



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE HALL-SMITH

MEMBERS: Ms H Bharadia
Mr N Shanks

BETWEEN:

Ms K Sommerford

Claimant

AND

United Hygiene Services Limited

Respondent

ON: 11, 12, 13 October 2017; (Chambers) 16 October 2017

APPEARANCES:

For the Claimant: Ms P Harwood, HR Consultant

For the Respondent: Ms R Dickinson, Counsel

RESERVED JUDGMENT

THE UNANIMOUS JUDGMENT OF THE TRIBUNAL is that:

The Claimant's complaints of pregnancy and maternity discrimination are well founded to the extent set out in the Reasons to this Judgment.

REASONS

1. By a claim form received by the Tribunal on 11 January 2017 the Claimant, Ms Kirsty Sommerford, brought complaints of direct discrimination on grounds of sex or maternity, indirect discrimination on grounds of sex, harassment on grounds of sex, victimisation and detriments on grounds of making protected disclosures against the Respondent, United Hygiene Services Limited.
2. At the Hearing the Claimant was represented by Ms P Harwood, HR Consultant, who called the Claimant to give evidence before the Tribunal.

3. The Respondent was represented by Ms R Dickenson, Counsel, who called the following witnesses on behalf of the Respondent, namely Ms Vicki Crawte, Group Sales Director and Kane Benham, Operations and Environmental Director. There was a bundle of documents before the Tribunal.

The Issues

4. The issues to be determined by the Tribunal were considered at a Preliminary Hearing on 3 March 2017. As a result of the Preliminary Hearing the Claimant prepared a Scott Schedule, which clearly identified seventeen grounds of complaint to be determined by the Tribunal. Accordingly, the issues involved the following:
 - 4.1 On 4 April 2016 the Claimant was told not to inform her colleagues of the fact that she was pregnant. The Claimant was socially isolated as a consequence. Pregnancy and maternity discrimination contrary to Section 18 of the Equality Act 2010; direct discrimination on the grounds of sex, Section 13 of the Equality Act 2010.
 - 4.2 On 17 May 2016 the Respondent failed to provide the Claimant with a copy of the risk assessment. The Respondent failed to address the issues arising from that risk assessment, in particular the need to adjust the Claimant's workstation and ? duties. The Claimant's health and safety was put at risk as a consequence. This is an allegation of pregnancy and maternity discrimination; direct discrimination.
 - 4.3 On 13 June 2016 the Respondent instructed the Claimant to work from the Regus Centre with effect from 20 June 2016, despite the fact that an inadequate workstation was provided contrary to the findings of the risk assessment. The Claimant's health and safety was put at risk as a consequence. This is an allegation of pregnancy and maternity discrimination and direct sex discrimination.
 - 4.4 On 20 June 2016 the Claimant complained by telephone to Vicki Crawte that the workstation was inadequate. This was a protected disclosure. This is an allegation under Section 47B of the Employment Rights Act 1996.
 - 4.5 On 23 June 2016 the Respondent sent a notice of concern letter to the Claimant. As a consequence the Claimant's career prospects and status within the Respondent were damaged. This was also a detriment for the purposes of the Claimant's public interest disclosure claim. This is an allegation of pregnancy and maternity discrimination and direct sex discrimination and a claim of detriment under Section 47B of the 1996 Act.
 - 4.6 On 29 June 2016 the Respondent conducted the Claimant's twenty five week risk assessment in front of four male colleagues. This had the intention or effect of humiliating the Claimant. This is an allegation of pregnancy and maternity discrimination, direct sex discrimination, harassment related to sex contrary to Section 26 of the 2010 Act.

