Case Number: 2302488/2017

MK
EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms S Jeves	and	1 Sinlen Limited 2 Ms E Chirikinha

Held at Ashford on 26, 27, 28, 29 November and, in Chambers, 13 December 2018

Representation	**Claimant:**	Mr M Grant, Solicitor
	Respondent:	Mr R Hignett, Counsel
Employment Judge Kurrein	**Members:**	Mr N Phillips Ms R Downer

JUDGMENT

1 The Respondents have discriminated against the Claimant contrary to S.18 Equality Act 2010,

2 The Respondents have victimised the Claimant contrary to S.27 Equality Act 2010.

3 The First Respondent has unfairly, and automatically unfairly, dismissed the Claimant contrary to Ss.94 and 99 Employment Rights Act 1996.

4 The Claimant's claim alleging wrongful dismissal is not well founded and is dismissed.

5 The Claimant's claims alleging a failure to pay holiday pay and a failure to pay for time off for ante-natal appointments are dismissed on withdrawal.

REASONS

The Claims and Issues

1 On 14 September 2019 the Claimant presented a claim to the Tribunal principally alleging pregnancy discrimination.

2 By a response received on 29 November 2017 the Respondents denied those claims.

3 A preliminary hearing took place on 8 January 2018 at which an amendment to the claim was allowed and the issues were defined, as further amended on the first day of this hearing, as follows: -

Pregnancy discrimination (s. 18 EqA 2010)

1. Contrary to s. 18 Equality Act 2010, did the Respondents treat the Claimant as follows:

(a) Sending the Claimant a text message on 31 May 2017 stating: "This Andy's friend booked for semi permanent make up tomorrow and she planned it really in advance. Are you sure you can't at all to come in?? I can't work that way ever and I would be able to cancel your appointments at all time Stacey".

(b) Sending the Claimant a text message on 31 May 2017 stating: "You will need then letter from your GP tomorrow to cover your absence and discuss with your doctor your absanxee from work. You need also to have advice about advance as it's effect on my business and I can't take more. It will be more absences 100% but we need to sort out to make sure no one loose there rights. Hope you will be better soon".

(c) Removing the Claimant as an administrator from the First Respondent's Facebook account on 2 June 2017.

(d) On and since 14 June 2017, withdrawing use of the shared parking space.

~~(e) On 15 June 2017, stating that hour-long massage appointments were not a risk and by requiring the Claimant to obtain a GP report in order to avoid having to do them.~~

(f) On 15 June 2017, varying the Claimant's existing break times and requiring the Claimant to record any additional breaks.

(g) On a date between 22 May 2017 and 15 June 2017, changing the diary to state that the Claimant would be taking a full day off on 19 June 2017.

(h) On 15 June 2017, informing the Claimant that an NT scan is not an antenatal appointment and that she would not be paid for the time required to attend it.

(i) On a date between 22 May 2017 and 15 June 2017, installing a voice recorder in the salon.

(j) On 15 June 2017, issuing the Claimant with a warning.

(k) Refusing to review and/or increase the Claimant's rate of pay in June 2017.

(l) On 19 June 2017, failing to acknowledge the Claimant when she attended the salon.

(m) On 19 June 2017, requesting that the Claimant return her shop keys.

(n) On 22 June 2017, placing an advert on Facebook for a "part-time Beauty Therapist vacancy for NVQ level 3", and without consulting the Claimant.

(o) On 10 July 2017, writing to the Claimant to place her at risk of redundancy.

(p) On 14 July 2017, and again on 26 July 2017, threatening the Claimant with the possibility of dismissal.

(q) On 5 September 2017, speaking in a threatening/aggressive manner to Gill Collins (Practice Manager of the Claimant's GP practice) in relation to a medical report, including stating that "there was nothing wrong with" the Claimant (or words to that effect).

(r) On 23 September 2017, writing to the Claimant stating "we can't confirm that you have "stress at work". Your several refusals is sufficient grounds to doubt that the incapacity is genuine and stop paying SSP".

(s) On 25 September 2017, dismissing the Claimant.

~~(t) On 30 September 2017, accusing the Claimant of lying about her training progress, of causing the Respondents to lose money, of not wishing to continue her professional development, and of lying about her performance and GP restrictions between April-June 2017~~.

2. Was the treatment unfavourable?

3. Did the Respondents subject the Claimant to the unfavourable treatment because of pregnancy, pregnancy-related illness or maternity?

Victimisation (s. 27 EqA 2010)

4. Did the Respondents subject the Claimant to the following detriments:

(a) On 10 July 2017, writing to the Claimant to place her at risk of redundancy;

(b) On 14 & 26 July 2017, threatening the Claimant with the possibility of dismissal.

(c) On 25 September 2017, dismissing the Claimant.

5. Did the Respondents subject the Claimant to those detriments because she did a protected act, namely raising a grievance on 7 July 2017?

Unfair Dismissal (s. 94 ERA 1996)

6. Did the First Respondent commit a repudiatory breach of contract by acting without reasonable and proper cause in a manner that was calculated or likely to damage or seriously destroy the relationship of mutual trust and confidence?

7. If so, did the Claimant accept that breach by her resignation of 25 September 2017 such that she was dismissed for the purposes of s. 95(1)(c) ERA 1996?

8. Was the reason (or if there was more than one reason, the principal reason) for the Claimant's dismissal a prescribed kind, or did the dismissal take place in prescribed circumstances, falling within s. 99 ERA 1996?

9. If the dismissal was not automatically unfair by reason of s. 99 ERA 1996, is the Respondent able to show a potentially fair reason for dismissal within s. 98 (1) ERA 1996?

10. If so, and with regard to that reason, was the Claimant's dismissal fair or unfair on application of s. 98 (4) ERA 1996?

Wrongful Dismissal (in the alternative)

11. Did the First Respondent commit a repudiatory breach of contract by acting without reasonable and proper cause, and in a manner that was calculated or likely to damage or seriously destroy the relationship of mutual trust and confidence?

12. If so, did the Claimant accept that breach by her resignation of 25 September 2017?

13. Did the First Respondent dismiss the Claimant with the correct amount of notice (5 weeks' notice)?

~~**Holiday Pay (Reg 14 WTR 1998)**~~

~~14. The Claimant is owed holiday pay? In particular:~~

~~(a) What was the holiday year?~~

~~(b) How much holiday had the Claimant accrued between the start of the holiday year and 25 September 2017?~~

~~(c) How much holiday had the Claimant taken between the start of the holiday year and 25 September 2017?~~

~~(d) Allowing for the First Respondent's payment of £234, how much leave, if any, is owed?~~

~~**Antenatal appointments (ss. 13 & 55-57 ERA 1996)**~~

~~15. Did the Claimant attend an antenatal appointment on 19 June 2017, and what amount of time did she take off?~~

~~16. Was that time which the Claimant was entitled to take off within the meaning of s. 55 (1) ERA 1996?~~

~~17. Did the First Respondent fail to pay the Claimant for that time, contrary to s. 56 (1) and, if necessary, s. 13 ERA 1996?~~

Procedural Matters

Late disclosure

4 The Claimant had given late disclosure of 44 pages of documents after exchange of witness statements. The Respondent objected to their inclusion in the bundle. We directed that the Claimant should provide a brief statement setting out the basis on which she alleged them to be relevant following which we would hear submissions.

