EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss EC Nolan	**v**	**Public Health England**

Heard at: Watford **On:** 23 July 2018

Before: Employment Judge Bloch QC

Appearances
For the Claimant: Mr David Rommer, Solicitor (CAB).
For the Respondent: Mr David Massarella, Counsel.

RESERVED JUDGMENT

The complaint of discrimination on grounds of pregnancy under s.18 of the Equality Act 2010 ("EqA 2010") is struck out:

1. pursuant to s.123 EqA 2010, as being out of time (it not being just and equitable to extend time within the meaning of s.123(1)(b) EqA 2010); alternatively,
2. under rule 37 of the Employment Tribunal Rules of Procedure, on grounds that the complaint has no reasonable prospects of success.

RESERVED REASONS

1. On 26 November 2017 the claimant presented a claim of pregnancy discrimination under s.18 EqA 2010. (There was no claim for unfair dismissal).

2. A preliminary hearing was ordered to take place on 23 July 2018. The issues to be decided in relation to the complaint were:-

   2.1 Does the complaint form part of conduct extending over a period?

   2.2 If so, does that period end on such a date so as to render the complaint in time by s.123(3)(a) EqA 2010?

2.3 If not, was that complaint presented within such a period as the Tribunal thinks just and equitable within the meaning of s.123(1)(b) EqA 2010?

3. The above was set out in a list of issues [agreed in part] presented by the parties' representatives before the hearing of the preliminary issues. In that list of issues, the following further issues were identified in relation to pregnancy discrimination – s.18 EqA 2010:

> "2.1 Are there facts from which the Tribunal could decide, in the absence of any other explanation, that the respondent in the protected period in relation to the claimant's pregnancy, treated the claimant unfavourably because of her pregnancy by:
>
> 2.1.1 Dismissing her on 30 March 2017 (ET1 paragraph 12);
>
> 2.1.2 Allegedly failing to make efforts to find alternative employment for her (ET1 paragraph 13);
>
> 2.1.3 Failing to:
>
> 2.1.3.1 Give her notice of termination of her employment, save for one day (ET1 paragraph 15);
>
> 2.1.3.2 Pay in lieu of notice (ET1 paragraph 15);
>
> 2.1.3.3 Pay her contractual maternity pay (ET1 paragraph 15);
>
> 2.1.3.4 Pay her contractual redundancy pay (ET1 paragraph 15).
>
> 2.1.4 Failing to properly address or remedy her complaints. Specifically, the claimant alleges that:
>
> 2.1.4.1 On 13 April 2017, Tricia Buckle refused the claimant's request for a further meeting to resolve her complaints;
>
> 2.1.4.2 On 13 April 2017, Tricia Buckle told the claimant she could not make a formal complaint over the manner in which she had been treated as she (the claimant) was no longer an employee;
>
> 2.1.4.3 On 13 April 2017, Tricia Buckle failed to address the claimant's complaint that – by insisting on paying SMP in a lump sum rather than when it fell due – the respondent caused the claimant's SMP to have been taxed at a higher rate thereby causing the claimant financial hardship;
>
> 2.1.4.4 [On 22 May 2017, in response to a telephone call from the claimant, the respondent's HR department provided the claimant with a letter which contradicted what the claimant had previously been told in relation to the reason for her dismissal;]

The respondent does not accept that this is one of the matters which was agreed at the Preliminary Hearing on 25 April 2018 before EJ C Palmer as forming part of the claimant's claim that her "complaints were not properly addressed". The claimant was required to particularise the complaints she relied on at that Preliminary Hearing and accordingly, the respondent does not consider it appropriate for the claimant to seek to expand her case at this stage of the proceedings.

2.1.4.5 [On or around 23 May 2017 and/or 24 May 2017, the respondent's HR department failed to respond to the claimant's further telephone messages;]

As above, the respondent does not accept that this is one of the matters which was agreed at the Preliminary Hearing on 25 April 2018 before EJ C Palmer as forming part of the claimant's claim that her "complaints were not properly addressed".