- 4.7 On 29 June 2016 the Respondent removed the Wyndeham Account from the Claimant. This caused the Claimant to suffer financial loss and distress. This is an allegation of pregnancy and maternity discrimination, direct sex discrimination and unauthorised deduction of wages.
- 4.8 On 4 July 2016 the Respondent informed the Claimant that her targets were to be increased. This caused the Claimant to suffer distress and may lead to financial loss. This is an allegation of pregnancy and maternity discrimination and direct sex discrimination. Alternatively the Claimant contends that the Respondent applied the provision, criterion or practice of increasing the targets of employees carrying out duties similar to the Claimant, which put her at a significant disadvantage.
- 4.9 On 4 July 2016 the Respondent informed the Claimant that her sales area was to be increased from London and the southern counties to include Wales, Gloucester and Bristol. This is an allegation of pregnancy and maternity discrimination, direct sex discrimination. The Claimant relies on the comparators Scott Russell and Ian Matthews. Alternatively the Claimant claims that the Respondent applied the provision, criterion or practice of increasing the sales region of employees carrying out the duties similar to the Claimant, which put her to a particular disadvantage.
- 4.10 On 5-7 July 2016 and 18-19 July 2016 the Respondent sent a series of emails to the Claimant referring to her targets, resigned contracts, and deadlines, the language and contents of which were inappropriate. This is an allegation of pregnancy and maternity discrimination, direct sex discrimination and harassment on the grounds of sex.
- 4.11 On 18 July 2016, 3 August 2016 and 19 September 2016 the Respondent failed to hold a return to work meeting on the Claimant's return to work. The Claimant suffered distress as she had no reassurance that the appropriate changes to her working conditions had been made. This is an allegation of pregnancy and maternity discrimination, and direct sex discrimination.
- 4.12 On 18 July 2016 the Respondent wrote to the Claimant inviting her to a disciplinary hearing on 21 July 2016. The Claimant suffered distress at the threat of disciplinary action and/or dismissal. This is an allegation of pregnancy and maternity discrimination, direct sex discrimination. The Claimant relies upon the comparator, Paul Ryan.
- 4.13 On 26 July 2016 the Claimant raised a grievance into a number of the complaints set out above. This is the protected act for the purposes of the Claimant's victimisation claim. This was also a further protected disclosure as the Claimant alleged the Respondent failed to comply with its legal obligations under the Equality Act 2010 by subjecting her to discrimination. This is an allegation of victimisation, Section 27 of the 2010 Act and under Section 47B of the 1996 Act.
- 4.14 On 27 July 2016 the Respondent removed the Claimant from the Pureprint Account. The Claimant suffered a loss of commission as a result and failed

to meet her July sales target. This is an allegation of pregnancy and maternity discrimination, direct sex discrimination, unauthorised deduction from wages, and victimisation. The Claimant relies upon Ian Matthews as a comparator.

- 4.15 On 3 August 2016 the Respondent conducted the grievance hearing, which was conducted by Vicki Crawte, despite the fact that VC was responsible for a number of the acts complained of in the Claimant's grievance. This is an allegation of pregnancy and maternity discrimination and direct sex discrimination.
- 4.16 On 8 August 2016 the Respondent excluded the Claimant from a number of meetings and activities isolating her from her colleagues. These included the sales meeting on 8 August 2016, the ? team meeting on 16 August 2016 and the Respondent's summer party. This is an allegation of pregnancy and maternity discrimination, direct sex discrimination, detriment on grounds of making a public interest disclosure. The Claimant relies upon the comparator, Paul Ryan.
- 4.17 On 21 and 22 September 2016 the Claimant emailed MT and VC but received no reply. She received a number of emails from Kane Benham relating to a period of holiday or sickness absence. The contents and language of the emails were inappropriate. This is an allegation of harassment on the grounds of sex.

The Facts

5. The Respondent, United Hygiene Services Limited, is engaged in the business of providing hygiene services to the manufacturing, print, aerospace, rail and fleet maintenance sectors. The Respondent also provides services to the Ministry of Defence.
6. The Claimant, Kirsty Sommerford, commenced her employment with the Respondent on 17 May 2010. On 1 April 2015 the Claimant was promoted to the position of Customer Services Manager. The Claimant's job role involved her in working four days a week travelling to clients and potential clients and one day a week undertaking administration work in the Respondent's office at Slinfold in West Sussex.
7. There was no issue that the Claimant was a highly conscientious and valued member of the Respondent's staff.
8. On 4 April 2016 the Claimant informed her line manager, Vicki Crawte, Group Sales Director, that she was pregnant. Vicki Crawte instructed the Claimant that she was not to inform her colleagues until the Respondent's Managing Director, Peter Evans was informed. The Tribunal accepted the Claimant's evidence that Vicki Crawte told her that she would be trying to find the right time to tell him.
9. The Tribunal was driven to the conclusion that an instruction to the Claimant that she was unable to inform her colleagues that she was pregnant until the

Managing Director had been told, reflected an approach on the part of Vicki Crawte that the news of the Claimant's pregnancy would be unwelcome to the Managing Director and that accordingly she needed to find an appropriate moment to tell him. Unsurprisingly, as the Tribunal considered, the Claimant felt that Vicki Crawte's reaction to the news of her pregnancy was negative and that she worried about the reaction of both the Managing Director, Peter Evans and the Respondent company in general.

10. On 14 April 2016, ten days after the Claimant had informed Vicki Crawte that she was pregnant the Claimant and Vicki Crawte exchanged text messages, page 111, namely:

"Morning VC. Did you speak to Peter yesterday? Xxx

Hey Schmirsty! No I didn't get any time. It'll be today if I get time. I'll let you know as soon as I do xxx".

11. The Tribunal found that the Claimant's belief that there had been a negative reaction to the news of her pregnancy was reinforced by the fact that it was not until 3 May 2016 that Vicki Crawte informed the Managing Director Peter Evans about the Claimant's pregnancy. There followed the following exchange of text messages on 3 May 2016:

Just so you know I have told Peter.

