EMPLOYMENT TRIBUNALS

Claimant: **Ms M Grabowska**

Respondent: **PSA Retail UK Limited (trading as Robins & Day)**

Heard at: **Watford ET by CVP** **On:** **11 and 12 February 2021, 5 March 2021 and 24 March 2021 (chambers day)**

Before: **EJ Cowen**
Members: Mr S Bury
Ms J McGregor

Representation
Claimant: Mr Lukomski Consultant
Respondent: Mr Mellis Counsel

JUDGMENT

1. The Claimant's claim for discrimination due to pregnancy under s. 18 Equality Act 2010 succeeds.
2. Directions for a remedy hearing will be sent separately.

REASONS

Introduction

1. The Claimant issued a claim for s.98 Employment Rights Act 1996 unfair dismissal, s.18 Equality Act 2010 pregnancy and maternity discrimination, a.15 Equality Act 2010 direct sex discrimination and breach of contract for notice pay, on 14 December 2019. The respondent denied all the claims. Both parties were represented throughout the litigation and at the final hearing. The claim for unfair dismissal could not be pursued due to a lack of the requisite two year continuing employment qualification.

2. The tribunal saw a bundle of documents which was agreed. A number of documents were disclosed during the course of the hearing, each of which was considered by the Tribunal on application. Oral judgment was given on each of those and is not repeated here. The tribunal also received and read a witness statement on behalf of the claimant and statements from Mr Stephen Hodgkinson, Mr Ian Mace and Ms Miranda Durston, on behalf of the respondent. These witnesses all gave oral evidence to the tribunal.

3. The final hearing was conducted over three days by CVP, a fourth day was required for tribunal deliberations.

The Facts

4. The Claimant was employed as a delivery driver by the Respondent firm who deal in car parts. She commenced work on 17 December 2018. It became apparent in March 2019 that the Claimant was disqualified from driving as a result of multiple points on her licence. At that time, the respondent's manager Mr Hodgkinson spoke to the Claimant and agreed with her that until her driving disqualification lapsed she would be allowed to work in the warehouse.

5. On 21 June 2019 the Claimant submitted a sick note declaring an "arm injury", which expired on 5 July 2019. The Respondent therefore expected the Claimant to return to work on Monday 8 July 2019, but she did not attend. Mr

Hodgkinson was not present that day and therefore Mr Mace spoke to Ms Durston in HR to request that the appropriate step1 letter from the Respondent's Absent Without Leave procedure could be followed. No-one at the Respondent attempted to phone the Claimant.

6. The claimant asserted that she obtained a GP certificate on 25 June 2019 and that she posted a copy of it to the respondent immediately after she left the doctor surgery. The respondent denied having received the certificate prior to 18 July 2019.

7. A step 1 letter according to the respondent's process was sent by email on Monday 8 July 2019, indicating that the claimant was now "absent without authority" ('AWOL') and may not be entitled to company or statutory sick pay. It asked her to make the appropriate contact with Mr Jon Mayes as soon as possible, giving his number. She was warned that a failure to do so may be an act of gross misconduct and lead to disciplinary action including dismissal.

8. Upon Mr Hodgkinson returning to work the following day, he did not attempt to contact the Claimant by phone or messaging service. No response or contact was made by the claimant in reply to the letter.

9. On Thursday 11 July 2019 Mr Hodgkinson sent an AWOL stage 2 letter to the claimant by email. This requested that the claimant attend a meeting the following day and said that if she did not attend, the meeting may be conducted in her absence.

10. On Friday 12 July 2019, the claimant did not attend the meeting and did not contact the respondent. Nor did the respondent attempt to phone the claimant. Mr Hodgkinson was aware that the claimant had domestic problems and was aware that the claimant's ex partner had caused her difficulties with her driving licence. But he did not contact her.

11. On Monday 15 July 2019 Ms Durston sent a further letter to the claimant by email. Once again this letter outlined a disciplinary hearing would be held the

following day. The letter stated that the claimant could have someone to accompany her and that action may be taken against her, including dismissal without notice. The respondent did not attempt to contact the claimant in any other way, or send the letter by post.

12. On 16 July the claimant did not attend and a further letter was sent, again via the same email address. This letter invited the claimant to a meeting on 18 July, setting out the same potential outcome. This letter, like the previous one, was signed by Ms Durston. The letter requests that the claimant inform Ms Durston if she will be accompanied at the proposed meeting. However, Ms Durston went on holiday on 16 July and did not return until Monday 22 July. Ms Durston had no out of office email to refer to anyone else in her absence.