5 Having heard those submissions and considered the documents we ruled that they were relevant and admissible.

6 There was further late disclosure, such as the "Accounts" books, which we admitted in the interests of justice.

Polkey

7 This was directed to be a hearing on liability only. At the start of the hearing we discussed if we should deal with the *Polkey* issue relied on, as accepted by the Claimant, by the Respondent. This was not expressly pleaded and no particulars had been provided. However, the Second Respondent's witness statements raised many matters concerning the Claimant's conduct that were relied on for that issue.

8 Following discussion we ruled that it was not appropriate for us to make findings on the *Polkey* issue.

Conduct Issues

9 It became apparent in the course of the cross examination of the Claimant that:-

9.1 The conduct issues were also relied on as the Respondents' explanation for many of the matters of which the Claimant complained; and

9.2 The Claimant's responses to the points put to her regarding her conduct required the Respondents' counsel to frequently take instructions.

10 We thought it unfortunate that these issues had not been clarified before the hearing, if necessary with a supplemental statement.

11 Following further discussion, and at the urging of both parties, we resolved that rather than adjourn to allow preparation of such a statement it was preferable to continue the

hearing, but to give allowance for the fact that this was the first opportunity the Claimant had to comment on these allegations.

Interpreter?

12 At the start of the Second Respondent's evidence we had concerns regarding her fluency in English, despite her having completed a Pharmacy degree in that language. We concluded the problem might reflect competency or go to credibility and decided to continue without an interpreter and keep the issue under review.

13 By the end of the hearing we concluded that whilst there were competency issues, particularly with regard to tenses, we were able to deal with these without that difficulty adversely reflecting on her credibility.

The Evidence

14 We heard the evidence of the Claimant and that of her partner's mother, Mrs E L Atkins, whose evidence, like that of Mrs G Collins, the Claimant's GP's Practice Manager, was unchallenged.

15 We heard the evidence of the Second Respondent, and that of Ms S Dewsbury, Cosmetic Chemist, and Miss Andi Antoni, a customer, on behalf of the Respondent. We also took account of a written statement by Mr M D Sarowar Parvej, a Social Branding Expert.

16 There were many significant clashes between the evidence of the Claimant and the Second Respondent.

17 We found the Claimant to be a convincing witness. She answered questions clearly, thoughtfully and directly. She willingly conceded points when it was appropriate to do so. On many occasions she spontaneously volunteered new information that rang true, was unchallenged and which corroborated her other evidence. In responding to cross-examination on the matters of conduct alleged against her she clearly had a mental picture of what had taken place and promptly responded appropriately.

18 By comparison, even giving every consideration for the fact that English is not the Second Respondent's first language, we thought her to be an unsatisfactory witness because: -

18.1 She was evasive, frequently not answering the question asked but responding, sometimes at great length, in a way she thought assisted her case.

18.2 She contradicted herself on occasions, both within her oral answers and in respect of the content of her statement or a document.

18.3 She was aggressive in some of her answers, which was, perhaps, a reflection of her character, and sought to repeat them.

We give some examples of these issues below.

19 Against that background we could not accept that the numerous instances of misconduct alleged by her against the Claimant were true. It was clear that the Second Respondent was a no-nonsense employer who expected her staff to meet or exceed her very high standards. Despite this, and her extensive complaints regarding the Claimant's conduct, these complaints were almost wholly uncorroborated by anything contemporaneous in writing.

20 In light of these findings we are unanimous in concluding that where there was a conflict of evidence between the Claimant and the Second Respondent, we should prefer that of the Claimant.

21 We read the documents to which we were referred and heard the submission of the parties. We make the following findings of fact.

Findings of Fact

22 The Claimant was born on 20 November 1990 and is qualified to NVQ Level 3 in beauty therapy. She started working for the Respondent as a Beauty Therapist on 1 March 2012. This was the start of an unpaid 3-month trial period, the Claimant having not been offered a paid post following an interview.

23 She was given a contract in June 2012 when she was designated a "Beauty Therapist". She was promoted to a Senior Beauty Therapist in June 2013. Throughout her employment she undertook training to qualify her to offer new treatments, including travelling to Riga with the Second Respondent for a few days to do so.

24 Ms Dewsbury, although qualified to degree level as a Cosmetic Chemist, was also qualified to NVQ Level 3 as a Beauty Therapist. She worked part-time from May 2016. Although she did carry out some duties as a chemist, which was her "core" status, she also worked as a Beauty Therapist for significant periods. In particular, she worked on Fridays, one of the Claimant's days off, which was a popular day for treatments to be booked. She also stood in for the Claimant on occasion, although she was not always happy to do so.

25 The First Respondent was incorporated in November 2010. The Second Respondent is the sole director. Its latest accounts show it has negative assets exceeding £260,000. It has 1 issued share which is held by Airoule UK Ltd, a company incorporated on 21 May 2018 and controlled by the Second Respondent and her husband. It operates a beauty salon in Sidcup, Kent, where the Claimant, Ms Dewsbury and the Second Respondent worked. There were no other employees at the time of the events with which we are concerned. It is what is sometimes described as a microbusiness.

26 The Second Respondent is of Latvian nationality and clearly intelligent and forthright. She holds a degree from London Southbank University as an Independent Prescriber and is currently studying for a PhD. She has a particular interest in medical skin treatments, including what she referred to as "injectables", including botox and fillers.

27 It was common ground that this was a happy working environment. The Claimant was a very respected employee who was regularly praised by the Second Respondent in front of and to the clients. She was punctual and polite and performed her duties to a high standard. The atmosphere was relaxed. The staff could have a cup of tea or coffee if they wished, and the Claimant did so regularly.

28 There was a space behind the salon for car parking. It was part-bounded on one side with a panel fence and on the other with some low bollards. Throughout her employment the Claimant was permitted to park on this space, and frequently this would put her car behind the Second Respondent's car. On many occasions the Second Respondent left before the Claimant so they would swap around at some point in the day. This was of considerable benefit as nearby parking was very hard to find and potentially expensive.

29 In 2015 the Claimant was enrolled on a course to train her in nutrition. It cost the Respondents about £400.00. The course was by correspondence but had no start date, no deadlines for assignments and no course completion date. The Claimant struggled to cope with the work required because of other life events. The Second Respondent was aware of this and took a relaxed attitude.

