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EMPLOYMENT TRIBUNALS

Claimant: Mrs L Griffin

Respondent: Mr G Perkin and Mrs Y Griffin t/a The Swan with Two Nicks

Heard at: Birmingham **On:** 9, 10, 11 and 12 May 2017

Before: Employment Judge Self

Representation

Claimant: Mr J McCracken (Counsel)

Respondent: Mr E Beever (Counsel)

JUDGMENT

- a) All Claims save for the Claim made pursuant to Regulation 18 and 18A of the Maternity and Parental Leave Regulations are dismissed upon their merits.

- b) The Claim made pursuant to Regulation 18 and 18A of the Maternity and Parental Leave Regulations has not been lodged within the relevant statutory time limit and it would not be just and equitable to extend time.

WRITTEN REASONS

1 The Claimant seeks compensation for a range of claims brought against her former employer (the Respondent) by way of a Claim Form lodged on 13 September 2017. Those Claims are resisted by the Respondent for the reasons set out in their Response. We have heard oral evidence and we have taken account of such documents as we have been taken to in the bundle of documents before us. We were greatly assisted by the parties' advocates closing submissions.

2 The Claims were as follows:

- a) Unfair dismissal arising from a constructive dismissal. The Claimant's resignation was on 20 May 2016.
- b) Direct Sex Discrimination (s.13 Equality Act 2010) (EqA).
- c) Direct Maternity Discrimination (s.18 EqA).
- d) Maternity Leave Detriment (s.47C Employment Rights Act 1996) (ERA).
- e) Breach of Regulation 10, 18 and 18A of the Maternity and Parental Leave Regulations (MPLR).

3 Section 47C (1) ERA provides that an employee has the right not to be subjected to a detriment by any act or deliberate failure to act by his employer done for a prescribed reason. The relevant prescribed reason in this case is ordinary or additional maternity leave pursuant to section 47C (2) (b) ERA. In order to be successful there needs to be a link between the act and the exercise of the right.

4 Regulation 10 applies where, during an employee's ordinary or, in this case, additional maternity leave period, it is not practicable by reason of redundancy for the employer to continue to employ the employee under her existing contract of employment. If that is the case then there are certain obligations upon the employer set out at subsections 2 and 3 of Regulation 10. Where there is a suitable alternative vacancy the employee is entitled to be offered suitable alternative employment with her employer before the end of her employment under her existing contract. Any new contract must provide work that is suitable and appropriate for the employee and the terms, inter alia, must be not substantially less favourable to the employee than under the previous contract. The issue of whether or not an employee is redundant should be answered by reference to the statutory definition set out at section 139 of the Employment Rights Act 1996.

5 Under Regulation 18 and 18A of the MPLR an employee is entitled to return from additional maternity leave to the job which she was employed in before her absence with her seniority, pension rights and similar rights as they

would have been had she not been absent and on terms and conditions not less favorable than those that would have applied had she not been absent.

6 There is substantial overlap between any claim brought under section 47C of the EA and section 18 of the EqA which provides that an employer discriminates against a woman if in the “protected period” in relation to a pregnancy of hers the employer treated her unfavorably because of the pregnancy. The protected period ends at the end of additional maternity leave or when she returns to work, if earlier (s.18 (6)(a) EqA). No comparator is required and all that needs to be shown is that the Claimant has been treated unfavorably. Section 18(7) EqA stipulates that no claim of sex discrimination may be made under section 13 based on the treatment of a woman that falls within section 18. It should be noted that in this case the additional maternity leave and hence the protected period concluded on 27 February 2016.

7 The Claimant also asserts that she was directly discriminated against because of her gender pursuant to section 13 of the EqA.

8 The factual allegations which are alleged to give rise to the discrimination claims were helpfully set out in a Scott Schedule and they are identified later in this Judgment.

9 The Swan with Two Nicks (hereafter “the Swan”) is a bar and night club in Worcester town centre that actually incorporates three establishments, Drummonds, the Swan pub and Lunar Bar. Prior to December 2025 the Swan was owned by way of a partnership and the partners were Mr and Mrs Perkin, the

Respondent to this action and Mr and Mrs Griffin, the Claimant's parents. That partnership had continued for 38 years before the Respondents took sole charge on 3 December 2015. Prior to that time it had been Mr and Mrs Griffin who had run the pub on a day to day basis, employing their daughter, the Claimant, and the Respondents took no active role.

10 The Claimant had continuous service since April 1998 and in the 2012 signed contract within the bundle, her role is described as Senior General Manager (SGM) of the Swan and she was also the Designated Premises Supervisor (DPS). The Claimant was also the licensee of the premises. There was no job description shown to the Tribunal as none existed at any time but it is clear that before the change of ownership in December 2015 the Claimant was responsible for the day to day operations within the Bar with her parents fulfilling the role of ensuring that the paperwork involved in running the business was maintained. The Tribunal finds that the Claimant was not deemed an equal to the parents within the business but performed a managerial role one step below.

