. In relation to these, the tribunal finds (a) and (b) are made out. The former is simply a case of the tribunal accepting the claimant's evidence in preference to that of Andrew Fairbrother. The latter is to some extent accepted by Andrew Fairbrother,

in that he agreed that he would only be able to give the claimant such assessments if a risk assessment of the relevant site could be carried out, although the tribunal finds that .the claimant's account of this whole issue is more credible, and that her note of the discussion on 18 July 2016 is a good record of what was actually said. To some extent Andrew Fairbrother accepted that he did have issues with the claimant carrying out work – based assessments, but seemed to rely upon a form of "justification" , which, as far as the tribunal is aware, is not open to a respondent in direct pregnancy discrimination claims.

39. In relation to (c), however, the tribunal is not persuaded that the claimant has made out this claim. The statistical evidence produced was unclear, and there was clearly a drop in student numbers around this time, but as to whether or not the claimant has demonstrated that she was given fewer new learners than her non – pregnant colleague, the tribunal is not satisfied. It may be so, but it equally may not be so. The tribunal has no hesitation in accepting that the claimant perceived this was the case, but it cannot go any further than that.

40. In any event, the findings on these more minor claims (which , of course, are also relevant background evidence in the context of which the tribunal has considered the evidence relating to the dismissal) are unlikely to add significantly to any awards to be made.

41. Finally, to the extent that there as any victimisation claim, the alleged protected act was the sending of the claimant's grievance about her suspension, and the act of victimisation relied upon was the dismissal. In relation to the former, the tribunal is not satisfied that the respondent was aware of the protected act at the time that the decision to dismiss was taken. On any view , the earliest that the grievance letter arrived was 11.20 a.m. on 12 October 2016, the same date on the dismissal letter. There could only have been hours for it to have been read by Andrew Fairbrother (to whom it was not addressed, although the envelope was) before his dismissal letter was sent. The tribunal considers, as indeed, is the claimant's case that the events to bring about her dismissal were put in train by, at the latest, 4 October 2016, when she was suspended. The decision to dismiss was apparently taken on 7 October 2016, and, on any view the tribunal considers it overwhelming more likely that the decision to dismiss was taken before the respondent became aware of the protected act of the grievance letter on 12 October 2016. The victimisation claim therefore fails.

Remedy.

42. Turning to remedy, one issue requires specific determination in relation to the breach of contract claim. On any view the claimant is entitled to a week's pay in respect of the notice period applicable under s.96 of the ERA 1996. The question then arises as to whether she is entitled to the allegedly contractual period of one month. This term is in the specimen contract at page 30 of the Bundle. The claimant's case, and her evidence, however, was that she never, until disclosure in these proceedings, saw that document. No signed copy has been produced, nor has the respondent adduced any evidence of when these terms were provided to her. The claimant agreed, when asked by the tribunal, that she had seen the Employee handbook, and the disciplinary procedure contained therein, and hence was able to refer to that procedure when she wrote her letter of 19 October 2016 (page 73 of the

Bundle), in which she refers to it. She does, however, also say in that letter that her "contract of employment, which incorporates the terms set out in the company handbook" . The specimen contract at pages 28 to 32 of the Bundle , however, at page 29, refers to the disciplinary procedure and rules, and refers to the Employee handbook, but does not state that these provisions are contractual. That they are contractual, however, is derived from the provisions in the Handbook, at page 42, wherein it is provided:

"Please read the following principles and procedures carefully as they form an important part of your terms and conditions of employment:"

43. What then is the position? The tribunal finds that the contract of employment document was not issued, and did not represent the terms expressly agreed between the parties at the commencement of her employment. As, however, the respondent contends that these were the "standard" terms for an employee , whether formally issued to the claimant or not, and the provisions are, particularly as to notice, more favourable to the claimant than the statutory minima, the tribunal will accept that these were indeed the terms upon which the claimant was employed, as the respondent contends. Further, whether *ab initio* , or by the subsequent provision of the Employee Handbook during the currency of the contract, as that expressly states that the disciplinary procedure forms an important part of the claimant's terms and conditions of employment, it is contractual. That is reinforced by the provisions set out on page 50 , under the heading "Employee Handbook receipt", where its is provided:

"This Handbook has been drawn up by the Company to provide you with information on policies and procedures. It is important for you to read the Handbook carefully as this, together with your Contract of Employment, sets out the main terms and conditions of employment."

44. Accordingly, the notice to which the claimant was entitled as one month, and she is entitled to damages for breach of the contractual disciplinary procedure, pursuant to the principle in ***Gunton v Richmond on Thames Borough Council [1980] IRLR 321*** cited by Mr Ryan, with which Mr Boyd did not take issue as authority that failure to follow a contractual disciplinary procedure can constitute a breach for which there is a separate, and, additional to the notice period, recoverable head of loss, if established. The only question that arises then is what period does the tribunal consider it would have taken to comply with the contractual disciplinary procedure before dismissing? As this would only really have been the time necessary for the respondent to compile and provide to the claimant the details of the allegations, and any documentation , as required by the procedure set out on page 43 of the Bundle, and hold a disciplinary meeting with her, the tribunal finds that such a period would be, at most, a week. That, of course, is in addition to the notice period of one month, so the total prospective award for damages fro breach of contract would be 5 weeks' pay, on the assumption that the claimant did not earn any sums in mitigation during this period, and did not receive any state benefits, which would be deductible from the award, and not by way of recoupment.

45. The parties are invited to consider whether remedy can be agreed, and the tribunal will afford them some time to seek to do so. Failing that, tey are to seek to agree such elements of remedy as they can, and then to notify the tribunal as to

whether a remedy hearing is required, to identify the issues to be determined, and to provide the tribunal with an estimated length of hearing and dates to avoid.

Employment Judge Holmes

Dated : 20 November 2017

RESERVED JUDGMENT SENT TO THE PARTIES ON
20 November 2017

FOR THE TRIBUNAL OFFICE