30 The Second Respondent, the Claimant and Ms Dewsbury were all on good terms. They exchanged birthday and Christmas gifts. The staff were allowed free treatments. The Claimant regularly baby-sat for the Second Respondent.

31 The Claimant's contract gave the Respondents a discretion as to whether to review her pay. In each year from 2013 until 2016 the Claimant received a pay rise in June. There was no appraisal system.

32 On an occasion in late January 2017 the Claimant was late for work because she had accompanied a friend to A&E, not returning home until 3am. The Respondent alleged she did not turn up for work at all. In fact, it was clear from late disclosure that the Claimant sent a text of explanation and apology and asked if she could be excused until 12.30, to which the Second Respondent texted her agreement. We include these details as an example of the unsatisfactory nature of the Second Respondent's evidence.

33 Until early 2017 the Respondents relied on a paper diary booking system. They adopted a digital one, with a public "front end", thereafter. The Respondents sought to allege that the Claimant, contrary to her instructions, frequently failed to enter the full name, phone number and email of the client. In support of this the Respondents produced extracts from those diaries. They did not assist us. There were only a few, selected by the Respondents, and the paper extracts were heavily redacted. We preferred the Claimant's evidence that the entries she made were in similar form to those she had seen from when she first started.

34 We rejected the Respondents' evidence that they were aware of the Claimant's pregnancy on 25 April 2017: this dates was before even she was aware. She actually conducted a pregnancy test on her return from training in Riga on 2 May 2017, and was very happy it was positive. She told her GP on 8 May 2017.

35 She told the Respondent the same day. This was corroborated by the fact the Respondents sought advice on staff pregnancy from their accountant the same day. The Second Respondent congratulated the Claimant and told her that she would be getting a pay rise in June, which would help with her maternity pay.

36 We have concluded that it was on 16 May 2017 (the date originally pleaded by the Claimant) that she had a letter inviting her to a have an NT ("nuchal translucency") scan on 19 June 2017. She told the Second Respondent of the appointment and offered to show the letter to her, but she declined. The Claimant made an entry in what was now the digital diary, blocking out two hours from 9 to 11am on that date. In the notes section she specified it as an ante-natal appointment.

37 The Claimant had been suffering from nausea from the time she learned of her pregnancy. This affected her all day and night. She found it was exacerbated by the physical exertion involved in hour long massages, which took place in a very warm room,

and asked to be excused from them, although she made it clear she was willing to do ½ hour massages. The Second Respondent agreed.

38 The Claimant was also concerned that she was frequently vomiting. She discussed this with the Second Respondent who told her not to be guilty or ashamed as it was natural. She should try and get to the toilet but, if not, use the basin in the treatment room.

39 On 17 May 2017 the Claimant texted work to say she was very sick and might be a little late. In the event she arrived on time. The staff working hours were entered by them in the "Accounts" book. These were only produced at our direction in the course of the hearing. They showed that apart from one specific occasion when it was agreed the Claimant would be late the Claimant always worked the required hours. The Second Respondent's evidence, which we rejected, suggested the Claimant was frequently late. We did not think the Second Respondent's character was such that she would regularly pay her staff for time they did not work, but she used the "Accounts" book to generate the payroll. We also thought it dubious that the Second Respondent altered her evidence to suggest that the Claimant was late "coming back from breaks", not simply "late", when challenged on her evidence.

40 On 18 May the Claimant went home for lunch, as usual. It gave her time to make and eat her lunch, which saved money which was being saved for a house deposit, and walk her dog before returning. On this occasion she felt too ill to return to work so she phoned the salon and spoke to Ms Dewsbury, who answered the phone. She explained the situation and asked that the Second Respondent be told, knowing she had asked not to be disturbed during a pharmacy inspection visit. However, the Claimant could hear the Second Respondent, who was very annoyed, in the background saying that the Claimant must contact that afternoon's client ("Shannon") herself, which the Claimant persuaded Ms Dewsbury to do as she did not have Shannon's contact details at home.

41 It was the Second Respondent's case that she had been unable to contact Shannon, or find the contact details for her because the Claimant had not made a full and proper booking entry in the diary. Her statement was to the effect that she could not contact the client, who turned up for the appointment and was very annoyed. That account did not withstand examination.

42 Shannon was an employee of a regular client, Mrs Antoni, who ran a hair salon, which had formerly offered beauty treatments. She had closed that side of her business and taken to visiting the Respondent, where the Claimant regularly treated her. Mrs Antoni was on first name terms with all the staff and was clearly known to the Second Respondent. She regularly accompanied Shannon to her appointments. On this day she received a call from the Second Respondent to be told the Claimant was ill because she was pregnant and the appointment was cancelled and rearranged.

43 It is therefore clear that, contrary to her assertion, the Second Respondent did know who Mrs Antoni was and that the "client", Shannon, did not turn up for her appointment.

44 The Claimant was on holiday from 23 May, intending to return on 1 June. Unusually the Claimant was not paid at the end of May, which had always been the case previously, but was paid on 1 June 2017.

45 On the morning of 31 May the Claimant texted the Second Respondent to say she had been ill throughout her holiday, was flying back that evening but thought it unlikely she would be able to work the next day. The Second Respondent texted in reply,

> "This Andy's *[sic]* friend booked for semi permanent make up tomorrow and she planned it really in advance. Are you sure you can't at all to come in?? I can't work that way ever and I would be able to cancel your appointments at all time Stacey
>
> You will need then letter from your GP tomorrow to cover your absence and discuss with your doctor your absanxee from work. You need also to have advice about advance as it's effect on my business and I can't take more. It will be more absences 100% but we need to sort out to make sure no one loose there rights. Hope you will be better soon".

These were references to Mrs "Andi" Antoni and Shannon

46 We accepted that the Second Respondent was expressing dismay and disappointment at the situation because the Claimant was her principal, by now, Senior Aesthetic Therapist. This would also mean cancelling Shannon's re-booked appointment. We understood the Second Respondent to be saying that she was sure that the Claimant would have further absences, that she herself was at the end of her tether and wanted advice on the future risk because of her concerns regarding the effects on her business of the Claimant's absences.

47 On the same and the next day the Second Respondent placed adverts on Indeed.co.uk for Level 4 or 3 Beauty Therapists, although these only came to the notice of the Claimant later. The Level 4 post sought skills effectively the same as the Claimant's and stated that it was for maternity cover, beginning part-time.

48 On 1 June 2017 the Claimant saw her GP, who signed her as unfit to work for 1 week with Nausea.

49 On 2 June 2017 the Claimant received an email from Facebook telling her she had been removed as an administrator of the First Respondent's Facebook page. That role, which the Claimant had held for some years (although declining formal responsibility for the First Respondent's social media presence) enabled her to place posts for the benefit of the First Respondent and to edit, where necessary, posts by others. Her last "post" had been in January 2017 but she edited posts several times a month, mostly using the office iPad.

