EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mrs F Jones	**V**	**Gower Gas & Oil Heating Services Limited**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: SWANSEA ON: 5, 6 JUNE 2018

BEFORE: EMPLOYMENT JUDGE W BEARD MEMBERS: MR R MEAD
MRS C WILLIAMS

REPRESENTATION:-
FOR THE CLAIMANT: IN PERSON
FOR THE RESPONDENT: MR JOSHI (SOLICITOR)

JUDGMENT

The unanimous judgment of the Tribunal is that the claimant's claim of discrimination pursuant to section 18 Equality Act 2010 was presented outside the limitation period and the tribunal has no jurisdiction to consider the claim.

REASONS

Preliminaries

1. The Claimant's claim is that she been subjected to unlawful sex discrimination on the grounds of pregnancy pursuant to section 18 of the Equality Act 2018. In addition, the claimant complains that the respondent unlawfully deducted wages. It is accepted that part of the unlawful deduction relied upon has since been paid, however she contended that a sum relating to holiday pay had not been paid. The respondent has since conceded the holiday pay claim in closing submissions. On that basis that claim is no longer in issue in the sum to be awarded; £400.25. However, the claimant still contends that she is entitled to a declaration on all deductions pursuant to section 24 of the Employment Rights Act 1996 because on any account she was paid late. The respondent apart from the concession in respect of the sum to be paid in holiday pay and does not concede the claimant's claims and in respect of a declaration of unlawful deduction of wages or in respect of pregnancy discrimination.

2. The tribunal heard oral evidence and from the claimant on her behalf. The respondent called a director of the respondent, Julie Jones. For the purposes of this judgement the tribunal will refer to Fiona Jones as the claimant and to Julie Jones as Ms Jones. The tribunal were also provided with a bundle of documents, which ran to 332 pages. However, during the hearing, we were only taken to a small number of those pages during evidence and submissions.

3. The claimant's claim essentially followed that set out in her ET1. She complained about the treatment that she says was meted out to her following her disclosure that she was pregnant in April 2016. The particular elements that she relied upon were as follows;
   3.1. The claimant contends that she was not allowed to continue with the responsibilities that had been given to her when she was promoted in February 2016;
   3.2. That she was not provided with information regarding maternity entitlements or the respondent's obligations as per the respondent's employment handbook procedures;
   3.3. That the claimant and was not provided with written confirmation of start and end dates of maternity and the appropriate pay only receiving information in February 2017 when maternity leave commenced on 28 November 2016.
   3.4. The claimant complains that prior to her commencing maternity leave an individual was promoted to the role of office manager and the promotion was to cover part of her role. She complains however, that the individual was told that this was a permanent role. Her interpretation of that was it meant a permanent removal of some of her responsibilities.
   3.5. The claimant then complains that she discovered that an employee was given promotion whilst she was on maternity leave. She discovered that promotion at a late stage in proceedings. Again, her position was that this employee was taking some responsibilities from her role. However, she also complains that she was never informed and consulted in respect of that promotion.
   3.6. The claimant then complains that there was a failure to carry out any risk assessments. Further, while the claimant was pregnant there was also a failure to put in place measures to reduce the level of working hours the claimant was required to work.
   3.7. Finally, the claimant complained that other salary benefits were removed when she started maternity leave. This involved the removal of a company car for which she had personal use. Further that company pension contributions were not continued as they to being.
   3.8. There are a second group of complaints relating to a period in May and June 2017, where she complains that her pay for May 2017 was withheld for several days. That the method of payment employed by the respondent to pay her June wages was changed, again resulting in a delay in payment. This resulted in the claimant being paid late in May and June of 2017. She claims that she did not receive a payslip for May 2017 and that the P45 given to her did not reflect her correct earnings.
4. The respondent's position in regard to the first group of complaints was that the claimant did not raise any complaint about those issues at the time they occurred. The respondent argued as follows:
   4.1. That the particular things complained about were generally methods employed to support the claimant.