13. On 18 July Mr Hodgkinson held a meeting which started at 11.21am. The claimant had not attended and it is noted that "nor have we heard from her". No steps were taken by Mr Hodgkinson to contact the claimant during the meeting. He noted the previous letters and then took the decision to dismiss the claimant summarily. The meeting ended at 11.43am.

14. On the same day, the claimant was able to access her emails for the first time in some time. She had been unable to do so as she had no credit on her phone and her ipad had been left behind at her previous address which she had been forced to leave. The claimant took steps to respond to the emails from the respondent at 11.31am by replying to Ms Durston's email, apologising for her lack of previous response. The claimant sent with this email a copy of a sick note, which specified that the reason for absence was early pregnancy and covered her absence to 23 July 2019. Ms Durston was not at work so did not see this email at the time, nor was the email forwarded to anyone else in HR or management. This email was therefore not seen by Mr Hodgkinson when he made his decision to dismiss.

15. On 19 July Mr Jafer Mammoo, a Housing Adviser at Shelter wrote on behalf of

the claimant to the respondent outlining her position and what had happened to her. The email was sent to Ms Durston and also to Ms Brennan. It clearly stated the reasons why it had not been possible for the claimant to contact the respondent since 8 July, including the fact that she had been the victim of domestic violence, that she had been made homeless and that she had subsequently had her car and phone stolen. The letter also indicated that the claimant had found out on 25 June that she was pregnant. The letter requested that the dismissal be appealed.

16. On 19 July, the claimant also sent Ms Brennan the same email she had sent to Ms Durston.

17. On 24 July Mr Mammoo wrote again to Ms Brennan asking her to respond to his letter. Ms Brennan replied that Ms Durston was dealing with it. By this time Ms Durston had returned to work from her annual leave.

18. A letter inviting the claimant to an appeal hearing at 3pm on 29 July was sent by Ms Durston on 26 July 2019 to the claimant and Mr Mammoo. Mr Mammoo requested that the respondent arrange a polish translator for the appeal. On 27 July Ms Durston said that she had arranged for a fellow employee to translate.

19. On 29 July at 2.29pm the claimant emailed Ms Durston to say that she felt unwell and had to lie in bed, so would not be able to come to the appeal meeting, she sent a further sick certificate from 24 July to 9 August 2019. The following day Mr Mammoo emailed Ms Durston to ask about the outcome of the meeting. Ms Durston replied that the claimant had given them 30 minutes notice that she would not be attending. She did not mention that the claimant was unwell, nor that she would rearrange the meeting. Although on 30 July Ms Durston sent the claimant details of a rearranged meeting on 5 August.

20. On 5 August the claimant did not attend the appeal. A decision was taken to proceed in her absence. No reference is made in the appeal notes to the claimant's pregnancy. A letter dated 9 August 2019 was sent to the claimant confirming her dismissal.

21. The respondent also provided evidence in relation to comparators; in relation to employee A, who had been absent since 1 February and had provided a retrospective sick note, was written to on 12 March referring him/her to Occupational Health. On 1 April 2019 the respondent wrote to employee A saying that his/her last sicknote had run out on 27 March and that they were now being asked to attend a meeting on 4 April.

The Law

22. S.18 Equality Act 2010, Pregnancy and maternity discrimination: work cases

(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.

(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably—

(a) because of the pregnancy, or

(b) because of illness suffered by her as a result of it.

(3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

(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).

23. S.13 Equality Act 2010; Direct discrimination

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

……

(6) If the protected characteristic is sex—

(a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

(b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.

(7) Subsection (6)(a) does not apply for the purposes of Part 5 (work).

(8) This section is subject to sections 17(6) and 18(7).

24. Under s.18 Equality Act 2010 a woman who is treated unfavourably due to her pregnancy or a reason related to her pregnancy, such as absence, suffers a direct discrimination. There is no need for her to compare herself to a man in similar circumstances. This was set out by the European court of justice in *Webb v EMO Air Cargo (UK) Ltd 1994 ICR 770, ECJ*.

25. Furthermore, a woman who is absent from work due to a pregnancy related reason may compare her treatment with the more favourable treatment afforded to a sick man in order to demonstrate that a different rule is being applied in a comparable situation — see *Fletcher and ors v NHS Pensions*

Agency and anor 2005 ICR 1458, EAT.

