Case Number: 2304120/2018/V

THE EMPLOYMENT TRIBUNAL

BETWEEN

Claimant	**and**	**Respondent**
Anastasia Tuchkova		**1) Blackdown Hill Management Limited** **2) Timur Artemev**

Held at London South (By CVP Video) **On 22-25 February 2021and 12 March 2021 (in chambers)**

BEFORE: Employment Judge Siddall
Ms A Sansome
Mr A Peart

Representation

For the Claimant: **In person**

For the Respondents: **Mr T Welch**

JUDGMENT

The unanimous decision of the tribunal is that:

1. The claim for unfair dismissal under regulation 20(1)(a) of the Maternity and Parental Leave Regulations 1999 does not succeed.
2. The claim under regulation 10 and regulation 20(1)(b) of the Maternity and Parental Leave Regulations 1999 does not succeed.

3. The claim for unfair dismissal under sections 94(1) and 98 of the Employment Rights Act 1996 succeeds against the First Respondent.
4. The claim of unfavourable treatment because of the protected characteristic of pregnancy and maternity brought under section 18 of the Equality Act 2010 succeeds in part against the First and Second Respondents.
5. The claim of direct sex discrimination because of the protected characteristic of sex brought under section 13 of the Equality Act 2010 succeeds in part against the First and Second Respondents.
6. The claim for harassment brought under section 26 of the Equality Act 2020 does not succeed.

REASONS

1. The Claimant claims automatic unfair dismissal because of pregnancy and maternity (two separate claims under regulations 10 and 20 of the Maternity and Parental Leave Regulations 1999), unfair dismissal, maternity discrimination, direct sex discrimination and sexual harassment. The various claims are set out in a List of Issues and we refer to the various paragraphs of that below.

2. The hearing took place by video. It was not possible to hold a face to face hearing as a result of pandemic restrictions. None of the parties objected although the Claimant had expressed concern prior to the hearing that it might be difficult for her to connect by video due to poor internet. Once the hearing began, no significant problems occurred. We heard evidence from the Claimant herself, from the Second Respondent Timur Artemev and from Anastasiya Stenina who is employed by him as a personal assistant and HR manager.

Background

3. The sequence of events that we have drawn from the evidence of both parties is as follows.

4. The First Respondent is a UK registered company with the Second Respondent as its only client. In essence it appears that the company was set up to look after the business and domestic arrangements of the Second Respondent.

5. The Claimant is a Russian-qualified lawyer. She started working for the Second Respondent on a consultancy basis but was offered full time employment with the First Respondent from 4 January 2016, on a salary of £40,000.

6. We have seen the Claimant's terms of employment which begin at page 88 of the bundle. Paragraph 2 is headed 'Duties' and it sets out a very long list of tasks grouped under six headings: legal project management, legal research management, legal invoice management, supplier productivity management, investment management support and general administration.

7. The Claimant's description of her role in practice reflects the broad job description contained in her contract. She took on a variety of tasks for the First Respondent including the following:

    a. She liaised with Russian lawyers over the Second Respondent's business interests in Russia and in particular his pursuit of repayment of a number of unpaid loans.
    b. She carried out administrative tasks in the UK related to business interests including an innovation project which employed its own staff and was developing a new type of electric wheel. This work was carried out through a separate limited company called Uniwheel Limited.
    c. She also looked after the Second Respondent's legal and personal affairs including those in relation to his former spouses, his children and other family members.
    d. She liaised with lawyers and patent agents in the UK in relation to all these matters.

8. We have noted that although the Claimant is a qualified lawyer and her job title was Legal Project Manager, her job description suggests that many of her tasks involved administration, project management and liaison with external lawyers and agents as opposed to work with a specific legal content. She is not qualified as a lawyer under UK law.

9. The First Respondent employed a number of other people in the office including two other personal assistants – AN and Ms Stenina (who had a PA role but had taken on the task of looking after human resources for the company) - a finance director and chief financial officer. At the time of the Claimant's return to the office two others, DS and AS, were engaged as contractors. DS was looking after the Russian litigation and AS acted as investment manager.

10. We find that in practice there was a reasonable degree of overlap between the work the Claimant was doing and that of others in the office. Staff tended to deal with whatever tasks needed doing, whether on behalf of the Second Respondent himself or members of his family who needed assistance.

11. The Claimant became pregnant in the latter part of 2016 and she started her maternity leave on 1 March 2017. Before going on leave the Claimant prepared a detailed handover document to assist her colleagues which is found at pages 5-10 of the Supplementary Bundle.

12. On page 100 of the joint bundle is a form which the Claimant had completed prior to going on leave on which she indicated that during her leave she would like to be contacted if any vacancies or opportunities arose or about useful company information.

13. The Claimant originally intended to return to work on 1 September 2017 but on 3 August she emailed the Second Respondent and stated that she would like to delay her return until 1 March 2018. She said that she would like to arrange 'keeping in touch days' (KIT days) to 'smooth over this transitional period'.

14. On 4 August AN messaged the Claimant asking her to propose a schedule for her KIT days. On 8 August 2017 the Claimant emailed to say that she assumed that a return to work on 1 March was acceptable. She proposed specific dates for her ten 'KIT' days. On 22 August 2017 she emailed for a third time asking for confirmation that she could return to work on 1 March 2018 and that her proposed KIT days were acceptable.

15. It does not appear that the Claimant was sent any reply to these emails.

16. During her maternity leave the Claimant was contacted by her colleagues for information about matters she had been dealing with prior to her departure. A number of examples are contained in the joint bundle including one request sent when she was in labour.

17. On 14 February 2018 the Claimant emailed the Second Respondent and other colleagues to say she was looking forward to returning on 1 March 2018. She asked for an update on work done in her absence and current issues, and requested that her table of handover tasks be updated to reflect the current situation.

18. Ms Stenina stated in evidence that when this email came to her attention she contacted the Second Respondent. He asked her to arrange a meeting with the Claimant. He said that he did not intend to put any more money into the UK businesses as they had not been successful. He planned to cease his efforts to pursue repayment of debts in Russia. He believed that there would be nothing for the Claimant to do when she came back.

19. The Second Respondent was asked about when he came to the view that there would be no work for the Claimant to do upon her return. He replied that the Claimant had completed a lot of the infrastructure work around the start-up of the Uniwheel venture before she went on maternity leave. Retail sales from the import business had not been good, and the innovation side of the business had suffered a major blow when the lead designer resigned in the summer of 2017. The Second Respondent had fears for the business in the autumn of 2017 but he was encouraging the team to keep going. He tasked another engineer, CB with designing a new prototype. He had hopes that this would be done and that the business would take off. If it had done so, there would have been work for the Claimant to do around the intellectual property requirements. Unfortunately CB resigned at the end of April 2018 (around two months after the Claimant returned to work).

