



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104752/2018

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Held in Glasgow on 23, 24, 25 and 26 April and 30 May 2019 (members meetings in chambers)

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**Employment Judge: F Jane Garvie
Tribunal Member: Mrs G Eckersly
Tribunal Member: Mr A Grant**

Ms X

**Claimant
In Person**

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Peter Vardy Ltd

**Respondent
Represented by
Mr G Robertson
Advocate**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:-

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1. the complaint of discrimination in terms of sections 13(1) and 26 (1) of the Equality Act 2010 succeeds and a remedy hearing will be arranged at a later date;
2. the complaint of discrimination in terms of section 18(2) of the Equality Act 2010 did not succeed and it is therefore dismissed;
3. the complaint of discrimination in terms of section 27 of the Equality Act 2010 did not succeed and is therefore dismissed;
- 30 4. the complaint in terms of section 108 of the Equality Act 2010 did not succeed and is therefore dismissed;
5. the complaint of automatic constructive dismissal in terms of section 99 of the Employment Rights Act 1996 did not succeed and is therefore dismissed and

E.T. Z4 (WR)

6. the Tribunal did not have jurisdiction to consider the complaint of constructive dismissal in terms of section 94 of the Employment Rights Act 1996 as the claimant did not have sufficient qualifying service in terms of section 108 of the 1996 Act and it is therefore dismissed.

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REASONS

Background

1. In her claim, (the ET1) the claimant alleges that she was unfairly dismissed and discriminated against on the grounds of pregnancy or maternity. She did not tick the box for “sex” discrimination at page 6, section 8 of the ET1. The respondent lodged a response, (the ET3) in which they deny all the allegations made by the claimant and, specifically, they state that at no point did she complain that she had been bullied and/or harassed due to pregnancy.
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2. A Preliminary Hearing by way of case management was held after which a Note was issued by Employment Judge Jane Garvie, indicating that a Preliminary Hearing on the issue of Time bar was required. That Note was dated 6 August 2018.
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3. There was then a further preliminary hearing on 27 September which considered the respondent’s position that they did not wish to pursue the point on time bar. It was explained that time bar did require to be considered since whether a claim is in time is fundamental to the issue of jurisdiction. It was pointed out that the claim appeared to be brought on an assertion of automatically unfair dismissal and pregnancy related dismissal and so the Tribunal would have to consider whether or not it would be just and equitable to allow the claim to proceed if it was brought out of time.
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4. A Preliminary Hearing on time bar was held on 19 November 2018 before Employment Judge Declan O’Dempsey who gave judgment that the effective date of termination of employment was 8 January 2018 and the Tribunal considered that it was just and equitable to allow the claim to proceed in terms

of section 123 of the Equality Act 2010, (referred to as the 2010 Act). Judge O'Dempsey also issued a Note in which he set out various directions.

5. His Note states that it seemed to him that, along with section 39 of the 2010 Act, other sections may be applicable, having found that the agreed termination date of the claimant's contract in terms of section 108 was 8 January 2018. For matters before and after that time section 18, (pregnancy/maternity) and section 26 (1), (harassment related to sex). He also noted that the claimant appeared to rely on section 13, (direct discrimination). He went on to say that, while appreciating the claimant is not a lawyer and so has not set out her pleadings in that style she wanted to complain about the incidents she refers to in the ET1, using the phrase, "the vast number of incidents", not only as examples of pregnancy discrimination under section 18 but also as examples of direct sex discrimination, (section 13) and or harassment under section 26.
6. He pointed out that the claimant referred to "a string of incidents" and "the incidents of bullying continued and worsened" and that all of these needed to be particularised. Following discussion, it appears that the claimant agreed to provide a table with columns with each row representing a different date.
7. The first column was to contain the date or starting date of any event on which she wished to rely, then the second column was to contain factual details of the event upon which she wished to rely while the third column would give a very brief description of any document which was relevant to the second column such as an email or the like. The fourth column would name any person whom the claimant considered was a witness, including people mentioned by name in column four to the events in column two. The fifth column was to contain the details of any section or sections of the 2010 Act on which the claimant wished to recover compensation.
8. It was pointed out that the claimant would need to give sufficient detail so that the respondent knew fairly what case it had to meet. In his Note the Judge explained that the claimant did not need to give all the evidence on which she

intended to rely nor to list each and every document that might be relevant, only the principal ones.

9. It was then explained that she would have to write to the Tribunal, copying this to the respondent and stating if she wished to amend. He also noted the
5 claimant previously had mentioned victimisation and, if she was relying on section 27 of the 2010 Act, she would have to make it clear if she was doing so and she would also have to explain what was (a) the protected act she seeks to rely on and (b) the detriment that she says she suffered as a result of doing that protected act. If she could not point to any such passage this
10 was another point at which she would need to apply to the Tribunal to amend the pleadings.
10. Thereafter, the respondent would have 14 days to indicate if the amendments sought would be accepted as being made by consent or to indicate what objection the respondent had to any such amendments.
- 15 11. The claimant was also to indicate whether she was making a claim that the stress of her treatment by the respondent caused her miscarriage. The Judge noted that she did not seem to be making such a claim.
12. His Note then set out directions about the number and names of potential witnesses, the approximate time to present the evidence, likely cross
20 examination times and the amount of time the hearing might take.
13. He also indicated that the parties should consider the importance of seeking a settlement and that if they considered or reconsidered their expressed positions on judicial mediation then that was something which could then be considered.
- 25 14. The claimant provided a detailed table under cover of an email of 11 December 2018. There was then an email sent by the respondent's representative, indicating that they were still to take instructions on the proposed table and, in the meantime, information was provided regarding the availability of witnesses.

15. Next, the claimant was informed by the Tribunal office by email that, if she wanted to proceed with an amendment, she must set out her reasons for doing so. The claimant responded by email of 20 February 2019, indicating that she had not applied to amend.
- 5 16. Meanwhile, date listing letters had been issued and Employment Judge Robert Gall directed that the case be listed for 4 days for the final hearing.

The Final Hearing

17. At the start of the final hearing, Mr Robertson explained that he had recently been instructed by the respondent, this being over the Easter holiday weekend. Both parties provided separate bundles of documents in which there was some overlap of material. It appears that the claimant had received the respondent's bundle by way of an electronic copy. This was unfortunate as it meant that the claimant had not seen the hard copy of their bundle until the morning of 22 April 2019. The claimant had included in her bundle the table being the one referred to by Judge Dempsey in his directions from the preliminary hearing on 19 November 2018. It was clear that no formal application had been made to amend the claim given the claimant's indication that she was not seeking to do so. It was suggested that her document which is set out as C 41 – 62 should be treated as her witness statement. That document had been seen by one of the respondent's witnesses, Miss Stephanie Connor.
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18. After an adjournment it was agreed that the hearing should be adjourned for the rest of the day to enable the parties and the Tribunal to read the respective bundles. There was no objection taken to the suggestion made by the Tribunal that the claimant's table be treated as her witness statement.
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19. It is important to note that witness statements had not been ordered by Judge Dempsey. As the Tribunal understood it, the respondent did not take objection to the claimant's document at C41-62 been used in this way given its contents appeared to be familiar to Miss Connor and, presumably, to those instructing

Mr Robertson. It is appropriate to note that the respondent had previously been represented by another advocate at the earlier preliminary hearings.

20. When the hearing reconvened the next morning, the claimant was to give evidence. She had intended to call two witnesses, one being her mother and the other a friend. It became apparent that neither of these individuals would be able to speak to any of the allegations made by the claimant about incidents that were said to have occurred during the course of her employment since neither was present at the time the incidents occurred at work and which the claimant maintains give rise to the allegations set out by her against the respondent.
21. After an adjournment, the claimant indicated that she was no longer seeking to call these individuals each of whom at various times sat in during the Tribunal hearing as a supporter to the claimant and there was no objection to their doing so by Mr Robertson.
22. Evidence was given on behalf of the respondent by Miss Connor and by the claimant's immediate Line Manager, Mr Y. It was agreed that it would be appropriate to issue an anonymisation order for the claimant. It later became apparent that an anonymisation order should also be issued in respect of the immediate line manager who is referred to as Mr Y.
23. It was also agreed that the final hearing should deal with the merits and that, in the event the claim or any or all or part of it succeeds, then there should be a separate remedy hearing at a later date.
24. The claimant had provided in her bundle a detailed schedule of loss but this was not considered at the merits hearing given it had been agreed that there should be a separate remedy hearing in the event of the claim or part of it succeeding, as set out above.

Findings of Fact

25. The Tribunal made the following essential findings of fact.

26. The claimant commenced employment with the respondent as a sales advisor in the early summer of 2016. The claimant gave her start date as 25 May while the respondent disagreed as they gave the start date as 20 June 2016. The claimant very much enjoyed her work. She worked as one of a team of sales advisors and their direct reporting line was to a sales controller. The respondent has a number of sales teams, usually between 4 and 5 sales advisors in each team with the direct line manager being a sales controller. The sales controllers, in turn, report to the next level of management. The respondent's premises where the claimant was based is a large car showroom where many vehicles are on display. Potential customers are referred to as "guests" and they will be met on arrival by a member of staff who will then ask each guest to meet a sales advisor who can then provide assistance to the guest.
27. The claimant continued to work as a sales advisor throughout the remainder of 2016 and well into 2017. Mr Y was employed by the respondent before the claimant commenced employment. They did not work in the same sales team but, very occasionally worked together, for example, if they were asked to travel to other sites operated by the respondent in Central Scotland to deliver or collect cars.
28. In the summer of 2017 Mr Y became the claimant's sales controller and as such he was her direct line manager, that is her first line of reporting. He, in turn, then reported to a more senior member of management, a Mr Alistair Page. His line manager was a Mr Darren Cuthbertson. The more senior members of management such as Mr Page and Mr Cuthbertson were often on the sales floor as well as the sales controllers and the various sales teams.
29. The claimant set out a table as referred to above following the preliminary hearing before Judge O'Dempsey. This records the various incidents. Each incident gives a date and describes which incident it was, for example, the first was on Friday, 29 September 2017, (C41-43). For ease of reference, they are set out under each incident and date.

The first incident on 29 September 2017

30. On that date the claimant met a potential customer, (referred to by the respondent as a “guest) who was interested in a specific vehicle. He explained that he was looking at this for his wife and so he wanted time to take photographs and then call his wife in his mobile and discuss it with her.
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31. The claimant had booked a test drive for the customer’s wife. She left the customer alone as this was what he requested. The claimant moved away and went to where another colleague was standing. They were then chatting near a large television screen in the centre of the car showroom.
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32. Mr Y then approached her and wanted to know why the customer had been left alone. The claimant was adamant that he told her to go back to the customer and indicated that, if she did not do so, then she would be “walking out the door”. The claimant asked if he meant she was “being sacked” and he said, “Yes” he did.
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33. The claimant walked away and went to Mr Alistair Page who was Mr Y’s line manager. She recounted to him what had been said to her. Mr Page told the claimant that Mr Y did not have the authority to dismiss the claimant. He asked the claimant to wait in his office while he spoke to Mr Y.
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34. While waiting in Mr Page’s office the claimant thought that Mr Y tried to call her twice on her mobile while she was waiting for Mr Page to return. Mr Page did return some time later. He reassured the claimant she had not been dismissed. He also told her to come to him if she had any issues with Mr Y in future.
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35. The claimant agreed to go back to work on the showroom floor. The claimant felt there was an unpleasant atmosphere for the rest of the day as Mr Y did not speak to her again.
36. Mr Y had a very different version of the events of the incident.

37. His recollection was that the claimant had left a “guest”/potential customer in the showroom. He could not see the claimant but realised she had gone outside with another employee. The claimant disputed she had been outside.

5 38. In the claimant’s absence, Mr Y spoke to the “guest”/potential customer as the individual seemed to be looking for some assistance. Mr Y then found the claimant and asked her to return to deal with questions from the potential customer.

39. Mr Y denied having shouted at the claimant. He also denied saying something to the effect “that the claimant was being dismissed” by him.