26. This is different to the requirement for a claim of direct discrimination under s. 13 which requires the claimant to show that their treatment was less favourable than that of a comparator who is the same in all material factors, other than the protected characteristic.

27. s.18(7) indicates that a claim for sex discrimination cannot be applied to a claim for discrimination on grounds of pregnancy during the protected period. The Tribunal therefore considers the claimant's claim under s.18 Equality Act 2010.

28. The EAT in *Abbey National plc v Formoso [1999] IRLR 222,* set out that where an employee cannot attend a disciplinary hearing due to a pregnancy-related reason, and is dismissed in her absence it is highly likely to amount to pregnancy discrimination. The one caveat to that is the knowledge of the employer.

29. The issue of whether the decision to dismiss was taken with knowledge of the pregnancy is addressed in relation to automatic unfair dismissal in the case of *Really Easy Car Credit Ltd v Thompson EAT 0197/17* the EAT held that a decision to dismiss could not be automatically unfair dismissal for pregnancy reasons (under the Maternity and Paternity Leave Regulations) where the pregnancy was not known to the employer at the time the decision was made. They held there was no positive obligation on the employer to reconsider once they knew of the pregnancy. However the case was remitted to a different employment tribunal to decide if a further decision had been made at an appeal and whether it was by reason of the pregnancy.

30. A similar situation applies under s.18 Equality Act 2010. If the appeal decision is a separate decision, then that decision must be considered by the Tribunal separately. If the pregnancy was a 'reason why' the decision was made, then causation may be proved. (*O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372, [1997] ICR 33, EAT*)

31. The Court of Appeal in *Reynolds v CLFIS (UK) Ltd Reynolds* [2015] EWCA Civ 439, [2015] IRLR 562 set out that that liability will only be established where the protected characteristic formed the motivation for the individual performing the act complained of; unwittingly acting on the basis of someone else's tainted decision will not be sufficient: Underhill J said, *'I see no basis on which [the individual employee who did the act complained of] can be said to be discriminatory on the basis of someone else's motivation'*.

32. This thinking has not yet been overturned in relation to discrimination cases, but the case of Royal Mail v Jhuti [2019] UKSC 55, [2020] IRLR 129 which was a dismissal due to whistleblowing case, where Lord Wilson said, *'The need to discern a state of mind, such as here the reason for taking action, on the part of an inanimate person, namely a company, presents difficulties in many areas of law. They are difficulties of attribution: which human being is to be taken to have the state of mind which falls to be attributed to the company?' In that case the Supreme Court overturned the decision of the Court of Appeal and held that 'if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason*.'

33. The burden of proof in claims under the 2010 Act is set out in s136:-

"136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision. "

34. The burden of proving the facts referred to in s136(2) lies with the claimant. If this is satisfied, the burden then shifts to the respondent to show that it did not act in a discriminatory manner.

35. The Tribunal consider that it is useful to consider whether there has been unfavourable treatment and if so, what was the reason for that treatment.

36. However, a difference in treatment and a difference in protected characteristic is not enough to establish that the difference in treatment was caused by the difference in protected characteristic; "something more" is required (Madarassy v Nomura International [2007] IRLR 246). The Tribunal needs evidence from which it could draw an inference that pregnancy was the reason for the difference in treatment.

37. It is important to remember that unreasonable or unfair behaviour is not enough to allow for an inference of direct discrimination (Bahl v The Law Society [2004] IRLR 799).

38. It is a well-established principle that Tribunals are entitled to draw an inference of discrimination from the facts of the case. The position is set out by the Court of Appeal in Igen v Wong [2005] ICR 931 (as approved by the Supreme Court in Hewage v Grampian Health Board [2012] IRLR 870):-

"(1) Pursuant to s 63A of the SDA 1975[now s136 of the Equality Act 2010], it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination

will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word 'could' in SDA 1975 s 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s 74(2)(b) of the SDA 1975 from an evasive or equivocal reply to a questionnaire or any other questions that fall within s 74(2) of the SDA 1975.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s 56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice."

Decision

39. The Tribunal considered that the respondent and in particular Mr Hodgkinson were initially satisfied with the claimant's work and that when she became unable to drive, through no fault of her own, rather than dismiss her, Mr Hodgkinson helped to ensure that she could continue in her job whilst she served a driving ban. This indicated his support for her. However, his attitude towards her changed when she then went off sick and did not return at the expiry of her sick certificate.