Thank you. How did he take it?? Honestly?

He's OK. It's not the easiest job to cover LOL! But he was fine ... honestly

Oh good? That's a weight off my mind!!! I can start telling people now!

Yes you can.

12. The Claimant was relieved that she could now inform her colleagues, as she had been worried about the reaction of the Respondent company and she found it stressful being unable to share the news of her pregnancy with her colleagues.
13. On 17 May 2016 the Claimant's immediate line manager, Rosie Reynolds, undertook a risk assessment of the Claimant pages 116-117. The risk assessment identified that the Claimant wanted a new chair and that she needed air conditioning in her car. The Respondent provided air conditioning but on the evidence before the Tribunal, there appeared to be no issue relating to a new chair, although subsequently the Claimant requested a back support.
14. On 13 June 2016 the Claimant was instructed to work from the Regus Centre with effect from 20 June 2016. The Claimant was not the only employee who was asked to work at the Regus Centre and all customer service managers

were asked to work at the Regus Centre because the space at Slinfold was limited. The Regus Centre rents office space to companies such as the Respondent, and the Respondent had a designated seating area for its employees at the Centre.

15. On 20 June 2016 the Claimant had telephoned Vicki Crawte to inform her that her workstation was inadequate and involved sitting on a bench with a non-adjustable chair. Vicki Crawte agreed that the Claimant could use a private office for the day and the Claimant texted Vicki Crawte to inform her that she had been given a room which had a proper chair and desk so that it *“was all good now”*.
16. The Tribunal found that the Claimant made no further complaints about her working conditions at the Regus Centre until a grievance meeting on 3 August 2016. The Claimant had raised a grievance in a letter dated 26 July 2017, pages 180 to 181, but although she complained about being shut out of the Slinfold office, she made no complaint about seating arrangements or her workstation in her grievance letter.
17. The Claimant alleged that informing Vicki Crawte that the seating available at the Regus Centre was unsuitable for her amounted to a protected disclosure. It was clear to the Tribunal that the Claimant did not understand the concept of whistle blowing when it was put to her in cross examination that she had been raising legitimate concerns but not in the wider public interest. The Claimant replied that she did not know what the question put to her in cross-examination was related to.
18. On 23 June the Respondent sent the following letter to the Claimant, page 121, which was headed Performance During June. The letter included the following:

I am writing regarding your sales performance so far in June. You have currently signed £40.84 WRV of your £110 target. This equates to 37% of your target.

Due to this I am concerned that you may not achieve full targets this month.

Please send over your plan to achieve full target during June to me by 9.00am tomorrow morning. This must include how the remaining £69.16 would be achieved including customer names and values along with the date they will be signing or signing of a ? target and how you will achieve this.
19. The Claimant alleged that the letter amounted to pregnancy and maternity discrimination, direct sex discrimination and a detriment under Section 47B of the Employment Rights Act 1996. A male colleague of the Claimant, Paul Ryan, was sent a similar letter on the same date in circumstances where he had achieved 55% of his target.
20. The Tribunal accepted the evidence of Vicki Crawte that sending letters to

employees, who had not achieved their target, was a new procedure and had revived an earlier process when the Respondent wrote to employees about target issues rather than pointing out the issue orally. In her evidence Vicki Crawte thought that the target was achievable and the Claimant did not challenge the fact that she had achieved 37% of her target so far in the month of June 2016.

21. The Claimant relied upon male comparators identified as Scott Russell and Ian Matthews, who had not achieved their targets, but Scott Russell and Ian Matthews were Business Development Managers, and not Customer Service Managers such as the Claimant and Paul Ryan. The letters were only sent to the Customer Service Managers, namely the Claimant and Paul Ryan.
22. On 29 June 2016, the Respondent undertook a twenty five week risk assessment of the Claimant at the Respondent's Slinfold office. The assessment was carried out in a boardroom in front of four male members of staff. Unsurprisingly, as the Tribunal considered, the Claimant requested that the risk assessment should be carried out in private and not in front of male colleagues, but the Claimant was informed that there was nowhere else to do it.
23. The assessment was again undertaken by Rosie Reynolds, and the Tribunal was surprised at the insensitivity of Rosie Reynolds in not complying with the Claimant's request. We considered that the four male members of staff present should have been asked to leave the room for the duration of the assessment. The Claimant clearly felt embarrassed and humiliated at discussing personal issues relating to her pregnancy in front of her male colleagues.
24. The Claimant complained that she was not given copies of her risk assessments despite her requests. The Claimant was eventually provided with copies of her risk assessments on 3 August 2016.
25. On 29 June 2016 an account that the Claimant had been working on, the Wyndeham Account, was removed from the Claimant. The Tribunal accepted the evidence of Vicki Crawte that there had been difficulties with the account and that it was taken over by the National Group Manager, Mark Tomlinson, because it was time sensitive in circumstances where a competitor was showing an interest, and the Respondent needed to act quickly.
26. On 4 July 2016, the Claimant together with all the Respondent's staff attended a presentation where they were informed that targets were being increased with effect from the same day, 4 July 2016. The Claimant was provided with a printout of the presentation, pages 133-145. Targets were increased for all Customer Service Managers and the Claimant's sales area was also increased.
27. There was an issue between the parties as to whether the Claimant was informed that she was not expected to increase her targets or to service the increased sales area until after she returned from maternity leave. It was