20. As to the Russian litigation, the Second Respondent had obtained judgments and sought to enforce these in Russia. However although he had engaged DS to pursue the judgments after the Claimant went on leave, the Second Respondent says that he had formed the view by January or February 2018 that these efforts were hopeless and it was not worth spending any more time on them.

21. The Second Respondent was asked why he had not commenced consultation with the Claimant earlier, if he had formed the view in late 2017 or early 2018 that the demand for the role was reducing. He stated that he believed very strongly that breastfeeding a child was very important. He was aware that the Claimant was breastfeeding (and we have noticed that she referred to this in her email of 3 August 2017). He felt that it was important that he should leave her undisturbed while she was breastfeeding as he was concerned that the shock of a prospective redundancy might affect her ability to feed her child and that the child was more important than the mother.

22. On 15 February 2018, Ms Stenina emailed the Claimant asking her to attend a meeting on 26 February as they had considered 'certain organisational changes within the office'. The Claimant asked for an agenda for the meeting and Ms Stenina replied that they wished to discuss 'work capacity'.

23. The Claimant met with Ms Stenina and the Second Respondent as planned. There are various versions of the notes. Ms Stenina made a summary of the discussions at page 131 of the joint bundle. The Claimant made her own brief notes in Russian which she translated into English and put in her supplementary bundle. It also appears that the Second Respondent recorded the meeting as was his habit. A translated transcription of the recording can be found starting at page 132. (The meeting was apparently conducted in Russian). We refer mainly to the transcript.

24. The Second Respondent told the Claimant that 'we have very little work here, we are closing, cutting down on everything, I mean winding down'. The Russian ventures had 'ground to a halt'. He also told her 'there is no work' and advised her to 'look for a job'.

25. The Second Respondent made a suggestion that the Claimant could undertake the project of reviewing, filing and auditing the First Respondent's legal documents. The Claimant pointed out that the company employed an archivist.

26. The Claimant said (page 135) that this came as a shock and that she wished she had known earlier and been given more time. The Second Respondent said 'but I don't know if you are breastfeeding or not, I really didn't want to spoil your mood when you've just given birth'.

27. Ms Stenina ended the meeting by stating 'look we really wanted to find some alternative but there is really none. It's not just some decision, it's just that there is no work and we cannot find anything. And as for any alternatives, there is nothing at the moment'.

28. (We have noted that Ms Stenina's notes of this meeting, sent to the Claimant in April 2018 are headed 'Redundancy 1st Consultation Meeting' although it was the Second Respondent's evidence that redundancy was not considered until May 2018 when no way forward could be found, after which the Claimant was sent an 'at risk' letter).

29. On 28 February the Claimant emailed the Second Respondent saying 'I am sorry to hear you no longer have a place for me at BD Hill'. She noted this placed her in a difficult position. She asked if a consultation process was underway and what redundancy package would be offered. She requested the 'details and duration' of what she described as the archiving project.

30. On 2nd March Ms Stenina replied to the Claimant's request for a briefing on current projects and an updated version of her handover notes. In a short email, she states that 'AS was dealing with investments; ZH with CRM (shutting down) and AN was dealing with TimeInvest (shutting down)'. No other information was provided.

31. The Second Respondent replied (after being chased) on 4 March 2018 and said that 'I am coming back on the 9th of March and would like to discuss in

person the redundancy agreement. It would be very convenient for me if you could express your expectations on what should be fair conditions'.

32. The Claimant returned to work on 5 March as she had been ill for a couple of days. She says that she could not access her email accounts as she did not have the passwords. She managed to find her laptop but discovered that it had been returned to factory settings and wiped clean. Her files were not there. We have seen an email at page 159 of the bundle dated 8 March 2018 where the Claimant states that she still had no access to one email account and nor to the work folders which had been deleted from her laptop.

33. The Claimant met again with the Second Respondent and Ms Stenina on 13 March 2018. Ms Stenina describes this in her notes as 'redundancy 2st [sic] consultation meeting'.

34. Again this meeting was recorded although we should note that the Claimant complains that she was not provided with the full recording. She also asserts that the transcript is not complete. She states that there was a discussion between herself and the Second Respondent which has not been transcribed. During this conversation the Claimant asserts that the Second Respondent said that her hormones were affecting her because she was breastfeeding and implied that she was being 'crazy and unprofessional'. We have noted that the Claimant did not record this conversation in her own notes of the meeting at pages 170-171 of the bundle.

35. Apart from the alleged exclusion of this early part of the meeting, the Claimant does not challenge the accuracy of the transcript provided and we refer mainly to the transcript for what happened at that meeting.

36. The Second Respondent asked the Claimant how the audit of files was going but she replied that she did not have access to her files as her laptop had been wiped. She asked for further details of what the Second Respondent expected in terms of the audit and how long the project would last for. She states that she is not sure what was required in terms of the audit and that she does not have the skills to complete it, especially in so far as it relates to different

jurisdictions. The Second Respondent suggests that the audit is a task that is within her skills and knowledge, or that she could look up how to do it. The Claimant asked what was happening about the redundancy. The Second Respondent replied that they were having a conversation, the Claimant was looking for a new job and when she found one she could say 'I'll be working until a certain date and after that I move on to my new job.'(p 175). Ms Stenina mentions a redundancy package. The Claimant mentioned that she had paid a deposit and incurred the costs of booking her child into a nursery. She had a mortgage to think about. The Second Respondent pointed out that she was being paid. He suggests that she could carry on working on a flexible basis and look for another job at the same time.

37. On page 180 the Claimant states 'that's why I have no clarity, no understanding of what I am doing. I am told there is no work, you need to look for a job, right? Let's discuss redundancy. And then it's 'Nobody is saying that you no longer have a job on the 31st. I can't. I can't understand what my responsibilities are what my position is at the company right now, or the situation…'

38. The Claimant is asked several times what she wants to do. She became distressed and began to cry. At the end of the meeting the Second Respondent receives a phone call and leaves the meeting. He stated in his oral evidence that he did not think it was worth continuing the meeting as the discussions were not productive and there was no point going over the same things.

39. After the Second Respondent leaves it seems that the meeting was no longer recorded. There is some dispute about the conversation that then took place between the Claimant and Ms Stenina. Having considered Ms Stenina's short summary of the meeting and the notes made by the Claimant, alongside the matters referred to in the transcript, it seems that a number of options were discussed. Ms Stenina suggested that the Claimant could work on the audit for a fixed period, or could work on until she found another job and then leave. The implication seems to be that she would resign at that point. Ms Stenina

also mentioned the possibility of a redundancy package if the Claimant should not wish to go on working at the company.