4.2. It was contended that there was no provision for personal use of the company car and therefore no personal benefit to the claimant was removed.
4.3. It was contended that the changes in responsibilities and were in relation to firstly avoiding risks to the claimant. In terms of promotion of others it was argued that this was not related to the claimant's pregnancy but to the growth in the organisation of the respondent.
4.4. Any responsibilities taken up from the claimant had been temporarily passed over whilst the claimant was on maternity leave.
4.5. In respect of the complaints about pension the respondent said that this was a simple accounting error on behalf of the accounting providers for the respondent.
4.6. In respect of the payment of wages in May and June there was, at that stage, a concern that the claimant was not entitled to the statutory maternity pay and the respondent withheld pay for that reason until the position was clarified.

The Facts

5. The claimant was in a familial relationship with the respondent's directors; she was married to the nephew of Ms Jones who is also the partner in a business and personal sense of the other director. Her employment commenced on 14 March 2011 and that employment came to an end on 4 June 2017. By the end of her employment the claimant was employed as an operations manager. Prior to that promotion in February 2016 the claimant had been the respondent's office manager.

6. The respondent is a relatively small organisation with some twenty-three employees. The respondent deals with the installation and maintenance of gas and oil boilers and other related plumbing systems. As an organisation the respondent has grown in recent years such that it now provides services throughout Wales and has ongoing clients including local authorities.

7. The claimant's original role as office manager grew as the company grew. Her change in status to operations manager was a further increase in this role. That role required that the claimant take part in meetings arranged with local authorities and other larger customers and clients This meant that the claimant was required to travel and on occasion this would mean travel to north Wales. Consequently, on days when the claimant was required to travel it could mean 13 hour days at work.

8. We should make clear at this stage that there were significant factual disputes between the two witnesses from whom we heard evidence. We will deal with any specific aspects in our reasons for the preference of evidence as necessary in dealing with the facts. However, we make this general point: we did not find the respondent's witness either reliable or credible in many aspects of her evidence. We Considered that her witness statement was expressed in more than colourful terms perhaps best described as hyperbole. A similar impression was gained when listening to the evidence she gave under cross-examination, where it appeared to the tribunal that Ms Jones found it difficult to give a straight answer to a straight question. Instead she would attempt to deflect the question or answer a question that she would have preferred to have been asked. In contrast, we found the claimant in her answers straightforward and prepared to concede points to her disadvantage. This means that in general terms we preferred the evidence of the claimant to that of Ms Jones.

9. The claimant announced (in an informal manner) at the beginning of April 2016 that she was pregnant. She had taken up the role of operations manager in February. She had attended meetings in north Wales taking a full role in the negotiations and discussions. The claimant would share the driving on these occasions. At some point, shortly after the announcement of her pregnancy, the respondent made arrangements for the claimant to no longer share driving on those occasions of travel (although it must be said that the claimant indicated that driving was shared on those occasions in any event).

10. Ms Jones told us that she had undertaken an "informal" risk assessment. The level of informality is such that there is no detail of what risks she assessed, which dangers she foresaw nor what risk of danger that requiring somebody else to drive was to alleviate. However, despite that lack of detail it is clear that the respondent's reason for reducing the driving requirement placed on the claimant was because the claimant was pregnant. It was the reason given by Ms Jones and she told us that she did so to ensure the health and safety of the claimant. The tribunal note that there was no specific risk identified by either the claimant or the respondent in respect of the claimant driving whilst pregnant. Further there has been no evidence given that driving in of itself raises a specific risk to pregnant women. We are clear, however, that the reduction in the claimant's driving time did not reduce her actual responsibilities as operations manager. She was still expected to carry out the duties that she had previously when meeting the representatives of the local authorities and other organisations.

