Claim No: 1602287/2019 (V)

EMPLOYMENT TRIBUNALS

Claimant: **Mrs D Pritchard**

Respondent: **Scot Group Ltd t/a Thrifty Car Rental**

Heard at: **Cardiff** **On: 10, 11, 12, 13 August 2020 and (Chambers Day) 14 August 2020**

Before: Employment Judge RL Brace
Ms K Smith
Mr M Pearson

Representation
Claimant: In person
Respondent: Mr D Leach of Counsel

RESERVED JUDGMENT

It is the unanimous decision of this Employment Tribunal that:

1. The claim under s.18 Equality Act 2010 is brought out of time, it is not just and equitable to extend time and the claim is dismissed.

2. The claim under s.19 Equality Act 2010 is brought out of time, it is not just and equitable to extend time and the claim is dismissed.

3. The claim of unfair dismissal (constructive) and wrongful dismissal are not well founded and are dismissed.

Reasons

Preliminary Matters

1. On the morning of the hearing the parties produced skeleton arguments, a chronology having been provided some days earlier to the Employment Tribunal by email.

2. A bundle of agreed documents, amounting to some 485 pages (the "Bundle") had also been provided in electronic and hard-copy format and the electronic copy was used by the Employment Tribunal. Each witness had their own hard copy of the Bundle and/or witness statements and where witnesses were sharing copies of the Bundle, gloves were used to avoid 'double-handling' of the paperwork as had been discussed at the preliminary hearing which had taken place on 3 August 2020.

3. The issues to be determined were discussed at the outset of the hearing and the claimant confirmed that the list of issues, as set out by Judge Beard in his Order of 20 April 2020 (paragraph 8-12 inclusive) were the issues to be determined, particularly with regard to the treatment complained of, both in the constructive dismissal claim and in respect of the unlawful discrimination. the claimant was reminded to bear those issues in mind when cross-examining the respondent's witnesses and again when summing up.

4. The morning of the first day was allocated as reading time and the parties attended at the hearing venue to commence at 2.00pm on the afternoon of the first day of the hearing. The hearing was conducted as a 'hybrid' hearing, with the claimant and her representative attending the hearing room in-person with the Judge. The clerk was also present in the hearing room. Due to social distancing measures, the room accommodating up to 5 persons only at any one time and the dais not being long enough to accommodate all members, the non-legal members, participated by video (CVP).

5. The claimant was accompanied by her husband and, whilst the claimant was giving evidence on the afternoon of the first day, the claimant's husband attended in-person and sat where the claimant as a party (or their representative) would normally sit when the claimant was in the witness box. He was needed to be warned that he should not interact with the claimant whilst she was giving evidence. The claimant's husband did not attend on the second day of the hearing when the claimant completed her evidence but did re-join the hearing room part-way through the respondent's submissions on the fourth day.

6. The respondent's counsel agreed to such arrangements even though due to social distancing measures, no additional respondent' representative or witness could sit alongside Mr Leach during the hearing due to social distancing measures.

7. The remainder of participants, including the respondent's solicitor and witnesses, participated via CVP either from observing the hearing via a screen in a second hearing room, or remotely. Each respondent witness gave evidence in person in the hearing room.

8. The Tribunal heard evidence from the claimant and from the respondent from Mr John Hern (Area Manager for the South West,) Ms Pam Roe (Head of Operations for the South) and Ms Michelle Fox (Finance Director).

9. We also heard evidence briefly on the morning of the fourth day from Mr Mark Davey (Hr Operations Manager) regarding his interaction with Mr Hern whilst Mr Hern was still under oath. An issue had arisen during the cross-examination of Mr Hern regarding whether a spreadsheet, which had been prepared by Mr Hern, had been disclosed to the claimant. Mr Hern was unable to confirm whether it was contained in the Bundle. A short adjournment had taken place for Mr Leach to obtain instructions from his clients and Mr Hern was reminded that he was still under oath.

10. On return Mr Leach quite properly brough to the Tribunal's attention that the claimant had witnessed Mr Leach showing Mr Hern a document from the Bundle, and she had been concerned that Mr Hern and Mr Harvey had interacted over this issue despite the Tribunal's instructions and despite the fact that Mr Hern was still under oath.

11. Mr Harvey was directed to provide a witness statement and give evidence on this interaction on the morning of the fourth day. This was prepared as directed and Mr Harvey gave evidence that he had turned to page 449 of the bundle and as he had been unable to email the page number to Mr Leach had opened the bundle and pointed his pen to page 449 indicating to Mr Hern that the document was in the bundle.

12. We accepted his evidence that he had not spoken to Mr Hern. Having considered the matter we concluded that this interaction had not impacted on the fairness of the hearing and that a fair hearing was still possible.

Assessment of the evidence

13. The Tribunal was satisfied that all witnesses gave their evidence honestly and to the best of their knowledge, information and belief. It is not necessary to reject a witness's evidence, in whole or part, by regarding the witness as unreliable to not telling the truth. The Tribunal naturally looks for the witness evidence to be internally consistent and consistent with the documentary evidence.

14. The Tribunal found the claimant to be a consistent and compelling witness whose account was plausible. The Tribunal did however guard against the possibility that her evidence could illustrate how the wish can be 'father to the thought'. She was able to recollect conversations with Mr Hern who in contrast, and unsurprisingly given the passage of time that had elapsed between the date of some of the verbal discussions i.e. beginning of 2017 and beginning of 2018, and the date of the hearing in the summer of 2020.

Findings of Fact

15. On 15 November 1999 the C commenced employment with the respondent and by January 2008 she was promoted to Cardiff Branch Manager. She was at the time of termination of her employment employed on terms and conditions which were provided in 1999 [42] and these had not been updated since. She was a successful Branch Manager with an exemplary work record.

16. The respondent company trades as 'Thrifty' and operates in the hire of cars and vans. The Cardiff branch is a busy branch with limits on its estate in that Cardiff

location. Parking of hire vehicles is an ongoing issue for the Cardiff branch to manage due as a result with complaints from commercial public regarding vehicles being parked on the road, with a particular pinch point during the 'plate' change in March and September of each year.

Pre-Maternity Leave Period

17. The claimant had no issues regarding management of the branch, or indeed her ability to manage the parking issues, prior to October 2017 or certainly none that was in evidence before us.

18. On 18 October 2017 the claimant confirmed her pregnancy [199]. A Maternity Pay and Fact Sheet was provided to the claimant, but we were not provided with a copy of this document. A maternity risk assessment was arranged, and this was carried out by the claimant's line manager, John Hern, Area Manager for the South West ("JH") on 23 October 2017 [200]. A number of hazards were identified as part of that risk assessment with the three main issues being:

    a. the need for a new more supportive chair;

    b. the recently fitted LED lighting was causing the claimant headaches and migraines;

    c. work related stress. It was noted that action would be taken regarding the parking and removal of vehicles at the branch as this was a stressful part of the job with complaints from public about cars parked on the road.