40. On 20 March 2018, two weeks after her return to work, the person responsible for IT support messaged the Claimant to ask her what access she needed and stated that he can create access to the shared drive. He later asks her to bring her laptop to the office. (page 209). We have concluded from this that as at the 20 March the Claimant was still unable to access her work folders.

41. On 21 March 2018 the Claimant went off sick with work related stress (a sick note is found at page 215).

42. On the same day the Claimant emailed the Second Respondent indicating that she wished to raise a grievance (page 213). She stated that she had been discriminated against on the grounds of maternity and complained about the subsequent selection of her role for redundancy.

43. The Claimant states that she felt as if she was being pushed out of her job and she cited the lack of access to her files. She says that 'this has meant I have little work to do and was prevented from doing it, both of which caused me significant stress'. She states that she should have been consulted about changes during her maternity leave. She asked for written confirmation about the future of her role, the consultation, any redundancy package and any alternative post. She suggested that the job she was employed to do still existed, having received contact from colleagues and staff about ongoing matters in the First Respondent's sister companies.

44. Notes of a grievance meeting that was conducted by the Second Respondent on 18 April 2018 begin at page 238. The events that have occurred are discussed in full. Following the meeting the Claimant provided her handover document to Ms Stenina.

45. It was the Respondents' position that the grievance process was conducted by the Second Respondent, and that as the company was so small, he was the only person who was able to undertake that task. There was another director of

the company called AT but he was not actively involved with the day to day management.

46. During oral evidence, Ms Stenina and the Second Respondent confirmed that following the grievance meeting, Ms Stenina interviewed all the people involved to investigate the Claimant's concerns about her experience upon her return to work. The Second Respondent stated that he had been very busy over this period. He said that Ms Stenina carried out the investigation and presented him with her findings, and he agreed with these.

47. On 30 April 2018 CB resigned from his position with Uniwheel Limited.

48. On 4 May 2018 a letter was sent to the Claimant confirming that her grievance had not been upheld. The letter maintained that a genuine redundancy situation existed and that the Claimant was the only employee in the legal department. There was a reduction in the demand for legal work. However the letter asserts that no final decision had been made as the Claimant had been presented with several options including a redundancy package and alternative role.

49. On 13 May 2018 the Claimant emailed Ms Stenina indicating that she wanted to appeal the grievance decision and she followed this up with grounds of appeal on the 14 May. She stated that a number of the grievance findings were inaccurate. She said that she had not received details of a redundancy package nor of the alternative role suggested. She asked for the reasons why she had been selected for redundancy and the timeframe for the process.

50. An email to employees of Uniwheel Limited dated 18 May 2018 confirms that the company will become dormant on 18 July 2018.

51. An undated letter sent on 31 May 2018 notifies the Claimant that she is now at risk of redundancy.

52. A meeting was arranged to consider the Claimant's appeal against the grievance outcome. The outcome of the appeal is contained in a letter to the Claimant dated 18 June 2018 (page 311).

53. The letter reiterates that there is a genuine redundancy situation and that the Claimant's selection was not related to her maternity leave. However the grievance was partially upheld in relation to what had happened following the Claimant's return to work. She was advised that the IT support contract would be terminated; a third redundancy consultation meeting would be arranged and she would be sent details of a proposed redundancy package and details of the alternative position available. The letter is signed by the Second Respondent although a short email at page 316 suggests that the director of the First Respondent AT had reviewed the grievance and appeal and confirmed the outcome.

54. On 20 June Ms Stenina invited the Claimant to a further consultation meeting which we understand took place on 3 July although we have not seen any notes of this meeting.

55. There is a job description for the proposed alternative role (which the Claimant says was provided on 3 July) at page 328.1.1. which appears to be for a three month's fixed term contract, 3 days a week with a trial period and flexible hours. Salary was described at this stage as negotiable. A second document contains the proposed redundancy package and sets out the Claimant's statutory entitlements.

56. On 13 July 2018 the Claimant wrote to Ms Stenina stating that the proposed alternative role of legal auditor was not suitable and she did not accept it.

57. On 18 July 2018 staff at Uniwheel Ltd were made redundant with immediate effect.

58. On 19 July 2018 the Claimant indicated to the Respondent that she would return from sick leave on 23 July 2018.

59. By letter dated 20 July 2018 the employment of the Claimant was terminated with immediate effect with the reason stated as redundancy (page 341). The letter states that the entire operations of the First Respondent were being considered for closure and that there was no ongoing need for legal services.

With reference to the proposed alternative role, the letter states: 'to confirm your employer would have continued to be the Company. Your pay (£24,000 per annum gross) were to be the same as your current pay, reduced pro-rata to reflect part-time hours'.

60. It is accepted that the Claimant appealed against the decision to dismiss her. It is not in dispute that the appeal never took place. The Respondents state that the Claimant commenced the early conciliation process soon after her dismissal and proceedings followed. They understood that early conciliation replaced the need for an appeal.

61. The Second Respondent stated in evidence that the First Respondent has been dissolved or is in the process of being dissolved.

62. It does not appear that anyone else within the office was made redundant, although the contractors were let go during 2018.

63. The Second Respondent continues to employ Ms Stenina in an HR role. He also employs two personal assistants who are currently on furlough, two gardeners, an accountant, a chief financial officer, an archivist and nannies for his children.

64. When asked whether he had considered making others redundant in the business and assigning work to the Claimant, the Second Respondent replied that the Claimant had always made it clear that she expected a salary in the region of £40,000 and he was certain that she would not have accepted, for example, a role as personal assistant for a salary in the region of £25,000. The Claimant also stated that she would not accept the role of PA.

Decision

What was the reason for dismissal?

65. The Claimant puts forward a claim for unfair dismissal in three different ways: automatic unfair dismissal under regulation 20(1)(a) of the 1999 regulations, automatic unfair dismissal under regulation 10 and regulation 20(1)(b) and

'ordinary' unfair dismissal under sections 94 and 98 ERA 1996. We therefore turn our attention to the question of the reason for the Claimant's dismissal.

66. The Respondents' position is that a genuine redundancy had arisen at the point of the Claimant's email reminding them that she was returning to work on 1 March 2018. The Claimant states that her job still existed, there was no redundancy and that she was dismissed because she had become pregnant and taken maternity leave.