50 On 6 June 2017 the Second Respondent and the Claimant exchanged texts about her return to work. The Second Respondent told the Claimant that if she was signed off for a further period she would require a written explanation for her "paye file". The Claimant responded to say that her GP wished to see her again and on 8 June she told the Second Respondent she had been signed off for another week.

51 Ms Dewsbury telephoned the Claimant during this absence to inform her that she believed the Second Respondent intended to make recordings of the Claimant when she was at work because she had ordered some equipment on-line. Ms Dewsbury believed the Second Respondent wanted to know what was going on in the shop in her absence. Ms Dewsbury did not remember that call.

52 On 14 June 2017 the Second Respondent texted the Claimant, with the following exchange

> "Hi Satcey *[sic]* hoping you are better. Tomorrow please come at 9.30 we need to discuss health and safety at work and do not park your car on the back. Thank you and see you tomorrow. Elena"
>
> "where do I park my car?"
>
> "Ask Sabina she will be able to advice *[sic]*"
>
> "Why can't I park there?"
>
> "We will discuss it tomorrow"
>
> "Please can you advise me on where to park my car?"
>
> "I can't give you such advice. It's up to you."

53 This clearly took the Claimant by surprise because she and Ms Dewsbury had always been allowed to park their cars behind the shop and it would be expensive and inconvenient to park elsewhere. She phoned Ms Dewsbury who expressed surprise because she had parked there that day without a problem.

54 The next morning the Claimant attended work and met the Second Respondent, who read aloud to her from an A4 booklet which appears to have been a pregnancy risk assessment checklist which the Claimant signed, but of which she was not given a copy. We accepted that this was not the document in the bundle which, in any event, appears to have been edited until at least February 2018.

55 In the course of that meeting the Second Respondent told the Claimant that instead of her one hour lunch break she would receive an unpaid ¼ hour break each morning and afternoon and a ½ hour lunch break. She was dismissive of the Claimant's objections and told her that if she took any additional breaks she would have to record them as they would be unpaid too.

56 Later that morning the Claimant noticed that her two hour appointment for a scan on 19 June 2017 had been changed so that she was booked out all day. The Claimant questioned the Second Respondent about this and was told that she had to take the whole day off and that her NT Scan was not an antenatal appointment. We find as a fact that it clearly is. The Claimant's protests were overridden by interruptions so, rather than argue, the Claimant started to record the conversation on her mobile phone.

57 It is clear from that transcript that the Second Respondent insisted that the Claimant either work the whole day or take the whole day off. The Claimant insisted on her right to return to work after the appointment and the Second Respondent was equally insistent that if she did so she would not be paid. She was also insistent that the Claimant should perform all massages.

58 Following an interruption when the Claimant dealt with a telephone enquiry from a regular customer the Second Respondent said something inaudible. The Claimant questioned her and the following conversations ensued,

"You pay review on 6th June, it stays the same as it was before"

"You said to me you would be increasing my wage"

"I said I would do my best but unfortunately, I won't be able to do my best"

"So what, when can we have the review?"

"It was on 6th June this year, but this year it stays the same as it was"

"But I was ill on 6th June"

"[inaudible] pay review is not up to you, it's up to me"

"So are we able to book in another review to have?"

"6th June 2018"

"So you're not going to give me another review – pay review?"

"No, no"

"Is there any reason why, Elena?"

"Because you –"

"Elena, sorry, as a woman - " [phone rings]

59 The Second Respondent went on to make it plain that the changes to the Claimant's lunch break would be introduced and she would have to provide a medical note to excuse her from any treatments. The Claimant made it plain that she thought their relationship had changed since she had informed her of her pregnancy. The Second Respondent thought the situation was putting too much pressure on her.

60 There was then a more general discussion before the topic of the Claimant's use of the parking space came up. The Second Respondent said that because she was stressed she wanted complete flexibility and not to have to move cars at all. When questioned about days when she was not usually there she responded that she might attend. When questioned about afternoons after she had left she said she might return. She then said it was a health and safety issue and no-one should park there except herself because she might be sued.

61 She also asserted that it was not a car parking place although, by the time of the hearing, that had changed to her lease only giving permission to park "a motor car" in the place. She also produced a planning document from a for Wind Energy Development in Northern Ireland's Landscapes. This required parking places to be 2.4 metres wide and pointed out that the place in question was only 2.3 metres wide. We noted that the Risk Assessment documents the Second Respondent produced, which was unsigned and undated, did not refer to parking as being an issue.

62 At the conclusion of the conversation the Claimant was handed a letter which informed her that payroll was being outsourced and that she would be paid within two days of the end of each month, rather than in the last days of the month.

63 Later that day the Claimant discovered a digital voice recorder, capable of recording up to 18 days of conversation, under a pile of papers on the desk near the shop entrance. It was switched on to the automatic voice-activated recording setting. We did not accept the Second Respondent's evidence that her husband had purchased two such devices for use in their home, they had been delivered to the shop and the Claimant had taken the device out of its box. That evidence was undermined by the fact they were delivered shortly after 6 June 2017 but one remained in the shop and was switched on when it was found.

64 At another point that day a neighbour, who had given the Claimant permission to park behind his premises, came in to the shop to ask for the keys so that he could move her car to access his.

65 There is a fundamental conflict of evidence between that of the Claimant and that of the Second Respondent and Miss Antoni.

65.1 It was the Claimant's evidence that at this point she had not started the treatment, which would involve tattooing semi-permanent makeup for Shannon, who was filling out the relevant form at the time. She therefore went to the back room, got her keys and handed them to the neighbour.

65.2 The evidence for the Respondents was that the Claimant was in the middle of the treatment with non-sterile gloves on and a tattoo gun in her hand. She stopped the treatment, placed the tattoo gun down and without removing her gloves, went to get her keys and handed them to the neighbour before resuming the tattoos without changing her gloves.

66 We were concerned at the evidence given for the Respondents because:-

66.1 The Second Respondent changed her evidence as to how much of this incident she saw. In her statement and in the warning she gave she said she was present throughout. When it was pointed out that Miss Antoni's evidence was that the Second Respondent was carrying out treatment in another room and was "in and out" she altered her evidence to accept this version.

66.2 If, as is alleged, the Claimant was in the middle of this treatment, which had required the Second Respondent to apply numbing cream before the Claimant started the procedure, we are confident that the Second Respondent would have stopped the Claimant from abandoning the client mid-treatment.

66.3 We also think it highly likely that if, as alleged, the Claimant had started the treatment she would not have stopped to personally assist the neighbour: she would have asked him to wait or asked someone else, such as Miss Antoni, to assist by getting her keys from her bag.

66.4 We also thought it highly unlikely that if the incident had happened as alleged by the Second Defendant she would have failed to make any mention of the Claimant leaving her gloves on and not changing them. It is clear that the Second Respondent placed great store by matters of hygiene. It beggars belief this was not in the forefront of her mind when she composed the warning she gave the same day.