11. The respondent's Handbook requires the respondent to inform an individual of their rights and of the respondent's obligations in regard to maternity, upon being told of that maternity.
    11.1. The claimant was the first person to have become pregnant whilst employed by the respondent; this particular fact it appears to the tribunal relates to two matters.
        11.1.1. Firstly, the claimant was employed as the person who would normally have researched the requirements for this type of personnel issue with the respondent's HR advice providers; it was the claimant who would find out what steps the respondent should be taking.
        11.1.2. Secondly, although the claimant was pregnant Ms Jones, had an expectation that the claimant would do this for her own case.
    11.2. The claimant had no experience of dealing with these matters as this was the first pregnancy that the respondent was to deal with. Therefore, she would not have been aware of what steps it was necessary to take.
    11.3. There was no instruction from the employer to the claimant that she should seek out this information.
    11.4. That means that no steps were taken, in accordance with the handbook, to provide the claimant with the information on rights and obligations.
    11.5. It appears to the tribunal that because of the familial relationship along with the expectations that Ms Jones had of the claimant in her role, no thought at all was given as to what steps ought to have been taken when the claimant announced her pregnancy. In short, the respondent thought of this as a family matter and did not consider the claimant's position as an employee. On this basis, the respondent failed to make any contact with its providers and therefore received no appropriate advice as to the way in which it should have approached matters with the claimant.

12. A similar position was adopted by the respondent in regard to the claimant being provided information about: start and end dates of maternity leave, of statutory maternity pay and of the ordinary and additional maternity leave which the claimant would have been entitled to. In our judgement there was a failure on the part of the respondent to consider the claimant as an employee when they should have done so.

13. The claimant complains that at no stage was a risk assessment undertaken into her work. At the root of this complaint is the claimant's argument about being required to work long hours on occasion. The tribunal have heard no expert medical evidence, nor evidence from the claimant of any specific aspect of her pregnancy, which would mean that she fell outside the ordinary scope of an expectant mothers. We also have no evidence upon which we are able to say that the environment in which the claimant worked was one which had particular hazards. The claimant therefore relies solely on the length of time she was required to work. The tribunal are unable without evidence to conclude that working and twelve or thirteen hours is of a particular risk to expectant mothers. The tribunal are aware, for instance, that in a number of organisations where four-day weeks are worked that employees regularly work shifts in the twelve to thirteen hour range and we are unaware of any evidence that working such a period is of a particular risk to pregnant women.

14. The claimant complains that the company car allocated to her was taken from her at the start of her ordinary maternity leave on 28 November 2016. The respondent contended that the vehicle was not a benefit in kind.
    14.1. The respondent gave evidence that the claimant's vehicle was not for personal use. However, on questioning by the claimant it became clear that the respondent had seen the claimant drive for personal use at least once. The respondent contended this was a one-off occasion where permission was granted.
    14.2. The claimant told us, and we accept, that this was a situation which occurred far more often than once, and that no specific permission was requested or granted on those occasions.
    14.3. The respondent relies on the company handbook which sets out a general rule that vehicles were not to be driven for personal use.
    14.4. The claimant referred us to emails where personal use of vehicles was discussed.
    14.5. The claimant also pointed out that the respondent had, at her request, attempted to produce emails by using a search of the claimant's email address with the phrases "personal use" and company car" as the search parameters (p. 328). This search came out with zero results. The respondent could provide no explanation as to why the emails which use those phrases and which were disclosed were not apparent on those searches.
    14.6. The claimant told us that there were other emails dealing with these issues and that they must, therefore, have been deleted. Whether deleted deliberately or lost in some other way the tribunal is unable to say. However, given the existence of the emails to which we have referred we do not consider the page 328 is evidence that other emails dealing with those issues did not exist.
    14.7. We accept the claimant's evidence that there were other emails demonstrating that the claimant's use of the vehicle included personal use.

14.8. We are bolstered in this conclusion because it appears to us that the claimant, on being promoted to operations manager, received no pay rise but was given a company car. In those circumstances it appears to us to be likely that the provision of a company car was a benefit provided as an alternative to an increase in wages.

14.9. In addition to this the claimant's tax records demonstrate that the claimant had her personal tax allowance reduced to reflect use of a company vehicle. The respondent argued this was solely for the commuting element of personal use i.e. to and from the office from home.

