



EMPLOYMENT TRIBUNALS

Claimant: Ms D Lewandowski

Respondent: Bradford District Apprenticeship Training Academy

Heard at: Leeds **On:** 24 to 26 April 2017

Before: Employment Judge Rogerson

Members: Mr T Downes
Mrs S Robinson

Representation

Claimant: In person

Respondent: Mr T Webb of Counsel

JUDGMENT

1. The Claimant's complaint of unfair dismissal made pursuant to section 111 of the Employment Rights Act 1996 and automatically unfair dismissal made pursuant to section 99 of the Employment Rights Act 1996 succeeds.
2. The Claimant's complaint of pregnancy discrimination made pursuant to section 18 of the Equality Act 2010 succeeds.
3. The Claimant is awarded compensation in the sum of £9,130.41 financial loss (including interest) £15,600 for injury to feelings (including interest) and £435 for loss of statutory rights.

REASONS

Issues

The issues in relation to the 3 complaints for the Tribunal to determine were agreed between the parties at the beginning of the case and are set out at page 39 in the bundle. The Claimant makes complaints of unfair dismissal, automatically unfair dismissal for a reason related to pregnancy (section 99 of the Employment Rights Act 1996) and/or unfavourable treatment by way of dismissal because of her pregnancy (section 18 Equality Act 2010). It was accepted that the Claimant was dismissed and her dismissal was unfavourable treatment. The Respondent asserts that the reason for that dismissal was because the

Claimant's fixed term contract expired and the dismissal was by reason of redundancy

The key issue for the Tribunal to decide was the reason for the Claimant's dismissal. This as Mr Webb identifies in his closing submissions, lies at the heart of this claim. If it was because the Claimant was 'pregnant' then her dismissal was discriminatory and unfair.

The burden of proof provisions contained in section 136 of the Equality Act 2010 apply to the pregnancy discrimination complaint and require the Claimant to prove primary facts from which the Tribunal could properly and fairly conclude that the unfavourable treatment was because of the protected characteristic of pregnancy. If so, what is the Respondent's explanation for that treatment? Does it prove a non discriminatory reason for any proven treatment? Both in relation to the complaint made under section 99 of the Employment Rights Act 1996, and in relation to the complaint of pregnancy discrimination the Respondent asserts that the Board which made the decision not to renew the Claimant's contract was unaware of the fact of the pregnancy and made the decision purely on the basis of the Respondent's financial position.

In relation to the findings of fact the Tribunal heard evidence from (1) Kate Dallas-Wood ("KDW") former Chief Executive, (2) Jessica Wolfenden Marketing Executive, (3) Emma Longbottom, Lead Officer Education Employment and Skills and attendee at board meetings (4) Andrew Welsh Group CEO Bradford College Director and Board Member and (5) Tracey Jennings current head of the Respondent Organisation. We also heard evidence from the Claimant who was employed as Apprenticeship Manager at the relevant time.

We saw documents from an agreed bundle of documents and further additional documents were produced by the Respondent at the request of the Tribunal. From the evidence we saw and heard we make the following findings of fact:

1. The Claimant was employed by the Apprenticeship Training Agency "ATA" initially as an Employer Engagement Officer from 22 July 2013 on a fixed term contract running to 30 March 2015. That contract was extended verbally and the Claimant was also promoted and awarded a pay increase when she took on the position of Apprenticeship Manager in December 2014. A new contract for that position was not issued at the time, but a job description for the role was agreed and the Claimant's contract was extended until 31 March 2016. The extension was based on a verbal agreement made between the Claimant and her manager KDW.
2. The Respondent is described as a joint venture between Bradford College and City of Bradford Metropolitan Council and is called Bradford District Apprenticeship Training Agency. It describes itself an organisation offering an "all round hassle free solution to hiring an apprentice by acting as a broker between employers and apprentices".
3. The Council provided three years of funding to the ATA which ended on 31 March 2016. This was a known event and planning for that event took place in late 2015, because it was necessary for ATA to consider its options to ensure the continuation of the venture beyond 2016.
4. The Claimant's employment was subject to a redundancy policy and procedure at pages 79 to 83 and a grievance procedure at pages 77 to 78. The Respondent had access to and paid for HR services provided by Bradford College. The employees of "ATA" were KDW, the Chief Executive Officer, on a gross salary of £40,000, the Claimant as apprenticeship

manager, earning a gross salary of £33,000 gross and Jessica Wolfenden marketing executive earning a gross salary of £16,000 gross.