2.1.4.6 Ignoring the claimant's complaint dated 1 August 2017 to the respondent's Chief Executive?"

4. The reason for the lack of agreement between the parties relation to paragraphs 2.1.4.4 and 2.1.4.5 was (as indicated above) that at the preliminary hearing on 25 April 2018 Employment Judge Palmer required the claimant to provide (during that hearing) particulars of her complaint at paragraph 18(d) of the claim that "complaints between April and July 2017 were not properly addressed or remedied". The Judge explained to the claimant that she would not be permitted to expand her claim thereafter. Accordingly (as I was told by the parties' representatives), the Judge gave the claimant and her representative some time to particularise the claim and then took a note of the specific allegations. The Judge also directed that the parties then produce an agreed list of issues, although it was understood by the parties that this was not so much agreeing a list of issues as confirming in writing the issues which had been identified before the Judge.

5. The allegations at 2.1.4.3 and 2.1.4.4 of the list of issues are (as accepted by Mr Rommer) new points, not mentioned to the Judge.

6. The Judge ordered the above time issues to be decided and also:

   (1) Whether under rule 37 there were no reasonable prospects of success so that any or all claims should be struck out; and

   (2) In the alternative, under rule 39 whether there was little reasonable prospects of success so a deposit order should be made.

7. The relevant dates in relation to the timing issue are as follows:-

7.1 The claimant contacted ACAS on 25 October 2017;

7.2 ACAS issued its certificate on 26 October 2017;

7.3 The claimant's claim was presented on 26 November 2017;

8. It was common ground between the parties that subject to the continuing acts issue, and the just and equitable argument, the claims were presented out of time, except for 2.1.4.6 ("ignoring the claimant's complaint dated 1 August 2017 to the respondent's Chief Executive?") which the claimant alleged was in time. The other claims were out of time by a long chalk. Time expired to present the claim in respect of the dismissal on 29 June 2017 so that it was nearly 5 months out of time when presented to the tribunal.

9. I shall deal first with the continuity issue and then the just and equitable argument. The latter shall require me to set out the key facts relied upon by the claimant.

10. Mr Massarella referred me to the well-known case of The Commissioner of Police of the Metropolis v Hendricks [2003] ICR, where at paragraph 52 of the judgment of Lord Justice Mummery (with whom Lord Justices May and Judge agreed) he said:-

> "… the focus should be on the substance of the complaint. The commissioner was responsible for ongoing situation or a continuing state of affairs … The question is whether that is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time began to run from the date when each specific act was committed."

11. I was also referred to the Court of Appeal decision in Aziz v First Division Associated (FDA) [2010] EWCA Civ 304, where Lord Justice Jackson (with whom Lord Justices Dyson and Richards agreed) said (at paragraph 33):

> "In considering whether separate incidents form part of "an act extending over a period" … one relevant but conclusive factor is whether the same individuals or different individuals were involved in those incidents …"

At paragraph 36 Lord Justice Jackson said:

> "Another way of formulating the test to be applied at the pre-hearing review is this; the claimant must have a reasonably arguable basis for the contention the various complaints are so linked as to be continuing acts or to constitute an ongoing state of affairs …"

12. Turning to the list of issues at paragraph 2.1.4, I must first resolve whether the points at paragraphs 2.1.4.4 and 2.1.4.5 should be allowed to be put forward. Mr Massarella submitted that there was no application to amend the claim and that these allegations surfaced for the first time in the list of issues presented recently to the Tribunal, in circumstances in which the

Judge had said that no further issues were to be added. In my judgment, while there is much to be said in favour of Mr Massarella's submissions, I would not wish at this stage to shut out the claimant from putting forward these points. It seems that the claimant being required to particularise her complaints (list of issues paragraph 2.1.4) had to be dealt with by the claimant's solicitor somewhat "on the hoof" and Mr Rommer urged upon me that he was required to provide those particulars under some pressure during a short adjournment provided for that purpose. While I do not believe that that amendment of the claim form was required in order to particularise the relevant complaints (which are indeed further particulars rather than new claims or matters), the claimant should as soon as possible after the hearing before Employment Judge Palmer have sought permission from the tribunal to add these further particulars. That said, looking at matters in the round (including that there was no tribunal order in writing made regarding these matters) in my judgment the fairer course would be not to shut the claimant out from making these allegations.

13. That said, I find the submission by Mr Rommer on behalf of the claimant that the matters set out in paragraph 2.1.4.1 to 2.1.4.6 were "continuing acts" highly artificial. There is no doubt that the key complaint of pregnancy discrimination relied upon by the claimant, is her dismissal on 30 March 2017. That, together with the other associated complaints (failing to make efforts to find alternative employment, failing to give her notice of termination of her employment, or payment in lieu of notice, or contractual maternity pay, or pay her contractual redundancy pay) all of which occurred on or about 30 March 2017, constitute the true nub of her complaint to the tribunal.