11 The Claimant had commenced maternity leave for her second child in March 2015 and was still on maternity leave when the change of ownership took place. The change had a substantial gestation period described by the Claimant as a number of years. As an example we have seen within the bundle a Business Plan drafted by Mr Perkin which is dated in 2013 which analyses the business with a view of obtaining funding from the banks.

12 When the Claimant was on maternity leave she was replaced temporarily by Sophie Curnock whom the Claimant had known for some time having

employed her in the Swan over a number of years when Mrs Curnock was in the area and available for work. The Claimant told us that she believed that she had a good relationship with Ms Curnock and had no idea why Ms Curnock would wish to tell untruths about her or seek to get her into trouble. The Claimant remained the DPS during her maternity leave until 24 December 2015 when the DPS role was removed after the change of ownership.

13 Government guidance relating to the DPS role is obtainable on www.gov.uk and states that the DPS “is the person who has day to day responsibility for the business”. It states that the DPS is the primary contact for local government and the police; that they must understand the social issues and potential problems associated with the sale of alcohol and that they must also have a good understanding of the business. The DPS need not be on site at all times but are “expected to be involved enough with the business to be able to act as its representative”.

14 Whilst there would appear to be no prohibition from somebody on maternity leave being the DPS it does seem to the Tribunal that it would be perfectly reasonable and probably better to appoint somebody else during maternity leave because of the temporary lack of day to day responsibility for that business. In this case the old regime did not make a change but the new regime did. That was not unreasonable.

15 There was an issue between the parties about the views of the outgoing partners towards the change of ownership. The Respondents have asserted that Mrs Griffin was very reluctant to move on and that Mr Griffin was the driving

force. The Claimant denied this and said that both her parents were happy for the business to be sold to the Respondents. We will deal with this issue so far as it is relevant later in this Judgment. We are satisfied however that notwithstanding the long relationship that all the partners had, that the sale process soured that relationship and that by the time of the sale in early December relationships had deteriorated badly.

16 It is not clear whether or not Mr Perkin's low view of the existing management of the business was communicated to Mr and Mrs Griffin. The opening words of his November 2013 Business Plan are "The Swan with Two Nicks is a falling business in the centre of Worcester". The Business Plan provides a bleak view of past trading and emphasizes the lack of marketing activity, management information, business planning, and attention to customer needs. Mr Perkin describes it as being "managed as a lifestyle and in support of the family business rather than a commercial business" and that there is "no real appetite to change" (92).

17 Whilst the retention of managers after the partners have left is deemed to be "important given their experience" they would need training and development moving forward. The overwhelming impression of that document is that Mr Perkin had a low view of the business acumen of Mr and Mrs Griffin despite their long association and considered that drastic change was required to turn the business around. There is no overt criticism of the Claimant but there are a number of issues criticized pertaining to what takes place in the Swan from which criticism is clearly implied. Improvement would clearly be required moving forward according to Mr Perkin's November 2013 vision.

18 The Claimant applied for a pay rise from her parents by letter on 6 April 2015 whilst on maternity leave and she received an increase of £1200 per annum. She used her position as DPS and the fact that the industry norm was significantly higher to support her request.

19 It would appear that the transition re ownership was not a smooth one and became drawn out and increasingly tetchy. Mr and Mrs Perkin had no experience of running such a business before having previously not being involved in day to day operations despite being partners. It follows that they would have needed to have experienced help if they were to make a success of the business. Matters took an adverse turn when Ms Curnock resigned by a letter dated 10 November 2015 (120). She cited within that letter that she believed that the handover would be “very difficult”, thus supporting the conclusion in the opening sentence to this paragraph and that she would be “left without any managerial support”. She stated that in order to protect her own physical and mental well-being she would give 4 weeks’ notice and would leave on 8 December.

20 On the same day and after the resignation Mr Perkin received a critical e-mail from Mr Griffin which seems to put the blame on the resignation on Mr Perkin and betrays some impatience as to how the transaction is proceeding. Mr Perkin’s response (131) is to Mr and Mrs Griffin and the Claimant. In it he states that he has been told by Ms Curnock that the real problem is that she is lacking support at that time, she was three assistant managers short and that he does not want “another argument”. He explains that he hopes to be able to exchange

contracts soon but until he does he is in a state of limbo and needs the Griffins' help to try and address the problems. He also states "I very much want to speak with Lucinda (the Claimant) and will be contacting her".