67. We had considerable discussion on this point and examined the circumstances surrounding the Claimant's return to work. Our conclusions are as follows.

68. We do not accept the Second Respondent's evidence that he had concluded that he no longer had a need for a legal project manager prior to receiving the Claimant's email dated 14 February 2018. There is no evidence at all of the Respondents taking any steps to wind down any of the business activities prior to this date and indeed the Claimant had been contacted on several occasions in relation to work matters whilst on maternity leave. Having considered all the evidence we find that when the Claimant sent her email of 14 February 2018, the Second Respondent and Ms Stenina were taken aback and a degree of panic ensued.

69. We do not accept the Second Respondent's evidence that he did not wish to disturb or upset the Claimant whilst she was on maternity leave and possibly breastfeeding. The Claimant had specifically stated that she wanted to be informed during her leave about other opportunities and company information. There was nothing to stop the anyone from the First Respondent contacting her during her absence.

70. We have noted that the Claimant received no formal response to her proposal that she should extend her maternity leave until 1 March 2018. Despite providing proposals about her KIT days as requested, there was no response and the days were never arranged. This was unfortunate as the Claimant lost an opportunity to find out what had been happening in the office during her absence and to start to reintegrate herself.

71. We have also observed that although there were requests for assistance from the Claimant up to the Autumn of 2017 these tailed off after she indicated that she wanted to postpone her return to work. We conclude that by February 2018 the Claimant had been forgotten about. When she contacted Ms Stenina and the Second Respondent to remind them that she would be coming back in two weeks, they were taken by surprise.

72. There was then clearly an urgent discussion between Ms Stenina and the Second Respondent about what to do and what work was available for her.

73. The Second Respondent says that at this point he had decided not to pursue the Russian litigation any further and the Uniwheel business was going nowhere. We have noted that he referred to these matters at the meeting on 26 February.

74. We accept that at the meeting on 26 February 2018 the Second Respondent told the Claimant that the Uniwheel business was not going well and that pursuing repayment of the Russian loans was not progressing. He also told her that he was considering winding down all his business activities. However we do not accept that the Second Respondent had come to a definite conclusion about those activities at this stage. We have noted that a contractor, DS, was still working on the Russian litigation at this point. Whilst we accept that the Second Respondent was frustrated about the lack of progress we find that the work was ongoing at the point at which the Claimant returned to work. This is demonstrated by the point that soon after the Claimant's return she was contacted by the Russian lawyers who wanted a catch up, suggesting that they remained engaged on the Second Respondents business activities in Russia. The evidence of the Respondents on how long DS was engaged for is vague. The Second Respondent advised that DS 'fell in love' and returned from Russia around February or March 2018. This supports the Claimant's evidence that DS was back working in the office in the UK upon her return to work. The Second Respondent also referred to a conversation he had with DS in the following summer but neither he nor Ms Stenina could give a

specific date on which his contract ended. We conclude that DS was still working on the Respondent's business affairs during the Spring of 2018.

75. In relation to Uniwheel the Second Respondent told the Claimant that this was all going nowhere. We have noted that one of the lead developers left in the summer of 2017 and this was a major blow. However in cross-examination the Second Respondent said that although things were not going well and retail sales were poor, he was still encouraging the team and hoped that another developer, CB, would be able to design a new prototype and the business would take off. The Second Respondent said that if this happened, there would be additional IP work for the Claimant to do.

76. The Respondents' position was that the Uniwheel project formed a substantial part of the Claimant's work and that when this diminished her role was plainly redundant. The Claimant said that Uniwheel was not her main role. She was not employed by that company and it was simply one of several projects that the Second Respondent was involved in. From her point of view, the work had peaked in 2015/16 but since then she had been working on other matters. By way of example we note that on 14 August 2017 she had been contacted by SJ about the insurance policy for Uniwheel and Directors and Officers liability insurance. On 15 October 2017 the Claimant had been contacted by the archivist about a company called Shiraliev about a loan (page 120) and then about a property in Russia which belonged to a Cypriot entity on 2 October 2017 (page 117).

77. On this point we prefer the evidence of the Claimant. The Second Respondent told us repeatedly that he was very busy, was often travelling and was rarely in the office. We have noted the detailed handover document prepared by the Claimant before she went on leave which sets out a large number of projects she had been working on. We have also considered the description of duties contained in the terms of employment. We find that the Claimant's work was more diverse than suggested by the Respondents.

78. It is of course quite usual that when a woman goes on maternity leave, the work she has been doing is divided up amongst other staff members (unless

maternity cover is provided which did not happen in this case). Upon a return to work it will often take a period of time for an employee to build up her workload again. That does not mean that she has automatically become redundant.

79. In this case, once the Claimant had contacted them, there seems to have been no real effort to establish what she had been doing before her leave commenced, which projects had been taken on by other people and which aspects of her job remained.

80. It is significant that although in her email of 14 February, the Claimant asks for her detailed handover document to be updated, she does not get a response to this until 2 March 2018 when she receives an extremely short response from Ms Stenina. We find that the Claimant never received a proper briefing on what had happened to all her projects during her absence.

81. It may well have been that the Second Respondent did not have a good grasp of everything that the Claimant had been doing on a day to day basis. He told us that she worked autonomously and he was not often in the office.

82. We therefore find that although we accept that there were parts of the business activities that were not going well, on the 14 February the Second Respondent and Ms Stenina reached a reactive response that the Claimant's job had disappeared without making any proper enquiry into this or analysing what parts of her job remained.

83. The meeting on 26 February proceeds in a rather strange way. The Second Respondent appeared unsure about when the Claimant was returning to work. He informs the Claimant quite bluntly that there is no work for her. He describes how the Uniwheel project was floundering and then asks the Claimant what her plans are. We note that the meeting had not been billed as a redundancy consultation meeting and the Claimant was shocked. The Second Respondent's proposal seems to be that the Claimant should return to work and carry on working for a short period while she looked for another job,

and that she should then simply leave. It is Ms Stenina who intervenes a couple of times and mentions redundancy.

84. We accept that at this meeting the Second Respondent proposed that the Claimant returned to work and carried out an assessment of what had been happening over her period of maternity leave. He asked her to go through the documents in the safe and to let them know 'what is correct and what isn't'. it seems that it was being left to the Claimant to establish what aspects of her job remained. She sought clarity about the task and suggested that any legal documents in the safe would have been sent across to the archivist already.

85. It is not surprising that the Claimant left the meeting confused about the process and unsure whether a redundancy process had started given how matters had been left.