14. The matters which occurred thereafter (all but the last of which - ie 2.1.4.6 - would not bring the complaint within the primary time limit) are subsidiary. The first three all involve the acts of HR officer, Tricia Buckle on 13 April 2017 (refusing a request for a further meeting to resolve her complaints, telling the claimant that she could not make a formal complaint over the manner in which she had been treated as she was no longer an employee, and failing to address her complaint that by insisting on paying SMP in a lump sum rather than when it fell due the respondent had caused the claimant's SMP to be taxed at a higher rate.) All of these matters are subsidiary to the essential gravamen of the claimant's complaint, ie the matters which had occurred on 30 March 2017.

15. The next act relied upon is that referred to in 2.1.4.4 (which I have allowed to be put forward, as set out above) namely that on 22 May 2017 in response to a telephone call from the claimant, the respondent's HR department provided the claimant with a letter which contradicted what the claimant had previously been told in relation to the reason for her dismissal. Quite apart from the lateness of this point, it seems to me to fall into the same category as that set out above. The same can be said for the point alleged in 2.1.4.5 (which I have also allowed in) namely that on or around 23 May and/or 24 May the respondent's HR department failed to respond to the claimant's further telephone messages.

16. There is a distinction to be drawn between a failure to address or remedy (adequately or at all) an expressed concern or complaint about an alleged wrongful act (which has allegedly caused loss) and a continuation of the wrongful act itself. While it is feasible that such failures might in some cases amount to such a continuation, not every such failure is (without more) a continuation of the act. Here, it does not seem to me reasonably arguable that the failure to address or redress the consequences of the claimant's allegedly pregnancy-discriminatory dismissal amounts (without more) to a continuing discriminatory state of affairs;
    16.1 It is not alleged that the incidents which occurred after the 13 April 2017 involved the same personnel as in the earlier incidents.
    16.2 There is nothing else pleaded which indicates that these incidents or failures are arguably continuing acts of pregnancy discrimination. So, (to take one example) the point (at 2.1.4.5 of the list of issues) that the respondent's HR failed to respond to the claimant's further telephone messages does not pass the threshold for continuing acts, even at this stage. It cannot be right, that the claimant can claim that her claim is extended simply because of a failure to respond to her telephone messages about that dismissal (or the consequences of that dismissal). The other points (at 2.1.4.1 to 2.1.4.4) similarly lack any foundation for an assumption that they were continuing acts of pregnancy discrimination as opposed to isolated failures to address or redress expressed concerns or complaints about an alleged discriminatory act of dismissal (and its financial consequences);
    16.3 Accordingly in my judgment it is not reasonably arguable (based on any of the material before me) that these further incidents amounted to a continuing state of pregnancy discrimination, as opposed to isolated incidents;
    16.4 Accordingly, I find against the claimant on the continuing act issue in relation to issues 2.1.4.1 to 2.1.4.5.

17. Turning to issue 2.1.4.6 (ignoring the claimant's complaint dated 1 August 2017 to the respondent's Chief Executive):
    17.1 Again, in my judgment this falls into the same category as the incidents referred to above.
    17.2 As submitted by Mr Massarella, the decision not to offer the claimant the permanent role in March (which resulted in her dismissal) was taken by three members of the interview panel; contrast the allegations in respect of the complaints in April and May which were against members of the HR team and by further contrast the email in August which was to the Chief Executive. The complaints have no prima facie connection and it was not suggested by the claimant there was collaboration between these different groups of individuals working at different levels of seniority.
    17.3 In any event, this event occurred some 4 months after the dismissal and months after the incidents alleged to have occurred on 22 May and up to 24 May;

17.4 Accordingly, (as pleaded) neither in substance nor as matter of timing does this incident provide a reasonably arguable basis for the claimant's contention of a continuing state of affairs up to 1 August 2017.

18. Further, for the reasons referred to below the allegation referred to in paragraph 2.1.4.6 is in any event misconceived: see below, where I accept Mr Massarella's submission that this incident cannot be an act of pregnancy discrimination because it falls outside the protected period.