21 On 14 November the Claimant contacted Mr Perkin and said that they hadn't spoken for a couple of months and that she wanted to discuss the new management structure when her parents leave. Mr Perkin responded later that day saying that he had been waiting for clarity that the deal would go through but the deal was now going to complete on 2 December and that he would like to meet her on 16 November. That was agreed.

22 There are no contemporaneous notes of the meeting on 16 November but Mr Perkin tasked the Claimant with trying to persuade Ms Curnock to stay for the Christmas period at least. She was unsuccessful in that course. In addition from the Claimant's own e-mail of 30 November she discussed with Mr Perkin potential solutions to the crisis that had presented itself. They included the Claimant returning early from maternity leave, getting someone to cover the office, agency staff and also Mr Duford being brought back for the weekends, which the Claimant achieved. At this meeting it would appear that Mr Perkin was using the Claimant as an appropriate experienced resource to try and extricate himself from the potential looming staff crisis. On 20 November Mr Perkin is seeking confirmation from the Claimant as to whether her discussions with Ms Curnock had borne fruit (122).

23 It was mentioned that the Claimant met with Mr Duford in order to try and persuade him to return to the Swan in order to assist. It was a sound idea taking

into account the need for someone with experience of the business at that time. The claimant provides no detail of that meeting but Mr Duford does. He says that she told him that as Mr Perkin really needed them they were in effect in a seller's market and that she was going to ask for a big leap in her salary and that he should ask for £18 an hour. This was a reflection of economic reality. There is other evidence in the bundle that the Claimant thought she was previously being paid below the market rate and Mr Duford's evidence is consistent with that as are also the contents of her e-mail dated 30 November. The Tribunal accepts that the Claimant made it clear to Mr Duford in the course of her conversation with him in terms that she was aware that Mr Perkin was naïve in respect of the business and that if she could she would seek to gain advantage from that naivety in financial terms.

24 Just before the change of ownership the Tribunal considers that the parties held the following views. The Claimant intended to return after maternity leave but was keen to secure the best deal she could and was still worried about what the job would consist of when her parents had left the business and in particular whether it would mean more work and responsibility for her. That is clear from the concerns she raises in an e-mail dated 30 November (bottom of 129). In addition the Claimant clearly had concerns about the role that Tony Gibbon would have moving forward and his "capacity to undermine management" (130). Having expressed those concerns she also put forward constructive assistance as to possible solutions and informed Mr Perkin of her conversation with Mr Duford vis a vis pay i.e. that he should be paid £18 per hour and that she wanted a pay rise of some 55 per cent to £34,480. The Tribunal considers that at this time the Claimant despite some vulnerability and concern about the future

was still able to very much stand up for herself in seeking to utilize the situation to try and get herself and Mr Duford vastly improved terms.

25 Mr Perkin was also feeling vulnerable at this time and the situation just before he was to take over was described as a crisis situation. He was buying a business in a sector that he was not experienced in, without a clear and defined management team or almost, in fact any managers at all. It is not surprising that he was asking the Claimant for her views and also that he was leaning on Tony Gibbon who have previously had substantial dealings with the Swan and Jayne Thompson (132) who he trusted from a business perspective. The Tribunal considers that although he still intended for the Claimant to be part of the future he also held concerns as to precisely how that would map out taking into account her strong links with the previous regime.

26 Mr Perkin responded to the Claimant on 2 December (127-128) largely answering the points she had made and apparently trying to reassure her about matters going forward and Tony Gibbon's role as perceived at that time. The issue of the Claimant's pay rise is placed on hold although commenting that it is a substantial request and he asks for the license to be transferred. Objectively the letter is a wholly reasonable one that seeks to inform the Claimant of his present plans and also trying to minimize any concerns that the Claimant might have.

27 The Business changed hands the following day. There were further e-mails between the parties on 4 December. The Claimant asserts that she was "in the dark" as to what was going on at that time. The reality is that Mr Perkin was effectively, having to make it up on the spot as things were regularly changing

and the Tribunal finds that the Claimant was updated as best Mr Perkin could. The Tribunal accepts the rationale set out by Mr Perkin in respect of the meeting on 4 December (139) to which the Claimant was not invited. The Tribunal can also understand why the Claimant wrote to Mr Perkin in the way that she did (139-140) about this matter. At this point all were feeling vulnerable for differing reasons.

28 On 6 December Ms Curnock wrote to Mr Perkin regarding an issue with Mr Gibbon on the door of Drummonds where she asserted that he had actively allowed more people in against her express wishes. She raised the fact that she considered that this was typical of Mr Gibbon's behavior and that he had a vested financial interest in getting numbers up and she concluded that from this experience she believed her decision to resign was a correct decision. Ms Curnock passed this e-mail onto the Claimant who in turn passed it onto her mother.