Vicki Crawte's evidence that she had expressly informed the Claimant that the increase in targets and an expanded region would not apply to her until after she returned from maternity leave. The Tribunal accepted the evidence of Vicki Crawte in circumstances where the Claimant did not undertake work to the level of the increased targets nor did she cover the increased area. Vicki Crawte in any event stated that the increased targets were achievable.

28. The Claimant contended that the increased target and area amounted to a provision criterion or practice which put her to a particular disadvantage. The Tribunal accepted that if it had been the case that the Claimant was required to undertake significant periods of driving in the course of her employment, it would have put her to a particular disadvantage as a pregnant woman. However in circumstances where, as we found, the Claimant had been expressly informed that she was not required to work to a level of increased targets or to undertake driving in an extended area, the Claimant did not suffer any disadvantage.

29. On 8 July 2016 the Claimant was signed off work for a week with work related stress. The Claimant returned to work on Monday, 18 July 2016 for one day when she was again signed off for two weeks with work related stress on 19 July 2016.

30. The Claimant complained about a number of emails that she received from Mark Tomlinson, the Respondent's National Group Manager, during the period 5-7 July 2016 and 18-19 July 2016. By way of example in response to a query from the Claimant on 7 July 2016 about the new targets which had been announced on 4 July 2016, Mark Tomlinson replied, page 153:

Also in our meeting on Monday you were clearly told the new targets went up from 4/7/16. You were given a memo July 2016 target figures stating this in writing and verbally during the PP presentation.

It is very clear communication. Can I suggest you write things down if you forget or misinterpret conversations in future.

31. The Tribunal considered that although some of the communication from Mark Tomlinson could be interpreted as somewhat blunt, we did not consider that they represented anything more than the type of communication which can surface in email exchanges between a manager and a member of staff that he or she manages. We found no evidence to support any contention that the content or tone of the communications complained about crossed the threshold into direct sex discrimination or maternity and pregnancy discrimination of the Claimant.

32. Further we did not conclude that the communications complained about involved harassment of the Claimant related to her sex or pregnancy. Further the Tribunal noted that following the Claimant's complaints about Mark Tomlinson's emails to her, complaints which she raised in a subsequent grievance, were upheld and Mark Tomlinson was directed to apologise to the Claimant, which he did, and the grievance outcome stated that management

courses for Mark Tomlinson to attend would be arranged and that all correspondence between Mark Tomlinson and the Claimant would be copied to Vicki Crawte to enable her to monitor the situation on a continuous basis going forward.

33. On 18 July 2016 Vicki Crawte wrote the following letter to the Claimant page 162:

I am writing to advise you that you are required to attend a disciplinary meeting at 3pm on Thursday, 21 July in the boardroom at our Slinfold depot.

At this meeting the question of disciplinary action against you, in accordance with the company disciplinary procedure, will be considered with regard to:

- **Falsification of lead data**
- **Underperformance during quarter one**
- **Poor participation during sales meetings”.**

34. The Respondent accepted that the reference to a disciplinary meeting was an error and that the letter should have referred to an investigatory meeting. Clearly the Claimant was upset by the receipt of such a letter, but the issues identified in the letter were not followed up. There had been some concern that the Claimant had alleged that companies had been closed down when it had not been the case, but on investigation Vicki Crawte found that there was no substance to the allegation and the issues raised in the letter were not further pursued by the Respondent.

35. It was common ground that on her return to work following a sickness absence, the Respondent failed to hold a return to work meeting with the Claimant. The Claimant alleged this amounted to pregnancy and maternity discrimination and direct discrimination. The Respondent Staff Handbook, page 78 stated the following:

You will be required to attend a return to work interview after any absence due to sickness or injury.

36. It was the Respondent's case that the failure to hold return to work interviews with the Claimant was because on 18 July 2016, there was nobody available to undertake a return to work interview and the Claimant went off sick again on the following day, 19 July 2016. On her return to work on 3 August 2016 there was no return to work meeting but there was a grievance meeting with the Claimant. Finally on 19 September 2016 when the Claimant returned to work after a further period of sick leave, she was provided with a form, which had been provided to her to complete. The last day the Claimant attended work was 19 September 2016

37. The Respondent always accepted that matters should have been handled better in relation to the Claimant. The Tribunal approached the Respondent's

assertion that things should have been done better with caution in circumstances where an acknowledgement might be made for tactical reasons in circumstances where it is unable to provide a credible reason for allegations involving alleged discriminatory conduct.