66.5 We also thought it very surprising that Mrs Antoni could recall the detail she did at this distance in time.

67 We concluded that on this issue we preferred the evidence of the Claimant.

68 Shortly before midnight that night the Second Respondent emailed the Claimant to confirm the points she had made in their discussion regarding breaks, the need for a medical note to excuse the Claimant carrying out any specific treatments and the denial of the parking space for health and safety reasons. It concluded by giving the Claimant a warning regarding her alleged conduct that day with regard to parking with a neighbour. Her "misconduct" showed "neglect" of the business and customers and she threatened disciplinary action in the event the behaviour was repeated. The Claimant simply acknowledged the email by text, she was going to Dublin for a family break, because she wished to seek advice. She thought Second Respondent was deliberately trying to make her life as difficult as possible because her pregnancy and its effects were causing stress to the Second Respondent.

69 The Claimant had her NT scan on 19 June 2017, and was then required to have some blood tests. She texted the Second Respondent to explain this and that she had to leave at 4.00pm for an appointment with her GP. When she returned to the shop at about 12.30 the door was locked. That was not unusual: all staff locked the door when lone working. On this occasion, however, the Second Respondent had left her keys in the lock so the Claimant could not use her keys and had to ring the bell. The Second Respondent came to the door and, in effect, "blanked" the Claimant. She simply turned on her heel and went back to a treatment room without a word or any acknowledgement. She told us that she was in the middle of a painful treatment and wished to return without delay.

70 Later that day the Claimant's GP signed her off for a period of four weeks with "stress at work". He was concerned at the effect the stress might have on the Claimant and her baby. The MED3 was handwritten and in an earlier form (04/10), whereas her earlier one appears to have been A computer generated later form (01/17). The Claimant sent her sick note to the Second Claimant by email early that evening commenting that since she advised the Second Respondent of her pregnancy it had been made plain that it was an inconvenience to the Respondents who had sought to change her terms and conditions of employment without agreement. She advised that she would keep the Respondents updated.

71 A little over half an hour later the Second Respondent replied to text,

> "I received your email. Please bring keys tomorrow for safety reasons. Thank you."

The Claimant did not understand what "safety reasons" were involved. She had previously had spare keys cut at the request of the Second Respondent and knew that all staff had a set, as well as an alarm fob. She was also privy to the alarm PIN. She thought the Second Respondent had decided she would not be returning and was concerned.

72 We found the Second Respondent's explanation of this text confusing. She first said she needed the keys in case a new temporary employee was found, but she had been advertising for some weeks without success and such need was not imminent. When it

was also pointed out that spare keys had been cut she responded that what she had meant was to simply ask for the fob. We thought that odd because it was unlikely a new temp, even if found, would immediately be trusted with a set of keys and the alarm fob.

73 On 21 June 2017 the Second Respondent challenged the validity of the sick note because of its form and directed the Claimant to provide a valid electronic form with all fields completed by 30 June 2017.

74 On the 22 June 2017 the Second Respondent posted on Facebook to advertise for an NVQ Level 3 qualified beauty therapist. This was previously a private posting that became public on this date. In light of the likely EDC of the Claimant being late January 2018 we thought she was entitled to be concerned at such early advertising for maternity cover without it having been mentioned to her.

75 As a result of advice she received from the CAB the Claimant raised a detailed grievance by an emailed letter on 7 July 2017. She set out a summary of the nature of her relationship with the Second Respondent and her view of how it had changed and then went into detail under the following headings:-

- Pay Review
- Pregnancy
- Working Pattern
- Salary Amendment
- Staff Parking
- Written Warning
- Voice Recording

and set out her detailed concerns in respect of each. She concluded by saying she intended to return to work on 24 July and expected to be invited to a grievance meeting.

76 The Second Respondent did not immediately acknowledge that letter. On 10 July she sent the Claimant a letter by email which invited her to a consultation meeting on 13 July and advised her of her right to be accompanied. The letter was headed, “Warning of possible redundancies”. It continued,

> “I am writing to inform you of the following situation now facing Sinlen Ltd (the Company).
>
> Beauty treatments business line of Sinlen Ltd has not bringing in any sizeable profit and we do not expect any increase in the turnover or profitability of this business line. After considering all possible options, the Company has decided that there is a risk that it will be unable to continue to provide work for all of its employees at … and that it may therefore have to make redundancies.
>
> The Company will be exploring ways of avoiding compulsory redundancies. Measures which it may take to avoid redundancies include restrictions on recruitment and voluntary redundancy. If you have any suggestions on ways to avoid redundancies please let me know.
>
> If the Company is not able to avoid the need for redundancies it may have to make redundancies at … . At present we anticipate that, if compulsory redundancies become necessary, the following role are likely to be at risk:
>
> - 1 (from pool of 1) beauty therapist.

> If redundancies are necessary the Company will have to decide which individuals from each pool will be selected for redundancy.
>
> …."

It then dealt with consultation.

77 We were concerned that in response to our questions the Second Respondent told us that she had not carried out any financial analysis of the First Respondent's accounts. She did not know, for instance, what the income and costs were of the beauty treatment side of the business.

78 The Claimant replied on 12 July to inform the Respondents she could not attend that proposed meeting as she was presently signed off sick and was then on a pre-booked holiday returning to work on 24 July 2017.

79 On 14 July the Second Respondent emailed the Claimant to ask her to give consent to her GP providing the Respondents with a medical report. It attached a list of questions and a summary of the Claimant's rights, which were referred to in the email which included the following passage,

> "You are entitled to withhold your consent to us approaching your doctor, you should be aware that if you refuse consent we will be entitled to make a decision regarding your future on the basis of the information available to us. This could include a decision to terminate your employment."

80 During the Claimant's family holiday on the Isle of Wight she felt very unwell and booked an appointment with her GP for her return on 21 July.

81 In the interim, on 17 July, the Second Respondent invited the Claimant, who was advised of her right to be accompanied, to attend a grievance meeting with an independent HR consultant on 24 July 2017.

82 On 21 July the Claimant's GP signed the Claimant off as being unfit for work for 1 month with stress at work. He noted her pregnancy and used the 01/17 form of MED3.

83 On 24 July 2017 the Claimant informed the Respondents of her inability to attend the grievance meeting. She also asked that her letter be treated as a further grievance concerning her being put at risk of redundancy and the threat that a failure to consent to a GP's report might lead to her dismissal. She thought these matters to be retaliation for her having raised a grievance. She thought the Respondents to be "trying to manage me out of the business at any cost", rather than to support her at a difficult time in her pregnancy.