5. Jessica Wolfenden had been an apprentice trainee who was then directly employed by the Respondent and was trained by the Claimant. The Claimant described and we accepted that within such a small team she was able to perform all roles required and everyone knew how to do everyone else's job.
6. KDW describes the background to the events leading to the funding ending in her witness statement. She describes how in January 2015 the Board were presented with a number of options to consider from April 2016. She describes how she spent a lot of time looking at the various options available to ensure the sustainability of ATA beyond 2016.
7. In November 2015, Gareth Osborne joined the ATA meetings as an 'observer'. He together with Allan Mangham (operations and finance director at the college) was responsible for undertaking an assessment of the potential financial models for the ATA post March 2016. KDW describes how they looked at the cost of running the business, the staffing and what it could afford going forward in the period from November 2015 onwards.
8. In November 2015 Bradford College made a proposal to the ATA board that the college would take over the running of the ATA from April 2016 as a separate entity from the college as the Respondent. There was no board meeting in December 2015 and the next board meeting that took place following that proposal was 12 January 2016.
9. KDW describes this meeting as the meeting where she was told her contract would not be extended beyond March 2016. She refers to the minutes of that meeting at pages 123 to 126.
10. Ms Longbottom also attended that meeting as did Mr Welsh and they refer to the same set of minutes at pages 123 to 126. Mr Welsh was one of 4 board members present. The other board members were the Chair Counsellor Susan Hinchcliffe, Terry Davis and Richard Wightman. Also in attendance at that meeting was Gareth Osbourne the Group Chief Operating Officer for Bradford College Group. We did not hear any evidence from these individuals.
11. No corrections were made to the meeting minutes in the witness statements of Ms Longbottom or Mr Welsh or at the subsequent meeting which took place in February 2016 when the earlier minutes were approved. We accepted the minutes accurately record and reflect the discussions that took place, the decisions that were made and the agreed actions to implement those decisions.
12. The 'actions' were also repeated and recorded in the 'action log' that was produced following the meeting. The log sets out the tasks to be completed and the individuals who would be completing those tasks as part of the normal procedure.
13. A detailed financial update was provided at the January 2016 meeting based upon the management accounts and the detail is recorded in the minutes. There is a discussion of the profit and loss and a financial forecast update. Mr Mangham sets out in January 2016, where he thinks ATA will be at the end of the year at the end of 2016. There is a discussion about the number of apprentices starting each month (8-10). A discussion about grants that are to be received (which include a £75,000 payment to be received after March 2016). A discussion about taxes that are due to be paid (HMRC liabilities

VAT). The final year end accounts are also approved. There is then a management report and a discussion about targets and a detailed discussion headed "Sustainability and Future Related Issues". There are then two pages of notes setting out the discussions that took place on this issue. The particular reference that the Claimant relies on is at page 126 and that sets out what the minutes record as the agreed actions that follow those discussions about the staffing and the future position of ATA. The reference at page 126 states as follows:

"The Chair closed the meeting and asked if ATA staff members could leave the meeting so the board members could have a private discussion regarding ATA's future.

In confidence given by Emma Longbottom for the board. These were the points **agreed** from this part of the meeting:

- ◆ It was **agreed** that the contract ATA chief executive would not be extended beyond 31 March 2016. The marketing executive and apprenticeship manager **would be offered an additional 12 month contract up to 31 March 2017**. The ATA team will be **co-located with Beacon Recruitment from 31 March 2016 to allow for services to be shared and costs to be reduced**.
- ◆ Action: GO to arrange for staff contracts to be extended.
- ◆ Discussed offering the ATA chief executive a bonus if she is able to stay with the ATA until 31 March 2016 and complete the final milestones to draw down the rest of the grant.
- ◆ Action: GO to look at options for bonus payment and email board directors with proposal.

Those were the relevant parts of those minutes which set out in detail each of the actions agreed by the board in relation to the ATA's future going forward. A further meeting was also set up for 15 February 2016.