19. For these reasons the claimant's arguments of continuity of acts failed in their entirety.

Just and equitable argument

20. The claimant gave evidence that she was born with a congenital heart defect and had several operations when she was young in relation to that and other conditions. She started work with the respondent on 8 December 2014. Her job was personal assistant and she worked for Jonathan Green, head of infectious disease informatics. It turned out in the evidence that Mr Green was well-known to the claimant before she began her employment and he seems not only to have been involved in her seeking employment with the respondent and her entering into her contract of employment dated 28 November 2014, but ultimately in the decision not to continue her employment. The contract dated 28 November 2014 stated that she had been employed for a fixed term from 8 December 2014 until 1 May 2015. It is noteworthy that the contract letter dated 28 November 2014 was headed "Fixed Term Part time 20 hours per week …". In the "contract of employment and written statement of main terms and particulars of employment" the end date was given as 1 May 2015. The notice period was stated to be two weeks, and (significantly) it stated:

> "A fixed term contract cannot be extended beyond a period of two years unless you have been recruited through a process of fair and open competition."

21. It is common ground that the claimant had not been recruited through a fair and open competition.

22. According to the claimant's evidence, in early May 2015 Mr Green told the claimant that her contract had been extended for a further 6 months. She was not given any new contract, or documents, or emails confirming the extension. Everything was done verbally.

23. Around December 2015 Mr Green told the claimant that her contract had been renewed for another 6 months, and again in May 2016 Mr Green informed her of a further 6 month extension. There was no paperwork on either of these occasions.

24. In December 2016 Mr Green told the claimant that her contract was being renewed for a further 3 months and that there would be interviews to fill her post on a permanent basis. There was still no written confirmation of the 3 months extension but she was told when the 3 months extension would end.

25. On or around 3 or 4 January 2017 the claimant told Mr Green that she was five months pregnant. Some weeks later she submitted her form M81B which confirmed that her "expected week of confinement" would begin on 16 June 2017.

26. The claimant believed (having discussed the matter with Mr Green) that she had a very good chance of obtaining the permanent position.

27. On 27 March 2017 she attended interview for the permanent post. The chairman of the interviewing panel was Mr Green. While she was waiting to hear whether she had been successful she saw an email which suggested that she had not been given the job.

28. On 28 March 2017 the claimant attended a hospital check-up. She was told that her blood pressure had spiked and was very high and this was potentially dangerous. She explained the situation at work and that she was feeling extremely stressed and anxious. The doctor advised that for the health or both herself and her baby, she needed to take a step back as it was causing her stress. She was prescribed beta blockers.

29. On 29 March 2017 she was told that she had not been successful at interview and that another candidate had been appointed. She was told that her employment would end on 30 March 2017. She would only be paid statutory maternity pay and not enhanced maternity pay.

30. The claimant thought that the respondent as a large organisation should have been able to find some other suitable work for her, as she had been dismissed without any attempt to look for another role for her within the organisation. Also, she had previously been informed even if she was not given the permanent post she would be kept in employment for the duration of her maternity leave period, but that did not happen. She was shocked and upset, and very worried about what happened.

31. The claimant gave evidence of a meeting between herself and Tricia Buckle on 13 April 2017. She was very stressed at that meeting and felt that Miss Buckle's explanation of the situation did not make any sense and was completely different from the information that she had been given before her dismissal.

32. After this meeting (which she found distressing) there were then some further emails by the claimant to the respondent in April to find out to whom she should address a subject access request. However, she failed to go ahead and submit the request, as she was worried that dealing with

the situation would cause her blood pressure to become dangerously high again.

33. As early May approached she was entering the final weeks of her pregnancy. She attended her growth scan on 9 May and it was determined that her child had a rare brain defect which often led to serious health conditions.

34. On that day she was offered an abortion and the option of having another amniocentesis, but was told that that could be risky itself. She opted for a pre-natal MRI scan which was a little more complicated due to her heart condition. She chose to continue with the pregnancy and spent the last few weeks of her pregnancy worrying about the situation and knowing that her baby might have a disability and would be facing further tests as soon as she was born.

35. Throughout May 2017 and early June 2017 she was focusing on her unborn child and some serious choices she had to make. At that point she felt emotionally unable to cope with any more correspondence with the respondent.

36. She believed that the only contact that she made with the respondent in May 2017 was to request a letter setting out the details of her dismissal. A letter was emailed to her on 22 May 2017, however that gave a different reason for the termination of her employment and different date for termination of her employment than she had previously been given. She called HR twice over the next day or so to try and clarify the position, but according to her the call was not returned.