10 40. It was not in dispute that the claimant subsequently contacted Mr Y’s line manager, Mr Page who told the claimant to wait in his office while he spoke to Mr Y.

41. Like the claimant, Mr Y accepted that the relationship between them changed from then on.

15 **The second incident on Saturday, 30 September 2017**

42. The second incident was referred to as Saturday 30 September (although the typed date on the claimant’s table is 20 September, (C43-48).

20 43. The claimant arrived for work, having driven from home which is a commute that takes her about one hour. She was wearing what she described as a “pencil skirt” and she was aware that it was creased from sitting in the car while driving from home to work.

25 44. The claimant attended the regular sales meeting which is held with each sales team’s staff first thing each morning. She then moved across to where there is an ice cream van which is situated in the middle of the large showroom as this is where her team would congregate before the business opened to customers.

45. Mr Y approached the claimant. He handed her a £20 note and told to purchase an iron and ironing board and then go to an upstairs office upstairs to iron her skirt. Mr Y spoke to the claimant about her skirt as it was very wrinkled.
46. The claimant did not consider this was an appropriate instruction to be given to her by Mr Y as it was done in front of other employees. Mr Y disagreed as he and the claimant had moved away from other staff and so he thought they were far enough away not to be overheard.
47. The claimant then left the showroom and went to the female toilets where she was upset and crying. Two female colleagues approached her, asking if she was alright and suggested that she should go outside and calm down.
48. As the claimant came out of the female toilets she saw Mr Page who was with his line manager, Mr Cuthbertson. The latter started shouting at her and said to the claimant something to the effect of "You always have to make a drama and a big deal out of things". The claimant knew she was visibly upset.
49. The claimant began walking away towards the work shop but Mr Page and Mr Cuthbertson followed her. The latter told her to go into an office which was close to the work shop. He was accompanied by Mr Page.
50. The claimant was extremely upset. She was aware that there were mechanics nearby in the work shop who could see into the office as it has glass windows. Mr Cuthbertson continued to shout at the claimant and she was conscious of the mechanics looking through the glass windows.
51. Mr Cuthbertson shouted at the claimant about "how I was a mess and made me turn around in a circle in front of Alistair Page". He asked Mr Page what he thought of "my attire", (C46).
52. The claimant's impression was that Mr Page was agreeing with Mr Cuthbertson although he did not say anything directly to the claimant or to Mr Cuthbertson.

53. The claimant remained upset and so she knew that she had to leave the building. She told Mr Cuthbertson this and left, walking to her car.
54. Once in her car she pulled herself together, reapplied her makeup and then, having gathered herself together, drove to a nearby Tesco store where she purchased a skirt. She drove back to the showroom and went to change into the new skirt in the female toilets.
55. Later, she saw Mr Cuthbertson in the showroom. She handed him back the £20 note which she understood he had given to Mr Y earlier in the morning. The claimant paid for the new skirt she purchased in Tesco with her own money.
56. Mr Y's recollection was that the claimant's standard of dress was unacceptable and her shoes were "mucky". That was why he approached her, handed her the £20 note with the instruction to buy an iron and so forth.
57. The claimant herself accepted that her skirt was creased when she arrived in the showroom.
58. During the rest of her shift, the claimant was aware that a number of mechanics had seen something happening earlier as they approached her and asked what had happened.
59. In relation to this second incident, (the skirt/iron) the claimant was upset by the fact that Mr Y spoke to her about her general appearance. She was also upset that this was done in front of other people. His position was that they were standing away from other people and were not overheard.
60. Part of the claimant's ongoing upset was that she then happened to encounter Mr Cuthbertson and as explained he told the claimant to go with him and Mr Page into another office which was close to the work shop. The claimant became even more upset which is entirely understandable in that she was then asked to turn around in a circle in front of the two men while Mr

Cuthbertson asked Mr Page what he thought of the claimant's standard of dress.

- 5 61. It seems, from the claimant's point of view, that Mr Page was quiet but he did appear to agree with what Mr Cuthbertson was saying to the claimant about her skirt.
62. It is important to stress that the claimant's upset was first of all in relation to Mr Y when he spoke to her about her general standard of dress and that she was unkempt. His evidence to the Tribunal was that her standard of dress was unacceptable. He recalled that her shoes were "mucky" as set out above.
- 10 63. It was not in dispute that he gave a £20 note to the claimant, indicating that she should purchase an iron and ironing board although she did not do so. Instead, later in the morning having had the encounter with Mr Cuthbertson and Mr Page the claimant went to her car where she was still visibly upset and, eventually having reapplied her makeup, she drove her car to the local
15 Tesco where she bought a new skirt. She then returned to the respondent's premises and changed into that skirt in the female toilets. She then handed the £20 note back to Mr Cuthbertson as it appears that she understood that he had provided the £20 to Mr Y.
- 20 64. Mr Y recalled that another employee has been sent home because their standard of dress was not acceptable. This was in the last year but it does seem to suggest that the respondent may have been particularly concerned about the standard of dress of its employees generally.
- 25 65. However, this does not justify, in the Tribunal's view, that two male employees would tell a female employee to turn around in a circle so that the individual's skirt could be viewed from the rear. Possibly, the same could have been said to a male employee which raises the question of whether this was discrimination in terms of Section 26(1) being unwanted conduct related to a relevant characteristic which has the purpose or effect of violating the person's dignity or creating an intimidating, hostile, degrading, or humiliating

offensive environment. Asking any employee to do this, seemed to the Tribunal, to be at the very least inappropriate.

5 66. The Tribunal was satisfied that, by doing so the respondent's senior manager acted in a way that amounted to unwanted conduct as it created an intimidating, hostile, degrading, humiliating and offensive environment for the claimant.

10 67. The Tribunal was mindful that in the ET1 the claimant indicated that she was asserting that she was discriminated against on the grounds of pregnancy or maternity. She did not tick the box for sex. However, on reading the documentation provided it was apparent that she is asserting that there was discrimination on the grounds of sex as well as her allegations in relation to pregnancy, (see below).

The third incident Monday, 2 October 2017

15 68. The third incident was on Monday, 2 October, (C47-49). The claimant received a group text on her mobile from Mr Y, (C39). This indicated that his team, (including the claimant who was the only female member of the team) were to attend an inspection the next morning. He expected that their name badge would be visible, they were to be clean shaven, shoes polished and uniform ironed perfectly.

20 69. The claimant thought this text was directed at her from the previous day and the incident with her skirt. She later spoke to Mr Page who assured her she did not require to attend any inspection. He told her he would speak to Mr Y.

70. Mr Y accepted he had sent the text to all the members of his team as a group text. There was no uniform inspection the next day or any other day.

25 71. The text sent to the claimant and the rest of her team by Mr Y, (C39) reads as follows:

"Every morning at 9.15 My team will meet & The Main Screen for an inspection. What I expect:-

Name badge visible.

Clean shaven

Shoes polished

Uniform ironed perfectly”

5 72. This was followed by a further text of 3 October which reads:

“Guys 10.30-5.30 this Sunday”

73. This was followed by another text on 5 October 2017 which reads:

“No inspection this morning team”, (both again C39).

74. Mr Y accepted that he sent this e-mail to his team which included the claimant
10 who was the only female member of the team, there being four men and
herself on that team. As indicated, there was no inspection of the team’s
attire/appearance the next morning or indeed on any subsequent morning.

75. The claimant was upset because she believed that this e-mail was sent as a
way of causing further embarrassment to her as she believed that the entire
15 sales team knew about the incident with her skirt on 30 September.

76. The claimant also referred to her start time being 10am and that she was
being required to attend at 9.15am which she maintained was “unpaid as
unethical”. The Tribunal did not understand that this specific point was raised
by the claimant to the respondent when she met Miss Connor on 23
20 November 2017, (see below).

The fourth incident 4 October 2017

77. The fourth incident is recorded as having occurred on 4 October, (C49-51).
The claimant attended work that morning, knowing that Mr Page was on a
25 day’s leave.

78. She spoke to another employee as she was concerned about how she would be able to handle her work that day as she would not have Mr Page available to approach for support.

5 79. The claimant duly attended the daily sales meeting after which Mr Y asked her into Mr Page's office. He told the claimant that she was "the worst member of his team", that "hr were handling her" and "I wouldn't have a job if I continued to cause problems".

80. In sharp contrast, Mr Y did not recall such a discussion with the claimant.

10 81. In any event, as a result of what had been said to her by Mr Y the claimant was in tears. A female member of staff arrived in Mr Page's office and so the claimant explained her concerns. This individual suggested that the claimant and she should speak to Ms Holmes who was a more senior member of the management team.

15 82. There was an informal discussion with Ms Holmes who said that she would arrange a meeting with HR so that the claimant and Mr Y could resolve their issues. The claimant referred to another colleague later speaking to her and warning her "to watch my back", this being in relation to Mr Y.

The fifth incident (referred to by the claimant as the sixth) on 5 October 2017

20 83. The next incident was on 5 October, (C51-52). On that date the claimant was asked to attend a meeting with Mr Y and a Ms Laura Cuthbertson, (the latter is not related to Mr Cuthbertson) who is a member of the HR team.

25 84. The claimant thought this meeting was "very scripted" and that Ms Cuthbertson sided with Mr Y in relation to points that had been raised by the claimant since, in her view Ms Cuthbertson was "siding" with Mr Y who denied the events that the claimant referred to in the meeting.

85. The claimant was not given prior notice of this meeting and no witnesses were offered or minutes prepared. The claimant did not understand this to be a disciplinary meeting.

86. The claimant objected to any suggestion that this meeting was, in fact, intended to be a disciplinary meeting regarding the claimant's timekeeping and performance which was the respondent's position.

5 87. Thereafter, from 5 October until about 14 November 2017 the claimant maintained there were constant calls to her personal mobile and constant questions and "minor bullying" from Mr Y towards her, (C52).

10 88. Mr Y accepted that calls were made by him to the claimant's mobile phone but this something that he was entitled to do as her line manager as he needed to know where she was and as the respondent's showroom is a large space it is not always possible to find an individual so mobile calls were useful as a way of communicating with the team.

The seventh incident on 14 November 2017

89. On 14 November the claimant recorded "incident 7", (again C52).

15 90. On this occasion, Mr Y told the claimant that she would have to work her day off or until 8pm each evening and work on a Sunday which was her day off.

91. The claimant explained that she was unable to do this as she was too tired and unwell. She did not say to Mr Y that she was pregnant and, indeed at this date, she did not know that she was pregnant.

20 92. The claimant understood from Mr Y that she would have to do as he told her about the days/evenings she was to work. The claimant did not contact any of the senior management team, such as Mr Page about this encounter with Mr Y. Thereafter, the claimant referred to there being constant calls to her mobile whilst she was at work from Mr Y and constant interrogation and bullying of her by Mr Y. He denied doing so. Any calls made were legitimate
25 for him to make as the claimant's line manager.

93. For the avoidance of doubt, the claimant accepted that she did not, at any point, disclose to Mr Y that she was pregnant.

94. As the Tribunal understood it, at this stage, the claimant thought she might be pregnant but was not certain. However, she did not tell anyone at work that she might be pregnant.

The eighth incident on 16 November 2017

5 95. On 16 November 2017, (C53) the claimant refers to “Incident 8”.

96. On that date Mr Y told her that she had to e-mail him “every hour on the hour with a report of what she had done on that previous hour”.

97. In her note, (C53) she wrote, “I decided I could no longer cope with the stress of the bullying especially being pregnant”.

10 98. It was on this date that the claimant then wrote her resignation letter as well as her formal complaint, (see below).

99. It is important to note that, at no time, either verbally to Mr Y nor in terms of her grievance and resignation letters did the claimant inform the respondent that she was or might be pregnant.

15 100. The claimant during the course of her evidence explained that she was not certain she was pregnant at this time i.e. as at the middle of November, around 14 to 16 November.

101. As explained above, she thought she might be and was using home testing kits. The claimant was very frank in accepting that it was not until 30
20 November 2017 that she was certain she was pregnant and, so it was at that stage, that she took medical advice.

102. Nevertheless, the claimant’s document records that she felt unable to cope with the stress of “the bullying especially being pregnant”.