29 There was a meeting on 7 December between the Claimant and Mr Perkin. Again no contemporaneous notes were taken but the Claimant provided a summary of it in her e-mail of 14 December (142-143) and Mr Perkin indicated in evidence that he accepted that it was a fair representation of the meeting. The Claimant raises further issues about Mr Gibbon and asks other questions about her role going forward. She also indicates that she will be at the Swan on 18 December because she is worried about capacity levels.

30 On 11 December Mr Perkin wrote an e-mail to all staff thanking them for their efforts announcing that Mr Gibbon and Mr Duford were stepping in as interim managers and thanking the Claimant for her help as well (141).

31 Mr Perkin responds on 18 December to the Claimant's e-mail of 14th (156-157). He apologizes for the short delay and mentions that the 2 weeks since he took the business over have been incredibly busy over the busiest trading period of the year. His explanation as to why the Claimant was simply one of his focuses as opposed to the prime focus appears reasonable. He confirms that the Claimant will hold the same role on her return from maternity leave and that her pay rise request is not feasible but a pay increment will be looked at again in April. He confirms that the Claimant can take her accrued holiday at the end of her maternity leave and whilst reassuring her that he is endeavoring to cover the management aspects of the business he makes it clear that if she wishes to return early from maternity leave then that is something she can elect to do and that she should inform him of that fact. The issue of the Claimant returning to the Swan is placed firmly in her court. Mr Perkin concludes by thanking the Claimant for her help. The Tribunal considers this letter to be informative and reassuring and sets out the position clearly. This e-mail probably marks the high water mark of the parties' relationship in these proceedings.

32 The Claimant attended on 18 and 19 December as KIT days. She had indicated that she was coming down to the Swan on one of those days because of concerns over door numbers but it was not made abundantly clear she was coming down under KIT. It appears that the Claimant attended and kept close attention on the numbers entering and took evidence in respect of the logs etc.

This seemed to lead to some confusion and irritation of some and led to an e-mail from Mr Perkin dated 22 December in which he sought to set down certain parameters about her returning (160-161). An issue in respect of salary being paid was also raised. It seems to the Tribunal that the door issue was caused by a lack of communication and the long running conflict between Mr Gibbon and the Claimant.

33 Following that e-mail there was further conversation on 23 December wherein the Claimant confirmed that she was not returning early and her first date back would be 28 March and that her maternity leave would end on 27 February. The Tribunal is satisfied that had she wanted to return before that date Mr Perkin would have facilitated the same as evidenced in his previous e-mail. Other issues were clarified in that discussion and Mr Perkin expressed his pleasure that the Claimant had committed to her return date as he could now plan for the first quarter of the year. The outcome of that meeting is set down in an e-mail dated 23 December (162-163).

34 Additionally in December the following matters had arisen. The Claimant had attended work for a couple of days in order to assist the Respondent with wage run for the month and word had got back to Mr Perkin that rather than being completely at the ease with the process as she had asserted she needed significant guidance from her father. Secondly, following on from the over-capacity incident that had concerned Ms Curnock the authorities were tipped off about a potential problem and Mr Perkin thought that person could be the Claimant. Thirdly, Mr Perkin was told on 11 December by Ms Curnock that she had observed the Claimant taking a bottle of Bacardi from the office on 6

December whilst she was clearing her possessions from the premises. Fourthly, there was evidence that the Claimant was forwarding on certain e-mails and other documents to her mother who was, of course, no longer a partner.

35 The Tribunal considers that it would be impossible for none of the above to colour Mr Perkin's view of the Claimant. We need make no finding about the Claimant's competence on the wages but we accept that an issue was raised with Mr Perkin. Likewise we need make no finding about whether the Claimant committed theft or not but we accept that Mr Perkin was informed of the incident by Ms Curnock. We consider that taking into account the whole of the evidence and Mr Perkin's credibility we are not prepared to find that he has been untruthful or is mistaken on this point. His evidence is supported by Mr Durford who explains that Ms Curnock had raised the matter with him first. Again, we accept Mr Duford's evidence which we considered unshaken after cross examination. We also accept that at least some information was passed onto the Claimant's mother by the Claimant because the Claimant told us herself. The precise extent of those disclosures does not matter.