38. However in the present case the Tribunal found that the Respondent was genuine in its acceptance that it should have handled matters better, and on the evidence we did not conclude that there was a discriminatory reason for the failure to hold return to work interviews with the Claimant. The Claimant was not driving long distances as we found, her targets had not been increased, and the only issue complained of by the Claimant was her chair but we found that the Claimant had not raised any issue with her seating arrangements after 20 June 2016.
39. On 26 July 2016 the Claimant raised a grievance to Vicki Crawte pages 180-181. In her letter the Claimant stated she had been hoping for a return to work meeting on 18 July 2016 to discuss the reason why she was stressed with work and the fact that she had been provided with the "disciplinary" letter. The Claimant listed eight concerns including unrealistic deadlines, the letter of concern relating to her June target, the increased target identified at the presentation on 4 July, the removal of large accounts, the receipt of emails which she alleged were bullying, being shut out of the Slinfold office and being made to work in a shared office centre which made her role harder and increased distances to travel and an increase in work.
40. The Tribunal noted that although the Claimant complained about working at the Regus Centre, there was no reference to the seating arrangements or to her workstation. Vicki Crawte arranged a grievance meeting with the Claimant on 3 August 2016 at Slinfold.
41. The Claimant later complained about the involvement of Vicki Crawte in the grievance process but Vicki Crawte had asked the Claimant whether she was happy for her to hear her grievance and the Claimant agreed. The Claimant alleged that there was a conflict of interest in the involvement of Vicki Crawte in her grievance on the ground that Vicki Crawte had been involved in a number of issues involved in the grievance. The Claimant alleged that the involvement of Vicki Crawte in the grievance process amounted to pregnancy and maternity discrimination and direct sex discrimination. The Tribunal noted the following exchange of emails between the Claimant and Vicki Crawte dated 27 and 28 July 2016, page 179.

Dear Kirsty

I am writing to acknowledge receipt of your email below.

Please confirm if you would like this matter to be dealt with by me or if you would like me to forward this on to be dealt with by someone other than me?

Dear Vicki,

I am happy for you to deal with this In the first instance.

With kind regards

42. we considered that this allegation was entirely without foundation. We further considered that elevating this complaint in to serious allegations of pregnancy and maternity discrimination and direct sex discrimination undermined the Claimant's credibility. There was no evidence before the Tribunal which supported any contention that the involvement of Vicki Crawte in the Claimant's grievance had involved any less favourable treatment of her.
43. On 10 August 2016 Vicki Crawte wrote to the Claimant informing her of the outcome of her grievance, pages 212-214. The Tribunal considered that the outcome was very largely in favour of the Claimant. In relation to the issues involving bullying emails, her workstation, increased area and return to work meetings the outcome letter included the following:

At no point prior to this grievance did you raise this issue with me. I will be addressing issues you have raised related to Mark Tomlinson who will be apologising to you face-to-face when you both meet. I will also be arranging some management courses for Mark to attend and would like all correspondence between Mark and yourself to have me copied in so that I can monitor the situation on a continuous basis going forward.

Following receipt of your photographs of the seating at the local Regus Centre I can confirm that this does not offer the correct back support. I have reviewed the desk spaces at Slinfold and with immediate effect reinstated that you are working from here on your administration days. At no point prior to this grievance did you raise this issue with myself and I would also point a ? on our findings to the Centre for review.

As discussed on Monday, 4 July during a one-to-one you are not expected to cover Gloucester, Wales and Bristol until you return to work following your maternity leave. At no point following your one-to-one and prior to this grievance did you raise this issue or indicate you were unsure what was being asked of you at the timeline set out.

44. In relation to the return to work interview issue the letter stated

you also mentioned at the grievance meeting how you did not receive a return to work interview following your first period of sickness of 8-14 July. This was not arranged on the 18th due to Mark Tomlinson and I having interviews that day. The following day you were signed off for a further two weeks. If any points have not been covered in this grievance process please let me know and I will arrange for a return to work interview to be conducted.

45. The Claimant contended that her grievance letter of 26 July 2016 amounted

to a protected act for the purposes of Section 27 of the Equality Act 2010 and also involved a protected disclosure namely that the Respondent had failed to comply with it's legal obligations under the 2010 Act by subjecting her to discrimination.