14.9.1. We asked the parties about the possibility of the tribunal exploring company car tax rates online, because no evidence had been produced other than the claimant's reduction in tax allowance for a car.

14.9.2. Having considered submissions on the matter in our judgment we are not entitled to conduct such research into the levels of tax reduction in allowances for particular vehicles and therefore must rely solely on the evidence.

14.9.3. On that basis we are not in a position one way or another, to say whether the particular sum in the claimant's records reflects full personal use or personal use from home to office.

14.9.4. However, taking account of the other matters which we referred along with the fact that the claimant has a reduced personal tax allowance for a vehicle provided by the respondent, we have come to the conclusion that, on the balance of probabilities, that the vehicle was provided to the claimant for work use and for personal use.

15. The respondent argued that it had not requested that the claimant return the vehicle to the respondent and the claimant had done this of her own volition. The respondent's witness provided a vivid picture of the claimant abandoning the vehicle. She told us that the claimant had simply arrived blocking a driveway with the vehicle and had not spoken to her. The claimant produced a more measured account of having been asked to return the vehicle and of doing so and of having to wait at Ms Jones' home because her husband was delayed and would be picking her up. The accounts given by each of them varied so much in detail. This is not merely a different view of events; one of them did not tell us the truth. In our judgement the person who was misleading the tribunal was Ms Jones.

15.1. Ms Jones had told us that the vehicle was not for personal use. Obviously, in those circumstances, it would be expected that the respondent would have made provision for the return of the vehicle at the outset of the claimant's maternity leave. This is because at that stage the vehicle could not be used for any other purpose by the claimant.

15.2. When asked about what arrangements had been made Ms Jones said that she had no expectations of what would happen with vehicle. However, at a later point in her evidence Ms Jones said that she thought it would end up on her driveway. The tribunal considered her answers unsatisfactory and came to the conclusion that she had begun to tailor her evidence when she realised the illogicality of her earlier answers.

15.3. The claimant was unsure as to what the respondent's expectations for the vehicle were (and we add that the claimant had not at that stage explored her maternity rights and would not have known about an entitlement to retain the vehicle as a benefit). She was discussing this uncertainty in messages we have seen.

15.4. The account the claimant gave the tribunal ties in with tracking and telephone records that the tribunal have been shown. The account given by Ms Jones does not tally with these records well.

15.5. In all the circumstances we reject Ms Jones account; firstly that the claimant was not asked to return the vehicle and secondly that the claimant simply attended her premises and abandoned the vehicle in front of the driveway and left the key.

15.6. In our judgement the claimant's account that she had arranged to attend, had to wait for her husband to collect her, had telephone conversations with her husband indicating that he would be late, and had moved the vehicle as requested whilst in conversation with Ms Jones is correct. It supported by records and the claimant's account was more compelling.

16. The claimant's complaint relating to pension payments not being continued during her maternity leave was met with the respondent's evidence that an accidental error was made by the respondent's accountant. The claimant accepted that payroll and pension matters were dealt with by the accountant on behalf of the respondent; although, she did say that processing was based on information provided to the accountant by the respondent. However, that said nothing in the evidence pointed towards this reduction being anything other than an accounting error. There was no indication from any of the documents that we've seen or the evidence that we've heard that the decision to pay lower pension contributions was deliberately made.

17. At the beginning of May 2017, the claimant announced to the respondent, in the person of Ms Jones, that she was tendering her resignation with notice. The tribunal mark this as the date of change in the relationship between the claimant and Ms Jones. In our judgement after this announcement Ms Jones felt a degree of bitterness towards the claimant. The evidence of Ms Jones pointed to her holding the view that the claimant had had specific advantages with the respondent because of her family connection. Further that evidence demonstrated a sense of being significantly let down by the claimant. Ms Jones said this was because the claimant was joining her husband's business and she had discovered disloyalty on the part of the claimant after her resignation: we reject that as a reason.

