EMPLOYMENT TRIBUNALS

Claimant: **Mrs C Nicholls**

Respondent: **Boogie Bounce Xtreme Limited**

Heard at: **Birmingham**

On: **15-19 June and 18 August 2021**

Before: **Employment Judge Flood**
Mrs Ellis
Dr Hammersley

Representation
Claimant: In person
Respondent: Ms Clarke (Counsel)

JUDGMENT

JUDGMENT having been sent to the parties on 24 August 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The Complaints and preliminary matters

1. By a claim form presented on 10 April 2019, the claimant brought complaints of pregnancy and maternity discrimination (s 18 Equality Act 2010 ("EQA"), harassment on the grounds of pregnancy, maternity and childbirth (s 26 EQA) and unlawful deduction from wages (s 13 Employment Rights Act 1996 ("ERA"). Her claim was subsequently amended to add complaints of automatically unfair dismissal because of grounds of pregnancy/maternity (s 99 ERA) and unlawful detriment for reasons which relate to pregnancy, maternity or childbirth (s 47C ERA).

2. At a preliminary hearing held on 19 August 2019 before Employment Judge Richardson, the issues were identified and recorded in a case management

order which is shown at pages 49-57 of the agreed bundle of documents produced for the hearing ("Bundle"). The hearing was originally listed for final hearing starting on 22 June 2020 but was postponed due to the Covid 19 Pandemic.

3. Together with the parties, we have referred to the List of Issues (as amended by the additional of the additional complaints) which is also set out below, throughout the hearing.

4. We also had before us the agreed bundle of documents ("Bundle"); a Chronology produced by the respondent and a Skeleton Argument produced by respondent.

5. After a five day hearing, the Tribunal adjourned the hearing at the close of evidence of submissions and was reconvened for a further day upon which it gave an oral judgment (via CVP video hearing) confirming the unanimous decision of the Tribunal that all the complaints against the respondent were not well founded and were dismissed.

The Issues

6. The issues which feel to be determined between the parties were:

Time limits / limitation issues

(i) Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the EQA")? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period,; whether time should be extended on a "*just and equitable*" basis; when the treatment complained about occurred; etc. Any allegation that happened before **12 November 2018** is potentially out of time.

EQA, sections 18:pregnancy & maternity discrimination

(ii) Did the respondent treat the claimant unfavourably as follows:

a. In September/October 2018 AM made an adverse comment when discussing the marketing plan for January he said "*but you won't be here will you? For whatever reason you have decided to start a new family and leave us at the busiest time of the year*".

b. In October 2018 AM said to the claimant prior to her taking annual leave: *"I don't understand why you are taking holiday when we have so much to do, especially when you go on maternity leave in January."*

c. On return from holiday and after being hospitalised for pleurisy and time off sick, the claimant returned to the office

on 12 November 2018 and found that she had been demoted and staff were not speaking to her.

d. On 19 November 2018 the claimant was accused of theft;

e. On 26 November 2018 disciplinary proceedings were commenced against the claimant;

f. Following the birth of her child on 8 January 2019 maternity leave commenced; the claimant's passwords were changed and she was required to hand over her laptop;

g. On 26 January 2019 AM told the claimant to "*go and get another job, lots of women have to return to work straight after having a baby";*

h. The claimant was denied the right to return to work on 19 February 2019 as had been previously agreed by the directors AM and Ms Belcher;

i. The respondents deleted e mails which evidence the agreement that she would return to work on 19 February on contractual pay;

j. The respondent dismissed the claimant on 7 May 2019.

(iii) Did the unfavourable treatment take place in a protected period and/or was it in implementation of a decision taken in the protected period?

(iv) Was any unfavourable treatment because of the pregnancy or of illness suffered as a result of it; because the claimant was on compulsory maternity leave; because she was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave?

EQA, section 26: harassment related to pregnancy/child birth, maternity leave

(v) Did the respondent engage in conduct as set out in the grounds of complaint and repeated above at paragraph (ii) a. to i.?

(xv) If so, was the conduct unwanted?

(xvi) If so, did it relate to the protected characteristic of pregnancy/child birth/maternity leave?

(xvii) Did the alleged conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

Unlawful detriment for a reason related to pregnancy/maternity

(xviii) Did the alleged comments made by A Male as set out at a, b and g above amount to a detriment for the prescribed reason which relates to pregnancy, maternity of childbirth or the taking of ordinary, compulsory or additional maternity leave?