46. The Claimant alleged that the Respondent had excluded her from a number of meetings namely a sales meeting on 8 August 2016, a Slinford team meeting on 16 August 2016 and the Respondent's summer party.
47. In relation to the sales meeting on 8 August 2016, the meeting had been arranged to take place in Northampton to enable staff to attend from various parts of the country. The Claimant was not excluded from the meeting as she alleged, but had pointed out in emails to Vicki Crawte that she was unable to attend the meeting having regard to the distance involved from her home in Sussex and the timing of the meeting. Various options were proposed namely arranging someone to drive the Claimant there and back on the Monday of the meeting, arranging for her to stay overnight or she could choose not to attend the sales meeting. The Claimant enquired whether there would be any remuneration for her for travelling up on Sunday and when told that there would not be remuneration Vicki Crawte proposed that the Claimant should work from home on Monday and treat the day as a normal administration day. The Tribunal considered that the Claimant had unjustifiably elevated this issue into a complaint that she had been excluded from this meeting.
48. In relation to the meeting on 16 August 2016 the Claimant had been booked out for the day with appointments and was not expected to be in the office. The Claimant emailed Mark Tomlinson, page 219, stating that she had just been made aware that there was a team meeting at Head Office today which involved the whole team and she asked why she had been isolated and excluded from it. In his reply of 16 August 2016 Mark Tomlinson replied:

Following our email discussion on Friday we agreed that you would be at Head Office on Tuesday (today) and therefore I arranged for Paul to be here as well to meet the new starters in the team and go over the structure.

After our telephone conversation this morning this has now been re-arranged to Monday with yourself because you now have appointments to go to today. I will go over how the team will be working moving forward and the links to the administration team and also the new price list."

49. On the basis of the documentary evidence, the Tribunal did not consider that the Claimant's complaint that she had been excluded from meetings on 8 August and 16 August 2016 to be justified.
50. In relation to the Respondent's summer party it was arranged for 30 September 2016. On 6 September 2016 page 339 the Claimant emailed Mark Tomlinson asking him whether there was a summer party happening and that everybody seemed to have invitations except her. In his reply half

an hour later, page 240 Mark Tomlinson apologised and attached an email he had sent about the party.

51. During the period the Claimant had been on sick leave the Claimant was unable to close one of her accounts, the Pureprint Account. The account was closed by a colleague, Ian Matthews. On 3 August 2016, the Claimant emailed Vicki Crawte pointing out that she had dealt with the Pureprint Account from the start but it was unreasonable for another member of staff to attend one meeting to sign the account after all her hard work and take not only her target figure for that month but to take the commission that she worked hard for.
52. On 17 August 2016 the Claimant appealed her grievance outcome to Kane Benham, Group Operations and Environment Director. The Claimant alleged that the Respondent company had failed to address and resolve any of the issues raised. The Claimant's letter stated that she had not received an apology from Mark Tomlinson, requests for a new chair or back support had been ignored and the fact that the whole of her team had attended the sales meeting at Slinfold the day before on 16 August 2016 and that she had been the only person who had not been asked to attend.
53. The appeal meeting took place on 6 September 2016 and it was conducted by Kane Benham. On 15 September 2016 Kane Benham wrote to the Claimant informing her of the outcome of her grievance appeal, pages 251-252. The appeal outcome was largely in the Claimant's favour and the Tribunal noted that there was an acceptance that the Respondent had not handled things in the Best Practice way. The letter included the following:

“Some of the procedural tasks should have happened in a routine manner such as back to work interviews not taking place in a routine and will be reviewed.

Overall on reading your grievance and Vicki Crawte's letter to you I feel that things were not highlighted as they occurred and allowed to fester and fuel other issues that over the length of your employment with us has never been an issue or raised ? as a concern. Mark Tomlinson will be undergoing training as detailed previously. The company will ensure that better provision is made for pregnant employees going forward.

At no point have we intentionally set out to cause upset or distress and do feel that escalation sooner would have averted the majority of points raised.

With regard to the disciplinary letter you received, I do feel that this was a genuine error on our behalf as it was meant to be no more than an investigation meeting to discuss things further as it was felt your performance was slipping within the business and some data errors were highlighted and needed to be explained. I am sure you agree that just because targets have been achieved does not mean that other performance related issues are on track

and within scope. Vicki may well need to discuss the points of the letter with you but not in a disciplinary manner only investigatory and question asking to obtain the answers to resolve and clear up the matter.”

54. In relation to the Pureprint issue Kane Benham's letter stated the following and concluded:

You raised an issue with Pureprint that wasn't raised with Vicki at your grievance but I have investigated the matter. The customer needed it to be signed and you were off sick at the time so a decision was made to re-assign the customer to another BDM to arrange signature and bring the revenue into the business. This is normal practice while team members are off sick or on annual leave. No-one notified you due to your reason of sickness which in turn has led to non-payment of commission to yourself as normal practice. So in light of my paragraph above I feel it appropriate to apportion the commission on a 50/50 basis between yourself and the BDM, so again this payment will be made to you in due course.