14. Consistent with those minutes was the Claimant's account of events as recalled in her grievance in June 2016. She only saw these minutes as a result of disclosure in these proceedings. Her account is also consistent with what she is told before and after the meeting in terms of her future. Before the meeting she speaks to Mr Welsh who tells her that there was some "good news" for her. KDW confirms the Claimant's told her about the 'good news' comment at the time. Mr Welsh doesn't recall it and says it is unlikely he would say it. We didn't accept his evidence and prefer the Claimant's evidence that the comment was made by Mr Welsh referring to the good news of the agreed 12 month extension of her contract. This was in contrast to the bad news for KDW because she was told that there was no extension of her contract and she was not being transferred to the Respondent at the new location.
15. After the meeting, the Claimant had a separate meeting with Emma Longbottom and Terry Davies. The Claimant was told that KDW was not transferring to Bradford College but that the Claimant and Jessica Wolfenden were being offered an extension of their fixed term contract which would mean that their employment would continue to 31 March 2017, provided they were willing to accept that offer. The Claimant did accept the offer there and then, as did Jessica Wolfenden. She was happy and was told that a contract would be "on its way". That account is consistent with the

minutes and the action log which provided that Gareth Osbourne (GO) was to extend the staff contracts (in the plural) which can only be for the Claimant and Jessica Wolfenden

16. Emma Longbottom attempted to backtrack from this during her evidence by suggesting it was not a certainty, it was a hope, a possibility. Nothing was set in stone. She told us that the minutes should have recorded the word “hopefully” before the offer of an additional 12 months contract. Her evidence was inconsistent with the minutes prepared by her, the action identified in the minutes, the separate action log that followed which required GO to arrange for the contracts to be extended, the meeting with the Claimant afterwards, and the ‘good news’ comment by Mr Welsh. The language used in the minutes and to the claimant was unambiguous and clear. It was not a hope or possibility. It was a certainty of an additional 12 months contract up to 31/03/2016. It offered certainty of terms relating to a particular date (31 March 2017) and at a particular location for the Claimant, at the college. That reflects the decision was made by the Board on 12 January 2016.
17. In accordance with that decision, on the same day the Claimant was offered and accepted an extension to her contract running until 31 March 2017. Consistent with that contract for the following five weeks the Claimant is presented to other organisations as the new point of contact, because KDW was leaving. Also consistent with that contract extension the Claimant makes no attempt to find alternative work. She would have done so if there was any uncertainty as to her future, in the way KDW did. She didn’t do that because she had been offered and accepted an extension of her contract until 31 March 2017. We did not find Jess Wolfenden to be a credible witness in terms of her recollection. She repeats the suggestion that ‘nothing was set in stone as to the future’ yet refers to being told that she and the Claimant would be ‘moving’ location but KDW would not be staying with the business, which was the position in January 2016.
18. The difficulty for us based on our finding of fact of an extension agreed on 12 January 2016 is that this goes to the credibility of the Respondent’s witnesses (EL JW and AW) on a critical piece of evidence. All three have attempted to portray this meeting and the subsequent discussion to this Tribunal, very differently to what actually happened. We have to ask ourselves: why are they now attempting to rewrite events and manipulate the facts to make them fit the case as it is now presented.
19. After the extension of the contract had been accepted verbally the Claimant chased the written contract confirming that extension with KDW. On each occasion she chased she was led to believe it was being dealt with she was never told she was mistaken or had misunderstood the position or there was no extension so the Claimant would not be getting a contract. At this time both JW and the Claimant describe a change in attitude by KDW towards them. She is described as “more snappy” which given the fact she was losing her job and they were not might be understandable.
20. In late January 2016 the Claimant disclosed her pregnancy to her friends at work which included JW. She had a previous history of an ectopic pregnancy and was happy about the pregnancy but was also concerned about the lack of any written confirmation of the extension. She was encouraging KDW to get her a contract sorted out before her pregnancy was announced at work.
21. She asked KDW to find out what was happening with the written contract again on 18 February 2016. This time she explained that she was pregnant

and was telling KDW this news in confidence, because she wanted KDW to understand why she was pressing for the written extension. She was concerned that if the Respondent found out she was pregnant they might not want her anymore. This was because they would be paying her SMP without the benefit of her being at work during her maternity leave. KDW was asked to keep her pregnancy confidential at this stage but to push for the written contract extension.