86. It may have been reasonable for the Second Respondent to expect the Claimant to update herself about what had happened in her absence. However when she returned to work on 5 March she found this task very difficult to complete. We have already referred to the very brief handover email received from Ms Stenina. When she came back to the office the Claimant discovered that her laptop had been wiped clean and she did not have access to her work folders. There has been no clear explanation as to why this was done. At the second meeting on 13 March the Claimant is still complaining that she cannot access the files and so has been unable to complete the audit.

87. The meeting on 13 March was very unproductive as the Claimant had been unable to complete her audit. She became upset. After some time the Second Respondent left the room. There is some dispute about what happened but we accept that there was a discussion about options, which involved either the Claimant working on for a period and then leaving if she got a new job; or if she did not want to do that Ms Stenina said that she would speak to the Second Respondent and request that he put a redundancy package in place. We do not criticise Ms Stenina for referring to redundancy but it is strange that one of the options still being talked about was the suggestion that the Claimant should simply carry on working for a short period and then resign.

88. Soon after this the Claimant went off sick and lodged her grievance alleging maternity discrimination and stating that no genuine redundancy situation existed.

89. To sum up, although it is accepted that business activity in some areas had been decreasing, the Respondents appear to have reached a conclusion that as a result the Claimant's job had disappeared but without a proper basis for reaching that conclusion, and without adopting a formal process. Her selection appears to have been pre-judged and this made proper consultation from that point onwards very difficult. Although the Claimant had been tasked with carrying out an assessment of what work remained, in practice she had found this impossible to complete due to a lack of access to her files in particular and the lack of a proper handover. In addition, it had been suggested to the Claimant that it would be in her best interests to look for another job and leave.

90. We find that it is also relevant that the Claimant was not made redundant following the second meeting on 13 March 2018. The redundancy process was protracted.

91. It is worth noting that despite the initial announcement that there was no work for the Claimant to do, by early July the First Respondent felt able to offer her a position for three days a week on a pro rata salary, albeit the note of 3 July 2018 suggests that the role may have been temporary.

92. We have also noted that whilst the Second Respondent suggested during the meeting of 26 February 2018 that he was 'closing, cutting down on everything and winding up', and he is in the process of dissolving the First Respondent, in practice he continues to run an operation where he personally employs an HR assistant, two personal assistants, an archivist, an accountant and chief finance officer in addition to his domestic staff. A significant proportion of the activities being carried on in the office at the time of the Claimant's return to work appear to be continuing albeit not under the umbrella of the First Respondent.

93. Based on this evidence, we have given careful consideration to the possibility that the Claimant was told there was no job for her and was treated as redundant solely because she had taken maternity leave.

94. It is the conclusion of the tribunal that, had the Claimant not taken maternity leave, it is highly unlikely that she would have been advised in February 2018 that there was no longer a job for her. However we recognise that this is not the correct question to ask ourselves as it involves a 'but for' analysis. We go on to consider the reason why the Claimant was dismissed in July 2018 and to give consideration to the Respondent's assertion that a genuine redundancy situation had arisen at that point.

95. We accept that in the Spring of 2018 the future of the Uniwheel project was uncertain, although the Second Respondent remained committed to it for the time being. In addition the Russian litigation was not progressing. We therefore accept that the Second Respondent had reached a genuine view that some aspects of the First Respondent's activities with which the Claimant had been involved had diminished or were likely to diminish. He set out his fears about the business to the Claimant at the meeting on 26 February 2018.

96. Between March and July 2018 there were further developments within the business of the Respondents. Most significantly, CB handed in his resignation on 30 April 2018 with a departure date of 31 May 2018.

97. We accept the evidence of the Second Respondent that following CB's resignation he decided to abandon his plans for the development of Uniwheel Limited. The staff were told that the company would become dormant. The remaining staff were put at risk of redundancy and were issued notice of termination with effect from 18 July 2018.

98. The situation therefore by the summer of 2018 was that the Russian litigation was coming to an end. The Uniwheel project which could have led to further work for the Claimant was to be wound up.

99. We are satisfied therefore that certainly by the summer of 2018 the Respondents can demonstrate a reduction in the work that the Claimant was required to do. We do not necessarily accept that the reduction was as great as the Second Respondent has made out, but we accept that the definition of redundancy has been met.

100. We draw a distinction between the reduction in business activity and the decision that the Claimant's job had disappeared. We have concluded that the Claimant's return to work was very badly handled. The Respondents reached a premature conclusion that the Claimant's role had disappeared as the result of a lack of proper assessment of the situation, lack of a handover and failure to hand previous projects back to her. An inappropriate suggestion was made that she should resign once she found a new job.

101. However there had been further developments by Summer 2018. It was at this point that the Claimant was formally put on notice that she was at risk of redundancy and she then received notice of her dismissal. Although the situation was complicated, we are satisfied that ultimately the reason for her dismissal was redundancy.

102. We then turn to the various unfair dismissal claims and set out our decisions.

103. **Was the Claimant automatically unfairly dismissed because of pregnancy or maternity contrary to regulation 20(1)(a) of the Maternity and Parental Leave Regulations 1999?**

104. We conclude that she was not. Although the fact that the Claimant had taken maternity leave had a significant impact on how she was treated upon her return to work, ultimately the reason for her dismissal in July 2018 was redundancy. We do not find that the reason or principal reason for her dismissal was the fact that she had taken maternity leave per se.

105. **Was the Claimant automatically unfairly dismissed contrary to regulation 10 and 20(1)(b)of the 1999 regulations?**

106. Regulation 10 states that if a woman becomes redundant during the course of her maternity leave she is entitled to be offered any suitable available vacancy. We find that there were no vacancies within the First Respondent's business just prior to her return to work. The Claimant has stated that she would have accepted a role of 'legal assistant'. The previous legal assistant had departed prior to the Claimant taking maternity leave and had not been replaced.

107. We have also noted that the Claimant emailed the tribunal on 25 February after evidence and submissions had been completed to inform us that she had observed on social media that the Second Respondent now employed a legal assistant (AS who had been an observer at the tribunal hearing). The screenshots she sent through to us indicated that AS had been fulfilling this role since around the summer of 2019. This is around a year after the Claimant was made redundant and as such we do not think it is relevant to the question of whether the Claimant's role was required in July 2018 or whether a suitable available vacancy existed at this time. The claim under regulation 10 does not succeed.

108. We mention in passing that according to the List of Issues the Claimant has not brought an alternative claim of unfair selection contrary to regulation 20(2) of the 1999 regulations. We have therefore not considered whether she would have succeeded in such a claim although we consider the general question of whether the selection process was fair below.