17.1. We were told by Ms Jones that the claimant was part of the family regularly visiting Ms Jones and her Husband. This meant that the claimant would have been fully aware of events both in the business of the respondent and within the family, because of those visits and discussions. We consider that was likely to have remained the position up until May of 2017.

17.2. However, the converse is also true. Ms Jones, because of the familial relationship, would have been fully aware of any involvement that the claimant had in her husband's businesses.

17.3. This is important for the following matters: the promotion of the office manager and the promotion whilst the claimant was on maternity leave of another individual.

17.4. In our judgement the relationship up to May 2017 meant that the claimant was, in general terms, content with the steps taken by the respondent and was fully aware of those steps.

17.5. We have no doubt that the claimant would have been aware that there were expansion plans and that individuals were taking on roles and new duties as part of those expansion plans.

17.6. We are also of the view that any specific responsibilities of the claimant, given to others, during or in preparation for her maternity leave, were so given in order to cover the needs of the respondent during that maternity leave.

17.7. We do not consider that the claimant was unaware of the roles and the responsibilities undertaken by those individuals. Further we do not consider that she was concerned that she would not have a role and responsibilities at operational manager level when it was planned that she would return after maternity. Although those individuals were told that their roles would be permanent, in our judgment the claimant would have been aware that with the growth of the organisation there would be no difficulty in her returning on the same role and responsibilities whilst additional work would be available for the others promoted.

18. However, in May 2017, when the claimant informed the respondent of her intention to resign we conclude that the bitterness that we have referred to revealed itself in Ms Jones attempting to use the claimant's involvement in her husband's businesses as a means of attacking the claimant.

18.1. In terms, we conclude that Ms Jones would have known that the claimant used working time and the respondent's equipment to assist her husband.

18.2. Further we consider that this was with the tacit, even if not actual permission of the respondent. In coming to this conclusion, we take account of the fact that the claimant's husband was the nephew of the director Ms Jones.

18.3. If the claimant was in any way trying to be underhand, in our judgment, she would not have used the respondent's computer equipment in the way that she did. She had stored the information where it would be readily available to the respondent in open computer files so that any person, including Ms Jones would have easy access to the evidence.

18.4. Ms Jones would have had no difficulty using the computers and obtaining these files at any stage.

18.5. We take the view that in those circumstances the respondent's references to breach of contract and breach of the requirements of employment as set out in the handbook on the part of the claimant are, Ms Jones, lashing out at the claimant with any information at her disposal. This was because the claimant had resigned.

19. It is for a similar reason that we consider that the respondent was approaching matters in May and June 2017 in the hope that it would not have to pay the claimant any further monies. The respondent was, from the correspondence we have seen, attempting to discover whether there was a means of lawfully not paying the claimant. This is the reason the claimant was paid late in both May and June 2017. It was a consequence of those late payments that the payslips and P45 record of the claimant's earnings were wrong.

The Law

20. The Equality Act 2010:

20.1. Section 18 provides:

> (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
>
> (2) A person (A) discriminates against a woman 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.
>
> (3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.
>
> (4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.
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>
> (6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—
>
> (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
>
> (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), or.
>
> (b) it is for a reason mentioned in subsection (3) or (4).

21. If an employee has the right to ordinary and additional maternity leave, the 'protected period' begins when the pregnancy begins, and ends upon the expiry of the additional maternity leave period, or when she returns to work after the pregnancy if that is earlier.

22. The approach adopted by the Court of Appeal in disability discrimination as set out in ***Williams v Trustees of Swansea University Pension & Assurance Scheme [2018] ICR 233*** indicated that the critical question is whether treatment which confers advantages on a person, but would have conferred greater advantages had different circumstance existed, amounts to "unfavourable treatment? The answer given is that it would not. The statutory formulation of "unfavourable" is to be measured objectively against that which is adverse as compared with that which is beneficial. It appears therefore in deciding whether the claimant was treated unfavourably we have to

consider whether, objectively, it conferred any benefit upon the claimant or was to her disadvantage.