22. KDW told the Claimant that she would chase the written contract and in fact in her witness statement states she had told the Claimant that "GO had emailed her asking for a 12 month contract to be drawn up for the Claimant and for Jess". There was a clear intention prior to the February meeting for the course agreed in January to be followed and it appears for KDW to prepare the paperwork. However something changed at the board meeting in February 2017 to alter that course.
23. Mr Webb suggests that because the Claimant was chasing the written contract for 5 weeks this indicates that no such contract had been promised. We do not agree for the reasons set out above. A contract extension had been verbally offered and accepted on 12 January 2016 and previous verbal extensions of contract were not always followed up by written contracts. On this occasion the Claimant was chasing the written contract because she felt more vulnerable because of her pregnancy.
24. The account of events that follows from KDW in her witness statement was also odd. Four days after this discussion with the Claimant on 22 February 2016, on the morning of the board meeting, she says that she spoke to the Claimant about disclosing the pregnancy. She states that prior to the board meeting on 22 February she asked the Claimant whether she wanted the board to know that she was pregnant. She says that in response the Claimant said that "I could maybe tell EL and TD as she knew them personally. However in the event I did not have the chance to tell them prior to the meeting starting". Her evidence is that she specifically asked the Claimant's permission to disclose the pregnancy to the board prior to the board meeting and having been given permission to talk to 2 individuals she did not then tell them.
25. The evidence of any such discussion with the Claimant was disputed by the Claimant who said that she could not have spoken to KDW prior to the meeting because she was not at work at that time. The witness statement was not corrected by KDW but was confirmed as accurate. It was only in answers to questions by the Tribunal did KDW accept that the alleged conversation prior to the board meeting did not happen. Why then has KDW referred to the Claimant allegedly giving her permission prior to the board meeting to talk to a board member to disclose the pregnancy and then say in her witness statement, that it did not occur to her to say anything to the board about the Claimant's pregnancy?
26. We did not find KDW to be a credible witness. We found that she told the board at the meeting that the Claimant was pregnant. Her evidence of the Claimant giving her permission before the meeting yet it not occurring to her to say anything during the meeting was unconvincing and in our view a lie. She also accepts that she told Emma Longbottom at some point but cannot recall when precisely she told her. Emma Longbottom's witness statement states that "at the time this decision was made, the board members who made the decision were not aware of the Claimant's pregnancy. The Board

members are Councillor Hinchcliffe, Andy Welsh, Richard Whiteman and Terry Davis. Although there were others of us who attended the meetings we did not have any decision making powers and were there simply as observers and to provide information. We had no say in any decisions made. I cannot remember at which point I was told by Kate Dallas Wood that Danielle was pregnant but **I did not know before the board meeting**". Odd that Ms Longbottom uses this wording to limit her knowledge of pregnancy before the meeting, or that she feels she is in a position to tell us that all board members were not aware of the pregnancy, when the decision was made even though she states she was not part of the decision making process.

27. Mr Welsh told us that he didn't know about the pregnancy at the board meeting but couldn't comment for the other board members. We didn't find Mr Welsh to be a credible witness in relation to the 'good news' comment or in relation to the discussions that took place at the February board meeting. Notably the minutes are silent. There is one sentence on the topic about 'sustainability in the future'. That is in stark contrast to the detailed discussion that took place on finances and was recorded in January to support the decision made. He told us there was a lengthy discussion that took place about the potential financial models at the February meeting. Where is the reference to that discussion in the minutes of the meeting when the decision is made to terminate the Claimant's contract? Where is the reference to that decision in the outcomes or the actions that had taken place in the way actions had been decided following the January meeting? The absence of any detail at all about any further discussion and financial modelling is notable.
28. The evidence of all of the Respondent's witnesses about the February board meeting was vague and unconvincing. That is with the exception of one comment made by KDW which was quite enlightening. She told us that at this meeting all of a sudden she was told that there was a need to extract another salary because the business could not afford it. She told us I don't know why the position changed between January and February. I can't recall any discussion about other costs/details/models.
29. We found the position did change 'all of a sudden' at the February board meeting and the new information that led to the decision to terminate the Claimant's contract earlier than agreed was the knowledge of the Claimant's pregnancy. KDW communicated knowledge of the pregnancy to the board at that meeting. That was the reason why all of a sudden a different decision was made in February 2016.
30. We accept that the Claimant wasn't present at the meeting and does not know what was said and is inviting us to make inferences. Mr Webb summarises the position is stark, either on the one hand witnesses are lying or have forgotten about the pregnancy: or the pregnancy was not discussed with the board. He invites us to find the latter is the far more likely scenario on the balance of probabilities. We do not agree. We have found that the Respondent's witnesses have not been honest about what had been discussed and agreed at the earlier meeting in January 2016, and their account was not credible about the February meeting either. We were satisfied on the balance of probabilities that KDW disclosed the fact of the pregnancy to the board at the meeting in February 2016.
31. The Claimant is right to question the 'motive' of the Respondent and makes a very valid point in paragraph 18 of her witness statement as to why she says the reason advanced by the employer is not credible and the real reason for

the earlier termination of her employment is her pregnancy. She states at paragraph 18 as follows:

“I do not accept that the Respondent’s reason for my dismissal was due to not being able to afford my salary. The Respondent knew from the outset what my salary was and was in receipt of this information when I was offered and accepted the 12 month extension to my contract on 12 January 2016. The Respondent would have compiled its accounts in January 2016 and had they genuinely not been able to afford me following 31 March 2016 this would have come to light at this stage(January 2016). This was not the case and both Jess and I were duly offered a 12 month extension to our contracts which we accepted on 12 January 2016. It would seem ludicrous for a company to offer extensions to contracts without having taken into account or being aware of its financial position. This again goes to support the fact that my salary was not the genuine reason for my dismissal. Rather I was dismissed from the Respondent due to being pregnant”.

32. Ms Longbottom suggests in her witness statement that she had no prior notice that there would be a proposal to remove one of the positions. She said the figures showed quite clearly that the “ATA could only afford to keep one member of staff on a lower salary” but was unable to explain which figures she was referring to and how the decision was made as to which member of staff should be kept on the lower salary, or what role/salary was required. She said it was Gareth Osbourne who proposed that the ATA did not need the Claimant’s ‘position’ and could manage with just the junior position and a decision was therefore made not to renew the Claimant’s fixed term contract.
33. We would have expected a record in the minutes to reflect the discussions in line with the more detailed record of discussion that had taken place in January 2016. There are 3 relevant entries in the minutes of the February board meeting. The first is the review and approval by the board of the 12 January 2016 minutes. If the minutes were inaccurate in relation to the offer of a 12 month extension position it is odd they are confirmed as accurate by all those present. The action log was also confirmed. The only entry under “sustainability and future related issues” is one sentence. “There was a discussion around the ATA sustainability and the transfer to Bradford College including staffing issues”. There was a lack of detail and transparency in relation to the discussions that took place which are now relied upon to support the Respondent’s account of events. This only serves to add to the concern we have about the credibility of the Respondent’s evidence.
34. Mr Welsh states in his witness statement that in January 2016, no decision was taken regarding the contracts for the Claimant and Jessica Wolfenden which is contrary to the evidence and our finding of fact. He says that at the meeting in February “we made the decision not to renew the Claimant’s contract but to retain Jessica Wolfenden because she carried out more of an admin role and there was still a need for this work to be done” As the only board member we heard from we did not find his explanation for the change in position from renewal and 12 month extension in January to no renewal in February was credible. As the Claimant points out the only thing that changed in this period was knowledge of her pregnancy.
35. After the February 22nd 2016 board meeting, the Claimant was called into a meeting with Kate Dallas Wood, Gareth Osbourne, Emma Longbottom and Terry Davis. Gareth Osbourne told the Claimant that despite having offered

her an extended contract until 31 March 2017 which she had accepted the position had now changed due to the fact they could not afford her salary and her employment would terminate on 31 March 2016.