19. At that meeting the claimant also expressed concern that she had just discovered that she was only entitled to SMP.

20. On 25 October 2017 a new chair was ordered by the claimant [209] and JH requested that a dimmer switch be installed for the lights [211].

21. On 25 January /2018 the claimant was off work sick with a stomach issues [223] and remained off work until 8 February 2018. During this sick leave, the claimant was contacted by colleagues using her personal mobile number she had provided to them. There was no evidence she had objected to such contact and at times she had initiated contact with her staff.

22. On her return to work on 8 February 2018 the claimant sought support for her forthcoming annual leave and JH that day arranged for the Newport Branch manager, Mr David Ward to base himself out of Cardiff that week [227]. In the event it appears that Mr Ward did not attend the Cardiff branch but this does not appear to have been raised as a concern with JH, either by the staff at the branch or by claimant at the time. On the same date the claimant was informed that her maternity cover, Lynne Plaister ("Lynne"), whom it had been intended would start the maternity cover at some point in January, would be commencing at the branch on 19 March 2018, just under a month before the claimant was due to start her maternity leave [228].

23. In February 2018 there was an altercation between a member of staff and a customer at the branch. The claimant stepped in to deal with the issue and the customer displayed violence and aggression towards her. A risk assessment had already been completed by claimant with regards to violence towards employees [184] on 23 March 2017 which had rated the risk as moderate. She had also received

some training on how to handle conflict the previous year [76A and 76B]. She spoke to JH suggesting that a sign be displayed showing that Thrifty would not tolerate violence or aggression towards staff. No incident report form was completed by the claimant and no further action was taken in relation to this incident or the claimant's suggestion by either claimant or JH.

24. On 21 February 2018 the claimant had to leave work early at 15.20 to attend the hospital: an unfortunate emergency in relation to her pregnancy. At 16.01 that day JH sent the claimant a text in which he confirmed that he has received her message [453] and that he hoped everything was ok. He asked about passwords regarding time sheets as it is payroll day. The claimant did not respond but it transpired that this was not required in any event, and payroll was completed. No further issue was raised by the claimant regarding this at the time.

25. 23 February 2018 the claimant called JH reporting that the situation with the car parking for the Cardiff branch was putting pressure on the branch. This was confirmed by her in an email later that day [238] to JH, in which she reported that:

    a. staff had reported the matter to the Newport Manager who had arranged to move 4 vehicles to Newport; and

    b. reminded him that this was an issue that had been raised regularly.

26. She also reported on:

    a. pressures of staff recruitment;

    b. Delay in commencement of her maternity cover; and

    c. backlog of work whilst she had been off ill.

27. She asked that something could be put in place to assist the branch to enable them to meet their targets.

28. An email response by JH was sent later that day:

    a. confirming that 10 drivers were expected the following week to collect vehicles;

    b. suggesting that cars could be also moved to the Newport branch; and

    c. confirming that he was happy for staff to look for alternative parking.

29. In relation to her maternity cover, JH confirmed that he was ascertaining if Lynne could be freed earlier to provide cover earlier.

30. On 27 February 2018, following a day off work with migraine, the claimant again emailed JH raising concerns that a number of staff were on sick leave or annual leave asking whether cover could be arranged, again raising concerns that administration was backing up including filing/emails [240]. During this period, a new IT system had been put in place and staff required training to use this system. This too was being queried by the claimant as this had not yet been put in place for the Cardiff branch

31. On 1 March 2018 heavy weather was forecast, which became known as the 'Beast from the East' and a 'Red' weather alert was predicted for 3pm in the South West. The claimant emailed JH at 11.49am that day [248] asking if staff could leave before

3pm and was informed that they were reviewing the weather hourly and that if she wished to close the branch early then that would need approval. She was offered a 4x4. She responded confirming that she would continually review the situation and would contact him again if she was looking to close the branch due to safety reasons. She emailed again at 1.30pm and asked if she had permission to close at 2.30pm. JH sought approval, confirming that he didn't want any risks and confirming that he was happy with a closure at that time. The claimant left at 2.30pm as requested. At no point did the claimant raise any specific concerns regarding her pregnancy.

32. On 5 March 2018 the claimant again emailed JH to ask about the parking: a number of vehicles had been left outside the branch overnight. JH emailed within 2 hours confirming the steps being taken to assist in the removal of vehicles and asked the claimant to take on more drivers. The claimant responded that driver recruitment was not going well.

33. On 6 March 2018 the claimant signed off with work related stress and remained off work until the commencement of her maternity leave on 16 April 2018. During this period, she was sent a copy of the employee manual [264].

34. On 29 March 2018 additional overflow parking is completed at the Booker store in Hadfield Road following a process of legal negotiation over the licence terms to ease the parking issue at the Cardiff branch.

Maternity Leave Period

35. Whilst the claimant was on maternity leave, Lynne undertook maternity cover as branch manager and was based at the Cardiff location. There is a dispute as to whether Lynne worked on a full-time basis at the branch. We found that she did not. Rather she worked a maximum of 4 days per week and that she also worked at other branches from time to time. Likewise, whilst we accepted that Emma Tomlins ("Emma") was, as a Roving Manager, based in the Cardiff branch, she spent no more than 2 days per week there and was also involved in recruitment for other branches. The Cardiff branch did not have two full time branch managers during the claimant's maternity leave.

36. At some point during her maternity leave, on or around October 2018, the claimant and JH spoke on the telephone and the claimant confirmed she wanted to submit a flexible working request. In this conversation JH told the claimant that of the respondent's branch managers, none worked part time or flexibly, or words to that effect.

37. On 11 January 2019 the claimant submitted her flexible working request "(FWR") [286] in line with the respondent's Flexible Working Policy [282]. Timescales were set out for dealing with the application including that:

    a. the line manager would hold a meeting within 28 days of receiving the request;

    b. notifying the employee within 28 days of the meeting; and

    c. an overall three-month time-period from first receipt to notification of the decision on appeal.

38. In her FWR the claimant requested a change in hours from full time to three days per week indicating that she would like the flexibility of working from home for 2-3 hours

per week on one of those days, seeking to work Monday, Wednesday and Friday from 1 March 2019. In her request she noted that Monday and Friday were the busiest days and stated that she believed her staff were capable of supporting these changes to her hours and believed that the respondent would be able to support flexible working hours.

39. A meeting was arranged for 23 February 2019 which the claimant attended accompanied by Sian Evans, Customer Services Representative ("CSR"). An email from 25 January 2019 sent by JH sets out the discussion that took place as part of the consideration of the claimant's FWR and included his recommendations [296]. We were satisfied that that email accurately reflected the contemporaneous thought and views of JH at that time.

40. He was supportive of the claimant coming back and his suggestion was to accept the FWR but to restructure the branch to have an Assistant Manager in place to run the branch in claimant's absence. Reference is made to the branch being in 'turmoil' over the previous 6-9 months as a result of the departure of one member of staff to Newport and negativity from the staff towards Lynne and Emma. He suggested an increase to 4 days after 6 months and full-time within 12 months.