37. The claimant's baby daughter was born one week premature on 11 June 2017. She was assessed by a neo-natal cardiac specialist and had to undergo a series of tests. The claimant chose to focus on her baby and adjusting to her new life before going back to follow up the problems with the respondent.

38. The claimant further gave evidence that over the next month and a half she had been corresponding personally with Mr Green about the situation, and by the end of July she decided to draft a letter to send to Duncan Selbie, the Chief Executive of the respondent. In that letter she outlined the situation and her feelings on the unfair treatment she had received. She sent the letter on 1 August 2017 but received a bounce-back email explaining that Mr Selbie was currently on holiday and that she should contact someone else (whose names and contact details were given in the bounce-back email). She continues (at her written statement paragraph 30):

> "I therefore decided to wait a few weeks for a response, as I knew he had received my letter so would be a matter of time before I heard from him."

She mentioned that her baby had multiple appointments and was told that they would need to sedate her and carry out a post-natal MRI which again caused her high levels of stress and meant that her focus was on the child's health and the outcome of the tests.

39. By the end of August, she said she understood again that she was clearly being ignored as she had not had a response from the respondent. So, she decided in September that she should approach the Citizens Advice Bureau for help. She first called the CAB in Hendon on 2 October 2017. The earliest appointment that they could give her was on 17 October. She saw a volunteer on that day and she made an appointment for her to see Mr Rommer. She met Mr Rommer on 25 October 2017 and he submitted an early conciliation notification to ACAS on the claimant's behalf later the same day and submitted a claim to the Tribunal on 26 November 2017.

40. Mr Massarella submitted that notwithstanding her health difficulties the claimant was well enough to present her claim in time. In May 2017 she made more than one call to HR to raise queries about her entitlements. In the month and a half after childbirth (in June) she conducted a correspondence with her former manager about the same issues and then wrote a detailed letter to the Chief Executive on 1 August 2017.

41. The claimant knew about her right to make a subject access request and that she could have obtained advice from the Citizens Advice Bureau yet she took no steps to seek advice about complaining to the Employment Tribunal until the beginning of October 2017. Mr Massarella submitted that, although the claimant's personal circumstances might assist her in respect of part of the period of delay, it could not account for most of it. The claimant had sent a letter the Chief Executive on 1 August 2018 and her statement that she decided to wait a few weeks for a response did not show a reasonable attitude. The "out of office" response she received did not indicate that she would receive a reply. Rather it gave alternative contact details which the claimant did not pursue. In the event she waited before making her first approach to the CAB, two months later.

42. Some of the claimant's answers in cross examination were telling. In relation to her enquiry regarding the data access request she accepted she was attempting secure documents for a claim. She was aware of the right to bring a claim. She had rights in relation to her data. She said that she had found out about the CAB when she called the charity helpline. She said she did not know anything about the Employment Tribunal. In relation to contacting the respondent in May 2017 it seems that Mr Green was acting as her mentor. He told her to appeal. She said the purpose of sending her letter to Mr Selbie which she decided to do in July was to try and settle her claim. She accepted that she was accordingly aware that she could go to "court".

43. The claimant accepted that her email to Mr Green of 4 May indicated that she was planning on writing to Duncan Selbie already in May. She stated that she was not in a position then to argue her case. The claimant also

accepted that her email of 1 August 2017 was a thoughtful setting out of her complaint. She did not accept that it set out the material facts sufficient for her to have been able to issue a claim form at that stage.

44. The claimant also accepted she had produced for the Tribunal no medical evidence or other documentary evidence relating to medical appointments between 1 August and 2 October 2017.

45. In the course of cross-examination, the claimant made clear she was not arguing that Mr Green was not supportive of her position. It was HR that was not. She accepted that HR had not taken the decision not to renew her contract. She made clear that she was not complaining about the interview itself or that pregnancy effected the outcome of the interview.

46. I found the decision whether or not to extend time on the just and equitable basis, a difficult one. On the one hand, I could not but have sympathy for the claimant's medical condition and her concern about her baby's medical condition. However, I found considerable force in Mr Massarella's submission that there was no proper proof or even prima facie case that there was a causative link between these factors and substantially all of the periods of substantial delay which occurred in this case before the claim was presented to the Tribunal. There was much force in Mr Massarella's contention that the claimant presented as an intelligent and articulate person who was aware of her employment rights in general. She took the rather sophisticated step of writing regarding a subject access request at an early stage after her dismissal. She was also plainly aware at an early stage of the rights which she had to complain about her dismissal to a 'court'. I had some difficulty in accepting her evidence that she was not aware of employment tribunals or the need to bring a claim before an employment tribunal within a certain limited period of time. It seems to me that (from her own knowledge or through her mentoring relationship with Mr Green) she would have been fully aware not merely the existence of her rights but (even if in broad terms) the means whereby those rights could be enforced and that there would be time limits enforcement of her rights.