Automatically unfair dismissal: section 99 Employment Rights Act 1996

(xix) Was the reason or principal reason for dismissal that the claimant relating to pregnancy, childbirth or maternity or ordinary, compulsory or additional maternity leave?

If so, the claimant will be regarded as unfairly dismissed.

Unlawful deductions from wages

(xx) Did the respondent, in breach of an agreement that the claimant would return to work after 6 weeks and would receive full pay during the first 6 months, make unauthorised deductions from the claimant's wages in accordance with ERA section 13 by refusing her the right to return to work on 19 February 2019, and if so how much was deducted?

Other claims

(xxi) The claimant claims under section 38 Employment Act 2002 that she was not provided with written particulars of employment.

Findings of Fact

7. The claimant attended to give evidence and Mr B Evans (the claimant's former partner) ("BE") and Mr B Bennett (the claimant's father) ("BB") attended to give evidence on her behalf. Mr A Male (Managing Director of the respondent) ("AM"); Ms J Belcher (Director and Chief Executive Officer of the respondent)("JB"); Ms S Abbott (owner of the HR Department, North Birmingham) ("SA"); Ms M Gambles (adviser at the HR Department, North Birmingham) ("MG"); Ms A M Grant (former adviser at the HR Department, North Birmingham) ("AG") and Mr O Rashid (owner of the HR Department North East and South West Birmingham) ("OR") gave evidence on behalf of the respondent. We considered the evidence given both in written statements and oral evidence given in cross examination, re-examination and in answer to questioning from the Tribunal. We considered the ET1 and the ET3 together with relevant numbered documents referred to below that were pointed out to us in the Bundle.

8. In order to determine the issues set out above, it was not necessary to make detailed findings on all the matters heard in evidence. We have made findings not only on allegations made as specific discrimination complaints but on other relevant matters raised as background. These findings may be relevant to drawing inferences and conclusions. The Tribunal resolved conflicts of evidence as arose on the balance of probabilities and assessed the credibility

of the witnesses and the consistency of their evidence with surrounding facts. As a general comment, whilst the claimant appeared to have a good recall of events, and we accepted much of what she said as we did not find her to be inherently a dishonest witness, there was a tendency on occasion to embellish conversations that took place to bolster the case she wished to make. We also felt that she gave evasive answers on occasions when documents were shown to her which appeared to be inconsistent with her own earlier accounts.

9. The respondent's witnesses gave evidence that was more credible and consistent with the contemporaneous documents. In particular we found the evidence given by SA, MG, AG and OR of HR Department entirely straightforward, robust and convincing. AG was a particularly compelling witness whose evidence we accepted in its entirety as fully consistent with all the documents, reliable and clear. We also found AM and JB to be on the whole convincing witnesses. Whilst they were not able to recall every event, we found them honest in the answers they gave and their evidence was internally consistent and broadly consistent with other witnesses where any detail was available. AM in particular was credible as he was able to make concessions on occasion where this was not always helpful to the respondent's own case.

10. We made the following findings of fact:

    10.1. The respondent was incorporated in 2014. JB, who founded the business, registered the Boogie Bounce brand in the UK in 1996 when she started teaching local exercise classes and built the business up over a long period. The Boogie Bounce concept involves high intensity interval training on a mini trampoline to choreographed music. The respondent runs a licensed programme whereby individuals can pay a monthly licence fee to be a Boogie Bounce instructor. The respondent also sells trampolines and other branded products. It runs in 13 countries worldwide and has over 3,000 instructors. It currently has seven members of staff including AM and JB and two of AM's children. AM and JB are married and had previously lived in Spain and run a motorbike tours business. On their return to the UK decided to promote the Boogie Bounce business further. AM previously ran a construction company. Following a You Tube video involving Boogie Bounce going viral, the business took off rapidly and has developed and grown quickly.

    10.2. The claimant initially provided marketing services to the respondent via her own company, Square Circle Limited, which unfortunately went into liquidation in July 2016. She then provided freelance marketing services to the respondent from October 2016 onwards.

    10.3. The claimant commenced employment on 1 June 2017 as Sales and Marketing Manager. At that time the claimant was trying to rent a property and struggled to do so because of her self-employed status. It was discussed and agreed between the claimant and AM and JB that she would become employed and go on to the payroll, as it assisted her to be employed in order to obtain a tenancy. No contract of employment was issued to her at this time. There was no handbook issued or any employment policies in place. The claimant was paid an annual salary of £25,000 plus an payment to cover expenses of £400 per month. In April

2018 AM and JB asked the claimant to become a director in the business. The claimant turned down this offer as she was concerned about possible ramifications from the liquidation of her previous business and did not want to become a director.