In summary my review is the company has not handled things in the Best Practice way but it has not acted in a discriminatory fashion or with malice, it has tried to act the best way it can to manage a difficult situation. The company has not had vast experience of pregnancy and will review and provide training where required.

We offer our apology to you and will make immediate changes to put things right, your diary has been frozen as we discussed for no further appointments to be made so you can hand over any details for accounts and contacts required while you are on maternity leave.

I realise I may not have responded in the manner you wished for but the company wishes to retain and restore your trust and rectify any issues so we can work together to continue our long relationship.

55. The Claimant complained about emails she received on 21 and 22 September 2016 which she alleged amounted to harassment related to sex. The emails, pages 254-256 were in relation to the Claimant's handover and the return of her car in circumstances where her maternity leave was imminent due to commence on 26 September 2016.

56. The Tribunal considered that there were no grounds for the Claimant's contention that the emails from Kane Benham involved harassment as the Claimant alleged, and in our judgment reflected no more than the type of communication to be expected from a line manager to a member of staff relating to handover issues before commencing a significant period of absence from the workplace. A flavour of the communications is contained in

the following emails from Kane Benham to the Claimant dated 21 September 2016 and 22 September 2016:

21 September 2016 at 14.13

Hi Kirsty,

We have chatted through everything and do need you to come in for one day to hand over anything outstanding.

Your car also needs an MOT and the emissions re-setting is per the manufacturer issues that were in the Press last year.

So please let us know if that is tomorrow or Friday, the Kir Rio(?) will be made available for you to swop into, please see Darren for the handover.

Any questions please give me a call.

Kind regards,

Kane

22 September 2016 at 17.30

Hi Kirsty,

We do need you to pop in tomorrow and just go through with Vicki some workflows and pipelines, it really shouldn't take long. Further to your comments below am I to assume that you don't need a car while you are on maternity leave?

I have sourced a car and it is available for you to use. However your email reads that you don't need it, so could you please clarify by return so I can action either way.

Also I am sure I don't need to remind you but could you please put your out of office on your email and change your phone voice message to direct to the office.

Kind regards,

Kane"

57. The Claimant complained that she had been contacted at 6.20 on her landline on 22 September 2016 which she alleged had not been acceptable having regard to the stress that the Respondent had already put her under throughout her pregnancy. Kane Benham accepted that he telephoned the Claimant twice that day in an attempt to find out what was happening with the vehicle and the handover and in circumstances where he had received no return call before leaving the office he had spoken to the Claimant's partner

who had been very polite and had asked if the Claimant could call him the following morning.

58. The Claimant was not satisfied with the outcome of her grievance appeal and in a letter to Kane Benham dated 14 October 2016, pages 258-264 the Claimant alleged pregnancy and maternity discrimination, harassment, unlawful deductions of wages (commission) and breaches of health and safety regulations. The Claimant stated that she had made every effort to bring matters to the attention of the Respondent in a timely and appropriate manner and to seek a change in behaviour towards her which sadly had not happened and she felt left her with no option other than to take the matter to an Employment Tribunal.

Submissions

59. The Tribunal heard submissions from Ms Dickinson on behalf of the Respondent and from Ms Harwood on behalf of the Claimant. The parties' submissions are not repeated in these reasons.

The Law

Pregnancy and Maternity discrimination

60. Section 18 of the 2010 Act provides:

(1) This section has effect for the purposes of the application of part five (work) to the protected characteristic of pregnancy and maternity.

(2) A person (A) discriminates against women if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably-

(a) Because of the pregnancy, or

(b) because of illness suffered by her as a result of it.

(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as-

(a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2)

61. In this case the Claimant's allegations are founded on her pregnancy and section 18 of the 2010 Act and section 13 which defines direct discrimination does not apply to complaints of pregnancy and maternity discrimination in the work place.

Harassment

62. Section 26 of the 2010 Act defines harassment as the following:

(1) A person (A) harasses another (B) if –

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of –

(i) violating B's dignity, or

(ii) creating and intimidating, hostile, degrading, humiliating or offensive environment for B.

63. Section 26(5) of the 2010 Act does not include pregnancy and maternity as relevant protected characteristics.

Indirect discrimination

64. Section 19 of the 2010 act provides:

(1) a person (A) discriminates against another (B) if a applies to be a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –

(a) A applies, would apply, it to persons with whom B does not share the characteristic

(b) it puts, would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it.

(c) It puts would pu, be at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim

65. Section 136 contains burden of proof provisions and provides:

(1) This section applies to any pleading proceedings relating to contravention of this Act.

(2) if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) but subsection (2) does not apply if A shows that A did not contravene the provision.