103. As indicated above, the claimant accepted to the Tribunal that she did not
25 know she was pregnant on 14 or 16 November and that it was not until 30 November that she was certain that she was pregnant.

104. In any event, the claimant decided on 16 November that she should resign and so she wrote a letter to that effect on her laptop. She also wrote a letter of complaint.

5 105. While she was composing the letters on her laptop Mr Cuthbertson came past and asked what she was writing. He wanted to see the screen of her laptop.

106. Mr Cuthbertson then left and, soon afterwards, Mr Page appeared. The claimant gave him both her letters. Mr Page, in turn, gave the claimant a letter about her conduct which she thought was prepared as a result of her resignation, (R60) and complaint (R61) letters.

10 107. The letter from Mr Page, (C4) is dated 16 November 2017 and addressed to the claimant as follows:-

“Dear

Re: Informal discussion

15 I would like to invite you to an informal discussion with myself and Laura Cuthbertson to discuss concerns that I have over your conduct. This discussion will take place on the 23rd of November at 11am.”

108. In her resignation letter the claimant wrote:-

20 “I would like to thank you both for the opportunities you have given myself up until the last few months I have loved every second in working at Peter Vardy.

After feeling like I am being pushed out of the business I feel I can no longer work here and feel valued – something core to the company values and I would doing myself and Peter a disservice by staying somewhere I feel I am not wanted.

25 From Today the 16th November 2017 I give my month’s notice taking me to 16 December 2017 which will be my last working day at Peter Vardy

Car Store. It is with a heavy heart that I take this step but unfortunately feel I have no other route after discussing issues with both of you.

Thank you again for everything.”

109. In her grievance letter, (R61) she reiterated that she was writing that letter
5 “with a heavy heart that I do so after being in the company for the best part of two years and wanting to be a part of the organisation, a place I thought I would be treated well as I have been the majority of my time here.” She then explained as follows:-

10 “The past few months have been difficult for me in work and I raised this a number of times with a few managers, the issue was also passed to HR, which is something I never thought I would have to face and certainly didn’t want to. Whilst at HR the issue was not dealt with in the manner it should have been and was evident to me that the manager in question was scripted and the issue was reverted and I felt personally targeted as
15 opposed to the issue being dealt with and resolved. Being an adult I went forward from this and worked professionally with the manager in question.

This Week I have again felt as though I am being personally targeted by the same person, I can’t put myself through the emotional stress or anxiety from this any more and no matter how I try to resolve it is not
20 being resolved, I have a diary at home noting every incident that has happened to make me feel like this and I mind bringing this in to show you both at your request.

Unfortunately I feel I am being bullied out of the business by someone who is meant to improve and motivate me as an individual. I don’t feel
25 motivated at all by what had been going on in fact the complete opposite where I am usually a strong person who can pick myself up and move forward I feel that I can no longer pick myself up and am anxious every day when coming to work as I don’t know what to expect for the day ahead anymore. This is having a negative impact on my health – physically and

emotionally, instead of feeling like this and being targeted and pushed out the door in terms of making me leave I would like to know if this is the case and it is wanted for me to leave the business or if this is one specific person's thoughts.

5 I do not have my diary in with me today but I can provide this to both of you tomorrow as it provides detailed descriptions of all the incidents leading up to this.

10 Thank you both for all of the opportunities put my way I have loved working under ally and didn't think I would ever be in this position within the company, as I thought I would be there forever."

110. The respondent did not proceed with their planned meeting with the claimant on that date. Instead, arrangements were made for a meeting with Miss Connor from the HR team to discuss the claimant's letters of resignation and grievance. This was held on 23 November 2018, (see below).

15 **The ninth incident 18 November 2017**

111. The next incident recorded by the claimant (incident 9) was on 18 November 2017, (C54) where the claimant referred to a deal on a car the previous day. This has been the claimant's rostered day off work. The claimant understood that the deal had been removed from her commission and was to be provided to another female member of staff. The claimant approached Mr Page who said that the claimant was not to be paid for that deal and he was not justifying it to her.

112. There does not appear to have been any discussion about the non payment of commission at the investigation meeting held with Miss Connor.

25 **Meeting on 23 November 2017 with Miss Connor**

113. Thereafter, the meeting with Miss Connor was held on 23 November 2018, (C55).

- 5 114. Originally, this had been intended to be the meeting referred to in the letter from Mr Page to the claimant which was handed to her on 16 November. Instead, as indicated above, in light of the claimant's grievance letter and her giving notice, it was held as an investigation by Miss Connor into the claimant's grievances.
115. The colleague whom the claimant would have wanted to attend with her was not available so she agreed to proceed unaccompanied.
116. Notes or minutes were prepared from that meeting by the respondent's note-taker, Ms Lauren Bridges who is a member of their HR team, (R62-66).
- 10 117. From that meeting the claimant understood that her "notice was put on hold and there was a discussion about moving roles or dealership" so as to allow the claimant to remain in the company if a resolution could not be reached with Mr Y.
- 15 118. There is no specific reference to this having been accepted by the respondent as being the position from the minutes of the meeting. There is also no reference to the claimant's notice having been put on hold. The respondent had not formally acknowledged receipt of the resignation letter.
119. A number of issues were discussed during the meeting.
- 20 120. Miss Connor asked the claimant what was her "desired outcome from our grievance?". The claimant is recorded as saying, "Don't know. Don't want anyone else to go through this. I'm usually strong and not usually emotional", (R65).
- 25 121. Shortly after this, Miss Connor is recorded as having asked the claimant, "So you don't know your desired outcome and you've made up your mind to leave?".
122. The claimant is noted as having replied, "No I don't feel like I could stay and I think would get worse", (again R65).

123. Towards the end of the meeting, Miss Connor is recorded as having explained that she would have to investigate the issues and contact some people who had been mentioned during the meeting.
124. She asked the claimant if she would “feel comfortable in (her) role during the notice period”, (R66). The claimant is noted as saying, “Yes I need to work”, (again R66).
125. Regrettably, the claimant was not offered the opportunity to have someone present at that meeting other than the person who was not available nor was she was given a copy of the notes/minutes although these were prepared as indicated above by the note-taker, Miss Lauren Bridges.
126. When the claimant eventually saw the minutes/notes she did not believe them to be full and accurate.
127. At that meeting on 23 November the claimant believed that her notice had been put on hold and there was a discussion about the possibility of moving roles or to another dealership so that she could remain with the respondent if the situation with her line manager Mr Y was not resolved. This is not recorded in the minutes/notes but the claimant did seem to think that there was some discussion about moving elsewhere within the showroom’s teams or to another dealership owned by the respondent.
128. As indicated above, while there was a note taker present who made the notes set out at R62-66 copies were not provided to the claimant.
129. It is clear, with hindsight, that it would have been better practice for the respondent to have sent the claimant a copy of those notes/minutes with an opportunity given to her to confirm whether or not she thought they were accurate.
130. While the claimant accepted that some of the contents are accurate, some of it she disagreed with but, as she did not have the opportunity to see them

soon after the meeting, she was not in a position to know precisely what had been noted.

- 5 131. The claimant did refer in that investigation meeting to the meeting that had been held earlier with Ms Cuthbertson. She appeared to accept that, at some stage, she and Mr Y had been “good friends” but, once he was promoted, she thought that something had happened to change their relationship.
- 10 132. The claimant is noted as giving some detail about the incident with the iron/skirt and also the incident which had happened before this with the customer/guest. She also explained that she was instructed to be in touch with Mr Y by way of text/phone.
133. The claimant informed Miss Connor that she thought the meeting that had been held with herself, Ms Cuthbertson and Mr Y had been “scripted”. It was apparent that she did not feel satisfied with the conduct of that meeting where she believed that Mr Y had said that she, the claimant, was “a liar”.
- 15 134. It was apparent that the claimant thereafter was having difficulty in working with Mr Y. She is noted as his having made “threats daily about my job”, (R64).
- 20 135. The claimant also made it clear that she had raised her concerns with Mr Page who had reassured her about her position with the respondent. The claimant was not certain that Mr Page had, despite his indications to her to the contrary, actually had spoken to Mr Y.
- 25 136. Miss Connor wanted to know what the claimant’s desired outcome from the grievance was and it was apparent that the claimant at that stage did not know what she wanted. She was also asked if she had made up her mind to leave the respondent (R65) and her reply is recorded as “no I don’t feel I could stay and I think it would get worse.”

137. The claimant explained how she had decided to draft her resignation letter. The claimant was also clear that she had been given what she thought was an informal letter but it appears to be the document set out at C4.

138. The claimant is recorded as having indicated something to the effect of “my dad’s side of the family are all lawyers” and that she had been told not to provide the diary which she was keeping. Miss Connor asked her to have sight of it so that she could take photocopies. As the Tribunal understood it, this was not provided to Miss Connor.

139. As indicated above, it was extremely unfortunate that Miss Connor did not provide a copy of the minutes of the meeting made by Miss Bridges to the claimant who later disputed the accuracy/completeness of the minutes.

140. Later the claimant took issue at the meeting with Ms Jenkins (see below) that while Miss Connor spoke to many of the employees who had been mentioned to her she did not speak to everyone whose names had been provided.

The tenth incident, 24 November 2017

141. The following day, 24 November 2017 the claimant recorded a note as incident 10, (C55/66).

142. The claimant had continued to attend work as normal. She had been on her lunch which was taken as a late break at 5pm when she was approached by Mr Cuthbertson who wanted to know what she was doing.

143. She explained that she was having lunch. At this point the claimant maintained that Mr Cuthbertson called her into his office and “continued to degrade me and go into further details in front of another colleague”. By doing so, Mr Cuthbertson breached the claimant’s confidentiality in front of other staff when she explained that she was entitled to a lunch break.

144. The claimant’s document at C56 refers to “I didn’t want to tell him (Mr Cuthbertson) it was imperative that I ate as I was pregnant due to the fact that another employee was present.”

145. In her evidence to the Tribunal, the claimant accepted that she did not tell Mr Cuthbertson that she was pregnant although she thought it was imperative that she should eat.

5 146. The claimant was later called back into Mr Cuthbertson's office and was told to hand in her phone and her laptop. She was advised she was being placed on garden leave until Miss Connor completed her investigation from the meeting held on 23 November. The claimant also understood from Mr Cuthbertson that she was being placed on garden leave and she would not be able to attend the Christmas night out or speak to any of her colleagues while on garden leave.

10

147. Accordingly, 24 November was the final date on which the claimant was at work as she remained on garden leave throughout the remainder of her notice period.

25 November – 22 December 2017

15 148. The claimant e-mailed Miss Connor on 25 November, (C57) to clarify if she was to be paid. There was no reply and she then tried to call and e-mailed Miss Connor multiple times, (C58).

149. Miss Connor by letter dated 15 December, (R67-69) explained how she had carried out her investigation into the areas which had been covered at the meeting on 23 November. This included the complaint by the claimant of having to update Mr Y as to her whereabouts. Miss Connor concluded that this was a reasonable manager request.

20

150. On the issue of standards of dress, Miss Connor noted what the claimant had explained about the occasion with her skirt. Her conclusion was that the claimant, on that occasion, had not met the business acceptable standards. However, she did accept that any conversations about standards of dress should be held in private. Her letter, (R67-69 at 68) explained:

25

“That said, I expect those conversations to be held in a private area not on the shop floor and I have taken action in respect of this.

5 It is common practice within the site from all advisors and managers alike that standards are maintained and high, and the conversations regarding standard of dress are held with all the team. That said, I expect those conversations to be held in a private area not on the shop floor and I have taken action in respect of this.

10 Our dress standards are important to the business therefore I do not believe, and indeed have no further evidence to suggest that you are targeted above any other colleague. With regards to inspections, following questioning of members of the team I can find no evidence to support this claim. Standards are discussed during sales meetings and on a 121 basis if required on the day however no evidence was found during my investigation to substantiate your claim of a ‘military setup’.

15 151. Miss Connor’s letter then addressed the incident on the shop floor but was unable to uphold this complaint, (again R68).