10.4. The claimant told us that she, JB and AM were the de facto management team of the respondent with JB being the creative member of the team and the face/personality of the brand; AM dealing with the legal and contractual side of the business; and that she was the "glue" that held the business together, managing staff, marketing and managing sales. AM accepted that this was the case. JB acknowledged that the claimant although starting out in sales and marketing and website hosting became embedded in the business and became involved in all aspects of the business taking on additional duties such as accounts and HR. The claimant began dealing with the respondent's accounts and was entrusted by AM and JB to do so. AM acknowledged he had no experience in modern accounts systems and as the claimant said she had experience in the system used by the respondent, Kashflow, and some accountancy training, he accepted her offer to assist with the accounts. The claimant was keen to retain responsibility for the accounts even when the offer of a book keeper was suggested by AM.

10.5. The claimant got on very well personally with AM and JB and the three became good friends. During 2016 and 2017 AM was recovering from serious health issues and the claimant became more involved with the respondent's business and offered her help with all aspects of the business and with the family personally. It appeared to us that, at times, this meant that the boundaries between the business and personal relationships may have become blurred and the usual formalities around the employer/employee relationship were not in place. The respondent had made advances to the claimant when she was in financial need (see email at page 114 referring to an advance of £600 to be paid back over a three month period in September 2018) and employed the claimant's father and her aunt in the business. AM and JB trusted and relied on the claimant to carry out many different activities in the business and it appeared to us that the degree of oversight of her work was not always there. This may have contributed to some of the issues that subsequently arose.

10.6. In response to questions from the Tribunal, the claimant gave some evidence of what she described as "*Andy being Andy*" in relation to his attitude towards women, and pregnant women in particular. She described AM as a "*typical 60 year old builder*" and said he had a negative attitude towards employing young female employees. She made reference to him having concerns about employing a Muslim employee who was about to get married, worrying that she would be having children or "*popping out kids*" as the claimant said AM put it. She also said he made a flippant backhanded remark about his concerns that another female employee would become broody if the claimant brought her baby in to the office. The claimant suggested that this attitude may have been a factor in these two female employees leaving the business. This was vehemently denied by AM who said that both employees referred to had left for entirely unconnected reasons (one was because of concerns the claimant had with

performance). These allegations had not been mentioned in the claimant's statement nor as far as we could see in any of the previous documents in the claim, which were plentiful. The claimant said that this had not been mentioned as she did not want to "*bad mouth*" AM and only put matters in she felt she had direct evidence of. We found absolutely no evidence that AM ever made any such comments nor indeed held such attitudes in relation to women or pregnancy. We noted that the respondent predominantly employed females many of which were relatively young. Our view was that if AM had made such inflammatory and offensive remarks which would be highly relevant to the claimant's complaints, these would have been raised in the claim form or in her witness statement at the very latest, if not in the various letters sent before these proceedings or in the lengthy grievance and disciplinary proceedings. We found this allegations to be without foundation and an attempt by the claimant to embellish her own case with fairly extreme allegations without merit or truth.

10.7. On 18 January 2018 the claimant as part of her role together with JB met with MG to discuss the preparation of employment contracts for employees of the respondent (see e mail with note of meeting at page 602). The respondent had engaged HR Department in 2017 to provide retained HR services to the business. Following that meeting on 25 January 2018 MG sent an e mail attaching draft employment contracts to the claimant (page 603). The claimant indicated that there had been discussions at this time involving AM, JB and MG about her own individual contract of employment including the possibility of a three month notice period. MG denied that she had been involved in any such conversation. We accepted her evidence and the e mails sent at the time support this finding. We acknowledge that there may have been some informal discussions of this nature between the claimant and AM/JB but no written contract was in fact put in place and no agreement was reached about what the claimant's notice period would be at this or any other time.

<u>123 Reg payments</u>

10.8. On 9 March 2018 the sum of £23.98 was taken from the respondent's corporate debit card by 123Reg (a provider of domain name registrations). The claimant explained that she had used 123reg in order to register domain names for her clients while she was still operating as Square Circle Limited and as a freelance marketing consultant. These domain names would be renewed and recharged by 123Reg on an three yearly basis. She logged onto 123reg to register/renew a domain name for the respondent and when doing so, having noticed that the card registered to the account was still her own personal account, she changed the card to the respondent's business debit card to pay for the respondent's renewal of its domain name. We accept that the claimant's actions at this time were entirely appropriate. This card them became the default card on the claimant's account with 123reg. As renewals came up on other client accounts that had been previously registered by the claimant, 123reg automatically deducted the renewal fee from the respondent's debit card. In total the sum of £828.05 was taken from the respondent's debit card during the period its card was registered with the claimant's account (page 491).