84 On the 26 July the Second Respondent emailed the provider of the nutrition course the Claimant had been enrolled on to enquire, as she had no confirmation of the Claimant's progress or status, of the whereabouts of any relevant certificates. The course provider telephoned the Second Respondent on 2 August to tell the Second Respondent that the Claimant had been issued with two assignments, but neither had been returned. The Second Respondent asked for written confirmation of this, which was provided on 7 August 2017.

85 We thought the content and tone of the Second Respondent's email enquiry of 26 April 2017 was such as to undermine her assertion that she had previously received this

information by telephone in early June 2017, which was what had prompted her not to review the Claimant's pay. We rejected that evidence. As is set out above, we accepted the Claimant's evidence that she had been entirely frank with the Second Respondent about her difficulties keeping up with that course.

86 On 31 July 2017 the Claimant gave consent to the Respondent's obtaining a medical report from her GP. She made it clear she wished to see any such report before it went to the Respondents.

87 Despite receipt of that consent the Second Respondent then emailed the Claimant on 2 August 2017 to ask her to consent to being examined by an independent occupational health advisor. She wanted that consent returned "by no later than 3pm on 4 August 2017".

88 On 4 August 2017 the Second Respondent emailed the Claimant to note her failure to provide consent to an OH examination and to tell her that the Respondents would therefore seek a report from her GP, which they did that day. Their letter to the GP was accompanied by a list of 11 questions, most of which were specifically designed for an enquiry concerning disability.

89 The Claimant raised her concerns regarding the proposed OH referral in an email to the Second Respondent on 9 August: the person she would see was not identified and details regarding the issues at work were inaccurate, in particular the Claimant had only expressed concern about I hour massage treatments and not about laser treatments. She expressed the wish only her GP should be consulted and asked that a grievance meeting be convened at which she might be accompanied by a family member, something her GP had thought would be helpful.

90 By an email and letter of 10 August the Respondents invited the Claimant to a grievance meeting to take place on 18 August to be conducted by a Ms Edward. We received no evidence concerning her qualifications or experience and when the Claimant enquired of this the Second Respondent gave her short shrift. The Claimant was permitted to be accompanied by Mrs Atkins.

91 The email to which that letter was attached made the point that in the Second Respondent's view the Claimant had breached a term of her contract in declining to be examined by an OH person and her sick notes failed to give adequate medical explanations. In her evidence to us the Second Respondent made it clear that in her view, as a "medical professional", stress was not a diagnosis or an illness. We did not think she was adequately qualified to give that evidence and excluded her purported medical evidence in set out in an appendix to her statement.

92 On 15 August the Claimant's GP signed her off as unfit to work because of "stress at work".

93 The grievance meeting took place with Ms Edward on 18 August 2017. It does not appear to have been noted or recorded.

94 On 22 August Dr M Rahman, one of the Claimant's GPs, provided a brief report to the Second Respondent. In error he did not first disclose it to the Claimant. It reflected the contents of the sick notes that had been issued and concluded that there were no physical or mental issues to prevent her carrying out her duties.

95 On 2 September the Second Respondent emailed the Claimant to state that she had not received any official confirmation of the Claimant's pregnancy and sought, no later than 15 September, details of the EDC, when the Claimant intended to start maternity leave and a MATB1.

96 On 5 September 2017 the Second Respondent spoke to the Claimant's GPs' Practice Manager concerning the report she had received. She thought it inadequate and stated she did not believe the Claimant to be ill and the doctor to be incompetent. She threatened to report the practice to the |GMC and the CQC. The evidence of Gill Collins to this effect was not challenged.

97 On 7 September the Second Respondent invited the Claimant to attend a sickness absence meeting on 9 September with her and her husband, Dr C Chirikhin (whose doctorate is in maths, not a medical science). The Claimant responded to indicate that she would prefer to receive the outcome of her grievances before any such meeting.

98 On 11 September 2017 the Claimant submitted her MATB1 to the Respondents.

99 On 13 September Dr Rahman compiled a further report, the Second Respondent having expressed dissatisfaction with the original letter and requested a more comprehensive response.

100 On 18 September the Claimant sent the Respondents a further MED3, but this appears not to have been received.

101 On 19 September 2017 the Claimant received the outcome to her grievances. It was on the First Respondent's headed notepaper, named Ms Edward as the author but was unsigned. The Claimant's grievances were not upheld, save that there was a recommendation that the written warning be withdrawn. There was no evidence this took place. On the basis of all our above findings we accepted her evidence that the outcome contained numerous factual inaccuracies.

102 On the same date, at 13.52, the Second Respondent emailed the Claimant to ask her to sign a consent form for HMRC Medical Services who would advise the DWP regarding the Claimant's entitlement to SSP. She gave a deadline of 12.00 on 21 September for receipt.

103 On 21 September the Second Respondent emailed the Claimant and adjusted her deadline for receipt of the Claimant's consent to 12.00 on 23 September 2017.

104 On the same date the Second Respondent wrote to the Claimant (at the correct address, earlier letters having been misaddressed) to express the view that Dr Rahman's reports were not sufficient and she wished to refer the Claimant to the government Fit for Work service. She again imposed a deadline of 23 September failing which she would conclude the Claimant was refusing consent.

105 On 23 September at 12.49 the Second Respondent emailed a letter to the Claimant in the following terms. It was based on a *pro forma* in which the Second Respondent's additions are in italics.

> "I am writing to you to tell you why I cannot pay you Statutory Sick Pay (SSP) for the period from *1 September 2017 to 30th September 2017*. You cannot get SSP for these days

because *we can't confirm that you have "stress at work". Your several refusals is sufficient grounds to doubt that the incapacity is genuine and stop paying SSP*.

If you have any questions ….."

106 On 25 September 2017 in a letter attached to an email, the Claimant resigned, giving the two months notice required by her contract. She set out at length the events we have recounted (in even greater detail) above and expressed the view that the detriments she had been subjected to were because she was pregnant and had pregnancy related illness. She said that she had been intending to resign before she received the letter regarding SSP of 23 September but had found it extremely offensive as it suggested that she had been lying about her illness.

107 On 28 September 2017 the Second Respondent asked the Claimant to withdraw her resignation and to attend a meeting to discuss a potential return to work. The Claimant thought that letter to be far too well written to have been penned by the Second Respondent and to be insincere. The Claimant replied to say that the Second Respondent had driven her out of the business and she felt unable to work for it.

Submissions

108 We received very extensive written submissions on behalf of the Claimant, which we read overnight. We heard oral submission from the Respondent the next day, when the Claimant's submissions were also spoken to. It is neither proportionate or necessary to set them out here.

The Law

109 We have had regard to all the authorities and statutory provisions cited to us.

Further Findings and Conclusions

110 We deal with each of the incidents complained of in the same order they appeared in the case management order. We rely on, but do not repeat our above principal findings of fact.