36 We are also mindful that Mr Perkin was exceptionally busy at this time and so all of the above would have been an unwelcome distraction dealing with an employee who was on maternity leave in any event. We also accept his evidence that especially in relation to the theft allegation he was in a state of denial on account of his long association with the Claimant. We also form the view that Mr Perkin was quite capable of putting off until tomorrow all that was not absolutely necessary today, especially difficult issues. Ms Thompson's evidence supported that. Whilst it is odd that he allowed the Claimant to prepare

the wage run after a theft allegation we accept the explanation he gave that due to his knowledge of the Claimant his residual trust outweighed the new information which he really did not wish to believe although he knew he would have to address it as some point

37 We conclude therefore that all of the above made Mr Perkin rather more wary of the Claimant than he had been at the start of December but that he still considered her to be a part of the set up going forward (subject to some future enquiry). Indeed, had he wanted to be rid of the Claimant at that time, Curnock's allegation would have been the perfect basis to effect a summary dismissal for gross misconduct which would, had the disciplinary processes been appropriately followed, have been likely to have been deemed reasonable. He did not undertake that in December and we consider that that is indicative of an overriding desire to utilize the Claimant to his advantage in the future in the business coupled with the fact he had more pressing concerns at the time.

38 Having taken over the business it was reasonable for Mr Perkin to take such steps as were deemed necessary to run the business in a manner which seemed appropriate to him. If the business plan is to be believed much was required to set the business on the right path. It was for him to choose the individuals that he wanted to drive things forward. Mr Gibbon is a case in point. Clearly, the Claimant and Ms Curnock had no time for Mr Gibbon. On the other hand, Mr Gibbon knew the business well, seemingly, had good contacts and was a big character who seemingly sailed close to the wind from time to time. Whilst he may not have been everyone's choice to assist it is clear that he had certain

attributes that could help Mr Perkin and that he considered the pros and cons before reengaging him at a difficult time.

39 The Tribunal finds that the conversation on 23 December wherein the Claimant confirmed when she was returning was the catalyst for the formalization of the interim plan going forward into the first quarter of 2016. We are satisfied with the evidence given both orally and in his statement of the reason for the change to Mr Gibbon from the Claimant of the DPS role. Looking at the criteria for the role it would clearly be better to have your DPS regularly working at the site rather than on maternity leave. The change is not legally necessary but Mr Perkin's decision seems to be a sound business one to the Tribunal especially in light of what he was told. The fact that it was not made until the Claimant confirmed her maternity plans is also a factor which seems sensible and reasonable. A similar conclusion is made to the decision to formalize Mr Gibbon's position as maternity cover for the Claimant in the contract signed on 24 December and effective from 25 December. We accept that at that particular stage Mr Perkin was still trying to get to know the business and understand what would happen on a long term basis.

40 The Tribunal considers that the Claimant knew that Mr Gibbon was working at the Swan and that there was no necessity for her to be told that a contract for her maternity leave had been put in place. The Claimant could have been told that she was no longer the DPS and the reason for that because she should have been aware that her statutory responsibilities had been passed over to another person and the reasons for that. She did not become aware of that for a substantial period thereafter.

41 No doubt both parties experienced worry and concern throughout December 2015 as the business changed hands and all the uncertainties that went with that. By Christmas however, the crisis point had passed, Mr Perkin had his interim team and the Claimant had been reassured that she would return to the same role. The Claimant had determined to remain on maternity leave until February but was not wholly at ease with the new regime and one of the reasons for that was, we find, that she had picked up her mother's negativity about the sale of the business.

42 The Claimant's evidence on this point was not credible. She told us that she had no idea of her mother's views about the sale and did not discuss it with her in the lead up which seemed strange with a close, daily, working and personal relationship. Thereafter she was using her mother as a confidante passing her certain documents. It is likely that the Claimant's view was being influenced by her mother and it is likely that such influence was negative to the new regime.

43 By a letter dated 29 December 2015, Mr Perkin announced that following a review the Swan would not remain open in the day time. The Claimant and all staff were sent a copy of this letter. It appears that due to the vagaries of the post the Claimant received the letter a day later than others but that was certainly not the fault of Mr Perkin. It is an example of the Claimant ascribing blame to Mr Perkin where none really attaches.

44 Jayne Thompson had been announced as an investor at a staff party in December at which the Claimant attended. She was assisting Mr Perkin on an ad hoc basis and she told us that she decided that if Mr Perkin was, in due course going to raise the disciplinary issues with the Claimant then some evidence should be recorded. Nothing was ever obtained from Mrs Curnock in respect of the alleged theft which is odd and something that we have carefully considered in balancing whether or not she ever made the Bacardi allegation. On balance as stated earlier we believe she did make such an allegation. Mr Duford sent an e-mail relating to his discussion with Ms Curnock on 5 January.

45 On 6 January Mr Perkin wrote to the Claimant asking if she knew where certain HR files were and for information relating to Facebook (194-195). The Tribunal considers it to be a legitimate and reasonable enquiry. The Claimant's response is a tad defensive, which leads to a more formal response from Mr Perkin which leads to a slightly disproportionate response from the Claimant exposing the tensions she felt at that time. The Tribunal do not consider that that tension is objectively justified as the Claimant has made herself available to assist Mr Perkin to navigate around the business and it is a reasonable request on the part of Mr Perkin.