47. Against that I pressed Mr Massarella on the question of prejudice to the respondent of allowing the claim to continue, and he relied on the fading of memories so that late presentation of the claim would inevitably have an adverse effect on the cogency of evidence. He referred in particular to complaints about the lack response by HR to the claimant's calls. He also referred to the effect of delay on the evidence by reference to the recruitment panel's recollection of the interview process. There was in my judgment some strength in this point although, it did not seem that the claimant (at least at this stage) was intending to rely on any unfairness by the recruitment panel. That said, I did accept in general terms that there is likely to be prejudice in the way in which Mr Massarella submitted.

48. I did find the claimant's evidence extremely vague in some important respects and while I have no doubt that she was suffering heightened

stress at various points after the termination of her employment, in the end I was unpersuaded by her evidence (or the lack of it, for example lack of documentary evidence of appointments referred to above) so that I did not conclude (the burden being upon the claimant) that she had shown that it would be just and equitable to extend time up and until 26 November 2017, an extension of almost 5 months from the end of the "primary limitation" period ie 30 June 2017.

49. Accordingly, I concluded the Tribunal had no jurisdiction to hear the claims.

50. I shall therefore deal rather more briefly with the alternative issue, namely whether the claim falls to be struck out as having no reasonable prospects of success.

51. I was taken by the representatives of both the claimant and the respondent to various well-known cases in the area. It is well established that discrimination cases are fact-sensitive – and should only be struck out "in the most obvious and plainest cases": Anyanwu v South Bank Student Union [2001] ICR 391 per Lord Steyn (at paragraph 24). Where there is a dispute over important facts it will rarely be appropriate to strike out a claim on the basis that there is no reasonable prospect of the claimant persuading a Tribunal at trial of his or her version of events: Ezsias v North Glamorgan NHS Trust [2007] IRLR 603 (at paragraph 29). Accordingly, the claimant's case should be taken at its reasonable highest. Nonetheless, as Mr Massarella submitted, a complaint of discrimination should not be permitted to proceed to trial if the basis of it is no more than assertion: Community Law Clinic Solicitors Ltd v Methuen (unreported) UKEAT/0024/11 at paragraphs 14-15.

52. Mr Rommer took me to the case of Hasan v Tesco Stores Ltd EAT (2 June 2016) [UKEAT/0098/16/BA] at paragraphs 17-19. These paragraphs emphasise that even if I concluded that the claims had no reasonable prospects of success, I should nonetheless consider how to exercise my discretion as to whether to strike out the claims.

53. With some considerable reluctance (given the authorities to which I was referred) I concluded there was nothing put forward by the claimant in support of her claim of discrimination on the grounds of pregnancy beyond mere assertion. It seemed to me, despite the authorities (which do not preclude exceptional cases) this was an exceptional case. Further, if I concluded that there were no reasonable prospects of success I could see no basis upon which I would allow (as a matter of discretion) the claim to continue. That would be pointless, being both unfair to the respondent and the claimant herself.

54. I shall state my reasons briefly. On the face of the material I have seen there was a plain and obvious reason why the claimant's employment could not become permanent:

54.1 Her employment had always been for a fixed term, with some extensions, until it was extended no more.

54.2 The contract of employment itself indicated that employment could not last for more than 2 years and when she was given a final further 3 months it was on the express understanding that she would then have to interview for a permanent job.

54.3 There was objective evidence showing that the claimant scored second during the interview process. She did well but not as well as the candidate who was chosen. The successful candidate scored 122 points to the claimant's 96.

54.4 Further, the respondent for good reason regarded itself as bound to award the permanent contract to the highest scoring candidate. That was the purpose of the exercise, the Respondent's "Recruitment Principles" requiring that the job be offered to "the person placed first in the order of merit by the selection panel."