Pregnancy discrimination (S.18 EqA 2010)

111 We remind ourselves that:-

111.1 The onus is on the Claimant to establish, on the balance of probabilities:-

111.1.1 that the events she relies on took place substantially as she alleges; and

111.1.2 that the event was unfavourable treatment of her;

111.1.3 facts from we could infer, absent an explanation from the Respondents, that the treatment could have been because of pregnancy or an illness suffered by her as a result of pregnancy.

112 In that event the burden of proof shifts to the Respondents to establish on the balance of probabilities that the treatment involved no discrimination whatsoever.

The Events

(a) Sending the Claimant a text message on 31 May 2017 stating: "This Andy's friend booked for semi permanent make up tomorrow and she planned it really in advance. Are you sure you can't at all to come in?? I can't work that way ever and I would be able to cancel your appointments at all time Stacey".

113 There is no doubt this event took place.

114 We accepted that this was unfavourable treatment because the Clamant was being put under pressure to attend work when she was unfit to do so under the implied threat that all her work would be cancelled if she continued to take time off.

115 We are satisfied by the Claimant that his could have been because of her pregnancy. Her sickness was pregnancy-related and was the reason for her absence.

116 The Respondents have failed to show that this was in no way whatsoever because of the Claimant's pregnancy-related sickness absence.

(b) Sending the Claimant a text message on 31 May 2017 stating: "You will need then letter from your GP tomorrow to cover your absence and discuss with your doctor your absanxee *[sic]* from work. You need also to have advice about advance as it's effect on my business and I can't take more. It will be more absences 100% but we need to sort out to make sure no one loose there rights. Hope you will be better soon".

117 This event was not disputed.

118 We took the view that this was also unfavourable treatment for the same reasons as set out above and was similarly because of the Claimant's pregnancy related illness absences.

(c) Removing the Claimant as an administrator from the First Respondent's Facebook account on 2 June 2017.

119 This was not disputed.

120 This was clearly unfavourable treatment. It deprived the Claimant of the ability to refer in the future on her CV to having current experience of social media marketing and promotion.

121 It was clear from the Respondent's Response that this was because of the Claimant's pregnancy: the Second Respondent purported to do this to reduce the pressure on the Claimant during a difficult pregnancy. The Second Respondent sought to resile from this position in her evidence, attributing the decision to the social media expert she engaged.

122 That evidence was more than sufficient to shift the burden of proof. The Respondents have failed to show that this was in no way whatsoever because of the Claimant's pregnancy-related sickness absence

(d) On and since 14 June 2017, withdrawing use of the shared parking space.

123 This was not disputed.

124 It was clearly unfavourable treatment.

125 On the Respondents' own case this was because of the Claimant's pregnancy as it was considered unsafe for the Claimant's to use it. However, we rejected that explanation. It appeared to us that the Respondents were bending over backwards to try and make a health and safety case for this treatment. However:-

125.1 Health and Safety was not raised in the first instance.

125.2 Car parking was not an issue in the risk assessment produced by the Respondents, and unsigned by them or the Claimant.

125.3 The supposed greater health safety risks to a pregnant employee, as opposed to any other employee, were largely illusory:-

125.3.1 The Claimant had been using the space for 5 years without incident.

125.3.2 The reasons given by the Second Defendant when first challenged in the transcript relate solely to her own convenience.

125.3.3 The fact that the space was 0.1 metre narrower than an obscure regional document recommended was of no relevance. The Claimant drove a Golf, not a people carrier.

125.3.4 The bollards were not high and were spaced such as to allow a car door to open fully.

125.3.5 There was ample space to get in and out of a car at any stage of pregnancy.

126 In light of the Second Respondent's sudden change of position, juxtaposed with her recent knowledge of the Claimant's pregnancy, we are unanimous in concluding that the Claimant has established facts from which we could infer that this decision was because of her pregnancy or a pregnancy related illness.

127 The Respondents have failed to show that this was in no way whatsoever because of the Claimant's pregnancy or pregnancy-related sickness absence

(f) On 15 June 2017, varying the Claimant's existing break times and requiring the Claimant to record any additional breaks.

128 This was not disputed and was clearly unfavourable to the Claimant.

129 The Claimant has established on the balance of probabilities that this could have been because of her pregnancy and/or pregnancy-related illness. The Respondents' evidence supported this: it was to help her recover better and faster.

130 The Respondents have failed to rebut the Claimant case in any particular.

(g) On a date between 22 May 2017 and 15 June 2017, changing the diary to state that the Claimant would be taking a full day off on 19 June 2017.

131 This was not disputed and was clearly unfavourable to the Claimant, not least as she would lose a day's pay. We rejected the submission that there was no detriment because the appointment was later reinstated. It resulted in a long and difficult exchange of views, at the least.

132 We rejected the Respondents' assertion that they did not know that this was an ante-natal appointment.

133 The Claimant has established on the balance of probabilities that this could have been because of her pregnancy.

134 The Respondent has failed to provide a cogent reason for this treatment: it has not rebutted the Claimant's case.

(h) On 15 June 2017, informing the Claimant that an NT scan is not an antenatal appointment and that she would not be paid for the time required to attend it.

135 This was not disputed and was clearly unfavourable to the Claimant, not least as she would lose a day's pay. We rejected the submission that there was no detriment because the appointment was later reinstated.

136 We rejected the Respondents' assertion that they did not know that this was an ante-natal appointment.

137 The Claimant has established on the balance of probabilities that this could have been because of her pregnancy.

138 The Respondent has failed to provide a cogent reason for this treatment: it has not rebutted the Claimant's case.

(i) On a date between 22 May 2017 and 15 June 2017, installing a voice recorder in the salon.

139 It is clear everyone knew the shop was subject to CCTV monitoring however, it appears to us that it is unfavourable to be subject in addition to covert recording.

140 We are unanimous in concluding that the Claimant has failed to establish on the balance of probabilities that there could be a link between this event and the Claimant's pregnancy. Mere proximity in time is insufficient.

(j) On 15 June 2017, issuing the Claimant with a warning.

141 This was not disputed. It was clearly unfavourable to be issued with a warning without any appropriate process.

142 Once again, we are unanimous in concluding that the Claimant has failed to establish on the balance of probabilities that there could be a link between this event and the Claimant's pregnancy. Mere proximity in time is insufficient.

(k) Refusing to review and/or increase the Claimant's rate of pay in June 2017.

143 This was not disputed. It was clearly unfavourable.

144 The following factors lead us to conclude that the Claimant has established facts from which we could infer that this was because of her pregnancy or pregnancy-related illness:-

144.1 She had been promised a pay rise before she took any sickness absence;

144.2 The supposed review took place while she was absent and without her being given an opportunity to take part.

144.3 The Second Respondent admitted that she had promised to do her best and then said she could not do her best. There is no contemporaneous evidence of her reason.