20 152. She next considered the meeting between the claimant, Mr Y and Ms Laura Cuthbertson which she understood was held to discuss the claimant’s performance and timekeeping. She did not understand the claimant to have reported any further concerns to Mr Page nor did she say to Miss Cuthbertson that thought there were unresolved issues, (R69).

25 153. Miss Connor understood this meeting was to be a clearing of the air but it was also to discuss concerns from Mr Y and Mr Page about the claimant’s performance and timekeeping. It is important to note that this was not referred specifically by the claimant in her evidence.

154. During the meeting with Miss Connor she had noted the claimant said that Mr Y had apologised to her if he had made her feel the way she did and that he had hoped that that meeting with Ms Cuthbertson and the claimant would have moved matters forward.

155. Miss Connor's letter explained that Mr Page and two other individuals had specified that the claimant was continually late and this had been discussed with the claimant by Mr Y and her manager, Mr Page but the improvements had been inconsistent. There was also reference to the claimant's sales performance.
156. The next heading in the letter is "Mr Y's approach", (page 69). Miss Connor's conclusion was that she could not find evidence to support and uphold the claims. She was not satisfied that the claimant had been targeted and that expectations was the same for any other sales advisors. Miss Connor also concluded that other sales advisors knew that they had to report to a sales controller when leaving the shop floor.
157. She also noted that the claimant thought that the discussion with her from Mr Y was excessive but her position was that there were concerns about the claimant's performance, whereabouts and lateness and that these were not isolated to Mr Y but were also noted by other members of the management team.
158. In conclusion, she did not find that the claimant had been targeted by Mr Y or treated differently in comparison to her peers. She explained that she had spoken to a selection of colleagues and managers to gain an understanding of the expectation set. Her conclusion was that the expectations set of the claimant were mirrored and expected of the other staff.
159. In summary, Miss Connor did not find that the claimant had been targeted by Mr Y or treated differently to her peers.
160. Her letter concluded:
- "Whilst I appreciate that you have currently handed in your resignation and given that this is the first opportunity that you have brought this to the attention of HR, in order to support a resolution, I would like to extend the opportunity to have a mediated meeting with Mr Y, with myself present as mediator, Should you wish not to follow this course

of action and continue with your resignation please inform me via email by 5pm Thursday 21st of December.”

- 5 161. The claimant was also informed that if she wanted to appeal any of the point raised she should do so within 5 working days, addressing her appeal to a Miss Mhari Jenkins whose email details were provided.
162. This letter, (R67-69) was posted to the claimant by Recorded Delivery and also e-mailed to the claimant. However, by an e-mail of 22 December 2017 addressed to Miss Connor the claimant advised that she had not received a letter.
- 10 163. By e-mail of 22 December 2017, (R70) Miss Connor wrote to the claimant, indicating she was surprised the claimant had not received the letter. Her e-mail confirmed the letter was sent to the claimant First Class Recorded Delivery.
- 15 164. While the letter of 15 December was both posted and emailed to the claimant, she was having issues with her personal email account and so she did not receive the letter by email nor did she receive the copy which had been posted to her, (see below).

22 December 2017

- 20 165. Miss Connor sent the claimant an email dated 22 December 2017, (R70) in which she advised that she had sent the claimant a letter offering a mediation. The claimant replied by e-mail of 22 December 2017 timed at 15:26 to Ms Connor, (R71) in which she refers to having tried to contact Ms Connor by text, leaving a voicemail and had made telephone calls.
- 25 166. In that e-mail she indicates that she had not received the letter and still had not been able to read Miss Connor’s conclusion or consider the position regarding the suggested meeting between herself and Mr Y (with Miss Connor to be present).

167. The claimant also indicated that she knew she only had until that evening (22 December 2017) to revert to Ms Connor about the suggested meeting and so she asked for it to be e-mailed.

168. Next, by email dated 28 December, ((R72) the claimant wrote to Miss Connor confirming receipt that morning of the letter. Her e-mail continued as follows:-

“I would like to confirm that I wish to meet with yourself and (Mr Y) in order to try and find a resolve and as such retract my resignation in order to go forward with your suggested solution.

If you could please contact me in regards to a date and time for the meeting that would be great, as I am on garden leave any day or time suits me.”

169. Miss Connor replied to this the same day at 18:16 hours by e-mail, thanking her for her response and confirmation of receipt of the letter and said that she would pick this up and arrange a call to discuss on 2 January 2018.

Telephone discussion on 3 or 8 January 2018 between the claimant and Miss Connor

170. Miss Connor was adamant that when she spoke to the claimant it was 3 January 2018 whereas the claimant was equally adamant that it was 8 January 2018.

171. Whether it was 3 or 8 January 2018 the result of the telephone conversation between the two individuals was that Miss Connor explained that Mr Y was not prepared to engage in mediation and nothing further was offered to the claimant. Nothing further was suggested by Miss Connor who took the view that the claimant’s employment with the respondent had ended once her notice had expired.

Email from claimant to Miss Connor on 1 February 2018

172. The claimant then e-mailed Miss Connor on 1 February 2018, (R73/74) regarding her pay. In that e-mail the claimant indicated that she believed the

reason that the mediation had been revoked was that the respondent knew she was pregnant. Specifically, at page R3 she wrote:

5 “I have since found out from a number of peter varyd staff and have evidence that this offer was revoked from me due to my pregnancy which is a form of discrimination.”

173. In the letter of 15 December 2017 Miss Connor had explained that the claimant was entitled to appeal against her decision and should do so within 5 days of the date of that letter. The claimant clearly could not have done so since she did not receive that letter until 28 December 2017.

10 **Appeal Hearing on 15 February 2018 with Miss Jenkins**

174. An appeal hearing was arranged and notes were prepared from that meeting, (R75/90). The meeting was held on 15 February 2018.

15 175. The claimant had attempted to bring a friend to that meeting but was informed that this person was neither a trade union representative nor an employee of the respondent and so she was not able to have that person attend.

176. The claimant agreed to continue with the hearing which was convened by Ms Mharie Jenkins who is described as “Head of People”.

177. It was not until 12 March 2018 that Ms Jenkins wrote to the claimant setting out her conclusions, (R91/95).

20 178. Ms Jenkins was not called to give evidence to the Tribunal and so her letter and conclusions have limited relevance since there was no opportunity for her to be cross-examined about any of the views she expressed either in the meeting with the claimant or in her letter.

25 179. There was then a dispute between the claimant and Ms Connor as to when they spoke again. Ms Connor was adamant that she had a discussion with the claimant on 3 January and this was because she was preparing for an

event in the respondent's premises on 4 January. The claimant was equally adamant that the discussion took place on 8 January 2018.

180. The significance of 8 January is in relation to the claimant's assertion that her employment had continued until that date.

5 181. In any event the substance of the conversation between Ms Connor and the claimant was to the effect that Mr Y having been asked by Ms Connor had indicated he was not willing to participate in a mediation between himself the claimant with Ms Connor as the mediator. Ms Connor's position therefore was that there was nothing further the respondent had offered to do since she
10 could not require Mr Y to attend a mediated meeting.

182. The claimant did not appeal against the grievance outcome but sent an e-mail to the respondent on 1 February 2018 which was in relation to pay deductions and an allegation she was not being allowed to return to work as she was pregnant. So far as the respondent was concerned, this was the first
15 notification they had of the claimant's pregnancy.

183. The e-mail was quite lengthy, (R73/74). Following this Ms Jenkins arranged for a meeting to take place with the claimant and this was held on 15 February 2018, (R75/90). The claimant had brought a friend to attend but was told that this individual was neither a trade union representative nor a colleague of the
20 respondent's employees the claimant should attend on her own provided she was comfortable with doing so. She agreed to do so and there was a note taker who was referred to as Lisa, (page 75).

184. This seems to have been quite a long meeting and it is clear from its terms that there were a number of occasions when there were interruptions by the
25 claimant as to points being raised by Ms Jenkins.

185. It is important to note that the Tribunal did not have the benefit of hearing Ms Jenkins.

186. Subsequently, Ms Jenkins wrote to the claimant by letter dated 12 March 2018, (R91/95) setting out her conclusion.

187. She dealt with the issues raised regarding Mr Y (R91), Ms Cuthbertson (R92), Mr Ally Paige (R92) as well as Mr Dan Cuthbertson (R92) and Miss Connor (R92).

188. She indicated under the heading, "Outcome" that she did not consider the respondent should be making a payment to the claimant in respect of an extension or notice payment she recognised the wording from Ms Connor regarding the proposed mediation might have led the claimant to believe there was a postponement in those latter stages. Her letter reiterated that the respondent's initial intention was to be able to offer mediation but they could not force Mr Y to do so given the points raised in the claimant's grievance had not been upheld.

189. She also noted that the claimant had said to her during the meeting in February "I appreciate it wouldn't have got any better as it didn't after any chat with Ally or Laura" which indicates she could not have envisaged a resolve.

190. At R93 she suggested that the letter sent to the claimant could have been differently worded to the following effect:-

"Whilst I appreciate that you have currently handed in your resignation, and your last day of employment will be tomorrow, taking into consideration that you have raised your grievance at the same time, I would like the opportunity to explore whether mediation may be an option for both yourself and Mr Y. If this is something you would like to consider, please come back to me by 5pm on Thursday 21 December. If mediation is an option (i.e. both parties consent) then you will be paid until 21 December at least. If mediation is successful and we are able to retain you within the team, then your service will be continued. If mediation is not successful, there is no automatic right to rescind your notice and your

official employment end date would be 21 December and you would be paid to that point.”

191. She then indicated that the respondent was going to pay the claimant for the period from 16 to 31 December 2017 in recognition of her interpretation of the process as Ms Jenkins felt this was the fairest action but her letter continued:-

5
10
15
“But I do emphasise that there will be no payment made in respect of a notice period. It remains that it was your choice to resign from the business and to raise a written grievance at the same time, leaving little time to resolve for you whilst you remained in employment. I feel that Stephanie’s approach was the right one and made every attempt to ensure a resolve was found for you. It remains that she felt it was not appropriate to force Mr Y into a mediation meeting as the points you made against him were unsubstantiated. Therefore, it was Stephanie’s decision to continue with your resignation rather than explore mediation further. You admitted during a conversation that it wouldn’t have gotten any better as your previous discussion with Laura didn’t resolve matters.”

192. She next set out the position regarding the claimant’s pregnancy and what she understood was suggested to be the source of information being the claimant’s father with his work colleagues (they worked in a different organisation) and then from them to four other individuals including someone called Brian.

193. Miss Jenkins explained that she spoke to this individual, Brian who said he did not say to the claimant that the respondent knew of her pregnancy although he told Ms Jenkins that he knew the claimant was pregnant but could not recall where he had heard this from but thought he had found it out on a social night out. He said he would never have made a statement and, at most, would have asked the claimant direct if she was pregnant.

194. Miss Jenkins’ letter concluded that both at the investigation and her meeting her view was that the claimant had been reluctant to share all the facts with

the HR team who were trying to obtain an appropriate outcome. Her letter continued as follows:-

5 “Conducting investigations without full facts can be difficult and therefore I believe that this is the most thorough I can be in trying to bring about a resolution for you. I am very confident the limited knowledge of your pregnancy at sight level had no bearing on the decision not to mediate by Stephanie and I am unable to substantiate that the behaviours of anyone in the business should have given you cause for you to resign.

10 Your decision not to bring your concerns to anyone’s formal attention prior to your resignation date meant that there was little time to review and bring about an effective solution. I am disappointed your employment ended the way it did but wish you the very best of luck for the future.”

15 195. The claimant acknowledged this by e-mail of 25 March 2018, noting that she was to be paid for other money and asserts that the respondent continued to support bullies and discrimination. There was a response to this of 26 March 2018, (R96) in which Ms Jenkins explained she had not been re-opening a full investigation into the earlier grievance as no appeal had been raised.

20 196. At the end of the final hearing the parties agreed to provide written submissions and the respondent chose to provide a reply to the claimant’s submission. It had been agreed their submission would be provided first to the claimant and she would then provide hers to them.

197. The Tribunal was grateful to the parties for providing such detailed submissions which are set out in full, (see below).