23. When asking if the treatment of the claimant was “because of” the protected elements it is not simply finding that it was 'because of' the relevant protected characteristic alone. The protected characteristic in question need not have been the sole reason for that the tribunal must ask if it was an 'effective cause' ***O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School and anor [1996] IRLR 372, [1997] ICR 33, EAT and O'Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615, CA***. In general terms that means that a “but for” test is to be applied. However, in ***Nagarajan v London Regional Transport [1999] IRLR 572***, it was accepted that a single test for direct discrimination was not always appropriate. The House of Lords concluded that if the protected characteristic had a 'significant influence' on the outcome, discrimination would be made out. The crucial question in every case was, however, 'why the complainant received less favourable treatment … Was it on grounds of the protected characteristic? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?'

24. In this case the tribunal is required to look at the issue of time limits for the acts complained of by the claimant which fall outside the period (including early conciliation extensions) prior to the presentation of the claims which is permitted. We are required to consider first whether separate incidents constitute an act extending over time and second, if that be not the case, whether it is just and equitable to extend time.

25. We are guided in respect of the first issue by the decision in ***Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96***. Where it is demonstrated that the claimant is required to establish that incidents of discrimination are linked and are evidence of a continuing state of affairs. We are entitled to take account of similarities in the incidents themselves, whether the same or different individuals were involved, whether a policy, practice or continuing state of affairs gave rise to the incidents, and we are entitled to consider whether the motive for the incidents arises from a single source.

26. Our discretion to extend time for presentation of a claim must be made on a just and equitable basis. We are entitled to consider an extension as an exceptional course which the claimant must persuade us is appropriate to take. We are required to take account of the prejudice that may be suffered by either party in the decision to extend or not to extend time. We must take account of all the circumstances surrounding the case. In ***Robertson v Bexley community Centre [2003] IRLR 434***, it is made clear that there is no presumption that the tribunal should exercise its discretion to extend time, and that the onus is always on the claimant to convince the tribunal to do so. It was said in that case by Auld LJ that: *"the exercise of discretion is the exception rather than the rule".*

27. The **Management of Health and Safety at Work Regulations 1999** article 3 and 16 require an employer to make risk assessments; the latter relating solely to pregnancy. They provide (so far as relevant) as follows:

Article 3:

(1) Every employer shall make a suitable and sufficient assessment of—
(a)the risks to the health and safety of his employees to which they are exposed whilst they are at work;
----
for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions -------.
(3) Any assessment such as is referred to in paragraph (1) or (2) shall be reviewed by the employer or self-employed person who made it if—
(a) there is reason to suspect that it is no longer valid; or
(b) there has been a significant change in the matters to which it relates; and where as a result of any such review changes to an assessment are required, the employer or self-employed person concerned shall make them.
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(6) Where the employer employs five or more employees, he shall record—
(a)the significant findings of the assessment; and
(b)any group of his employees identified by it as being especially at risk.

Article 16:

(1) Where—

(a)the persons working in an undertaking include women of child-bearing age; and

(b)the work is of a kind which could involve risk, by reason of her condition, to the health and safety of a new or expectant mother, or to that of her baby, from any processes or working conditions----------

the assessment required by regulation 3(1) shall also include an assessment of such risk.

In ***Nnachi –v- Home Farm Trust Ltd [2005] UKEAT 0400_07_2510*** it was made clear that a failure to comply with the above duties in respect of risk assessments could amount to an act of sex discrimination.

ANALYSIS

28. In order to be protected by the pregnancy and maternity provisions of the Equality Act 2010, the woman must be in the 'protected period'. There has been no dispute that the claimant's complaints fall within that period. Alternatively (or additionally) the claimant must be exercising, seeking to exercise, have exercised or have sought to exercise the right to ordinary or additional maternity leave. Again, there is no dispute that in respect of the claimant's complaints which include the loss of the vehicle and pay, the claimant is protected.