41. Despite JH conclusions, after a further discussion with his line manager Steve Sandford, a final decision was made, as articulated in the letter to the claimant of 15 Feb [304], that her application could not be agreed to due to:

    a. Detrimental impact on quality;

    b. performance; and

    c. Customer demands.

42. The respondent did however as an alternative proposed that the hours that the C had requested could be worked over different days on a short-term basis and a 6-month trial period of three days of Monday Tuesday and Friday was proposed. She was offered a right of appeal. No reference is made in that letter to JH's suggestion that an Acting Manager be appointed to support the claimant.

43. On 20 February 2019 the claimant appealed the outcome of her FWR [307] complaining of the delay in dealing with her application and advising that she had already proceeded to make childcare arrangements on the basis that 'no news is good news basis'. She proposed a compromise of trial for a year (Monday, Wed and Friday) to obtain an in-depth analysis and comparison between the full-time and part-time management of the branch. She stated that she understood that the current temporary manager had not been a full-time presence at the branch on a daily basis during her maternity leave and that she believed with her experience she would be easily able to run the branch as effectively and as efficiently as she always had in the past. No reference is made by her needing an assistant or someone to act up on her non-working days.

44. An appeal meeting was not convened. Rather on 22 February 2019 JH wrote to the claimant [310] confirming:

    a. that he was happy for her to work Monday, Wednesdays and Fridays; and

    b. the arrangement to be reviewed after 3 and 6 months.

45. She was asked to signify her acceptance to the FWR outcome but was not advised of any contractual changes and no new contract was provided.

46. Prior to recommencing work, on 06 March 2019 the claimant attended work for a 'Keep in Touch' day ("KIT Day") where she met both Emma and JH. At that meeting the claimant was advised that neither Lynne nor Emma would be present on her first day back at work on 11 March 2019, both having been relocated, by that date, to Bristol. As a result, the claimant requested that Emma attend the Cardiff branch to train the two new staff who were due to start work on the claimant's first day back in work. This was agreed.

Post Maternity Leave Period

47. On 11 March 2019 the claimant returned to work. At that point the claimant had no intention of filing a complaint and simply wanted to forget about her concerns regarding issues that had arisen during her pregnancy and maternity leave. She had taken no steps to obtain information about making a claim or researching how to at that point in time.

48. Emma joined the claimant on the morning of that day but, by around midday, she had left the Cardiff branch and did not return again to provide any form of assistance to the claimant or the branch more generally until 5 June 2019.

49. The Cardiff branch seemingly had not been well managed in the claimant's absence. JH had stated as much when he flagged in his email to HR on 25 January 2019 that the branch had been, in his words, in 'turmoil' with the departure of one particular member of staff moving to the Newport Branch and staff being negative towards both Lynne and Emma, particularly Lynne.

50. The claimant's first day back was difficult with opening hours having been changed, new staff starting, a new IT system and backed up administrative tasks as well as H&S assessments, KPIs and first aid management being outdated.

51. Save for the meeting on 6 March 2019 at the KIT Day, and the morning of 11 March 2019, at no time up to 5 June 2019 did Emma, as Roving Support Manager, attend the Cardiff branch on the claimant's non-working days. Both Lynne and Emma had departed from the Cardiff branch prior to the return of the claimant from maternity leave.

52. On 15 March 2109 the claimant requested that Sian Evans be made Lead CSR ("LCSR") [315] in recognition of the responsibility she had taken on over the previous year. This request was chased by the claimant on 5 April [315] and JH promised to look into it. No reference was made by the claimant of the need for Sian Evans to act as an assistant for her or to support her as branch manager. Rather the request was on the basis that Sian Evans was working at much higher level than CSRs and that she should be awarded accordingly.

53. No steps were put in place by the respondent to meet JH's suggestion, in response to the claimant's FWR, that an Assistant Branch Manager be appointed to undertake the Branch Manager role on the claimant's non-working days. We found that on balance it was probable that this was because the claimant had always been viewed as being keen to have an assistant manager and more senior management at the respondent held the concern (as explained by JH on cross-examination) that this would 'open the door' for other branches to want an Assistant Branch Manager.

54. On 2 March 2019 the claimant met with JH when she discussed her return. This was the first face to face meeting since her KIT Day on 6 March 2019.

55. The claimant's evidence is that JH agreed to prepare a spreadsheet of his visits and to email them to her. There is a dispute between the claimant and JH on what that spreadsheet would reflect and whether the claimant ever received them.

    a. JH evidence was that the focus of the meetings was on KPIs focussing on turnaround, which the spreadsheet reflected and that he 'thought' that he had sent her a copy.

    b. C evidence is that JH had promised to prepare a spreadsheet of his visits and record what was discussed. She denies having received any documentation.

56. There was an issue as to whether the spreadsheet had been provided on disclosure and after clarification it was confirmed that a copy of the final spreadsheet (after meetings in March and April) had been disclosed and was found at page [449]. No other notes of the meetings had been prepared by either party and we found that this was the only spreadsheet that had been prepared and we also considered on balance that it was likely that JH had not provided a copy to the claimant at any time on the basis that:

    a. the claimant denied having received a copy;

    b. no spreadsheet had been provided after this first meeting;

    c. there were no emails evidencing JH sending them had been included in the Bundle; and

    d. JH could only say on cross-examination that he 'thought' he had sent them to the claimant.

57. We were provided with no specific evidence from the claimant as to what was discussed at that meeting, save that at that meeting the claimant asked if Lynne or Emma could be assigned to Cardiff to help her get back on her feet but this was refused as they were needed in Bristol. We accepted that this had been raised and this had been the response that she had received.

58. It is not in dispute however that the claimant raised issues with JH regarding lack of staff and her workload and over the course of the following week from 8 April 2019, the claimant requested additional staffing, highlighting the need for an extra CSR and on 10 April 2019 sent a lengthy email to JH [317] highlighting that having been back for four weeks and having observed how the branch was running, she was concerned that the branch was struggling in lots of areas; listing areas which she considered she and the branch required assistance in. The Tribunal incorporates its contents by reference but in brief:

    a. The claimant requested an Assistant Manager, recommending that Sian Evans be appointed to the role, highlighting that she believed that during her maternity leave the branch had the benefit of two full-time branch managers;

    b. and an additional CSR highlighting increased workload, stagnant headcount but reduction in experience at the branch

59. She ended her email by asking for an advert to be placed for a CSR as soon as possible.

60. Whilst some support on recruitment was provided in the following weeks, with JH offering to chase up on advertisements and provide assistance with recruitment, the claimant considered this insufficient to meet the demands of the branch in recruitment of an additional CSR and QI.

61. The issue of whether the Cardiff overtime was considerable and/or more than other branches was an issue which we could not determine on the evidence before us. We accepted that many branches had been awarded new contracts and all were stretched. We therefore decline to make any findings as to whether overtime at the Cardiff branch was excessive.