The Law

25 198. Section 4 sets out the protected characteristics one of which is pregnancy and maternity whilst another is sex.

199. Section 13 deals with direct discrimination as follows -

“13 Direct Discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

5

(2) ...

(3) ...

(4) ...

(5) ...

(6) If the protected characteristic is sex –

10

(a) less favourable treatment of a woman includes less favourable treatment of her because she is breastfeeding.

Section 19 Indirect Discrimination

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

15

(2) For the purposes of sub section (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B if -

20

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

(b) it puts, or 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, or would put, B at that disadvantage, and

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

(3) The relevant protected characteristics are and one of these is sex.

Section 26 Harassment

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

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

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

(i) violating Bs dignity or

10 (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B

Section 18 Pregnancy and maternity discrimination

15 (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.

20 (5) For the purposes of subsection (2), if the treatment of a woman is an implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until the end of that period).

Section 27 Victimisation

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

25 (a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

Section 95 – Employment Rights Act 1996.

In circumstances in which an employee is dismissed –

- 5 (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to sub section)
- (2) ..., only if
- (a) ...
- (b) ...
- 10 (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

15 A woman who is subjected to detrimental treatment because of pregnancy or maternity leave can claim pregnancy and maternity discrimination under Section 18 of the Equality Act 2010.

200. Section 99 of the 1996 Act and the MPL PAL and SPL Regulations in relation to dismissal for reasons connected with pregnancy or any of the statutory rights to family leave are given special protection and there is no minimum service requirement for the right to claim automatically unfair dismissal under Section 99.

201. Section 99 of the 1996 Act provides an employer will regard it as unfairly dismissed if the reason or principal reason for dismissal is of a kind prescribed in the Regulations, or the dismissal takes place in prescribed circumstances Section 99(1) and (2).

25 202. For a claim of automatically unfair dismissal for a reason connected with pregnancy under Regulation 20(3)(a) to succeed it is essential that the

employer knew or believed that the woman was pregnant – see **Del Monte Foods Ltd v Munden** 1980 ICR 694, EAT.

203. There is also a further Judgment in **H J Heinz Co Ltd v Kenrick** EAT 2000 ICR 491 that a connection between a pregnancy and a dismissal can be established whether or not the pregnancy featured in the employer's mind however the EAT in **Ramdoolar v Bycity Ltd 2005** ICR 368 EAT confirmed that an employer must know or believe in the existence of an employee's pregnancy in order to be liable for automatically unfair dismissal.

204. It indicated that in limited circumstances dismissal will be automatically unfair under Regulation 20 even though the employer either knows or believes that the employee is pregnant. Those circumstances are where an employer, suspecting that an employee might be pregnant, dismisses the employee before having those suspicions confirmed.

205. Therefore, there has to be knowledge or belief the employee was pregnant.

15 **The Issues**

206. A letter was sent to the parties indicating that the issues for determination by the Tribunal appeared to be as follows:-

1. The claimant gave one month's notice on 16 November to expire on 16 December 2017. Did her notice period end on 16 December 2017.
2. If the notice period was extended when was that extension made, by whom and to what date?
3. If not, when did it end?
4. Judge O'Dempsey in his Note of 19 November 2018 referred to section 39 of the Equality Act 2010, (the 2010 Act). He then went on to refer to "**matters after 8 January 2018**" (this is shown as 2010 but appears to be a typographical error) the agreed termination of the claimant's contract and made reference to section 108 of the 2010 Act. Next, he

referred to “**matters before and after that time**” and made reference to section 18 (pregnancy/maternity) and section 26(1) (harassment related to sex). He also then referred to section 13 (direct discrimination) and section 27.

5 5. If the claimant accepts as she appeared to do, that she is not now
relying on pregnancy/maternity, (section 18) of the Equality Act 2010,
then her claim appears to be brought in relation to section 13,
(allegations of direct discrimination), section 26, (alleged harassment)
and section 27, (alleged victimisation) of the 2010 Act. Please note
10 that these are the references in the claimant’s bundle of documents at
pages C41-62.

6. It seems to the Tribunal that the claimant asserts in the ET1 (the claim
form) at section 8.2 that she was “**discriminated against due to being
pregnant and this resulted in me losing my job therefore I would
15 be claiming constructive dismissal on the grounds of
discrimination.**”

7. It may assist the parties if they consider the issue of constructive
dismissal under reference to Shaw v CCL Ltd 2008 IRLR 284 in which
the Employment Appeal Tribunal considered a case where a claimant
20 claimed direct and indirect discrimination and constructive unfair
dismissal. This case is referred to in the IDS Handbook on
Discrimination at Work at 26.8 on pages 872 and 873. For ease of
reference, a copy of those pages is attached. For completeness a copy
of pages 870-871 are also enclosed as page 870 sets out helpful
25 information about there being no qualifying period for discrimination
claims Mr Robertson was asked to arrange for a copy of the judgment
in **Shaw** to be sent as a hard copy to the claimant.

8. In this case, the issue which seems to arise is whether, in the event of
the Tribunal finding that there was an act or acts of (direct)
30 discrimination (as the claimant appears to allege) then would that

amount to a fundamental breach of the implied term of trust and confidence in the claimant's contract, thereby entitling her to treat herself as unfairly (constructively) dismissed? The Tribunal will also have to consider what detriment is alleged to have occurred.

5 9. If either party considers there are any other issues on which they want to address the Tribunal in their written submission they may, of course, do so.

207. In a further letter of 2 May 2019 sent to the parties (the issues have been set out in a letter of 1 May 2019 referred to above) the parties were reminded that
10 in Judge O'Dempsey's Note he referred to "matters after 8 January 2018" and to "matters before that and after that time". In relation to "matters after 8 January 2018" Judge O'Dempsey directed attention be given to Section 108 of the Equality Act and the parties were asked to address this.

208. For completeness, section 108 of the 2010 Act states:-

15 "Relationships that have ended-

(1) A person (A) must not discriminate against another (B) if –

(a) the discrimination arises out of and is closely connected to a relationship which used to exist between them, and

(b) conduct of the description constituting the discrimination
20 would, if it occurred during the relationship, contravene this Act.

(2) A person (A) must not harass another (B) if –

(a) the harassment arises out of and is closely connected to a relationship which used to exist between them, and

(b) conduct of a description constituting the harassment
25 would, if it occurred during the relationship, contravene this Act.

- (3) It does not matter whether the relationship ends before or after the commencement of this section.

Respondent's Submissions

209. The respondents are a private Limited Company engaged in the sale of new and used cars and light motor vehicles. The Claimant was employed as a sales adviser with the said company. She alleges that she was unfairly dismissed on the basis of sex discrimination conducted by her immediate line manager Mr. Y. The nature of the discrimination was identified by her as harassment, contrary to section 26 of the Equality Act 2010 as well as victimisation, contrary to section 27 of the Equality Act of 2010. The Respondents deny any and all such conduct occurred and aver that Miss X tendered her notice and resigned her employment.

ISSUES ARISING

A. Status of Miss X's Notice.

1. On 16 November, 2017 Miss X tendered her written notice indicating that her last working day would be 16 December, 2017. (R60)
2. On 23 November, 2017 in her interview with Miss Connor she again repeated that her notice had been handed in. She did not indicate a change of mind or that her action had been done "in the heat of the moment". (R65 No. 89, 101 and R66 No. 103, 109).
3. Notice having been given by Miss X it is submitted that it could not be unilaterally withdrawn in the absence of mutual agreement with the Respondent. No such mutual agreement took place.
4. The evidence of Miss Connor was that Miss X's employment ended on 16 December, 2017.
5. It is accepted that Miss X did not receive a copy of her interview with Miss Connor on the 23 November, 2017 (R62 – 66). Miss X made certain

criticisms of some of the contents of the interview notes. It is submitted that the criticisms made did not go to the heart of the interview.

6. It is submitted that in the conduct of the interview (R62 -66) with Miss Connor, combined with the lack of significant criticism of its contents speaks to the essential accuracy and integrity of the document and significant weight should be given to it.
7. Miss X received payment from 16 December, 2017 to 31 December, 2017. This was not on the basis of extending her notice period but as an act of good faith. Mhairi Jenkins at (R93 – 94) recognized that the letter sent to Miss X could have caused some confusion as to the purpose of the mediation referred to (R69).
8. It is submitted that the notice period ended on 16 December, 2017 and was not extended beyond that date.

B. The relevance of Constructive dismissal

1. Miss X asserts that she terminated her Employment Contract in circumstance where she was entitled to do so by reason by the Respondent's conduct.
2. She avers that the particular conduct she was subjected to was discriminatory in nature.
3. She asserts that the nature of the offending conduct was principally harassment and victimization by Mr. Y, contrary to sections 26 and 27 of the Equality Act 2010.
4. It is then averred that by virtue of such conduct she is entitled to claim Constructive Dismissal.
5. In my submission there is not an automatic connection between discriminatory conduct and Constructive Dismissal. It is only in circumstances where any such alleged discriminatory conduct goes to

the fundamentals of the contract of employment. A qualitative assessment must be made as to whether the conduct has the effect of destroying the trust and confidence that should exist between the parties.

- 5
6. The central question in the present case is can it be said, from the evidence, that the conduct complained of was of such a quality as to destroy the trust and confidence between the parties. In my submission, from the evidence heard in the case taken at its highest from the perspective of Miss X. I suggest that the quality has not been sufficient to destroy the trust and confidence between the parties, see Shaws (appellant) -v- CCL Ltd., (respondent) [2008] IRLR 284.
- 10

C. The relevance of Miss X's pregnancy

1. Miss X claimed in her ET1 claim for that she was being discriminated against due to her being pregnant which had the result of her losing her job.
- 15
2. In evidence she stated that she did not discover that she was pregnant with certainty, until the 31 November, 2017. She was now not relying on her pregnancy as the basis of her losing her job.
3. There was no evidence lead that any one from the Respondent's company knew of her pregnancy. The only evidence was an assertion she made in relation to remarks alluded to by former colleagues. Miss Connor and Mr. Y stated in evidence that they did not know she was pregnant nor did they suspect she was pregnant nor were they told that she was pregnant.
- 20
4. The only relevance placed on her pregnancy was her speculation that it provided a reason for the Respondents to cancel the need for mediation.
- 25
5. The cancellation of mediation was explained in evidence by both Miss Connor and Mr. Y as to his (Mr.) unwillingness to participate in the process.

6. In my submission little, if any, weight should be given to this element of Miss X's case.

D. Regarding the grievance procedure

1. On the same day that Miss X tendered her notice she also lodged a letter containing several issues of grievance. This letter was passed to Miss Stephanie Connor a senior member of the response people management team.
5
2. On the 23 November, 2017 a meeting was convened with Miss Connor and Miss X. Also, in attendance as note taker was Miss Lauren Bridges. Miss Bridges remit was to take full notes and thereafter to prepare a typed copy of said notes. She did so within 2 days of the meeting and caused Miss Connor to examine the notes as to accuracy. (R62 – 66). It is submitted that the interview notes provide a full, fair and accurate transcript of what was said at the meeting. Miss X participated fully.
10
3. A full and fair investigation was carried out by Miss Connor into Miss X's allegations against Mr. Y. The vast majority of witnesses named by Miss X who were said to be present at the various Loci of each alleged incident were interviewed separately.
15
4. In a letter dated 15 December, 2017 Miss Connor informed Miss X that her investigation had concluded and indicated that she could find no evidence to support her allegations that Mr. Y had treated her any differently than her peers and that he had not targeted her. (R67 – 69).
20
5. Miss X claims not to have received this letter. Miss Connor in evidence confirmed that it had been sent first class post, first class recorded delivery and also by e-mail.
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6. Miss X appealed to the head of People Management on limited grounds. Miss Mhairi Jenkins thereafter met with Miss X on the 15 February, 2018 and engaged in a lengthy interview with her (R75 – 90). In this meeting

Miss X complained that Miss Connor's investigation was not thorough enough. She also complained that the pregnancy was the reason why she was not allowed to be re-employed.