109. **Was the Claimant unfairly dismissed contrary to section 94(1) and 98(2) of the Employment Rights Act 1996?**

110. The Claimant was dismissed for a potentially fair reason, namely redundancy.

111. Was that dismissal fair in all the circumstances taking into account the size and administrative resources of the Respondent?

112. We turn first to the question of selection. The Respondents maintain that they were entitled to treat the Claimant as a 'pool of one'. She was the only person employed in the First Respondent's legal department. There may have been

some overlap with the work done by others in the office, but it was still reasonable for them not to have considered a wider pool as no-one else had a legal qualification or was employed in a legal capacity.

113. The Claimant states that her work had been dispersed between the other staff in the office whom she names as Ms Stenina, AN (another personal assistant) ZH (finance director) DS (contractor) and AS (investment manager, contractor). Paragraph 41 of the grounds of complaint asserts that these people should have formed part of the selection pool.

114. Mr Welch draws our attention to *Wrexham Golf Club v Ingham UKEAT/0190/12/RN.* That decision establishes that there will be cases where it is reasonable to focus upon a single employee without developing a pool or even considering the development of the pool. The matter for us to consider is whether such an approach would be reasonable in this case. The Respondents assert that it was.

115. We accept that the Claimant was the only person employed in the office who had a legal qualification. However in practice she had a wide-ranging role encompassing some tasks where legal knowledge may have assisted and others which were administrative or involved liaison and management with external consultants. No consideration was given to the extent to which the roles overlapped.

116. In addition we find that the conclusion that the Claimant's role was unique and had disappeared had been materially influenced by the fact that she had been on maternity leave, during which time all her work had been divided up amongst other staff members in the office. We accept that as a result of events that had occurred during her leave, the Second Respondent had reached a decision that some of his business activities with which the Claimant had been involved would diminish. However the Claimant's selection for redundancy was pre-judged upon her return to work, before she or the Respondents had established what projects were remaining and could be taken back. It was not reasonable for the Respondents to conclude in February 2018 that her role was unique and had disappeared without carrying out further assessment. It would

have been reasonable to carry out a wider analysis of who was doing what in the office and the extent to which the Claimant's role had been absorbed.

117. As stated above, we find it telling that although the Claimant was advised in February that her role had disappeared, as the process continued the First Respondent offered her a role for three days per week, albeit at least initially on a temporary basis.

118. We conclude that the failure to conduct an evaluation and selection exercise in the particular context of this case was not reasonable.

119. We go on to consider the procedure adopted by the First Respondent in making the Claimant redundant.

120. First we find that the meeting that took place on 26 February 2018 was not a genuine consultation meeting. The Second Respondent appeared to have already formed the view that the Claimant's role had disappeared. He did not give the Claimant the opportunity to provide any input prior to making this decision. He had not carried out an assessment of what she had been doing prior to her maternity leave and what parts of her role remained, but had been distributed to other people. The suggestion appeared to be that she should look around for another job and leave. This left the Claimant understandably confused about whether a redundancy consultation period had started or not. Her many requests for clarification of what was happening were not responded to for a number of weeks.

121. We place emphasis on the Claimant's email of 28 February where she asks for information about the process and timeline for consultation and the Second Respondent's reply to that email dated 4 March 2018 in which he suggests a further meeting to discuss the 'redundancy agreement' and what she would consider to be fair conditions. Again it appears to us from this exchange that the Second Respondent had already concluded that the Claimant's role was redundant, without providing a proper opportunity for consultation. The email suggests that he simply wanted to discuss the terms of a redundancy package rather than any ongoing employment.

122. The second meeting on 13 March although billed as a second redundancy consultation meeting appears to be a continuation of the first meeting. The Second Respondent was dismissive of the points made by the Claimant about her job and her inability to carry out an assessment of remaining projects. There are a number of points within the transcript where the Second Respondent appears to speak to the Claimant in a dismissive manner, for example where he talks about 'when you were a lawyer,' a phrase that the Claimant felt undermined her.

123. The Claimant then sought to raise her concerns via a grievance in which she alleged maternity discrimination and argued that her job still remained.

124. The Claimant asserts that it was not reasonable for the Second Respondent to conduct the grievance process as she was complaining about his conduct and that of Ms Stenina at the meetings on 26 February and 13 March 2018. The Respondent's initial position was that the Second Respondent was the only person who could conduct the grievance process as he was the only senior manager in what was a very small company. We are sympathetic to that position. However we have concluded from the oral evidence that in fact it was not the Second Respondent who carried out the grievance investigation but Ms Stenina who was a lower paid member of staff than the Claimant. It was she who interviewed the witnesses and suggested an outcome. The Second Respondent did not fully apply his mind to the issues raised in the grievance but simply rubber-stamped Ms Stenina's conclusions and the letter was sent out in his name.

125. In relation to the grievance appeal the Respondents have not provided a reasonable explanation as to why the director of company, AT, could not have carried out a full and independent review of the concerns raised by the Claimant and the process followed to date. The fact that he was not involved in the day to day operations of the business would have been an advantage at the appeal stage. We note that AT appears to have carried out a paper review of the grievance and outcome but he never discussed this with the Claimant and

we do not consider his involvement as representing an objective and independent assessment of the grievance at the appeal stage.

126. We conclude that the grievance was not handled fairly or reasonably. Ms Stenina investigated a grievance which involved complaints against how she and the Second Respondent had handled the meetings to date and the Second Respondent simply adopted her conclusions. In effect the two of them investigated and concluded a complaint against themselves and then repeated that process at the appeal stage. At no point was any proper consideration given to the legitimate concerns raised by the Claimant.

127. Following the conclusion of the grievance process the Respondents entered into what appears to be a more formal redundancy process and sent the Claimant an 'at risk' letter. It is true that by this stage CB had resigned and Uniwheel was being shut down so events had moved on. However we find that the letters sent to the Claimant from 31 May 2018 onwards are in themselves a recognition that the process prior to that had been defective. The procedure adopted from that point onwards represents an attempt to 'retrofit' what had happened previously and to create the appearance that genuine consultation had taken place when in fact the redundancy decision had been taken back in February.

128. In relation to the Claimant's appeal against her dismissal, Mr Welch argues that there is no requirement to offer an appeal against a decision to make a person redundant. We accept that although we note that in this case the option to bring an appeal was specifically offered to the Claimant in her dismissal letter. The Respondent failed to conduct an appeal hearing. We accept that there may have been a genuine misunderstanding on their part about whether any internal process had been overtaken by ACAS early conciliation. Nevertheless the failure to hold an appeal meant that a further opportunity to carry out an independent review of the entire process was lost.