40. The Tribunal were asked to decide an issue about whether Mr Hodgkinson was in touch with the claimant via Whatsapp, a messaging service. The claimant asserted that via messages sent between them prior to the relevant period of sick leave Mr Hodgkinson was aware that she had been subject to domestic violence and that she was therefore a vulnerable person. Mr Hodgksinson denied this and further denied that he was in Whatsapp communication with the claimant at all. The Tribunal considered that on balance Mr Hodgkinson had been in Whatsapp contact with the claimant as he had been supportive of the claimant with regard to the driving ban and that some of their communication around this issue was via Whatsapp.

41. However, the Tribunal noted that on 8 July Mr Hodgkinson was absent and that matters were progressed by others. When he returned to work, he did not take any steps to assist the claimant or to intervene in the process which had

been started by Ms Durston. In short, his attitude towards the claimant changed. He no longer was trying to protect or help her.

42. As to the respondent's knowledge of her pregnancy; the claimant asserted that she had sent a copy of her sick certificate, confirming her pregnancy to her employer on 25 June, shortly after her appointment with her doctor. She asserted that Mr Hodgkinson therefore knew on behalf of the respondent, that she was pregnant. The burden of proof was on the claimant to prove this to the Tribunal. We did not consider that the claimant had met this burden for a number of reasons, not least of which was that she had no proof of postage of the sick certificate. The assertion that it had been sent was not raised in her initial pleading, further information or witness statement. The evidence only arose in cross examination of the Claimant. The Tribunal considered this timing was relevant as this was a central aspect of the case, which was not asserted by the Claimant until she was questioned about it. The evidence which she did provide was contradictory saying that she sent the certificate to 'Steve', but the Claimant also said that she could not say that Mr Stephen Hodgkinson was aware of her pregnancy prior to 18 July.

43. The Tribunal found that the respondent initiated step 1 of the AWOL policy on the first day that the claimant did not attend. This is contrary to the policy which indicates that it should be sent <u>after</u> the first day of absence. This shows an element of undue haste on the part of the respondent. The letter sent to the claimant on 8 July says that part of the company rules are that a "manager may try and make contact to find out what is happening, and make sure that you are safe and looked after". The respondent failed to do so in this case. Ms Durston accepted that the respondent had failed to follow its own procedure in this way.

44. The letter suggested that if the claimant did not make contact with the manager, she would be considered to be AWOL and that this is gross

misconduct and may result in a disciplinary process including dismissal. This was a very severe response to an employee who was one day beyond a previous period of sick leave and whom Mr Hodgkinson knew to be a vulnerable person. However, the Tribunal did not consider this to be related to the claimant's pregnancy.

45. The second letter was sent only three days later, on 11 July. This gave 24 hours notice for a disciplinary hearing and indicated that it may be heard in her absence. The Tribunal concluded that this was unnecessarily hasty action by the respondent.

46. The Tribunal also noted that the respondent's evidence of comparators indicated that they treated others differently from the claimant. For example, employee A was not contacted until 5 days after their sicknote expired and was given 3 days notice of a meeting. A further employee was written to on 23 July 2019 having been absent without contact for 8 days. A letter on 26 July gave an employee 4 days notice of a disciplinary meeting with regard to absence without certificate.

47. When the claimant did not attend the meeting on 12 July, the respondent took no steps to try to contact her by phone. Mr Hodgkinson did not call or message the Claimant's mobile phone number, which he had. He took no steps to enquire whether the claimant was safe.

48. On Monday 15 July the respondent sent a further letter (AWOL 3) via the same email address, indicating that she should attend a disciplinary hearing the next day. This was the third severe letter within 7 days which the respondent had sent to the claimant and showed a lack of care by the respondent for the claimant's welfare.

49. The respondent had no knowledge of whether any of the emails they sent to the claimant had in fact reached her. They did not attempt to send the letter by post. Nor did they have knowledge of what had happened to her since her arm injury on 21 June.

50. Ms Durston's letter of 16 July inviting the claimant to a further meeting asked her to indicate to Ms Durston if she was bringing a companion. However, the evidence showed that Ms Durston then went on holiday and that no-one monitored her emails in her absence and she did not have an out of office message on her email. This meant that the claimant was not being given an opportunity to communicate with the respondent.