46 On 15 January Mr Perkin met Ms Curnock. She alleged that the Claimant's parents were skimming from the tills which meant that the money going through the books underestimated the profitability of the business. On the one hand that should have assisted Mr Perkin on his purchase of the business price wise but it also would have meant, if true, that he would have been cheated out of his share of the business for many years by the Claimant's parents if true.

47 The Claimant's maternity leave (and protected period) ended on 27 February and at that point she took holiday until 28 March. On 29 February the Claimant confirmed her return date and that she would like to have a meeting about any changes that had been made and to discuss flexible working hours. A meeting was arranged for 17 March. The Claimant was given no indication that the meeting would be about anything else other than the topics detailed above.

48 In the event flexible working and changes in the work place were not discussed at all. Mr Perkin had, by this point taken advice from an HR Consultant as well as Jayne Thompson. We find that Mr Perkin would have been quite happy to allow matters to drift but Ms Thompson had formed the view that matters had to be considered.

49 Mr Perkin did not really know what to do and so used this meeting as the opportunity to tell the Claimant that certain matters had arisen of a disciplinary nature which would need to be resolved. The clear impression we get from the notes are that Mr Perkin was distinctly uncomfortable about raising these matters. The Claimant denied the allegations that were mentioned to her and made representations in response. The Tribunal could not detect that her position was compromised in any way by the lack of prior notice as to the allegations.

50 Mr Perkin did raise the issue that he had been told that the Claimant's parents may have been "skimming" money from the business but he did so in order to contextualise the potentially difficult period ahead. The Tribunal does

not find that anything that Mr Perkin did at that meeting constituted “improper behaviour” and certainly do not accept, having read the transcript, that the Claimant felt any duress relating to the same and reject her evidence in that regard. Accordingly, we find that section 111A of the Employment Rights Act 1996 applies to parts of that meeting and we take no notice of either the content or the occurrence of those parts of the meeting covered by that section of the Act.

51 The Tribunal also finds that it was entirely reasonable for the Claimant to be suspended on that day because even on the Claimant’s own case and observations the allegations against her were serious ones. We have dealt with the reason for delay up until this point earlier but we find it was a symptom of Mr Perkin’s own character. In addition up until the end of February the Claimant had not been in the workplace as she remained on maternity leave.

52 The Claimant was due to return to work after her holiday on 28 March and would have done but for her suspension. That suspension was lifted on 30 March and the Claimant was asked to attend work from 7 April. Mr Gibbon was appointed as Managing Director from 6 April. Before the purchase of the business the Claimant had effectively been at the second tier of management beneath her parents whom the Tribunal finds that she reported into.

53 At the end of her maternity leave and following the holiday and the short period of suspension the Claimant returned to her previous named role and that did not change on account of Mr Gibbon’s appointment. The operational structure remained the same with three tiers of management. The Tribunal did

not consider that there was any form of redundancy situation at that time and that the key thing for the Tribunal is to consider whether or not there was any actual change to the Claimant's job role on a day to day basis.

54 We note that there was a degree of flexibility required of the Claimant and indeed all the staff. That flexibility is reflected in the Claimant's contract of employment (p.57) where the Claimant is required to carry out any additional or alternative roles that the Company may reasonably require. The Claimant told us that she was used to working on the bar for one day a fortnight as at that time was what was reasonably needed by the business. We note that in an e-mail dated 10 April sent to both Mr Duford and the Claimant by Mr Gibbon, bar staff hours had been cut because of the need to reduce the wage bill, Mr Duford's hours had been cut and both Mr Duford and the Claimant would be expected to work on the Swan bar during the week. The Tribunal is satisfied that such changes were catered for within the Claimant's contract and were reasonable response to difficult trading conditions.

55 The Claimant raised other issues about tasks that were being undertaken by others that she had done herself which we considered carefully. We do not accept that her position was deliberately or indeed accidentally eroded in any way shape or form or that she was treated any worse than any other member of staff or indeed that there was any material difference to the role she played.

56 The Claimant and Mr Perkin had a meeting upon the Claimant's return on 7 April. An account of that meeting is contained in an e-mail from the Claimant on the same day. The Claimant was told that a Ms Jeffcoat was being engaged

to undertake an investigation into the disciplinary issues. The Claimant made it clear that she was intending to raise a grievance about the manner in which the subject of the discipline issues had been broached. It is unclear to the Tribunal whether or not Mr Perkin indicated that the disciplinary process would be put on hold pending any grievance.

57 Mr Perkin informed the Claimant at that meeting that she was no longer the DPS and that he did not intend to return that role to her until she was back up to speed. In actual fact, it seems from Mr Perkin's witness statement, and we accept, that the real reason that he did not place her back as DPS was the risk that one way or another her time with the Respondent might be limited either by dismissal or resignation.