129. We conclude that although we accept that at the point the employment of the Claimant was terminated a genuine redundancy situation existed, the process adopted leading up to that point had not been fair. The Respondents had failed

to carry out proper consultation over the proposed redundancy situation, they did not carry out a fair selection process and the grievance was not addressed objectively or independently. We find that it was not reasonable in all the circumstances to have dismissed the Claimant in accordance with section 98(4). The Claimant's claim for unfair dismissal succeeds.

130. **Polkey**

131. Having reached the conclusion that the dismissal was unfair we have asked ourselves what we consider to be the percentage chance that the Claimant would have kept her job, had a fair consultation and selection process been carried out.

132. We have already reached the conclusion that the Second Respondent's statement to the Claimant in February 2018 that her job had disappeared was premature. We have noted that at that meeting the Second Respondent asked the Claimant to return to work and carry out an assessment and audit of the projects and documents to see what came out of this. It would have been reasonable for the Second Respondent to request the Claimant to undertake this task, had he not already reached a pre-judgment that the job had gone, and had the Claimant been enabled to carry out this process properly; for example by giving her access to her files and providing her with a proper project handover.

133. Given that the Claimant's work had been divided up amongst her colleagues when she went on maternity leave, we consider it likely that a volume of work could have come out of this project. Indeed on 3 July 2018 the Claimant was offered a part time role of three days a week on a pro rata salary.

134. We have accepted that by the summer of 2018 there had been a reduction in the Claimant's work as a result of the wrapping up of the debt recovery exercises in Russia and the eventual decision to close Uniwheel. However given that many of the Claimant's tasks were administrative rather than legal in nature, a consideration of the appropriate selection pool may have resulted in a reorganisation of the office or in a wider redundancy pool being created.

135. That said we recognise the possibility that even if such a pool had been established the Claimant might still have been selected for redundancy, although we do not view that as a certainty.

136. We have noted that the Claimant appeared to be one of the highest paid staff within the office. We have also noted that she stated in evidence that she would not have accepted a personal assistant role. She did not wish to accept the (temporary) project role offered to her for which the salary was likely to have been in the region of £20-24,000. We understand her reasons for not wishing to accept a role that appeared to be very short term. In addition she had always stated an intention to return full time and did not express an interest in a part time role.

137. Therefore if the Second Respondent had reached a proper conclusion in the summer of 2018 that he wished to make the Legal Project Manager role redundant, it is unlikely that she would have accepted a job at a much lower salary.

138. Nevertheless taking all the evidence into account we are not able to entirely rule out the possibility that a role might have emerged for the Claimant if the Second Respondent had carried out a proper consultation and selection exercise and had considered both the work the Claimant had been doing previously and the activities of the office as a whole. As a result of the way in which the meetings on 26 February and 13 March 2018 were conducted, trust between the parties was badly damaged and a constructive dialogue around an alternative became very difficult if not impossible. Had a proper and genuine consultation process started at an appropriate time prior to July 2018 it is possible either that the Claimant would have kept her job or that a permanent alternative role would have been offered and accepted. We assess that possibility as being reasonably low as we find that the Claimant would not have accepted a role on a considerably lower salary (in the region of £24-25,000) and nor had she expressed an interest in part time hours. After considering all the evidence we put this chance at 25%.

139. Maternity Discrimination

140. We now turn to paragraph 11 of the List of Issues and we consider in turn the Claimant's allegations that she was unfavourably treated because she had exercised the right to ordinary and/or additional maternity leave.

141. As to the test we should apply, Mr Welch has helpfully referred us to the case of *Indigo Design Build and Management Limited and Bank v Martinez* [UKEAT/0020/14) in particular paragraphs 29 and 30. In each case we must ask ourselves whether, if unfavourable treatment is established it is 'because of' pregnancy and maternity. We must ask ourselves 'the reason why' rather than apply a 'but for' test. We have this guidance in mind as we consider each allegation.

142. Not preserving the Claimant's role during her maternity leave and dividing her duties and responsibilities amongst other employees and external consultants

143. There is no requirement upon an employer to preserve an employee's role while they are on maternity leave and a number of options may be considered for dealing with a women's work whilst she is away. In this case the option selected by the Respondents was to divide her work amongst other members of staff within the office. We do not consider that this amounts to unfavourable treatment.

144. Failing to provide a suitable and appropriate role on her return from maternity leave

145. We find that upon the Claimant's return to work she was not able to return to her previous role. In fact on 26 February she was told that there was no job for her. This despite the fact that the Claimant's role had been distributed to other people, no proper reply to a request for a detailed handover was provided and the Claimant, although instructed to carry out an assessment of all the legal projects that had been underway when she commenced her leave, was in practice unable to carry out this task. In the circumstances this amounted to

unfavourable treatment. The reason why she was not able to return to her previous job was the fact that she had taken maternity leave and her work had been redistributed and was not returned to her. This claim succeeds against both the First and Second Respondents as it was clearly the Second Respondent's decision that there was no job available for the Claimant upon her return.

146. Failing to provide the Claimant with any meaningful work on her return or access to the First Respondent's systems

147. The first part of this allegation is dealt with above. As to the failure to provide access, it is not unusual for there to be issues around passwords when a member of staff returns to work after a period of absence. This can be quickly rectified although we note that it took a few days in the case of the Claimant. We find that this was as a result of the First Respondent's lack of preparation for the Claimant's return and was not a deliberate attempt to exclude her because she had taken maternity leave.

148. We view the complaint about the lack of access to work folders as more serious. The Respondents have not disputed the fact that the laptop appeared to have been wiped clean upon the Claimant's return and partially upheld her grievance upon this ground. Ms Stenina and the Second Respondent speculated as to the reasons why the laptop might have been cleaned (to protect confidential information or provide the laptop for someone else to use) without providing any clear evidence as to the reasons why this was done. We can only conclude that the folders were removed from the laptop and it was returned to factory settings because the Claimant had gone on maternity leave. This factor combined with the fact that the laptop was not restored upon her return plainly amounted to unfavourable treatment. The Claimant was not able to update herself or commence the assessment task that she had been given without it and we note that even on 20 March 2018 this information was not available to her. This significantly curtailed her ability to carry out her job.

149. We have noted that another member of staff had taken a copy of the folders whilst the Claimant was on leave. The Claimant had been copied into an email

where this instruction was given. However it would not have been surprising if the Claimant had missed this whilst on leave. This also indicates that staff in the office were aware that the folders were available on someone else's machine and it begs the question why the files were not restored to the Claimant's laptop prior to or very soon after her return. By suggesting that the Claimant could have asked this other member of staff for a copy, the Respondents seem to be placing the burden on the Claimant to sort this matter out. In fact we find that the information had not been provided to the Claimant by the time she went off sick on 21 March 2018. We find that the reason why the folders had been removed was because the Claimant had gone on maternity leave. This claim succeeds against the First Respondent only. There is no suggestion that the Second Respondent ordered the laptop to be wiped clean or that he obstructed the retrieval of the files.