62. On 25 April 2019 a letter was sent to Sian Evans, confirming her promotion to LCSR [330]. No reference is made in that letter as to whether she would be to support the claimant on her non-working days.

63. On 29 April 2019 the claimant had a further meeting with JH where the branch and KPIs were discussed. Whilst no notes were provided of those meetings, we consider that it is more likely than not that the claimant would have again told JH the issues that she was experiencing at the branch as she had already set out in her previous mails.

64. Matters came to a head on 22 May 2019, a non-working day for the claimant, where a member of staff was aggressive to Sian Evans and the branch was short-staffed in all areas, with the claimant struggling to recruit and the recruitment process being slow. She asked again for an Assistant Manager/Manager cover for her on her non-working days.

65. In response, on 24 May 2019 [337A] JH confirmed to the claimant that agency drivers could be used, and that HR/Recruitment could arrange short term cover. He also advised her to use alternatives such as other branches and that he had spoken to Lynne would help sift through candidates.

66. He also confirmed that Emma, as Roving Manger would be there on Tuesdays and Thursdays [339] i.e. the claimant's non-working days and could also get involved in the recruitment if required.

67. The claimant responded later that day [338] suggesting that it would be ideal for Emma to be at Cardiff to cover Monday to Friday for at least 4 weeks. She highlighted that there was significant annual coming up, including her own annual leave. She also expressed that that she was being required to do the workload of a full time in 3 days and had already requested an Assistant Manager to work alongside her. Other recruitment issues were also raised.

68. On 28 May 2019 Emma started work again based at the Cardiff branch on the claimant's non-working day and on 29 May JH confirmed that Emma would be in place for the next 4 weeks as had been requested by the claimant [340].

69. Later that day, JH arrived at the Cardiff branch to meet with the claimant when she explained to him the problems she was experiencing working 3 days per week.

70. Up to this point the claimant had anticipated that the branch could handle her absence on her non-working days with support from the existing Cardiff branch staff including, in particular, Sian Evans. However as the team had changed over her maternity leave, at around this date the claimant's view had altered as she was

finding it increasingly difficult to manage without additional support on her non-working days. This was reflected in the claimant's own witness statement at para 113.

71. The claimant's next non-working day was 30 May 2019. Emma again attended the Cardiff branch but left early on annual leave. Emma had also departed early on her first day on 28 May 2019 for the same reasons.

72. Handover notes were left by Emma for the claimant which she received on her return to the office on 5 June 2019 where that day she also worked alongside Emma. The claimant took exception to both the tone and content of the note but did not raise this with Emma direct.

73. The claimant's reaction to the handover note, together with comments which the claimant had been told Emma had made about her to another member of staff, caused the claimant to complain to HR on 6 May 2019 and ask for Emma not to be sent again to the branch on the following day [349]. Despite this request, Emma did attend Cardiff the following day which was the last day that she did work at the Cardiff branch at that point.

74. Over the next few weeks the claimant continued in work with the exception of some days annual leave, but by 21 June 2019 felt unable to continue in work having dealt with upset staff and an aggressive customer over the previous weeks and unable to manage the staffing situation. The claimant did not return to work again and on 27 June 2019 the claimant was signed off with work-related stress and anxiety which continued until her resignation on 28 October 2019 [351].

Grievance

75. 9 July 2019 the claimant sent in a grievance. The grievance letter was 5 pages long and was detailed setting out all of the claimant's concerns. It really needs to be produced in full to do it justice. The Tribunal again incorporates its contents by reference. Essentially the claimant complained about the way that the respondent had handled the period of her pregnancy and return to work including:

    a. No support had been given in relation to risks identified in her pregnancy risk assessment in October 2017;

    b. Excessive workload in the last three months of her pregnancy;

    c. It had never been made clear to her that she would only receive SMP; and

    d. her FWR and return to work arrangements.

76. She considered that the respondent had not considered her well-being and had not demonstrated a duty of care to enable her to return to work following her maternity leave.

77. A grievance meeting was held with Pam Roe, Head of Operations on 26 July 2019 and a note of the matters discussed at that meeting [362]. The meeting lasted over 2 hours. The claimant felt relieved and pleased that she had someone to listen to her concerns. She said so as much in her grievance appeal meeting.

78. Whilst we accept that the notes did not reflect what was said in detail we do consider that the claimant would have had the opportunity over the two hours to revisit and

talk over the issues that she had set out in detail in her written grievance in addition to the matters reflected in the notes.

79. On 5 August 2019 the claimant received a written response to her grievance [365]. She did was not sent a copy of the notes of her grievance meeting. In brief the response confirmed the following:

    a. With regard to the maternity risk assessment;

        i. it was accepted that the lighting had not been changed and the claimant was asked if the lighting continued to cause issues, arrangements would be made for this to be modified;

        ii. whilst additional overflow was found at the end of March 2018, it was accepted that this had taken longer than anticipated to resolve.

    b. With regard to staff shortages:

        i. it was accepted that measures should have been put in place to ensure sufficient staffing levels and the claimant should not have been contacted whilst off ill;

        ii. it was accepted that emails to JH had been left unanswered by him.

    c. With regard to the 1 March 2018 weather warning, it was accepted that communication that day had been unsatisfactory and the claimant received an apology.

    d. With regard to SMP, the claimant was informed that it was clear from the staff handbook that SMP only was paid.

    e. With regard to JH response to her emergency admission to hospital, Ms Roe confirmed that she had no doubt that JH had concern for the claimant.

    f. With regard to her FWR, Ms Roe accepted that a lack of structured return was not helpful and agreed that JH should meet with the claimant on her return from sick leave to discuss objectives over three months.

80. Ms Roe also made recommendations that:

    a. staffing levels were reviewed in line with other 7-day locations and that JH and David Ward conduct a full review of the workload and instigate actions to improve immediately;

    b. Sian Evans took on Acting Branch Manager for the claimant's non-working days to ensure consistent level of management;

    c. that the claimant meet formally with JH to agree priorities and objectives for the coming three months; and

    d. that interim review meetings at least once a month to check progress to identify issues or concerns.

81. She concluded by appreciating that coming back from maternity to a largely new team would have presented challenges and confirmed that she had asked training team to liaise on skills gaps to provide further support. The claimant was advised of her right of appeal.

82. On 12 August 2019 the claimant wrote to Mr Mark Davey Operations Manager appealing the grievance response [367]. In that letter she complained that:

    a. she had not seen the notes of the grievance meeting;

    b. what had been upheld and what had not been upheld had not been clarified;

    c. the conclusion was brief;

    d. there were no clear communication as to what new company procedures had been put in place, if any, to reassure the claimant that she would not find herself in the same position again;

    e. she wanted detail of how Sian Evans, in an acting role, would operate

83. She ended the appeal by confirming that her GP had recommended that she would benefit from Occupational Health support and she was still awaiting and acknowledgment from the respondent that this would be arranged.