Victimisation

66. Section 27 of the equality act provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

- (a) B does a protected act or,**
- (b) A believes the B has done, or may do, a protected act.**

(2) each of the following is a protected act –

- (a) bringing proceedings under this act;**
- (b) giving evidence or information in connection with proceedings under this act;**
- (c) doing any other thing for the purposes of or in connection with this act;**
- (d) making an allegation (whether or not express) that a or another person has contravened this act.**

Protected Disclosure

67. Section 43B of the Employment Rights Act 1996 provides:

(1) In this part a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following

- (d) that the health or safety of any individual has been, is being or is likely to be endangered**

Conclusions

68. The Tribunal reached its conclusions having regard to the evidence to the parties' submissions and to the relevant law.

69. In the circumstances of this case the Tribunal concluded that the Respondent was wholly genuine in its acceptance that things might have been handled better in relation to the Claimant's pregnancy.

70. In relation to the initial instruction to the Claimant to delay informing her colleagues about her pregnancy, we found that this clearly involved less favourable treatment of the Claimant because of her pregnancy. The Respondent provided no satisfactory explanation as to why the Claimant was denied the pleasure of informing her colleagues of her good news, and we were not impressed by Vicki Crawte's explanation that it was hard to pin the Managing Director down particularly as he attended the Slinfold office on two

or three days a week.

71. We concluded that Vicki Crawte could only have considered that the news would be unwelcome to the Managing Director, Peter Evans, and that accordingly she had to pick an appropriate moment to inform him. Unfortunately for the Claimant the appropriate moment, if such was the case, did not occur until a month after the Claimant had first announced her pregnancy.
72. The Tribunal concluded that this complaint of pregnancy and maternity discrimination was well founded.
73. In relation to the risk assessment which was undertaken in front of four men, the Tribunal considered that this also involved unfavourable treatment of the Claimant who was pregnant. We considered that there was no possible explanation justifying subjecting the Claimant to the distress and embarrassment of being risk assessed with the potential implication of discussing personal medical details, with the assessor in front of four men. The Claimant had asked for the assessment to be undertaken in private, and we considered that the explanation that there was no-where else to do it was wholly inadequate. This complaint of pregnancy and maternity discrimination is well founded.
74. In relation to the Claimant's remaining complaints involving the letter of concern, the disciplinary letter, the failure to undertake return to work meetings, the alleged exclusion from meetings, increased targets, we concluded that there was no causal link between the matters complained of by the Claimant either with her sex or with the fact that she was pregnant. We did not conclude that the burden of proof had shifted to the Respondent and even if it had, we concluded that the Respondent had provided an adequate explanation, which we accepted, for its conduct.
75. We also considered that the Claimant had unjustifiably elevated what we considered amounted to no more than normal line management communications with the Claimant into something more sinister, such as the letter of concern, when a male colleague had received a similar letter on the same day in circumstances where he had achieved a greater target than the Claimant.
76. In relation to the Claimant's workstation, we found that the Claimant had not raised any issues about her workstation after 20 June 2016, the first day at the Regus Centre until her grievance meeting. We noted that in her grievance outcome letter to the Claimant dated 10 August 2016, pages 212 to 213, Vicki Crawte had reviewed the Claimant's photographs of the seating at the Regus Centre location and had stated that she had reviewed the desk space at Slinfold and had reinstated her working from there with immediate effect. Vicki Crawte also pointed out the following:

At no point prior to this grievance did you raise this issue with myself and I have also passed on our findings to the centre for review.

77. The Tribunal also found that notwithstanding the July 4 presentation to all staff, the Claimant had been told in express terms that she was not required to meet the increased targets or to cover the increased areas until her return to work following her maternity leave.
78. The Tribunal concluded that the Claimant's complaint about her seating at the Regus Centre on 20 June 2016 did not involve a disclosure which had a public interest element and the Claimant herself did not appreciate what was required or what was meant by a public interest disclosure. In our judgment it amounted to no more than a complaint about seating.
79. We found that there was no conduct complained of by the Claimant which was linked to her complaint about seating or to the fact that she had raised a grievance. Both the Claimant's grievance and her grievance appeal had been concluded largely in favour of the Claimant, and we considered that the Claimant was disingenuous in alleging that her concerns had not been resolved or that the Respondent had failed to take steps to address her concerns seriously. Such complaints we considered were without foundation.
80. With the exception of the Claimant's complaints relating to the instruction not to inform colleagues of her pregnancy and her pregnancy risk assessment in front of four male colleagues, the Tribunal concluded that the Claimant's complaints of unlawful discrimination on grounds of pregnancy, indirect discrimination, her complaints of harassment, victimisation and detriment were not well founded and are accordingly dismissed.
81. A remedy hearing will be listed.

Employment Judge Hall-Smith

Date: 15 November 2017