150. The Second Respondent's behaviour in the meetings of 26 February 2018 and 13 March 2018.

151. We find that the Second Respondent was a 'hands off' manager who left other members of staff to deal with the detail of day to day matters. During the first meeting the Second Respondent was unaware of the date the Claimant was returning to the office; during the second meeting, he could not understand why she could not get access to her folders or start the assessment task he wanted her to do. We have noted that at points during these meetings the Second Respondent was intimidating and dismissive towards the Claimant when she raised concerns. We find that much of this was related to the Second Respondent's management style and was not related to the fact that she had been on maternity leave.

152. However for all the reasons stated above we are concerned that at the meeting on 26 February the Claimant was told there was no work for her to do and that she should look for another job and leave. We find that the Respondents appeared to be suggesting to the Claimant that she should resign within a reasonable period of her return. The Second Respondent had not given any thought to the fact that the Claimant's work had been distributed to others

whilst she was away, nor had he evaluated what parts of her job remained notwithstanding the changes in the business in the meantime. We find that the statements made to the Claimant amounted to unfavourable treatment and that the reason why these statements were made is the fact that she had been on maternity leave. The reason why the Second Respondent told the Claimant to look for another job is that she had been absent on maternity leave and she would not have been told that in any other situation including a formal redundancy consultation. This claim therefore succeeds to that extent against both the First and Second Respondents.

153. Not handling the Claimant's grievance or appeal properly, impartially or fairly

154. This claim does not succeed. We have criticised the way in which the grievance and appeal were handled. However we find that it is likely that the Respondents would have handled any other grievance or appeal process in the same way. We do not find that the Claimant was treated unfairly in this regard because she had taken maternity leave.

155. Not properly consulting with the Claimant; not following a fair procedure; and not considering ways to avoid redundancy

156. We take allegations 11.6 and 11.7 together and refer to our findings above in relation to unfair dismissal. We have already found that it was unfair and discriminatory to inform the Claimant on 26 February 2018 that there was no longer a job for her. The consultation that commenced at that stage contained a strong element of prejudgment of the situation. We have also found that it was unreasonable not to consider a wider selection pool in this case. The process adopted by the Respondents amounted to unfavourable treatment. We find that the reason for the consultation commencing in this way and the decision to treat her role as a stand-alone post for redundancy, ignoring the fact that work had been dispersed in her absence, is directly related to the fact that she had taken maternity leave. This claim succeeds against the First and Second Respondents.

157. Causing the Claimant to take sickness absence

158. We find that sickness absence may have been an effect of the treatment received, but the Respondents did not intend to make the Claimant ill. This matter is best addressed as part of any consideration of remedy.

159. Terminating the Claimant's employment

160. We have found above that the ultimate reason for the termination of the Claimant's employment was redundancy. We therefore cannot conclude that the Claimant was dismissed because she took maternity leave, even though we have concluded that this factor had a significant effect upon the process followed and how she was treated. This claim fails.

161. Disregarding the Claimant's redundancy appeal

162. This claim does not succeed. Having offered the right to an appeal the Respondents failed to conduct an appeal process. However we find that it is more likely than not that there was a misunderstanding about the effect of the ACAS Early Conciliation process.

163. Direct Sex Discrimination

164. At paragraphs 13 of the List of Issues the Claimant repeats all the allegations set out in paragraph 11 as claims of direct sex discrimination. In accordance with the case of *Webb v EMO Air Cargo (UK) Ltd (1994) C-32/93* a comparator is not required where a claim for sex discrimination is based on pregnancy. We find that those claims that have succeeded on the basis of maternity discrimination set out above must also therefore succeed as claims of sex discrimination. Those that have failed do not succeed as direct sex discrimination claims as the Claimant has not established that she was less favourably treated than a hypothetical male comparator.

165. Sexual Harassment

166. In her statement the Claimant alleges that during discussions at the start of the meeting on 13 March 2018, the Second Respondent said to her that she was being affected by hormones because she was breastfeeding, and that he suggested she was being crazy and unprofessional.

167. The Claimant asserts in her witness statement that the transcript of the meeting on 13 March is incomplete and that the alleged comment was made during the early part of the meeting which does not seem to have been transcribed. We have considered her alternative notes of the meeting which make no mention of this allegation.

168. We have noted that the Second Respondent was recorded as stating during the first meeting on 26 February that he had not wanted to discuss redundancy with the Claimant earlier as she may have been breastfeeding and that he did not want to affect her mood. That is a rather different statement to that alleged by the Claimant. The Second Respondent also went to some lengths during his evidence to set out for the tribunal his strong views on the importance of breastfeeding.

169. If the Second Respondent had said that the Claimant was 'hormonal' because she was breastfeeding we could quite understand that she would find that comment offensive and upsetting. It is therefore surprising that the Claimant did not mention this in the notes she made immediately after the meeting, in her grievance nor in her particulars of claim where she provides quite a detailed account of what happened at the meeting on 13 March 2018 at paragraph 28.

170. In light of this, we find on the balance of probabilities that the statement was not made as alleged.

171. The second allegation is that Ms Stenina harassed the Claimant because of her sex by asking the Claimant to state whether she wanted to go on working for

the Second Respondent, and stating that if not that she would be offered redundancy. This may have amounted to pressure on the Claimant to resign but we are not able to conclude that such a statement had the purpose or effect of violating the Claimant's dignity or of creating an intimidating hostile, degrading humiliating or offensive environment contrary to section 26 of the Equality Act 2010. Nor can we see that this statement is in any way related to the Claimant's sex.

172. Therefore the claims of harassment under section 26 of the Equality Act all fail.

173. Remedy

174. As the claim for unfair dismissal, and some of the discrimination claims have succeeded, a hearing will take place to decide what compensation and/or other remedies should be awarded to the Claimant. At the end of this hearing, a provisional date of **1 July 2021** was fixed at 10am and that hearing will now proceed by CVP.

175. The parties are encouraged to try to resolve the matter of remedy between themselves prior to that date, in which case the hearing need not take place. The tribunal has noted that there is a proposal to dissolve the First Respondent. The legal status of that entity will need to be considered as at the date of the remedy hearing.

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Employment Judge Siddall
Date: 24 March 2021