84. On 16 August 2019 an OH appointment was arranged for the claimant [369].

85. The claimant's grievance appeal meeting took place on 23 August 2019 before Michelle Fox, Finance Director [372]. The meeting was recorded and a transcript was prepared which was an accurate reflection of the matters discussed. The claimant presented as dissatisfied at the meeting expressing that she was unhappy and cross with the grievance response.

86. The notes are seven pages long and again incorporated by reference but in summary:

    a. the claimant complained that she had still not received a copy of the notes of the grievance meeting. Whilst a copy was provided during the appeal meeting and the C was offered an adjournment, she had declined this offer;

    b. she felt her grievance had been 'brushed over' in the response outcome;

    c. she had no confidence that that if she returned to work, she would not experience the same issues

    d. specific issues were raised regarding:

        i. her concerns regarding H&S on 1 March 2018 snow day and the ongoing parking issues;

        ii. that no objectives or plan was put in place for her return from maternity leave and that she had been unsupported on her return and that there had been no adjustment for the reduction in hours to 3 days per week.

87. In an email dated 23 August 2019 to Sian Evans, HR confirmed that Sian had been appointed as Acting Manager until the claimant returned to work (which was confirmed by way of letter dated 2 September to take effect from 1 September 2019 [379]) and by the end of August 2019 a development plan for Sian was being prepared by Pam Roe. She had also arranged for Andrada Bejan, Bristol Patchway Branch Manager, to visit the Cardiff branch and provide support for a week.

88. On 5 September 2019 the claimant was sent the outcome of grievance appeal [380]. In that appeal Michelle Fox sets out which elements of the claimant's grievance had been upheld, which ones had not, and which had been partially upheld.

    a. Her grievances regarding staff shortages, lack of communication on opening hours and overdue risk assessments were upheld;

    b. Her grievances regarding the maternity risk assessment and poor email responses from JH were partially upheld' and

    c. The remaining were not which included concerns on delayed maternity cover, management of the severe weather warning, maternity pay, JH response to her health scare and management of staff shortages on her return to work.

89. On 4 October 2019 the claimant attended her appointment with Occupational Health and by 7 October 2019 had received that report [394]. The report concluded that she was too stressed and anxious to attend work and that the claimant's perception was that there was too much work and too little support. The claimant was unhappy with the contents of the report which she considered to be inaccurate.

90. At some point the claimant instructed solicitors such that on 9 October 2019 the respondent received 11-page letter form Darwin Gray solicitors [396]. The letter set out a lengthy background and synopsis and concluded that the claimant considered that poor treatment during her pregnancy and after she returned to work and potential breaches of health and safety together with failure to adequately deal with her grievance had eroded her trust and confidence. Further that the claimant considered that she had suffered indirect discrimination by virtue of the respondent's treatment of her post-return to work after maternity leave.

91. They requested that the respondent put in place a robust action plan to deal with the outstanding issues of flexible working needs, excessive workloads staff shortages, proper managerial support and cover and put the necessary H&S provisions in place.

92. The letter concluded by stating that the claimant reserved all of her rights in respect of her potential claims of constructive unfair dismissal and indirect discrimination.

93. At that point, the claimant still wished to return to work and the purpose of the letter was to seek to further resolution which she felt the grievance procedure had not provided to her.

94. In response, and in response to the claimant's on-going sickness absence, a meeting was arranged through the claimant's solicitors for 23 October 2019 for the claimant to meet with Pam Roe [409] to discuss the OH Report and the requests set out at the conclusion of the Darwin Gray letter. A transcript (17 pages) was prepared following that meeting based on a recording that had been made by the claimant. On that basis we accepted that the transcript was an accurate record of all the matters discussed.

95. At that meeting the claimant was provided with a copy of the new procedure Manager Guidelines and Return from Maternity Parental Leave [65] that had been prepared since her return from maternity leave. The claimant was unhappy at Pam Roe's assurances that steps had been put in place for training, new CSR support, that a new manager was basing himself out of Cardiff one day a week and that Sian Evans

had started a development and training programme and would continue as acting Branch manger during her absence.

96. On 24 and 25 October 2019 the claimant queried her sick pay and was informed that as her full-time contract had reduced, her benefits had pro-rated due to the contractual change in March 2019 [438/431/427].

97. On 28 October 2019, the claimant writes into HR resigning [441]. In that letter she states that the final straw was the '*on-going situation surrounding misleading information regarding my pay at a time when I am in financial difficulty'*.

98. On 4 November 2019 the respondent's legal representatives respond to Darwin Gray [446] and on the same date ACAS acknowledges receipt of EC notification from the claimant.

99. On 2 December 2019 the ACAS Certificate Issued [1] and on 14 December 2019 the ET1 is submitted [2].

Submissions

100. The respondent's counsel presented written submissions comprising just over 15 pages (73 paragraphs). The Tribunal will not attempt to summarise those submissions but incorporates them by reference.

101. In supplementary oral submissions, Mr Leach referenced the Tribunal to the jurisdictional issues in particular, and the reasons that had been provided by the claimant on cross-examination for not having issued proceedings earlier, as well as waiver and 'last straw'. He also made submissions on the reason for dismissal in the event that the Tribunal concluded that the claimant had been unfairly dismissed.

102. The claimant had also provided a written skeleton argument comprising three pages and again the Tribunal will not attempt to summarise those submissions but incorporate them by reference. She confirmed again that whilst she had visited a solicitor in October 2019, she was a litigant in person, believed that the respondent had failed to support her and that the grievance process was an unfair process such that she did not consider she would get a fair resolution.

The Law

<u>Time s.123 EqA – Discrimination Time limit</u>

103. This involves consideration of whether the discrimination complaints were presented within the time limits set out in s.123((1)(a) and (b) EqA 2010 and dealing with this issue may involve consideration of issues such as whether there was an act and/or conduct extending over a period and/or a series of similar acts or failures and whether time should be adjusted on a 'just and equitable' basis.

104. The three-month time limit for bringing a discrimination claim is not absolute: employment tribunals have discretion to extend the time limit for presenting a complaint where they think it 'just and equitable' to do so — S.123(1)(b) EqA. Tribunals thus have a broader discretion under discrimination law than they do in unfair dismissal cases.

105. In *Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA,* the Court of Appeal stated that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) EqA, 'there is no presumption that they

should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.'