28.1. The claimant complains that prior to her commencing maternity leave an

individual was promoted to the role of office manager and the promotion was to cover part of her role. She complains however, that the individual was told that this was a permanent role. Her interpretation of that was it meant a permanent removal of some of her responsibilities.

28.2. The claimant then complains that she discovered that an employee was given promotion whilst she was on maternity leave. She discovered that promotion at a late stage in proceedings. Again, her position was that this employee was taking some responsibilities from her role. However, she also complains that she was never informed and consulted in respect of that promotion.

28.3. The claimant then complains that there was a failure to carry out any risk assessments. Further, while the claimant was pregnant there was also a failure to put in place measures to reduce the level of working hours the claimant was required to work.

28.4. Finally, the claimant complained that other salary benefits were removed when she started maternity leave. This involved the removal of a company car for which she had personal use. Further that company pension contributions were not continued as they to being.

28.5. There are a second group of complaints relating to a period in May and June 2017, where she complains that her pay for May 2017 was withheld for several days. That the method of payment employed by the respondent to pay her June wages was changed, again resulting in a delay in payment. This resulted in the claimant being paid late in May and June of 2017. She claims that she did not receive a payslip for May 2017 and that the P45 given to her did not reflect her correct earnings.

29. The first complaint is resolved by considering question of whether the treatment was unfavourable. We ask ourselves was there, objectively, disadvantage or benefit to the claimant in the actions of the respondent.

29.1. The claimant complains that responsibilities were removed from her role that had been given in February 2016, this included the need to drive. In our judgement there was no disadvantage but a benefit. The removal of the requirement for the claimant to drive did not remove a responsibility of her role on a permanent basis.

29.2. This was actually to the advantage of the claimant; it meant that others travelled with her and shared the driving. There was no reduction in salary nor was there any indication that this would be permanent.

29.3. Whilst we understand that the claimant, reviewing matters in the light of later events, might consider that this was motivated by other reasons, that is not the way she considered it at the time.

29.4. In our judgment, given the family circumstances at the time, and despite the absence of a formal risk assessment the real reason for the reduction in driving was an attempt to improve the claimant's work conditions during her pregnancy.

30. The next complaint relates to the claimant not being provided with information about her rights and the respondent's obligations with regard to maternity. It is useful at the same time to consider the complaint that the respondent failed to provide the claimant with any written confirmation of the start and end dates of her maternity leave along with the statutory maternity pay she was entitled to.

30.1. This was within the protected period and, obviously, this related to the claimant's pregnancy.

30.2. The respondent had decided as policy, and had set this out in a staff handbook, that it would give employees the necessary information on these matters; it did not do so in the claimant's case. Not to do so, in our judgement, is objectively unfavourable treatment. This is because the respondent failed to provide a benefit which it represented would be provided; that must be disadvantaging the claimant.

30.3. Further the treatment was because the claimant was seeking to exercise her statutory maternity rights including the right to ordinary or additional maternity leave. In short, the issue only arises because the claimant was pregnant, and it relates to the claimant seeking maternity leave. On that basis, subject to the question of time limits the respondent would be responsible for pregnancy discrimination.

31. In our judgement the promotion of other individuals, both prior to and after the claimant commenced maternity leave, were related to her pregnancy in the protected period. This is because of some of the duties that were provided to the promoted individuals had been carried out by the claimant. However, we do not conclude that this was unfavourable treatment. This was simply a reorganisation of the work to be carried out during the claimant's absence for maternity leave. It cannot be the case that an employer is not entitled, in the period leading up to maternity leave or during that leave, to make arrangements to ensure the work usually carried by the claimant is covered. That cannot, without more, amount to discrimination on the grounds of pregnancy.

32. We then there are asked to deal with the issue of risk assessments. We will consider along with this the complaint about failure to put in place reductions of long working hours. This complaint relates to the period of maternity to which the1999 management of health and safety regulations would apply. In our judgement the claimant does not succeed on these complaints.