10.9. The claimant became aware that this was happening after a number of transactions had been deducted at some time between May and July 2018. She did not log back into 123reg to change the card back to her own on becoming aware that this was happening. She explained that the sums involved could be recharged to her previous customers but she had not had the time to do this. She also explained that she was unable to repay the sums back to the respondent herself as she was not "*cash rich*". She described her failure to deal with these items as a mistake. The claimant told us that she had informed S Males, an employee of the business of this saying to him that these amounts were "*mine to sort out*". She also told us she discussed this in detail with J Cole at Rochesters (the respondent's accountants) and that she may have mentioned to AM in passing. She said that these sums were clear for all to see on the bank account. AM, S Male and Ms Cole denied that the claimant had informed them of this matter. We did not accept that this matter was discussed with any of these people. The claimant did not take any action to either cancel the renewals, pass the charges on to clients or change the debit card to ensure no further payments were taken.

<u>Sports Relief event and payments</u>

10.10. In March 2018 the respondent was involved in a charity event for Sports Relief. The event was the claimant's idea and an employee who reported to the claimant, Insya, ran the administration of the event. The money raised by the event was paid to the respondent via Eventbrite into its bank account on 28 March 2018. We saw an e mail from the contact at the charity on 29 March 2019 sending details to Insya about how to pay the money raised by the respondent over to Sports Relief. This e mail was forwarded to the claimant that same day (see page 266). Shortly after this, Insya left the respondent's employment. The claimant did not take any action to transfer the funds to Sport Relief at this time. The funds were transferred to Sport relief in January 2018 when this was picked up by the new bookkeeper Anita.

<u>Advance/loan of £1000</u>

10.11. In May 2018 the claimant was paid the sum of £1000 by the respondent. The claimant at that time had some financial difficulties as her partner was moving from weekly to monthly pay. She mentioned this to AM and he informed the claimant that she should pay herself the sum of £1000 and that this would be treated as a bonus, if the respondent bank account was out of overdraft by the end of June. We saw a WhatsApp message the claimant sent to her partner at this time (page 472) which referred to this payment being made and specifically said "*Andy said take a grand and if we are out of the overdraft at the end of June you can have it as a bonus*". AM had no real recollection of this discussion with the claimant, although does not dispute that this is what was said by him. AM told us that the cashflow prepared by the claimant at this time showed that the company could be out of overdraft by the end of June so at the time this discussion took place. The claimant said that although being out of overdraft was mentioned, she thought this was a joke because at that time, it was patently clear that the company would not be out of overdraft. We find that the payment was made

to the claimant as a loan or advance but that the agreement at the time was that if the company had achieved the aim of being out of overdraft, this would be converted to a bonus and this would not be repayable by the claimant. We can find no cogent evidence that the reference to the respondent being out of overdraft was either intended by AM to be a joke nor indeed that the claimant understood this to be a joke. As it happens in June 2018 the company was not out of overdraft and so the sum was due to be repaid in some manner. However no discussions took place between the claimant and AM about what would happen as regards this £1000 including how and when this would be repaid. It was not raised by the claimant or AM (as he had by then forgotten about the arrangement). We also concluded that had the claimant raised this matter with AM, it is likely that arrangements would have been put in place either for the sum to actually be a bonus (despite the respondent not being out of overdraft) or for the claimant to repay all or some of the sums over a period. It is unfortunate that the claimant did not draw this matter to AM's attention at the time.