58 On 11 April, Mr Perkin wrote to the Claimant asking that if there was to be a grievance then he would appreciate it being submitted by the following Friday. The grievance was lodged on 19 April and is a complaint about the meeting of 17 March detailed above and the duress it had placed her under and the fact that she considered that she had been demoted on account of a number of issues and that Mr Perkin was trying to oust the Claimant from the business because of her association with her parents.

59 The grievance meeting was set for 29 April 2016 and it was to be conducted by Jayne Thompson. The Tribunal considers that she was a sensible and reasonable choice to consider the grievance. There is an issue raised about whether it was a grievance hearing or a grievance investigation hearing. In some ways the distinction is a matter of no consequence. What is clear is that the

Claimant raised the issues that she wanted to and Jayne Thomson responded to them. The Tribunal do not consider that Ms Thompson did anything other than listen and seek to make findings on the matters that had been raised. The reality is that, by that time, the Claimant was sufficiently upset and angry with the Respondent that it was unlikely that anything anyone did would have assuaged her concerns or feelings. The tribunal does note however, that there were attempts by the Respondent to engage the Claimant within the business by for example being engaged in the re-launch of the Lunar Bar.

60 On 13 May, Ms Thompson responded to the grievance with her outcome letter (p.372-375). The Tribunal have considered that document carefully. It is measured in tone and the Tribunal consider that the findings therein are detailed and ones to which a reasonable person considering the grievance could have come to. There is a right of appeal given at the end of that document. On 16 May the Claimant went off work for work related stress.

61 On 20 May, the Claimant wrote to Mr Griffin expressing disappointing and raising a range of issues. She resigned with immediate effect and her employment terminated on 20 May 2016. That resignation was accepted by way of a letter dated 30 May.

62 **Allegation 1**

Failing to keep the Claimant informed of changes that took place whilst she was on maternity leave and in particular in respect of changes in individual's roles. The Tribunal does not accept that the Respondent did fail to

keep the Claimant informed of changes during her maternity leave. Indeed the evidence suggests that the Claimant had a number of meetings where information was imparted. She was told that Mr Gibbon was getting back involved with the business and she was not happy with that even though it was clear that that was originally only for the maternity period. He became Managing Director after the protected period had concluded. We have found at paragraph 40 that the Claimant was not informed that during her maternity leave Mr Griffin had made a decision to make Mr Gibbon the DPS but we are satisfied that at that time that was a decision that was governed by the reasonably perceived needs of the business in having a DPS on site and at that time was only designed to be for the period of the Claimant's maternity leave. We are fortified in that finding by the timing of the application for the change which was immediately after the Claimant had confirmed when she would be returning and the fact that Mr Gibbon's contract at that time was specifically stated to be for maternity cover. The Tribunal does not consider that the failure to inform the Claimant of the change to the DPS to amount to less favourable treatment pursuant to section 18 EqA nor a detriment under section 47C nor a detriment for a prescribed reason.

63 We find that the Claimant was told about Jayne Thompson's role within the business and that she was involved in the re recruitment of Andy Duford. We reject any suggestion that she was not kept properly informed.

64 **Allegation 2**

Downgrading the Claimant's position and removing her from ordering items, setting up rotas, management team meetings and interviewing new

staff and speaking to reps about new products and removing her as the DPS.

65 We have considered the evidence of both main parties on this point. We had concerns about parts of the Claimant's evidence which we found to be self-serving and at times contradictory. Mr Griffin gave his evidence in a far more balanced fashion accepting at times when things could have been done better. We prefer his evidence on this point that the Claimant was not downgraded and nor was she removed from key tasks save for the role of DPS. We have found as a fact that she remained at the same tier of management and that she undertook such tasks as she always had done.

66 The Claimant was entitled to her old job back or if not reasonable practicable to another job that was both suitable and appropriate for her to do. Save for the DPS role we find that the Claimant did return to her old job. The DPS role however was a fundamental and substantial part of her role and we do not accept that upon her return from maternity leave, her old role without the DPS was a suitable and appropriate alternative for her. That decision was taken on 6 April and communicated on 7 April. We will return to time limits in due course.

Allegation 3

67 Making the Claimant's position redundant

68 The Tribunal has been unable to see that the Claimant or the role she undertook has been made redundant at any time. The term redundant has a

specific meaning under section 139 of the ERA and the Tribunal cannot see that any of redundancy descriptions fit the facts of this case so far as they pertain to the Claimant. The Respondent had not ceased to carry on the business that the Claimant was employed in nor was there any sense that the requirements for the work she was employed to do had diminished or was likely to diminish. Her position in the second strata of management remained. We are further unable to see how she became redundant in the non-technical sense of the word either. This allegation is dismissed.