32.1. In order for the employer to have failed to carry out a risk assessment the pre-conditions which establish the duty to do so must exist. Therefore, the claimant's role must include work that is of a kind which could involve risk, because of pregnancy, confinement or post-natal care, to the claimant's health and safety (or to that of her baby) from the working conditions.

32.2. The claimant relies on the fact that on the occasions where she would be required to travel she worked long hours. Nothing in the evidence established that a new or expectant mother would be at risk from long working hours or the need to travel. We have heard no evidence to demonstrate that either the claimant in particular or pregnant women in general would be at a significant a particular risk to their health and safety because of working those long hours. We able to take judicial notice of some general expectation about lengths of the working day because we do not understand that there is a general public knowledge at that such working is harmful.

32.3. In those circumstances, in our judgement, there was no obligation under the regulations to undertake a formal risk assessment. Further in our judgement on the facts before us, there was no particular risk to the claimant which

needed to be alleviated by putting in measures to reduce working hours. Therefore, we do not consider that this amounts to discrimination on the grounds of pregnancy.

33. The next complaint is that the claimant lost the benefit of the use of the company car. We have found as a fact that the claimant had personal use of the company car. It was a benefit in kind to the claimant. That benefit was removed at the request of the respondent at the commencement of the claimant's maternity leave. The removal of the benefit took place in the protected period. The removal of the benefit was because the claimant was seeking to exercise ordinary maternity leave. Subject to the question of time limits, this claim of discrimination would be proven against the respondent.

34. The withholding of pay in May 2017 and the late payment in June 2017. These events fall within the protected period and, because statutory maternity pay is involved the non-payment is connected to the claimant's pregnancy. However, given our findings of fact, the pay was not withheld because the claimant was attempting to exercise her rights in respect of maternity leave. In our judgement this happened because of the adverse reaction by Ms Jones to the claimant's resignation. Factually, therefore, it is causally unrelated to pregnancy or maternity leave. On that basis there can be no discrimination finding against the respondent.

35. The claimant's complaint that her complaints amount to an act of discrimination extended over a period up to June 2017 cannot succeed. Assuming without making a finding that the latest instance in an extended act occurred on 28 November 2016 when the car was taken from the claimant, that must be the date from which limitation is applied. The claimant did not present an early conciliation application to ACAS until 30 August 2017. That process of conciliation was not concluded until 14 October 2017. The claimant's claim was not presented until 13 November 2017. As can be seen from those facts that the claimant's claim is considerably outside the three-month limit in which such claims can be made. The tribunal therefore must consider whether it would be just and equitable to extend time to 13 November 2017 for the claims which the claimant has demonstrated to be well founded, to be presented to the tribunal.

36. The claimant has demonstrated a facility for discovering employment law and considering its appropriate application to the facts of her case. The claimant had access to the sources of employment law online. The claimant did not, in evidence, demonstrate any particular reason why she could not have conducted that research at an earlier stage than she did. The claimant, therefore, was perfectly able to establish what her employment rights were within the initial three-months up to the 12 February 2017. Had she contacted ACAS by that date and used the maximum available period for conciliation that would mean that the latest the claimant could have presented a claim in time would have been in late April 2017; presentation of her claim is more than six months after that. The dates of the claimant's complaints begin almost immediately after she announced that she was pregnant. That means that, for the oldest complaints, the claim was presented more than 18 months after the events. If nothing else the passage of time would mean that there is some evidential prejudice caused to the respondent. In addition to this the family nature of some of the events means that there would less in the way of contemporaneous records of discussions and meetings; that also impacts on the degradation of

evidence over time emphasising this type of prejudice. The claimant will lose the opportunity of pursuing well founded claims, this is prejudice to her. However, put in the balance, in our judgement the balance of prejudice falls in favour of the respondent. Therefore, we find it is not just and equitable to extend the time for presentation of the claims.

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EMPLOYMENT JUDGE W BEARD

Dated: 26 June 2018

Judgment entered into Register
And copies sent to the parties
On

.....2 July 2018.....

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for Secretary of the Tribunals