5 7. As a result of Miss Jenkins investigations, she concluded that the limited knowledge of Miss X's pregnancy at site level had no bearing in her failure to mediate and that there was no evidence with respect to the behavior of anyone had given her cause to resign. Further that because of a possible confusion over the issue of mediation she would agree payment from 16 December, 2017 to 31 December, 2017 as a good will gesture.

10 8. I would respectfully commend the course of action adopted by the respondents in seeking to do what was reasonable in investigating and reporting the issues of grievance raised by Miss X in the narrow window of time available having regard to the resignation notice she had given. In my submission the respondents carried out a fair and reasonable
15 investigation in the circumstances they found themselves in.

E. The witnesses who gave evidence

1. Miss X gave evidence about a number of incidents in which she alleges she was harassed and victimized. She claimed that the responsible person was her immediate line manager Mr. Y. She stated that many of
20 the incidents were witnessed by other work colleagues who she named. She also indicated that many of those colleagues sympathized with her. Despite this she led no witnesses to support her account of any of the said incidents. Despite indicating to Miss Jenkins that she would forward to her further evidence she failed to do so. (R91)

25 2. Miss Stephanie Connor gave evidence as to her interview with Miss X over her grievance issues. She also spoke of her subsequent investigation together with her conclusions. She stated she knew nothing about Miss X's pregnancy and that it played no part whatsoever in any decision making. She regarded Miss X's last day of employment as 16

December, 2017 and as such was under some time pressure to conclude her investigation. She did not have any recollection of a telephone conversation with Miss X on the 8 January, 2018.

5 3. Mr. Y gave evidence and accepted certain of the events spoken of by Miss X in a general way. He did not recognize or accept any of the allegations made by Miss X against him. He contradicted her accounts in a material way. He totally denied that he harassed or victimized her in any way.

10 4. I would invite the Tribunal to prefer the accounts given by the Respondent's witnesses both with respect to credibility and reliability in those instances where there is a conflict in the evidence given by the Claimant.

CONCLUSION

15 For the reason set out above the Tribunal is asked to find that on the evidence heard that Miss X was not Constructively dismissed and that she was not the subject of discrimination in any form.

Claimant's Submissions

20 I am the claimant representing myself in the above case. I have taken this case against the respondent Peter Vardy Ltd to the Employment Tribunal as I was unfairly dismissed on the basis of sex and pregnancy discrimination by the company where I was employed as a sales advisor for used cars. I suffered months of bullying, harassment and victimization by both the company and my immediate line manager, Mr. Y, which resulted in the loss of my job whilst I was vulnerable and pregnant. I put it to the Employment
25 Tribunal that the respondents acted in a discriminatory manner over a long period of time, during various acts, and as such they did not provide the duty of care they should have and massively breached the fundamentals of trust and confidence within the employment contract as I will set out below. I would like to thank the Employment Tribunal for the opportunity of closure in what

has been a very traumatic and disturbing period of my life in regards to the respondents conduct and the detrimental effects that it has had on my life and health.

The Issues presented by Judge Garvie

- 5 1. On the 16th November 2017 I handed a grievance letter alongside my notice to Alistair Page (sales Manager) due to a final incident with Mr. Y. where I was taken aside directly after the 9.30am sales meeting and told I had to send an email every hour on the hour to Mr. Y. detailing every movement I had made within the business within that hour, this was the
10 final straw in a set of incidents where I was victimised, bullied and harassed. No other employee was asked to do this and it impacted my ability to do my job. I explained this to Alistair Page whilst handing in both letters and made it clear in both my letters and vocally that I was being forced to leave. After discussing with Alistair page he handed me a letter
15 (C4) and said that he was not accepting my notice and that we would discuss this further at the outlined meeting within this letter and try to resolve all issues so that I could stay within the business, I agreed. I was not given any vocal or written acceptance of my notice and as far as I was aware HR would be dealing with the issues to reach a resolve.

- 20 2. On the 23rd of November 2018 the meeting detailed in letter (C4) did not go ahead, it was instead changed to a meeting with Laura Cuthbertson's manager, Stephanie Connor, and Alistair Page was not present. During this meeting it was discussed that Stephanie would conduct a full
25 investigation into the events in order to reach a resolve, It was also discussed whether I would be happier in a different department within my current site or in the same department at a different site I agreed I would be open to this and again stated that I didn't want to leave the company but felt forced and that the treatment was making me ill, Miss Connor then suggested if a resolve could not be reached that I could be moved into
30 another role or location. This again alludes to the fact that my notice was

not accepted and that at this point Miss Connor was trying to find a resolve where I could remain in employment with the respondent. It was heard in evidence and accepted by the respondent that I did not receive a copy of the notes or minutes of this meeting and therefore no weight should be given to these as evidence as they were not handled in the appropriate manner which means they are not accurate and have no integrity (R62-R66)

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3. Further to this meeting Miss Connor Extended an offer of mediation with myself and Mr. Y on a letter dated 15th November 2017 (C1-C3) It was accepted in evidence that Miss Connor was difficult to contact over this period of time and that I did not receive the first copy of this letter that she maintains she sent out, therefore I was extended additional time to consider the letters contents after she sent a second copy recorded delivery which I received on the 28th of December 2017, to which I accepted the offer of mediation and Miss Connor was to contact me in January with a date for this meeting. It is therefore ridiculous for the respondent to suggest that my notice was ever accepted as they were willing to mediate the issues to a resolve as of December 15th 2017 and as stated by Miss Connor at (C3). It is therefore submitted that the respondents did not accept my notice.

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4. The offer of Mediation made by Miss Connor was taken away from me on the 8th of January 2018 during a phone call where she informed me that Mr. Y. declined to participate and as such my employment with the company had ended. She went on to inform me of appeal procedure and said that she could not force Mr. Y. to enter mediation despite his earlier agreement if he had changed his mind. I questioned the fairness in this and Miss Connor had no response. I was aware that over the Christmas period colleagues had become aware of my pregnancy and I believe this was the central reason for Miss Connor revoking her offer of mediation, and the absence of the offer of another job role as previously discussed, Evidence of pregnancy knowledge can be seen at (C36-C37) where Beth

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Ferguson has told me that Stephen Cummings who was in a management role (Sales Controller) had knew and been discussing this within work.

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- 15
5. In March 2018 I received a Payment from the respondent for the period of 16th December 2017 to 31st of December 2017, The respondents have submitted that this was not a notice payment but that it was “an act of good faith” I submit that this payment was an admission of wrongdoing as the respondent knew they had acted unlawfully in dismissing me after offering me mediation, the respondent added further insult to injury as they suggest that this was in relation to the misleading wording on their document. I submit that it isn’t credible for a professional such as Miss Connor working in such a superior role and in possession of a degree to put wording on a document in contrary fashion to the statement it achieves, I submit that this document would have been true to meaning and that the respondent tried to manipulate the effect of its wording in an attempt to deny the discrimination they acted in.
 6. It is submitted that my resignation was never accepted.
 7. It is submitted that my grievance was accepted and that further discrimination in relation to pregnancy took place after this.

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The Relevance of Pregnancy

- 25
1. Judge Declan O’Dempsey referred to @Matters after 8th January 2018” and “matters before and after that time” and referred to section 18 of the equality act 2010 (pregnancy/maternity)
 2. I fully believe that the offer of mediation made on the 15th of November 2017 by Miss Connor was withdrawn from myself on the 8th January 2018 due to the company finding out that I was pregnant, I believe they found out around late December 2017 as I had received a phone call from Emma Andrews stating that Mr. Y. and Daniel Stevens had been asking her questions regarding myself being pregnant. I then received a phone

call from Lisa McGuire who also told me that Mr. Y. asked her for information on my pregnancy. This knowledge was then clarified by Beth Ferguson who informed me that Stephen Cummings has also known of my pregnancy and was speaking to her regarding this at work (C37-C38)

5 It is interesting to note that Stephen Cummings is a sales controller which is managerial level and I believe he would have carried the information back to a higher source due to the nature of previous issues.

3. At the Tribunal hearing this was discussed and the issue centred around “what is knowledge” as such I am aware that the respondent has enough plausible deniability that they had no knowledge despite the reality of them not knowing being very unlikely, however their knowledge was not directly given by myself and could have been considered as hear say however as an employer has a duty of care due to what was being said at site level there should have been a conversation around this topic when it arose. I therefore accept that this claim although I maintain that discrimination on pregnancy grounds occurred – it is difficult to prove.

4. I was certain of my pregnancy on November 30th 2017, and maintain that the business finding this out was the reason the mediation offer made to me was revoked.

20 5. When asked in evidence Mr. Y. said he could not recall having conversations with either Emma Andrews or Lisa McGuire regarding my pregnancy I believe this was not credible because had this not happened he would have responded a straight forward No.

6. I submit that the respondents were fully aware as off late December that I was pregnant. I accept the difficulty in satisfying this knowledge with certainty however the matter still remains that I was treated so badly at such a pivotal time in the early development of my baby and a vulnerable time personally in respect of health and wellbeing I therefore believe that this issue should be considered relevant as the effects of the

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discrimination and the ultimate impact of losing my job were greater due to my pregnancy and miscarriage.

- 5
7. I submit that Mrs Jenkins in her appeal meeting was again discriminatory when she asked “when I was due” this was in February of 2018 a few weeks after I suffered from a miscarriage which was incredibly upsetting for me, this has also been omitted from her minutes.

The Relevance of Constructive Dismissal

- 10
1. On the 16th November 2017 I handed in my notice to Alistair page following a final straw incident with Mr. Y. (as submitted above) This was under duress and I made it clear in my letter of grievance and notice and also verbally to Mr Page that I did not wish to leave the company but felt forced and felt I had no other option as nothing was being done in regards to the behaviour of Mr. Y.
 - 15 2. I submit that the behaviour and discrimination I was subjected to by Mr. Y. was enough to warrant a constructive dismissal as his conduct was a breach of the fundamentals of the contract of employment and breached the trust and confidence that should have existed between me and the respondent.
 - 20 3. I was bullied, harassed and victimised by Mr. Y. over a number of months.

The Conduct amounting to a breach of trust and confidence

- 25
1. Alistair Page ignored my concerns regarding Mr. Y. on numerous occasions and failed to act in regards to my complaints.
 2. Mr. Y. twice imposed detrimental changes to my working arrangements, on the first occasion I was told I was required to work on my day off or work until 8pm every evening with no notice and no option to refuse, on the second occasion which was the final straw incident I was told I had to send a report every hour on the hour to Mr. Y. detailing my movements and tasks within that hour, again with no notice of this requirement.

3. Mr. Y. was continuously bullying, harassing and victimising me as heard in evidence this abuse made it impossible for me to do my job effectively as emotions have a massive impact on the ability to sell.
- 5 4. The respondent failed to provide reasonable support to me which would allow me to carry out my job without disruption, harassment or bullying from colleagues. Mr. Y's. Conduct was completely ignored despite my concerns being voiced and the company supported him and allowed his poor conduct to continue.
- 10 5. The discrimination carried out by Mr. Y. was such that my mental and emotional-state were affected and I could have no trust in him as a manager.

The Grievance Procedure

- 15 1. I submit that Miss Connor's investigation was not fair and she failed to interview relevant persons and only interviewed candidates cherry picked from a business stand point.
2. Miss Connor acted for the business and did not act in a fair or impartial manner.
- 20 3. Miss Connor interviewed people who were not directly involved or direct witness to incidents but failed to interview people who witnessed incidents or were considered friends of myself (i.e Kelly Bates, Lisa McGuire, Jody Boyle, Emma Andrews, amongst others).
- 25 4. Miss Connor did not keep or provide notes from the interviews she is said to have carried out therefore the full investigation is in competent and unreliable, she stated in evidence that she did not pass copies of minutes to the parties who were interviewed either.
5. Miss Connor failed to provide a copy of minutes of our meeting which the respondent relies upon at (R62-66) therefore this document is inaccurate

as I was not given the opportunity to read and correct these I submit that little weight should be given to this document in this respect.