36. On the same date a letter was sent to the Claimant from Terry Davis stating “I regret to inform you that it has been decided that your contract will not be renewed when your current contract ends on 31st March 2016”. That letter does not reflect or explain the change in position or make any reference to redundancy.
37. By email dated 1 March 2016, the Claimant raised issues of unfairness in the way she had been treated. She also complains of a right to redundancy pay. It is only after she raises this request for redundancy pay is ‘redundancy’ referred to. It was accepted that at the time the Respondent never addressed its mind to redundancy and it is only on 30th March 2016 that Human Resources at Bradford College advised of the Claimant’s right to a redundancy payment of £950. No appeal is offered to the Claimant.
38. The Claimant complains that at no stage did the Respondent follow a redundancy process or procedure and she identifies all the breaches of the policy at paragraph 36 of her witness statement which were not disputed by the Respondent. If it was genuinely an affordability issue that led to a redundancy situation why did the board not refer to redundancy or follow any process given the access to HR advice available at the time.
39. Unfortunately by 18 March 2016, the Claimant had suffered a miscarriage. In June 2016 she submitted a grievance complaining of unfair treatment and pregnancy discrimination. Her grievance letter gives a detailed chronology of the events which supports the account she gave at this hearing. Unfortunately the grievance process was not completed because the Claimant had no confidence in the investigating officer appointed to deal with the grievance.
40. The Claimant has applied for jobs and has found permanent employment at a lesser salary than that which she earned with the Respondent. The Respondent accepts having heard evidence from the Claimant that she has mitigated her loss. The contract she accepted on 12 January would have continued until 31st March 2017. It is unlikely thereafter that it would have continued beyond that given the small number of apprentices the Respondent has it is likely to cease operating soon. We accepted that a further extension would not have been offered.
41. The Claimant has produced evidence of prima facie facts from which we could conclude in the absence of an explanation from the Respondent that she was dismissed because of pregnancy. The difficulty for the Respondent is that it has been unable to explain to us what changed from the certainty of an agreed 12 month extension of the contract in January 2016 to the February 2016 meeting when the Claimant was informed her contract was to end because it alleges her salary could not be afforded.
42. If it was really about saving a salary and creating only 1 single administrative role going forward there was no assessment of the two roles to decide what role was required for the future, the skills and salary for that role. There was no consultation with the individuals affected or any process followed to support the redundancy case, even though the Board and particularly Mr Welsh had detailed knowledge of the redundancy policy and procedures. If a further salary saving had to be made on top of the saving of £40,000 already made, why offer the Claimant a 12 month extension 5 weeks earlier. Surely a

shorter extension for both staff would offer a salary saving while the issue was investigated. That was if affordability was the real reason for terminating the Claimant's employment which we found was not the case. There was also lack of transparency in the process that we have referred to in our findings of fact.

43. All of the financial information had been available and had been discussed and decisions had been made by the Board in January 2016 about future sustainability. No further financial information was sought by the Board and the only task allocated by the Board to Mr Osbourne was to get the written extension of the staff contracts sorted out supporting the case of certainty going forward. That was the task allocated to KDW in February 2016. If the financial position was uncertain why did the Respondent pay Ms Wolfenden a substantial pay rise (£2,000) in April 2016? The Respondent has failed to provide an adequate explanation to explain the decision to terminate the Claimant contract in breach of the agreed 12 month extension in January 2016. We found the reason for this change of heart was that the Board knew the Claimant was pregnant and did not want to honour the contract it had agreed to in those circumstances. The Claimant was dismissed on 31st March 2016 because she was pregnant.
44. The Claimant has also made a complaint of unfair dismissal. Given our findings and conclusion that it was a 'discriminatory' dismissal it is not necessary for us to go into detail into the position regarding the unfair dismissal. However we do find the dismissal was both substantially and procedurally unfair. There was no warning, no consultation, no selection process followed, no selection procedure and no appeal. This is not a case where the Respondent ever addressed its mind to 'redundancy'. In fact 'redundancy' never came up until the Claimant raised it after she had been dismissed. There was no calculation or award of redundancy made until the Claimant raised her right to a redundancy payment. Even then and prior to the effective date of termination coming into effect, the Respondent did not attempt to follow any procedure by arranging an appeal. The Respondent cannot rely on the Claimant raising a grievance post dismissal as a substitute for offering the Claimant an appeal. By that time the employment had ended and it was all too late. Mr Webb invites us to find that this was a case where it was reasonable not to consult because it was futile. We do not agree. An employee faced with a genuine redundancy situation may make different choices. The Claimant says that if faced with redundancy she would have accepted a lower salary and a more junior position to keep her job, especially when she was pregnant and her prospects of finding alternative employment as a pregnant applicant were much reduced. It would have been reasonable for this employer in these circumstances to have consulted much earlier than it did and not reasonable for it to conclude consultation was futile.
45. On the Respondent's case which we did not agree, a redundancy situation was envisaged for some time since January 2016. There was no consideration of the actual role that was required to be performed going forward. The evidence was that it was not a 'marketing executive role' (Ms Wolfenden's role at the time and it was not the Claimant's role). The lack of any consideration of the actual role required to be performed is supported by the fact that Ms Wolfenden's role changed two months after the Claimant's dismissal. The Claimant would have accepted that role rather than lose her job. If it was just a cost saving exercise why was Ms Wolfenden paid £2,000 as an extra payment of salary, shortly after the Claimant's employment had

ended.