54.5 This was the position even though (according to the claimant's evidence, which I accept for this purpose) Mr Green had indicated before the interview that there was every chance the claimant would succeed. She plainly had a sympathetic individual as chairman of the interviewing panel and yet she failed;

54.6 the claimant herself accepted that she could make no complaint about the interviewing panel's decision itself.

54.7 the claim that the claimant was entitled to re-deployment is misconceived. She was not entitled to re-deployment because she was not a permanent member of staff and had not been appointed through open competition. It would make a nonsense of the Civil Service Policy (ie that those not appointed under open recruitment could only be retained for 2 years) if they were re-deployed after 2 years without an open competition. In short, the termination of the claimant's employment was by reason of expiry of her fixed term. She had no entitlement to re-deployment.

54.8 It is unfortunate that a confusing picture was given to the claimant about her entitlement to contractual maternity pay (contrary to what the maternity policy indicates is appropriate in these circumstances) and that mistakes were made about the basis of the dismissal, ie stating in one letter that it was redundancy and in another letter giving a different answer. That said, there is not the slightest indication that this was due to anything other than administrative confusion on the part of the respondent. The complaints that she makes (as set out above) are against different people in the organisation and I regard it as beyond the bounds of reasonable possibility in the circumstances of this case that there was some

conspiracy against the claimant - and none was suggested by the claimant.

54.9 Lastly, there was every reason why the claimant did not receive a response from Mr Selbie. The bounce-back email did not indicate that there would be one but pointed the claimant to the names, addresses and contact details of those whom she should contact. She chose not to do so.

55. In all the circumstances I regarded this case is going beyond the sort of case in which a Judge would order a deposit to be paid in respect of the claimant's claims. It is a case of based on unsupported assertion.

56. That is not to say that I do not have some sympathy with the claimant. It is most unfortunate that at a difficult time of her life, with her own medical complications and those attaching to her baby, HR presented a confusing picture. That said, that confusion was not of the kind from which in my view any inferences could be drawn other than administrative error.

57. I accepted Mr Massarella's submissions in relation to the other detriments alleged by the claimant beyond dismissal itself:

57.1 With regard to the claim to notice, the claimant worked under a series of fixed term contracts and when a fixed term contract expires it terminates automatically without the requirement for any notice to be given. That was the reason for that treatment. There was no reason to suppose that that this treatment was because of pregnancy.

57.2 The same applies to the claim for payment in lieu of notice. She was not paid any because she would only have been entitled to notice had her contract been terminated early. There was no evidence that the reason for this treatment was pregnancy.

57.3 As regards the claim for contractual maternity pay, this was only payable to employees who were returning to work following their maternity leave. The respondent's maternity guide provided that: "If there is no right to return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred, you will only be entitled to SMP.";

57.4 The claimant was not paid contractual redundancy pay because there was no redundancy situation. The post continued, and an open recruitment process was carried out and another candidate was appointed. This treatment had nothing to do with pregnancy.

57.5 There was no evidence that pregnancy was a factor in the way in which the respondent handled the claimant's communications which were made prior to 1 August 2017.

57.6 As regards the complaint of 1 August 2017, a complaint of pregnancy discrimination can only be brought in respect of an act which occurs within the protected period. This period begins when the women conceives and ends (in cases where she is entitled to maternity leave) at the end of the period of maternity leave. Where she is not entitled to maternity leave (as the claimant was not) the protected period ends two weeks after birth; (s.18(6) EqA 2010). The claimant's child was born in June, so the act which took place in August cannot be an act of

pregnancy discrimination. (I should add, of course, that if that claim is struck out (as I do) it cannot be a continuing act for the purposes of extending time for presenting the claim). In any event, there was no proper basis upon which it could be alleged that the reason the claimant did not receive a response from the Chief Executive was because of pregnancy.

58. Accordingly, if I am wrong in my finding that the Tribunal has no jurisdiction to hear these complaints, I strike the complaint out as having no reasonable prospect of success. If I had not struck out the complaint, I would have been minded to order a deposit in respect of all of the complaints. However, having heard evidence of the claimant's financial position, I would not have ordered a deposit to be made because in my judgment the claimant could not afford any sum which I would have ordered.

59. I am grateful to both Mr Massarella and Mr Rommer for their assistance. Both argued the case in a succinct and helpful manner. They referred me to many legal authorities which I have taken into account, even if I have not found it necessary to refer specifically to them in these Reasons.

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Employment Judge Bloch QC

Date:21/8/2018

Sent to the parties on: .....

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For the Tribunal Office