51. At the time of Mr Hodgkinson's meeting on 18 July, he had neither seen the claimant's email, nor was he aware of her pregnancy. He had been shown and informed of the claimant's failure to respond to three letters. Those had been sent in very quick succession. The Tribunal finds that if this had been the end of the matter, then the claimant would not be able to show that the burden on proof had passed to the respondent.

52. However, Ms Brennan received Mr Mammoo's email on 19 July when it was sent, as well as the same email that the claimant had sent to Ms Durston. She was therefore aware, on behalf of the respondent on 19 July that the claimant was pregnant and the reasons why she had not previously responded to their correspondence.

53. When Ms Durston arrived at work on 22 July, she too would have seen the email from the claimant and also the email from Mr Mammoo on 19 July. She was therefore aware of the claimant's personal circumstances, including both the domestic violence and the pregnancy prior to the appeal hearing. Given that these were both pertinent issues to why she had been absent, she lacked care when she arranged for a fellow employee to act as translator for the claimant at the appeal hearing. Mr Durston's drive to follow procedure overtook her ability to consider the welfare of those working for the Respondent. From this point onwards, Ms Durston and the other staff of the respondent ought to have taken into account the fact that the claimant was pregnant when considering her dismissal. Whilst it cannot be said to be obligatory for the respondent to reconsider the dismissal in light of the pregnancy notification, they chose to base the appeal in response to Mr

Mammoo's letter of 19 July. It was therefore incumbent upon them to take into account all the information contained in the letter and not merely parts of it.

54. The appeal hearing on 29 July failed to take into account that the claimant had a sick certificate to cover the entire period which the respondent was investigating. It was also clear to the respondent as a result of this letter that the claimant had been within the statutory 'protected period' since 25 June 2019. The reason put forward by the claimant was therefore directly related to her pregnancy. The letter also outlined the domestic circumstances of the claimant which were also relevant to why she had not made contact with her employer. All of these were matters which ought to have been considered at an appeal hearing.

55. Furthermore, the reason why the claimant was unable to attend the appeal meeting on 29 July was related to her pregnancy, the sick certificate which the claimant provided made this clear. However, this was ignored by Ms Durston and not brought to the attention of Mr Mace. Nor was he provided with HR support which advised him to take account of the pregnancy.

56. The notes of the appeal meeting on 5 August refer to the claimant providing a sick note, but omit reference to the sickness being pregnancy related. The review of the circumstances fail to acknowledge any of the matters raised in Mr Mammoo's letter. Mr Mace failed to consider why the claimant had not been present. Given the information contained in the letter, Mr Mace ought to have considered whether the reasons outlined should alter the decision of the respondent to dismiss.

57. The evidence of Mr Mace was that he did not take into account the claimant's pregnancy, despite the fact that he knew of it and knew that the absence was pregnancy related and that at the time of the appeal, the claimant had a valid sick certificate which referred to her pregnancy. He had the opportunity to reconsider the dismissal and to take into account relevant facts which had come to light since. He failed to do so.

58. The tribunal were satisfied that in respect of the appeal, the claimant was able to show that she had provided a reason for her previous absence that warranted a reconsideration of the previous decision to dismiss. That the reason was at least in part materially related to her pregnancy. The Tribunal were satisfied that Mr Mace was the decision maker with regard to the appeal and that he was aware of the pregnancy. Without further evidence, the Tribunal considered that the claimant had shown facts from which it could be inferred that she had been treated unfavourably, i.e. dismissed and that those reasons were due to her pregnancy.

59. The Tribunal therefore considered whether the respondent had been able to show that the reason for the decision was a non-discriminatory reason. Mr Mace said in evidence that he dismissed because the claimant had not followed process and protocol. The Tribunal were satisfied that this was a reason which was inextricably linked to the claimant's pregnancy related illness and that Mr Mace chose to ignore this point. In doing so, we find that he treated the claimant unfavourably due to her pregnancy.

60. Due to the time constraints placed upon the listing of this matter, all parties agreed that only liability would be dealt with at this hearing. Therefore this matter must now be listed for a remedy hearing, unless the parties are able to settle the amount of compensation by way of negotiation.

61. The tribunal has provided directions to a remedy hearing without reference to the parties. If necessary the parties should apply for variation of the orders.

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Employment Judge Cowen

6 July 2021

Date_____

JUDGMENT SENT TO THE PARTIES ON

12 July 2021

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