46. In those circumstances the Claimant's complaints of unfair dismissal and pregnancy discrimination succeed.
47. I have not repeated the law which Mr Webb has correctly set out in his submission and which is in fact summarised in the list of issues.
48. In relation to remedy we heard evidence from the Claimant about the effects of the discrimination of losing her job because she was pregnant and her financial losses. The Claimant has to her credit found work immediately after her dismissal and after suffering a miscarriage. This must have been a very difficult time for her and to her credit she made a number of applications. She found some self employment on an 'ad hoc' basis and then found permanent employment in a lower paid job. She has not failed to mitigate her loss. She accepts that the contract that she was offered and accepted by the Respondent was only extended until 31 March 2017. We have heard evidence that the future for the ATA is not optimistic and we consider that a just and equitable period for loss is to compensate to the end of the contract that the Claimant was offered ie until 31 March 2017.
49. The Claimant has given very detailed evidence (subject to cross examination) to support her claim for injury to feelings flowing from the discrimination. The factors she has described are as follows. She was doing a management qualification whilst working for the Respondent which she was unable to complete because her contract was terminated prematurely. There has been a huge emotional loss of the job which reflects her investment in it. She has lost her confidence. She had bags of confidence. She loved and valued her job. She has lost trust in her employers for the future because she has been dismissed because of pregnancy and has been lied to. She has the financial worry of a lesser paid job and how she will meet her financial commitments going forward. She has felt that friendships have been lost and damaged as a result of what has happened to her. She is apprehensive about seeing anybody that she used to work with and is worried about bumping into anyone because her new job is located close by to the Respondent. She has had a year of hell. She didn't do anything wrong and feels that she has been punished for being pregnant. She would have had 12 months of extra time to find a better job and would have more prospects of finding a job whilst in employment rather than losing her employment when she was pregnant. She is asked what happened and why she lost her job and that is embarrassing because it portrays her in a negative light and overshadows her positive contribution to the organisation. The whole experience has been stressful and these proceedings have resulted in her taking medication from her GP in order to help her cope. Mr Webb says that the medication is a consequence of these proceedings and should be discounted. We disagree. It is a factor which describes to us the total effect on the claimant and demonstrates her honesty in not attributing everything she has suffered to follow as a consequence of her dismissal. Mr Webb suggests that mid lower range Vento is the appropriate amount of compensation because this is a single act of discrimination. There have been no offensive comments made and there has been no lengthy campaign of discrimination.
50. Being dismissed and losing your job because you are pregnant is a serious act of discrimination which in these particular circumstances falls in our view in the middle band. The Claimant has not exaggerated the effects of that discrimination when she describes a year of hell when the pregnancy should

have been a significant happy event. When she describes her loss of confidence and the effect on her personally she is not exaggerating. She is a young woman who loved and valued a job she lost because she was pregnant. She then miscarried and suffered a further loss. Despite losing her job because she was pregnant she has tried to get back on her feet. She has tried to find other work which unfortunately has not been as rewarding as the job with the Respondent but she has been prepared to do it with the hope of a better job in the future. She has suffered a year of hell and the dismissal has clearly resulted in a loss of confidence which has affected her outlook. Her claim for £15,000 compensation is in our view a just and equitable amount of award which accurately reflects the hurt and upset that she has experienced as a result of that discriminatory dismissal.

51. For loss of earnings from 31 March 2016 to 31 March 2017. The Claimant's earnings during that period would have been £33,000 gross and £25,534.08 net. She has earned in that period £12,469 gross which as a net figure we estimate at £10,000. She has also earned until 31 March 2017 the sum of £7,080 in her permanent employment. The difference then between the income she would have earned at the Respondent and the income she has earned is £8,454.08. To that we add interest of £676.33 making a total award for financial loss of earnings of £9,130.41.
52. We award injury to feelings of £15,000, with six months interest of £600 so the award for injury feelings we make is £15,600. Loss of statutory rights in the sum of £300 and reimbursement of Tribunal fees paid in the sum of £435.00.

Employment Judge Rogerson

Date: 16 May 2017