144.4 We have found the reason now advanced, the Claimant's failure to complete the nutrition course, to be spurious.

145 The Respondent has failed to rebut that case.

(l) On 19 June 2017, failing to acknowledge the Claimant when she attended the salon.

146 We accepted the Second Respondent's explanation for this.

(m) On 19 June 2017, requesting that the Claimant return her shop keys.

147 This was not disputed.

148 We find it was unfavourable, it clearly made the Claimant feel she was not trusted and that her employment was in jeopardy.

149 The Claimant has established that this could have been because of her pregnancy illness related absence. The proximity in time is remarkable.

150 The Respondent has wholly failed to rebut that case. Her explanations changed and the "safety reasons" were never adequately explained.

(n) On 22 June 2017, placing an advert on Facebook for a "part-time Beauty Therapist vacancy for NVQ level 3", and without consulting the Claimant.

151 This was not disputed.

152 We struggled to see that this was detrimental or unfavourable. The Claimant had no right or expectation to be consulted. The Respondents had the right to seek to recruit cover for the Claimant's absences. We accepted their evidence.

(o) On 10 July 2017, writing to the Claimant to place her at risk of redundancy.

153 This was not disputed. Being put at risk of redundancy is undoubtedly unfavourable.

154 We concluded that the timing of this decision on the part of the Respondents, coupled with the complete lack of any appropriate financial analysis and the fact that the Claimant was placed in a pool by herself raise a case that requires rebuttal by the Respondent.

155 The Respondents failed to provide any cogent explanation for this decision.

(p) On 14 July 2017, and again on 26 July 2017, threatening the Claimant with the possibility of dismissal.

156 These acts were not disputed and were clearly unfavourable treatment.

157 They were clearly linked to the Claimant's pregnancy illness related absences. In our view that alone is sufficient to raise a *prima facie* case.

158 The Respondents have failed to rebut that case.

(q) On 5 September 2017, speaking in a threatening/aggressive manner to Gill Collins (Practice Manager of the Claimant's GP practice) in relation to a medical report, including stating that "there was nothing wrong with" the Claimant (or words to that effect).

159 This was not disputed.

160 We did not accept that this was unfavourable treatment of the Claimant herself.

(r) On 23 September 2017, writing to the Claimant stating "we can't confirm that you have "stress at work". Your several refusals is sufficient grounds to doubt that the incapacity is genuine and stop paying SSP".

161 This was not disputed, and it was clearly unfavourable to be threatened with having your SSP stopped.

162 We concluded the Claimant has established facts from which we could infer that this was because of pregnancy or pregnancy-related illness. The Claimant was in receipt of SSP because of her pregnancy related sickness. The connection was clearly set out in Dr Rahman's letters. The Respondents' were clearly of the view the Claimant was swinging the lead and wished to stop paying her SSP which her GPs believed her to be entitled.

163 The Respondents have wholly failed to rebut the Claimant's case. The Second Defendant believed herself to be more qualified that those doctors, frequently referring to herself as a "medical professional", and that "stress at work" was not an illness.

164 (s) On 25 September 2017, dismissing the Claimant.

165 For the reasons set out below we find this allegation proved.

166 In light of all our above findings we conclude that the Respondent shave discriminated against the Claimant in respect of the matters identified at sub-paragraphs (a), (b), (c), (d), (f), (g), (h), (k), (m), (p), (r) and (s).

Victimisation (s. 27 EqA 2010)

4. Did the Respondents subject the Claimant to the following detriments:

(a) On 10 July 2017, writing to the Claimant to place her at risk of redundancy;

(b) On 14 & 26 July 2017, threatening the Claimant with the possibility of dismissal.

(c) On 25 September 2017, dismissing the Claimant.

5. Did the Respondents subject the Claimant to those detriments because she did a protected act, namely raising a grievance on 7 July 2017?

167 We have found each of the events proved and that they were unfavourable treatment.

168 We next consider whether the Claimant has established facts from which we could conclude that any one or more of them was because she had raised her grievances.

169 It is clear from her second grievance of 24 July 2017 that she thought she was placed at risk of redundancy in retaliation for her raising a grievance. The first grievance was raised on Friday 7 July and she was put at risk on Monday 10 July without any prior warning, formal or informal. We consider that evidence such that it requires an explanation from the Respondent, but none was forthcoming. We find this allegation of victimisation proved.

170 A connection between the grievance and the letters of 14 and 26 July is less easy to discern. It appears to us that those letters were a consequence of an inept choice of template, using one designed for very long term sickness absence inappropriately, rather than there being a connection to the grievance.

171 We found no connection between the grievance and the dismissal.

172 We therefore find that the Respondents victimised the Claimant contrary to S.27 Equality Act 2010 is in respect of sub-paragraph (a) only.

173 **Unfair Dismissal (s. 94 ERA 1996)**

6. Did the First Respondent commit a repudiatory breach of contract by acting without reasonable and proper cause in a manner that was calculated or likely to damage or seriously destroy the relationship of mutual trust and confidence?

7. If so, did the Claimant accept that breach by her resignation of 25 September 2017 such that she was dismissed for the purposes of s. 95(1)(c) ERA 1996?

8. Was the reason (or if there was more than one reason, the principal reason) for the Claimant's dismissal a prescribed kind, or did the dismissal take place in prescribed circumstances, falling within s. 99 ERA 1996?

9. If the dismissal was not automatically unfair by reason of s. 99 ERA 1996, is the Respondent able to show a potentially fair reason for dismissal within s. 98 (1) ERA 1996?

10. If so, and with regard to that reason, was the Claimant's dismissal fair or unfair on application of s. 98 (4) ERA 1996?

174 We are unanimous in concluding that the events of pregnancy discrimination that we have found proved, which extended from 31 May to 23 September 2017, were repudiatory of the contract of employment and that the Claimant resigned in response to them thereby terminating her contract of employment within S.95(1)(c) Employment Rights Act 1996 such that it is to be treated as a dismissal by the First Respondent.

175 As noted above, we are unanimous in finding that the Claimant's pregnancy and her pregnancy-related sickness absences were a significant cause of this termination.

176 The Respondent has not sought to advance a fair reason for the dismissal.

177 We find that this dismissal was unfair, contrary to S.94 ERA 1996, and automatically unfair contrary to S.99 ERA 1996.

178 **Wrongful Dismissal (in the alternative)**

11. Did the First Respondent commit a repudiatory breach of contract by acting without reasonable and proper cause, and in a manner that was calculated or likely to damage or seriously destroy the relationship of mutual trust and confidence?

12. If so, did the Claimant accept that breach by her resignation of 25 September 2017?

13. Did the First Respondent dismiss the Claimant with the correct amount of notice (5 weeks' notice)?

179 The Claimant gave contractual notice in her resignation so this claim is not well founded.

Remedy

180 This case will be listed for a remed hearing in accordance with the accompanying Order for Directions.

Employment Judge Kurrein

4 January 2019