Allegation 4

69 Not giving the Claimant the opportunity to apply for the role of Managing Director role.

70 This opportunity arose after the Claimant's protected period had come to an end and Mr Gibbon was appointed to this role on 6 April. We have already recorded above that at this time the Claimant was not placed back as DPS was because of the ongoing grievance and the disciplinary matters that were on hold because of the grievance and we find that was also the reason why the Claimant was not considered for the role of and promotion to Managing Director. It had no causal connection to her gender or to anything relating to her maternity leave.

71 Allegation 5

Removing her as the DPS

72 We have already found that the initial removal of the Claimant in December from the role of DPS was not a detriment and / or less favorable treatment. It was a role best done by somebody working on a day to day basis in the Bar. It is something that probably should have been done by the previous management but was not.

Allegation 6

73 **Not having any consultation with her about the redundancy of the post roles contrary to section 18.**

74 The Tribunal has already found that there was no redundancy situation and accordingly the need or otherwise for consultation in the context of a redundancy does not apply and this allegation is dismissed.

Allegation 7

75 **Requiring her to work behind the bar as the only person when she was supposed to be the Senior General Manager.**

76 This was a natural consequence of the need to reduce bar staff to save costs as part of the plan to resurrect the fortunes of the bars. Mr Duford also had to work more behind the bar and we are satisfied that the same was contemplated in the flexibility of the Claimant's duties contained within her contract. This state of affairs only took place some time after the Claimant's return from maternity leave and we do not consider tht the same amounts to a

detriment or indeed is linked to her sex as the same was applied to staff whatever their gender.

Allegation 8

77 The Claimant was not offered the role of Managing Director contrary to Reg. 10 MPLR.

The Tribunal is satisfied that this decision was made after the Claimant had returned from her maternity leave and the decision was not linked to her maternity as detailed under Allegation 4 above.

Allegation 9

78 The Claimant was not able to return to the role of Senior General Manager and Designated Premises Supervisor in which she was employed before her maternity leave.

We find that the Claimant did return to her role of Senior General Manager but did not return to her role of Designated Premises Supervisor and we have dealt with this claim above.

Allegation 10

79 The Claimant's position no longer involved her in ordering items, setting up rotas, management team meetings and interviewing new staff and speaking to reps about new products and removing her as the DPS.

This matter has been rejected above.

Constructive Dismissal

80 The Claimant resigned on 20 May and asserts that it was in response to the respondent's repudiatory breach of the implied term of trust and confidence. The Tribunal has to consider whether there was any reasonable and proper cause for the conduct of the employer and whether the conduct was calculated and likely to destroy and seriously damage the relationship of trust and confidence.

81 Whilst no doubt the Claimant believed and still believes what she states within her letter of resignation the Tribunal simply do not accept that her conclusions as set out in that letter are valid and in accordance with our findings. For the avoidance of any doubt we do not accept that:

- That the outcome of the grievance viewed as a whole was incorrect;

- That the outcome was pre-determined;

- That Jayne Thompson did not seek to deal with the grievance independently;
- That the process was adversarial in nature;
- The Respondent was at fault for placing the disciplinary matters which had been properly instigated on hold during the grievance process.

82 We have already found as a fact that in almost all respects the Claimant's complaints throughout all of this process were not well founded and that the Respondent has not acted in the manner which she has described. We accept that the working relationship had deteriorated until such a point where it could operate no more but we do not accept that it did soon account of the Respondent's repudiatory breaches of the implied term of trust and confidence. Accordingly, the Claimant has not been dismissed and the unfair dismissal claim fails.

81 From the above findings the Tribunal finds that the only allegation that is well founded is the failure upon the Claimant's return after maternity leave to return to the job in which she was employed before her absence pursuant to Regulation 18 and 18A of MPAL limited to the failure to give her back the role of DPS as the Tribunal find that in all other regards the Claimant did return to a role which had the same seniority and similar rights that she had before the absence and on the same terms and conditions. That decision was communicated on 7 April.

82 The Claim was not lodged until 16 September 2016 and even taking into account the ACAS EC period of 6 June to 6 July means that the breach set out above is out of time by a substantial length of time.

83 In those circumstances the Tribunal has to consider whether it would be just and equitable to extend time. No evidence or indeed submissions were given as to why it would be just and equitable to extend time and in the absence of any positive averral in that regard the Tribunal finds that it would not be just and equitable for time to be extended and consider that it does not have jurisdiction to deal with the Claim.

84 All claims therefore are dismissed.

Employment Judge **Self**

Date 29 September 2017

JUDGMENT & REASONS SENT TO THE PARTIES ON

29 September 2017

FOR THE TRIBUNAL OFFICE