106. This does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds.

107. In exercising their discretion to allow out-of-time claims to proceed, the checklist contained in S.33 of the Limitation Act 1980 is a 'valuable reminder' of what may be taken into account, but their relevance depends on the facts of the individual cases, and tribunals do not need to consider all the factors in each and every case and s.33 (as modified by EAT in *British Coal Corporation v Keeble [2003] IRLR 220*)

108. Counsel for the respondent also referred to *Madarassy v Nomura International plc [2007] IRLR 246 (CA)*, *London Borough of Southwark v Afolabi [2203] IRLR 220 (CA), ABMU Local Health Board v Morgan [2018] IRLR 1050 (CA), Miller and others v MOJ and others (UKEAT/0003/15) and Apelogun-Gabriels v London Borough of Lambeth [2002] IRLR 116 (CA)*

Pregnancy and maternity discrimination s.18 Equality Act 2020

109. For the purposes of a claim under s18 Equality Act 2020, the relevant statutory provisions are as follows:

> (2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably—
>
> > (a) because of the pregnancy, or
> >
> > (b) because of illness suffered by her as a result of it.
>
> (3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.
>
> (4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.
>
> (5) For the purposes of subsection (2), if the treatment of a woman is in 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 after the end of that period).
>
> (6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—
>
> > (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
> >
> > (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.

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

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

(b) it is for a reason mentioned in subsection (3) or (4).

Indirect sex discrimination - s.19 Equality Act 2010

110. For the purposes of a claim under s.19 Equality Act 2010 the relevant statutory provisions are as follows:

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

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

(a) A applies, or would apply, it to persons with 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.

111. The relevant protected characteristics include sex.

112. Counsel for the respondent also referred to *Ishola v Transport for London [2020] IRLR 9CA)*

Constructive Unfair Dismissal

113. As the claimant resigned her employment and relies on a constructive dismissal, she must establish that when she terminated the contract under which she was employed (with or without notice) in circumstances in which she was entitled to terminate it without notice by reason of the respondent employer's conduct (s95(1)(c) Employment Rights Act 1995).

114. The relevant principles are found in *Western Excavating (EEC) Ltd v Sharp* [1978] ICR 221. The test of a constructive dismissal is a three-stage one:

a. Was there a fundamental breach of the employment contract by the employer?

b. Did the employer's breach cause the employee to resign? and

c. Did the employee resign without delaying too long thereby affirming the contract and losing the right to claim constructive dismissal?

115. The respondent's counsel also referred the Tribunal to *Waltham Forest v Omilaju [2005] IRLR, Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1 (CA) and Mari (Colmar) v Reuters Ltd (EAT/0593/13)*

Conclusions

Pregnancy/maternity discrimination - s.18 EqA 2010

116. The first issue that we need to deal with is whether the Tribunal has jurisdiction to consider the complaints.

117. For the purposes of s.18 EqA 2010 the claimant's 'protected period' as defined in s.18(6) EqA 2010, ended on 10 March 2019 at the very latest being the last day of her maternity leave. For the avoidance of doubt, as the claimant seemed to consider that this was an issue, this protected period does not get extended by such time that the claimant continues breastfeeding.

118. The unfavourable treatment relied upon by the claimant either arose prior to the commencement of her maternity leave on 16 April 2018 or had taken place during the protected period.

119. The respondent submits as follows:

a. that all of the s.18 EqA 2010 claims are approximately 5 months out of time; many of the allegations made are significantly further out of time than that, concerning as they do alleged events *prior to* the commencement of maternity leave on 16 April 2018; and

b. even if there is said to have been a continuing act, that continuing act ended on 10 March 2019.

120. We have considered *British Coal Corp v Keeble [2003] IRLR 220* and we considered that the following were relevant:

a. Whilst we accepted that the claimant was in no state of mind, and likely incapable of bringing a claim prior to and immediately after the birth of her first child, she made it clear on cross examination that she simply had no intention of filing a complaint during or when she returned to work following the end of her maternity leave in March 2019. Even in response to a question on cross-examination about how long her recovery from the birth had been, the claimant reiterated that she had no intention of claiming and did not consider pursuing a complaint at that point in time. She also confirmed that when she returned to work, in March 2019, that she simply wanted to forget about her concerns and had taken no steps to obtain information about making a claim or researching how to bring a claim.

b. We formed the view that Mr Hern's evidence in relation to matters that had arisen pre-maternity leave and the conversation that had taken place in or around October 2017 during the claimant's maternity leave was hazy, particularly where verbal conversations only were relied on. We formed the view that the cogency of his evidence in this regard was impacted.

c. We had little evidence regarding the claimant's medical situation save for the FIT notes and Occupational Health report. There was nothing to suggest that the claimant's health from 11 March 2019 until she reported as sick on 21 June 2019 prevented her from bringing a claim.

121. We were satisfied that whilst there were arguments that this was a continuing act extending over a period of time, any continuing act ended on 10 March 2019 and, having weighed up the relative prejudice that extending time would cause to the respondent on the one hand, and to the claimant (in the loss of a valid claim) if we did not, on the other were not persuaded that it would be just and equitable to extend time. We were in particular influenced by the claimant's clear and unequivocal evidence that she had no intention of bringing a claim at the point she returned to work in March 2018.

122. We therefore concluded that the Tribunal did not have jurisdiction to consider the complaints brought under s.18 EqA 2010 and the claims are therefore dismissed.

123. However, for the sake of completeness and in summary, even if we were wrong not to extend time, we did not, in any event, consider the complaints under s.18 EqA 2010 to be well founded.

124. In order for a discrimination claim to succeed under s.18 Equality Act 2010, the unfavourable treatment must be *'because of*' the employee's pregnancy or maternity leave. Unlike claims under s.13 Equality Act 2010, there is no requirement for a comparator and the claimant who alleges that she has been discriminated against on the ground of pregnancy or maternity need not compare her treatment with a man in similar circumstances (*Webb v EMO Air Cargo (UK) Ltd 1994 ICR 770 ECJ).*

125. We did need however to consider the grounds or reasons for the treatment and in this case concluded that the claimant was unable to prove, on the balance of probabilities, facts from which this Tribunal could conclude, in the absence of an adequate explanation, conclude that the respondent has committed an act of discrimination because of the claimant's pregnancy and/or maternity leave.

a. Whilst it was not in dispute that staff had contacted the Claimant during her periods of sick leave, the claimant the freely gave her mobile number to her colleagues and Sian Evans, in particular, did not hesitate to use it. We concluded that the contact had not taken place because the claimant was pregnant, but simply because she was off work.

b. The claimant had not provided any basis for alleging that the failure to react to staff shortages was because the claimant was pregnant, and we concluded that they had not.

c. With regard to the failure to proactively manage the risks that had been highlighted in the pregnancy risk assessment on 23 October2017, whilst we accepted the need to undertake the risk assessment arose as a result of the Regulation 16 Health and Safety at Work Regulations 1999 because the claimant was pregnant, it did not automatically follow (as appeared to be the claimant's case) that any failure to proactively manage those risks was 'because of' the claimant's pregnancy. Even if the claimant could have demonstrated that a failure to fulfil obligations imposed under the Health and

Safety Regulations 1999 in some way automatically amounted to discrimination because it had a greater impact on pregnant employees, it did not follow that there had been a failure *because* the claimant was pregnant and on the evidence before us in this case, we concluded that it did not. We concluded that there was nothing in the evidence, in the failure to adjust the lighting and/or to obtain alternative parking earlier, to lead us to conclude that the reason for these failures was because the claimant was pregnant.