6. In Miss Connors Letter dated 15th December 2017, she states that Damien Hawthorn “is witness to my continued late coming” (C2) this was later corrected as a typing error which I find incredibly hard to believe given the different spelling and completely different names I therefore believe this was a scare tactic used by the respondent to further insult me. Mr Hawthorn turned up at court as a witness but was not required to stand due to this correction being made by Miss Connor.
7. Miss Connor was incredibly hard to get a hold of during the grievance procedure and ignored me on more than a few occasions and failed to keep me up to date with proceedings.
8. I do not believe that the respondent followed the ACAS code of practice.
9. I was not offered a witness at the grievance hearing
10. On November 24th 2017 Darren Cuthbertson (managing partner) took issue with me having my lunch break and pulled me into his office where he breached my confidentiality in regards to my grievance hearing to two separate colleagues; Graeme Clacher and Paul Kerr. (C55-57).
11. Following the withdrawal of mediation I emailed Mhairi Jenkins regarding my concerns over my treatment I then engaged in interview with Ms Jenkins in February 2018 where I felt incredibly intimidated by her.
12. Ms Jenkins failed to send me minutes by the date specified by her in the meeting and as such I did not forward her evidence until these were sent to me which was at the end of her outcome. This Evidence was sent to Ms Jenkins in March 2018.
13. Ms Jenkins paid me a sum of money to cover the period of 17th December 2017 until the 31st December 2017 and stated that this was due to a misinterpretation of wording in Miss Connors letter dated 15th December

2017 – I do not believe this document was worded wrong and I believe its words had the appropriate effect. Ms Jenkins was trying to manipulate this to try and suffice that the mediation was not a given where it was stated that it was.

5 **The Witnesses who gave evidence**

1. I gave evidence in respect of all of the incidents of bullying, harassment and victimisation I suffered at the hands of Mr. Y. Darren Cuthbertson and the respondents. I found it very difficult as explained due to GDPR, The leaving of employees from the company and the employment status of individuals to obtain witness requests as I was not in possession of full names and address of colleagues. The one witness I had, Damien Hawthorn was not required to stand as Miss Connor admitted mistake in her evidence.
10
2. Miss Connor gave evidence on her dealing with the grievance procedure; she admitted that she could have handled this procedure better and that documents should have been dealt with in a different manner. She admitted that she did not interview everyone involved and instead picked whom she spoke to but could not give clear justification why specific people were spoken to.
15
3. Mr. Y. gave evidence regarding the incidents of bullying, harassment and victimisation. He struggled to recall events and couldn't give a clear picture of his recollection, getting mixed up at most questions. It is also interesting to note that despite being in Miss Connors Company for the duration of the hearing (4 days) he was unable to recall her name or that she had interviewed him until Mr Robertson (Advocate) prompted him and asked if the lady from HR who interviewed him was sitting in the room.
20
25
4. Despite having names and addresses of every employee the respondent failed to bring forward witness relevant to the case. Darren Cuthbertson,

Alistair Page being central and involved in incidents, they were not brought to stand.

- 5 5. I would invite the Tribunal to prefer the account given by myself, the claimant, with respect to credibility, reliability and ability to recall, where there is conflict in the evidence given by the respondent.

CONCLUSION

For the reasons set out above the Tribunal is asked to find that on the evidence heard that I (Miss X) was unfairly/constructively dismissed and that I was the subject of discrimination. Thank you for your time and consideration.

10 *Respondent's follow up submissions*

RESPONDENTS WRITTEN RESPONSE TO CLAIMANT'S SUBMISSIONS RELATING TO HER PREGNANCY

1. Miss Connor gave evidence that she did not know or suspect that Miss X was pregnant until a date after February 2018.
- 15 2. Miss Connor gave evidence that the declinature of participation in mediation by Mr. Y was the only reason why it did not occur. The issue of pregnancy played no part whatsoever in the failure of mediation.
3. No witnesses were led to confirm in any way the assertions made by Miss X as to their state of knowledge as to her pregnancy prior to the end of December
- 20 2017.
4. Even had there been knowledge on the part of certain employees named by Miss X it is submitted that they would have had no input in the decision-making process with respect to mediation or termination of employment.
5. It is submitted that Miss X's stated belief that the decision maker at the
- 25 respondent's company knew of her pregnancy at a time and in a context that adversely impacted on her employment status is entirely speculative at best and denied by the respondent in any event.

Observations on the witnesses

210. In relation to the claimant's evidence, there were occasions when she spoke at great speed and it was difficult to follow all that she was saying as she tended to move quickly from one point to another.

5 211. The claimant also, of course, had the benefit having, provided the further and better particulars as directed by Judge O'Dempsey, as indicated above, of these being treated as her witness statement.

212. The Tribunal was alert to the fact that the claimant had not sought to bring a complaint of sex discrimination as her claim/the ET1 was predicated on the
10 respondent's knowledge, as she saw it, of her pregnancy.

213. The claimant also referred to section 26 of the 2010 Act in relation to what she alleges was unwanted conduct that violated her dignity or created an intimidating, hostile, degrading or offensive environment for her as well as to section 27 of the 2010 Act, (victimisation).

15 214. In relation to Mr Y, he did not recall in detail some of the issues put to him. To an extent, this is perhaps unsurprising given the events in question took place a considerable time ago and while, they were of real concern to the claimant, if Mr Y was correct, then some of the allegations against him would not have been of as much focus of attention for him. This might go some way
20 to explain why, on occasions, he said he did not recall the events in question.

215. Against this, the claimant gave the impression of being genuinely upset by the way that he spoke to her, for example, in relation to the first and second incidents, (see below).

216. In relation to the claimant's recollection about what was said to her by Mr
25 Cuthbertson when Mr Page was present, neither of them gave evidence and so there was no opportunity for their recollections to be tested under cross examination.

217. The Tribunal has already set out above its view that to ask the claimant to turn around in the way described by her was wholly inappropriate and therefore the assertion that this was an act of discrimination was a justifiable one to reach, (again see below).

5 218. In relation to Miss Connor, she had the disadvantage that she did not have available to her the very detailed information set out about by the claimant in her further statement at C41/62 when she met the claimant on 23 November 2017 to discuss the issues set out by the claimant in her grievance letter.

10 219. Miss Connor should have afforded the claimant the opportunity so to see the minutes of that meeting which Miss Bridges prepared. Had she done so and allowed the claimant to provide her comments, then she would have been in a position to look further into the issues that had been raised during the meeting. This might then have enabled her to look into interviewing other employees in addition to those to whom she did speak during her
15 investigation.

220. There was no doubt that Miss Connor carried out a detailed investigation, albeit the claimant's complaint about it appeared to centre on the fact that she failed to interview all of those individuals whom the claimant believed had input or relevant evidence to give to Miss Connor.

20 221. For some of these individuals, Miss Connor's view was that they were not directly involved as they only saw the claimant after the alleged event(s) in question.

222. As indicated above, the claimant did have a tendency not always to listen to what was being asked of her and this seemed to be the case from reading
25 through the notes of the meeting with Miss Jenkins and, to an extent, in relation to the minutes prepared by Miss Bridges at the investigation meeting with Miss Connor.

223. The Tribunal does not intend to be unduly critical of the claimant but it did not always assist when she tended to speak very rapidly although against this the

Tribunal could see that there were times when she was understandably very upset when recounting her recollection of particular events, especially the skirt incident.

5 224. It is also extremely unfortunate that the claimant did not receive the outcome of the investigation letter dated 15 December until 28 December. However, the respondent did then afford the claimant the opportunity to have a further discussion with her and to extend the time for her to reply to the proposal of a mediation.

10 225. As a result of the holidays, this delayed further discussion by telephone until early January whether this is 3 January which, on Miss Connor's assertion was the final discussion she had with the claimant or, as the claimant maintained, on 8 January 2018.

Deliberation and Determination

15 226. The first issue since the claimant gave one month's notice on 16 November to expire on 16 December 2017 did her notice period end on 16 December 2017?

227. After careful consideration the Tribunal concluded that there was no evidence before it to suggest that there had been a formal extension by the respondent of the notice period given before 16 December 2017.

20 228. In effect, the clock was ticking and the claimant's notice having been accepted, albeit the respondent did not formally confirm their acceptance meant that the notice period expired on 16 December 2017.

229. In relation to the claimant's contention that Mr Page put the notice on hold the Tribunal was not satisfied that there was evidence to that effect.

25 230. The claimant appeared to rely on the letter given to her by Mr Page, (C4) which invited her to attend about concerns he had over her conduct. Such a meeting did not take place that day.

231. Instead, it appears that this was put on hold given that arrangements were then made for the claimant to meet Miss Connor at the meeting which took place on 23 November 2017.
232. On the balance of probabilities, the meeting to discuss the claimant's conduct was what was put on hold rather than the respondent agreeing to the claimant's notice to resign as at 16 December having been extended by the respondent to a later date.
233. If that is correct, then reference to matters after 8 January 2018 becomes irrelevant because the employment ended as at that date although there is, of course, the issue arising in relation to whether there was a complaint made in relation to section 108 of the Act, (see below).
234. As the Tribunal understood it, the claimant accepted at the final hearing that she was no longer claiming to have been discriminated against on the grounds of pregnancy/maternity (section 18) of the Equality Act.
235. Instead, her complaint is made in relation to section 13, 26 and 27 of that Act. The claimant was frank in her evidence, (see above) that the respondent did not know she was pregnant in November 2017. She herself only became certain that she was pregnant on 30 November when she was then on garden leave. At no point, did the claimant inform any of the respondent's management, including Miss Connor that she was pregnant.
236. This deals with the first 5 points set out by the Tribunal as issues for determination.
237. Next, consideration was given by the Tribunal to the points set out at 6 and 7 as further issues.
238. Was there, as the claimant appears to maintain, an act which amounted to a fundamental breach of the implied trust and confidence, entitling the claimant to treat herself as unfairly constructively dismissed and could she do that on the basis of an automatic constructive unfair dismissal since she did not have

the requisite two years' service to bring a complaint of unfair constructive dismissal?

239. The parties were asked to consider the decision in **Shaw**, (see above).

240. In relation to the determination which the Tribunal has to make, the Tribunal
5 concluded that the respondent was correct that written notice was given by
the claimant, that it was her intention to resign with her last working day being
16 December 2017. The fact that she was subsequently placed on garden
leave does not alter this.

241. There was no indication either from the claimant or Miss Connor that the
10 claimant then said she had changed her mind or that she resigned in the heat
of the moment and sought to retract her resignation.

242. The Tribunal concluded that Mr Robertson was correct in his submission that
notice cannot be unilaterally withdrawn in the absence of mutual agreement
and no such mutual agreement took place.

15 243. As has already been indicated, it is extremely unfortunate that the claimant
was not sent a copy of the notes of the meeting with Miss Connor but while
there is criticism made by the claimant it is not clear that these go substantially
to the heart of the interview. Miss Connor did undertake to carry out further
investigations and that is what she did.

20 244. Again, it is unfortunate that it took Miss Connor from 23 November until 15
December to complete those investigations but the Tribunal recognised that
there were a number of people whom she had to interview.

245. The claimant's position appears to be that she terminated her employment on
the basis she was entitled to do so by reason of the respondent's conduct and
25 that this was conduct to which she was subjected which was discriminatory in
nature with reference to sections 26 and 27 of the 2010 Act.

246. Mr Robertson submitted that it is only where alleged discriminatory conduct goes to the fundamentals of the contract of employment that there could be an automatic connection between that conduct and constructive dismissal.
247. It was suggested that here the conduct complained of was such as to destroy the trust and confidence between the parties but, in Mr Robertson's submission, this was not sufficient to destroy that trust and confidence under reference to **Shaw**.
248. The Tribunal noted that the claimant thought she had indicated that she would be willing to continue to work for the respondent if she was moved from Mr Y's team either to another part of the showroom where she was based or, alternatively, other premises operated by the respondent.
249. However, she later indicated to Miss Jenkins in February 2018 at their meeting that she did not think matters would have changed yet she had been willing to participate in the suggested mediation which did not take place because Mr Y was unwilling to do so.
250. The Tribunal was unclear as to why Miss Connor did not check with Mr Y before suggesting a mediation or whether he initially was willing to do so and then changed his mind.
251. In relation to the claimant's pregnancy, there was no evidence to support the claimant's assertion that the respondent knew she was pregnant, again see above).
252. There was no evidence before the Tribunal that any of the respondent's employees knew of her pregnancy. The only evidence provided was from former colleagues. Both Miss Connor and Mr Y said that they did not know nor did they suspect she was pregnant nor were they told she was.
253. It was suggested by the claimant that it was her speculation that the respondent refused to proceed with the mediation because they had by then become aware of her pregnancy. However, that does not sit comfortably with

the explanation by Miss Connor that Mr Y had been unwilling to participate in the process and so it was for that reason alone that she was unable to proceed with the mediation.