d. Likewise, there was no suggestion from the claimant that the closure of the Cardiff branch at 2.30pm, and not earlier, was because of her pregnancy. Rather, we concluded that she believed that she should have been given more favourable treatment and that the respondent should have considered allowing her to leave earlier than the time she had requested because of her pregnancy, despite the fact that she had not requested this.

e. Furthermore, there was no evidence from which we could conclude that the failure to place signs, or make other proactive changes to assist staff in managing difficult customers, had anything to do with the claimant being pregnant

f. We failed to find any evidence to make any connection between the conversation that the claimant had with Mr Hern whilst she was on leave, that no branch managers worked flexible hours, and her pregnancy/maternity leave.

g. Finally, whilst it is evident that the respondent had not written to the claimant fully explaining any changes to contractual entitlements once she worked part-time, we could see no causal connection between the claimant's pregnancy and/or maternity leave and such a failure. If anything, this failure arose as a result of the claimant's part-time status and not as a result of her pregnancy and/or leave.

126. Whilst we heard from the claimant how upset that the claimant felt, and still feels, about what she perceives is the respondent's failure to look after her whilst she was pregnant and/or not doing more to look after her at a time when she was feeling vulnerable in the latter stages of her pregnancy, it does not follow that the claimant was treated unfavourably *because of* her pregnancy and/or maternity leave.

127. We concluded that had the Tribunal jurisdiction to consider the s.18 Equality Act 2010 complaints, the claimant had been unable to prove, on the balance of probabilities, facts from which this Tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed an act of discrimination because of her pregnancy and/or maternity leave.

<u>Indirect discrimination - s.19 EqA 2010</u>

128. Again the first issue for us to consider was whether the Employment Tribunal had jurisdiction to consider the s.19 Equality Act 2010 claim brought by the claimant; the claimant complaining that not providing appropriate support for managers in part-time and/or flexible working, put her at a disadvantage.

129. The claimant had returned from maternity leave on 11 March 2019 and by 21 June 2019 she had presented as sick, remaining off work on sick leave until her resignation. The respondent contends that the claim in respect of indirect discrimination was therefore approximately 6 weeks out of time, having been brought on 14 December 2019.

130. We concluded that the claimant was out of time, the last act complained of having arisen on the last day in work on 21 June 2019. We therefore turned to the issue of whether it was just and equitable to extend time and the claimant's reasons for the delay.

131. Whilst the claimant had been off sick on 21 June 2010 and we had accepted that at that point she felt that she could not continue in work, she had been able to prepare a relatively detailed grievance document which she had submitted just over two weeks later on 9 July 2020.

132. We considered that the fact that a claimant has pursued the respondent's internal grievance procedures before making a claim was one matter to be taken into account in considering whether to extend the time limit for making a claim.

133. We concluded that the claimant was entitled to take the view that it would be sensible to redress her grievances internally before considering legal proceedings.

134. However, what concerned us was, having received a final outcome at the end of the internal grievance process on 5 September 2019, and having been told in the ultimate paragraph of that letter [383] that this was '*the final stage in our Grievance Appeals process',* the claimant still delayed in submitting her claim.

135. Indeed,

a. the claimant waited a further month before she sought legal advice in Darwin Gray solicitors;

b. she then waited a further month, to 4 November 2019, before she contacted ACAS;

c. she then waited until 12 December 2019 before submitting her ET1 to the Employment Tribunal.

136. There has been no justification from the claimant as to why there has been such a delay. Even discounting the period during which the claimant was pursuing her grievance, there was still an unexplained delay of nearly three months. There had effectively been a period from 2 September to 12 December 2019 where there has been no explanation from the claimant for the delay.

137. We concluded that the claimant had not acted with promptness after she received her internal appeal outcome and we concluded that the claimant was out of time for presenting her complaint under s.19 Equality Act 2010 and that it was not just and equitable to extend time.

138. Again, if we were wrong to conclude that the claim had been brought out of time and/or that it was not just and equitable to extend time, we would have concluded that the claim under s.19 EqA 2010 was not well-founded in any event and should be dismissed.

139. The focus of our deliberations was on whether not providing adequate support for managers in part-time and/or flexible working was capable of amounting to a 'provision, criterion or practice' ("PCP).

140. Whist we accepted that the phrase 'provision, criterion or practice' is capable of covering a wide range of conduct and should be construed widely, we also accepted that there are limitations on what can constitute a PCP and to test whether a PCP is discriminatory or not, it must be capable of being applied to others.

141. We concluded that in this case the claim would not succeed on the basis that the PCP was not a legitimate PCP.

142. We had accepted the evidence that no other branch managers worked part-time flexible hours and whilst Mr Hern had confirmed that other managers and staff, below branch manager level, did work flexibly there was no evidence however before us for us to make any findings or form any conclusions that a failure to provide appropriate support had been applied in any other cases.

143. Equally, we concluded that there was no evidence that such a failure to provide appropriate support would be applied in future similar cases based on the following:

a. Pam Roe had acknowledged that the lack of a structured return from maternity leave had not been helpful;

b. Michelle Fox had reassured her at the grievance appeal meeting that the respondent would be looking into the fact that the claimant ahd no plan or objectives on her return; and

c. At the sickness review meeting on 23 October 2019 the claimant was provided with a copy of the new Manager guidelines when an employee was returning from maternity leave and parental leave

144. We therefore concluded that the claim of indirect discrimination was not well founded in any event and would have been dismissed had the Tribunal jurisdiction to consider the complaint.

<u>Constructive dismissal (and wrongful dismissal)</u>

145. We were not satisfied that any of the matters relied upon pre- maternity leave were sufficient, either in isolation or taken collectively, that could lead us to the conclusion that the respondent had conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between the claimant and the respondent amounting to a breach of trust and confidence:

a. In relation to staffing requests, we concluded that there had been a proactive response: Mr Hern had provided for assistance from the Newport branch and the claimant was encouraged to keep hiring drivers. We too concluded that one of the critical issues was cover for sickness absence and this by its very nature would not have been easy to pre-empt. We did not consider that there was any merit in the argument that the delay in maternity cover to one month before the start of the claimant's leave was a trust and confidence issue;

b. There had been a failure to proactively manage the lighting and to proactively seek alternative parking solutions to what was clearly a difficult operational issue for the Cardiff branch. However, the lighting failure had been a genuine error and the claimant had clearly not considered it significant enough at the time to follow up. Parking appeared to be a perennial issue and certainly not one which was novel for the claimant in 2018. It was part and parcel of the role of branch manager at Cardiff, that this was a difficulty borne out of the geography and location of the Cardiff branch. In any event steps were taken to address this issue and a solution was found by the end of March 2018. Commercial leases and licences would naturally take time to resolve and whilst the respondent may very well have not been particularly proactive in sourcing alternative parking back in the tail end of 2017, a solution had been found and they had addressed the position by the end of March 2018. Even taking into account that this had been flagged as a particular risk due to the claimant's pregnancy, we did not consider that the failure to find alternative parking solutions earlier than the respondent did, amounted to a breach of trust and confidence;