5 254. The fact that the claimant had, at some point, indicated a willingness to continue working with the respondent if she was moved from his team elsewhere within the showroom or to another site seems to have been lost sight of and perhaps that is understandable given the passage of time between the claimant having had the initial discussion with Miss Connor on 23 November 2017 and the later telephone discussion between them either
10 on 3 or 8 January 2018.

255. In relation to the grievance this was investigated by Miss Connor.

256. The Tribunal was satisfied that she did carry out a fairly detailed investigation, albeit the claimant maintained that not all of the employees that she thought should have been interviewed were interviewed.

15 257. Miss Connor's concluded that the claimant's grievance and allegations were not upheld which does not take away from the fact that there was a fairly detailed investigation of those allegations by Miss Connor.

258. Turning to each of the incidents set out by the claimant, the Tribunal's conclusions are as follows:-

20 (1) Incident 1 – this was the incident where the claimant alleged that she was spoken to harshly by Mr Y when she had left a customer in the showroom and in effect told that he could dismiss her from her employment.

25 On the balance of probabilities, the Tribunal concluded that it preferred the evidence that the claimant was not told that she has been "sacked" but rather that there was a heated discussion with Mr Y which led her to saying something to the effect of, "I can't handle this". Whatever words were exchanged, the claimant then

immediately sought out Mr Y's line manager, Mr Page. He reassured her that Mr Y did not have the authority to dismiss the claimant.

5 It is not clear to the Tribunal on what the basis the claimant can assert that this was discriminatory and unwanted conduct in terms of Section 26 nor 27 since there was no evidence before the Tribunal that the claimant has offered a comparator or that she has been able to show that a male employee of the respondent would necessarily have been treated differently by Mr Y on that occasion.

10 (2) Incident 2 – in relation to the skirt/iron incident the issue which arises is whether there was unwanted conduct violating the claimant's dignity under Section 26 and/or Section 27.

15 The issue arises in relation to the standard of dress and the Tribunal had to take on board that an employer is entitled to require a certain standard of dress. Mr Y indicated in his evidence that another individual had been sent home in the past year.

20 What was very significant is that there was then the further event where the claimant was taken by Mr Cuthbertson into an office with Mr Page present. It is also important to note that Mr Y was not present in that office.

The found the claimant's evidence compelling that she was asked to "turn around in a circle" in front of Mr Cuthbertson and Mr Page and that Mr Cuthbertson asked Mr Page "what he thought of my attire", (C46).

25 On any view, this was an entirely inappropriate thing to ask an employee to do.

The Tribunal then considered whether could it be said that the same might have been asked of a male employee i.e. had the claimant

offered a comparator and had that person been dressed in such a way that that man was then asked to turn around. Even if that were the case, the Tribunal concluded that it was wholly inappropriate for the respondent to have done so.

5 The Tribunal concluded that the claimant was correct in her assertion that this amounted to unwanted conduct in terms of Section 26 of the 2010 Act.

10 (3) Incident 3 – Turning to the next incident on 2 October this was the group text sent to the claimant and her colleagues within the team who reported to Mr Y.

Mr Y had taken the decision to send that e-mail and the claimant felt that she was being particularly focused on because of the reference at point 4 “uniform ironed perfectly”, (C48). No inspection did take place.

15 The Tribunal could well understand why the claimant found this so upsetting since it came so soon after the skirt incident. The Tribunal concluded that this too was unwanted conduct specifically directed only to the claimant even although it was addressed to a group of colleagues, not just to the claimant.

20 The Tribunal also noted that the claimant was the only female member of staff in that team.

(4) Incident 4 – in relation to the next incident on 4 October this was the occasion when Mr Page was absent and the claimant felt that there was an attack on her personally by Mr Y.

25 (5) The Tribunal concluded that it was difficult to find that this amounted to an allegation of sex discrimination since the same treatment might have occurred with a male employee.

In the circumstances, the Tribunal was not satisfied that this amounted to discrimination on the ground of sex.

5 (6) Incident 5 – in relation to the incident on 5 October, (C51/52) this was the meeting between the claimant, Mr Y and Ms Cuthbertson. The claimant thought this meeting was very scripted and that Ms Cuthbertson was siding with Mr Y. There were no minutes available as no minutes were taken of that meeting. Subsequently, this was raised as part of the claimant’s grievance with Miss Connor.

10 (7) The Tribunal could not see on what basis the claimant asserted that there was discrimination on the protected characteristic of sex.

15 (8) Incident 6 - the constant calls to the claimant from Mr Y from 5 October to 14 November and what is referred to as “constant interrogation” and “minor bullying”. Again, it was difficult for the Tribunal to reach a conclusion that this was done on the basis of the claimant being a woman. The Tribunal had to take into consideration that there is no protection afforded in relation to generalised bullying and harassment in the absence of it being done on the basis of a protected characteristic. Mr Y did not know that the claimant was pregnant.

20 (9) Incident 7 - in relation to incident 7 the claimant did not tell Mr Y that she was pregnant. She did inform him that she was tired and feeling unwell but there is no evidence that that would have then caused him to make the connection that she was, in fact, pregnant.

25 In any event this does not sit comfortably with the fact that the claimant admitted that she was not certain that she was pregnant until 30 November 2017.

(10) Incident 8 – the next incident was specifically in relation to Mr Cuthbertson rather than Mr Y and it was after this that the claimant submitted her grievance and her resignation.

(11) Incident 9 – this was the issue regarding commission being removed from the claimant by Mr Page but there is no evidence that this was done in relation to the claimant’s sex.

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(12) Incident 10 – in relation to the incident on 24 November 2017, again there is no evidence that this was because of the claimant’s sex. In terms of this complaint being alleged to have been in contravention of section 27, the Tribunal was not satisfied that there was evidence of victimisation.

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(13) It was also not satisfied that there was victimisation of the claimant in relation to the e-mail correspondence of 25 November through to 21 December 2017.

(14) In relation to 28 December 2017 there was no evidence that this amounted to victimisation of the claimant.

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(15) In relation to the final discussion between the claimant and Miss Connor, whether this was 3 or 8 January 2018, there is no evidence to support the claimant’s earlier contention indication that this was pregnancy related since the claimant had not informed Miss Connor at any point that she was pregnant. The Tribunal was not satisfied that there was evidence of discrimination in terms of section 27.

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259. In relation to the claimant’s assertion of discrimination on the ground of pregnancy in terms of section 18(2) of the Equality Act 2010, the claimant accepted in her evidence that the respondent did not know of her pregnancy and that complaint cannot therefore succeed.

25

260. In relation to the appeal meeting, the claimant was no longer employed by the respondent and although Ms Jenkins had been informed by then of the claimant’s pregnancy there is no evidence that she discriminated against the claimant on the grounds of pregnancy in reaching her decision.

261. In relation to the claimant's notice having expired as at 16 December 2017, the Tribunal concluded that the fact she was given originally until 21 December to indicate if she wanted to participate in a mediation but which she could not reply to as she did not receive the letter dated 15 December until 28
5 December and on that date Miss Connor informed her that she would speak to her on 2 January 2018 (or as Miss Connor thought it was 3 January while the claimant was adamant that it was 8 January 2018) did not, in the Tribunal's view mean that the claimant's employment had been continued until early January. It was clear that the claimant asked about payment and that Miss
10 Jenkins decided in March 2018 that the respondent should pay the claimant for the remainder of December i.e. until 31 December did not have the effect of extending the claimant's employment beyond the end of the notice period which expired on 16 December 2017.
262. It is very sad that the claimant's pregnancy had ended in a miscarriage on 30
15 January 2018 which was not known to Miss Jenkins until it was mentioned at that appeal meeting.
263. The Tribunal was not persuaded that the correspondence of 12 March amounted to discrimination on the grounds of either pregnancy discrimination, section 18(2) or to victimisation, (section 27 of the 2010 Act).
- 20 264. In conclusion, the Tribunal came to the view that the incidents which support the allegations of sex discrimination under section 26(1) of the 2010 Act relate specifically to incident 2 (the iron/skirt incident) and, specifically, in relation to the instruction by Mr Cuthbertson to the claimant in Mr Page's presence to turn around. The second incident which the Tribunal was satisfied amounted
25 to discrimination was the sending of and receipt by the claimant of the group text, (incident 3).
265. In relation to the remaining incidents, the Tribunal was not satisfied that there was evidence to satisfy it that there was discrimination on the ground of sex, it having been accepted that the claimant no longer contends that her
30 pregnancy was known to the respondent.

266. In relation to automatic constructive unfair dismissal, the Tribunal concluded that it could not find that there was a fundamental breach of contract, entitling the claimant to resign and claim constructive dismissal where she did not have the relevant two years' service in terms of section 108 of the 1996 Act. In any event, even had she had sufficient qualifying service under the 1996 Act the Tribunal was not satisfied that there was a fundamental breach of the claimant's contract. While she tendered her resignation with notice which was accepted by the respondent the claimant's position was that she would have been prepared to remain in the respondent's employment if she was no longer working in Mr Y's team. This together with her willingness to have participated in a mediation as originally suggested by Miss Connor did not sit easily with the assertion of a fundamental and irrevocable breach of contract by the respondent. Accordingly, that complaint did not succeed and is dismissed.

267. The Tribunal further concluded that it was not satisfied there was an automatic constructive dismissal. The Tribunal reached this conclusion for the same reason set out above, given the claimant appeared to be willing throughout to have agreed to continue her employment with the respondent, provided they moved her from being in Mr Y's team either to elsewhere in the showroom or, alternatively, to another site. There was further no evidence to support a contention that there was a discriminatory act or acts thereby entitling the claimant to succeed in a complaint of automatic constructive dismissal. In reaching this conclusion the Tribunal took into account the decision in **Shaw**, (see above).

268. In all these circumstances, the Tribunal concluded that the claimant's complaint of constructive automatic unfair dismissal fails.

269. For completeness, the Tribunal also concluded that the claimant has failed to establish any complaint in terms of section 108 of the 2010 Act and accordingly that complaint is refused.

270. Again, for completeness, in reaching its decision the Tribunal has applied the relevant law to the findings of fact set out above.

271. It had been agreed that this was a merits hearing only and there would have to be a separate remedy hearing to deal specifically with the issues in relation to those incidents 2 and 3 being the ones where the Tribunal is satisfied that there was discrimination in terms of section 26 of the Equality Act 2010.

5 272. Arrangements will be made for date listing letters to be sent to the parties so that a remedy hearing can be arranged and for which the allocation will be one day.

273. For the avoidance of doubt, while the Tribunal is aware that the claimant has provided a proposed Schedule of Loss, (C67/70) given the findings set out above and the conclusions the Tribunal has reached this will be only in relation to an award of injury to feelings but not to a compensatory award since the complaint of automatic unfair constructive dismissal did not succeed and the claimant did not have sufficient qualifying service to make such a complaint under section of the 1996 Act.

15 274. That remedy hearing will be for the purpose of considering an award for injury to feelings in relation to the two incidents of the skirt/iron and the group text.

275. It had been intended that there would be a further meeting on 31 July 2019 from the earlier meeting held on 30 May. Unfortunately, due to illness, the judge was unable to attend. However the judgment and reasons were drafted by her and both have been approved by the members and so the judge is now in a position to sign the judgment and reasons which are unanimously agreed by the full tribunal.

25 Employment Judge: F Jane Garvie
Date of Judgement: 06 August 2019

Entered in Register,
Copied to Parties: 09 August 2019