c. Whilst we appreciate that the storm on 1 March 2018 would have naturally caused concern to any employee, particularly to one in the final stages of her pregnancy, we also accepted that the respondent would have had to balance this against the needs of customers. This wasn't a case whereby the claimant was being ignored or her request refused. The claimant's case appears to be that the respondent, and Mr Hern, should have considered allowing the claimant to leave earlier than she had requested and that failure to do so was a breach. We concluded that this was not the case and the respondent acted appropriately on that day and in response to the claimant's requests. The claimant had not raised specific concerns regarding her pregnancy or wanting to leave earlier than the time she had requested. Whilst we understand that the claimant would have been upset that Mr Hern had not put the fact that she was pregnant at the forefront of his mind, equally, she did not raise this with him;

d. With regard to the management of violent/aggressive customers, we considered that the respondent's conduct in providing training, completing a risk assessment, obliging the staff to complete incident report forms to be appropriate and simply because the respondent did not follow up on suggestions from the claimant to improve the warnings to customers that such behaviour would not be tolerated, does not in our minds breach trust and confidence;

e. We did not find that she was told that she could not work part time after maternity leave and it follows that we did not conclude that anything in the conversation that took place in October could amount or lead to a breach of trust and confidence;

f. Finally, we concluded that whilst it would have been best practice and sensible to have informed the claimant of the pro-rata changes to her sick pay, this had been clarified, at least in relation to the holidays in the staff handbook and by dint of the fact that the claimant would have been receiving pro-rata salary from her return We do not conclude that failure to be a fundamental breach of trust of confidence.

146. Even where we stepped back and looked at the cumulative effect of these matters as a whole, whilst we accept that the claimant was upset and aggrieved, and we accept that Mr Hern could have been more sensitive to the claimant's own heavily pregnant status on 1 March 2019, we could not conclude that it could be said that these matters amounted to conduct that was calculated or likely to destroy or seriously damage the relationship of confidence and trust.

147. Furthermore, the claimant returned to work in the March 2018 and in doing so, and continuing to work for the respondent, the claimant waived any breach of contract that had arisen as a result of the conduct of the respondent up to that point.

148. With regard to the allegation that there had been a breach of trust and confidence as a result of any failure to provide appropriate support to the claimant following her return, we turned the focus of our initial deliberations on the claimant's FWR, and our findings in relation to that.

149. We concluded that the claimant had been clear in her FWR, and in her subsequent meeting with Mr Hern, that she considered that the role of branch manager could be undertaken on a part-time/three day a week basis and that any support would be obtained from the existing staff. She made no reference to only being able to undertake the role with additional management support.

150. We concluded that it was more likely than not, that she considered that the role could be undertaken part-time, with any support or cover for her absence on her non-working days coming mainly from Sian Evans, who would deal with any issues arising in her absence. There was no suggestion from the claimant at the time of the FWR, that to undertake the branch manager role on a part-time basis that she would need additional headcount at the branch on her non-working days or at all. There was no suggestion from the claimant at that point that a form of job share would be required to make the part time work.

151. Whilst on reflection this may have been an unrealistic position (and we conclude that Mr Hern had envisaged this being unrealistic having initially suggested an Assistant Branch manager, and then subsequently rejecting the FWR suggesting a review period after three months,) we also considered the claimant's own stated position was that the role could be done on a three day week basis and she chose to return on that basis.

152. However we also concluded that the claimant quickly realised, after being in the role for number of weeks, that being able to undertake the role on a part-time basis, with Sian Evans covering on her non-working days, was not readily achievable taking into account the demands of a busy branch.

153. She does not say this to the respondent, however. Whilst we accepted that she raised staffing issues in relation to CSRs, it was not until 10 April that she requested an Assistant Manager.

154. Whilst we accept that Sian Evans was made up to LCSR in April 2019 we did not consider that this would have alleviated the issues for the claimant. By the end of 24 May 2019 however the respondent had:

    a. arranged for Emma to be in the branch to support on the claimant's non-working days;

b. arranged for Emma to be in the branch full time for four weeks during a time of high annual leave absence; and

c. had assisted in the recruitment process albeit to a limited degree.

155. We considered that the over-time evidence could not lead us to any conclusion that there was serious under-staffing at Cardiff. It was our further conclusion, that whilst we accepted that the claimant was finding difficulty in managing her workload and working part-time, when additional support was requested, it was provided within a number of weeks and at the latest by the end of May 2019.

156. We therefore concluded that the claimant had not demonstrated that there was any conduct which was calculated or likely to destroy or seriously damage the relationship of confidence and trust between the claimant and the respondent amounting to a breach of trust and confidence in terms of the asserted failure to support the claimant and/or that.

157. In any event, even if it could have been demonstrated that there had been a sufficient lack of support such as to amount to a fundamental breach to trust and confidence up to the point she departed on sick leave in June, we concluded that the respondent had sought to address the claimant's concerns as part of the grievance process and had put in place supportive steps including:

a. a review of staffing levels and workload;

b. Sian Evans taking on Acting Branch Manager for the claimant's non-working days to ensure consistent management;

c. Formal meetings to agree priorities and objectives;

d. interim review meetings once a month;

e. liaison with the training team to identify skills gaps;

158. We concluded that whilst there had been some slippage in the typical timeframes set out in the Grievance Procedure, the respondent's processes had been properly followed and there was nothing in terms of the grievance process or the grievance outcome that could be said to be a repudiatory breach of contract.

159. Although we did not consider that there had been a breach prior to this in any event, we did not conclude that the content of the meeting, which took place on 23 October 2019 was anything other than another supportive meeting with the claimant and/or being informed that her benefits, including sick-pay, were pro-rata, were capable of being a repudiatory breach in isolation or as a 'last straw'.

160. Accordingly, we concluded that the constructive unfair dismissal claim and in turn the wrongful dismissal claims were not well founded and concluded that they should be dismissed.

<u>Unlawful deductions</u>

161. We concluded that the claimant had not established that she was, under the written terms of the contract that we had been provided, entitled to be paid for overtime. Whilst overtime was paid for branch managers if they worked on weekends, this did not apply to the claimant as she admitted that she did not

undertake weekend work. There was no entitlement to overtime and her claim in respect of any such amounts does not succeed.

162. Whilst no written change of contract was provided to the claimant explaining the pro-rata nature of the reduction in hours under the terms of her contract, it would have been implied into the contract that such benefits would be pro-rata, as her salary would have been pro-rata.

163. The claims for unlawful deduction from wages are therefore not well-founded and are dismissed.

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Employment Judge R Brace

Date 19 August 2020

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 21 August 2020

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FOR EMPLOYMENT TRIBUNALS