Issues with Rochesters

10.12. Rochesters had been the respondent's accountant for some time and AM was good friends with a partner of that firm, S Rochester. The claimant told us that in May 2018, an employee called Mark who had been the main contact at Rochesters, left that firm. He was replaced as the respondent's point of contact at Rochester's with a different employee D Bond. The claimant says that this change causes major issues with the accounting systems of the respondent leaving her unable to reconcile the invoices on its Kashflow system. She made references to missing invoices and also that manual invoices were being posted incorrectly. The claimant suggested that this had been significantly impacting her ability to see the true financial picture. We saw a note of a meeting from 18 May 2018 attended by the claimant, AM, Mr Rochester and Craig from Rochesters where it was raised that all work would be overseen by another employee at Rochesters. This was still being discussed in July and there was a meeting on 17 July 2018 where further actions were agreed with J Cole from Rochesters being allocated to come in and sort out the remaining issues. The claimant sent a further email on 6 August 2018 (page 77) to Mr Rochester again raising concerns. There had also been some discussions between Mr Rochester and AM whereby it had been suggested by Mr Rochester that the problems with the accounts were due to the claimant's lack of ability and experience. It is clear that there was some reference to Hurst media invoices during these discussions (see below). The issues that arose led to a decision by AM to appoint a book keeper. This was discussed between Mr Rochester and AM and he recommended the individual that was subsequently appointed by the respondent to this role, Anita.

The claimant's pregnancy

10.13. In June 2018 the claimant informed the respondent of her pregnancy. There was some suggestion by her that AM had made a negative comment at this time along the lines of "*Oh, we weren't aware you were trying again*". AM denied that he said this and said that he and JB were pleased for the

claimant (as they were aware she had sadly suffered a miscarriage in 2017). We do not find that this comment was made by AM. There was no reference to a comment of this nature being made in the claim form nor indeed in the claimant's witness statement. The claimant mentioned that "*unpleasant comments*" had been made by AM when she submitted her grievance in February 2018 but did not provide any detail. On balance we could not find that such a comment was made.

10.14. The claimant and AM had a conversation early in July when he offered the claimant a pay rise of £200 a month, as he had just asked her to increase the pay of his son, S Male at that time. The claimant turned down the pay rise but said to AM that she wanted him to "*just look after me during my maternity leave*". AM accepted that this conversation took place and that it was his intention to do this, although no detail of what would be paid by way of maternity pay etc had been discussed and agreed at this or any other time.

<u>Hurst Media invoices</u>

10.15. Hurst Media was a supplier of the respondent and during the period March to June 2018 sent a number of e mails around outstanding invoices to the claimant (page 534). Many of these invoices were paid by the claimant but there was at least one invoice that was outstanding in July 2018. An email was sent by the Finance Manager of Hurst Media on 17 July 2018 asking for the balance of £1580 to be paid and making reference to some invoices being over three months old. She sent a further e mail to the claimant on 23 July 2018 (having received no response) stressing the urgency and asking for contact that day or tomorrow. The claimant did not respond and on 24 July 2018 the claimant received an e mail from the James Hurst, the Managing Director of Hurst Media stating that the matter would be referred to their legal team and debt recovery if they did not receive immediate payment. The claimant responded on 27 July 2018 when she sent a WhatsApp message to James Hurst stating that the outstanding sum of £1580 would be paid "*next week*" and requesting a credit note for an invoice previously sent for £4,800 for work which did not proceed (page 488). The message also stated that the claimant would call Mr Hurst when she got to the office. He responded on 1 August 2018 stating "*Once again I haven't heard from you*".

10.16. On 1 August 2018 there was a further e mail from Hurst Media threatening legal proceedings if the outstanding invoice has not been paid. (pages 485-488). The claimant told us that she did not take this threat of legal proceedings seriously as the respondent was awaiting a credit note from this client. The claimant referred us to the WhatsApp message that had been sent to Hurst media and also the fact that she raised this again in September 2018. The claimant suggested that this matter had been discussed with AM (which he denies), but we find that she did not mention this issue to anyone at the respondent and that neither AM nor JB were aware that Hurst Media had threatened legal action against the respondent. The outstanding invoice of £1580 was paid on 7/8 August 2018.

10.17. Around August 2018 AM was making arrangements about moving

offices to enable the claimant to be able to bring her baby into the office after she returned from maternity leave. The claimant acknowledged that at this time AM was expecting her to return to work and was being very accommodating to her about her return. When asked why his view later changed and as suggested by the claimant he became negative towards her and her pregnancy, the claimant suggested that AM only did this once her pregnancy became visible as before that he did not appreciate that the claimant would actually be leaving to have her baby. This contention does not seem to us to be credible and is not in line with the underlying facts we have found. There had been some discussions during this period about the claimant's plans for taking maternity leave and her return. The claimant alleged that it had been agreed that she would take 6 weeks off and be paid at 90% and that she would then start working from home, coming into the office two days a week with her returning to work full time once her baby was 6 months old. The claimant suggested that she would be paid in full during this 6 month period, whatever hours were worked by her. The respondent contended that various ideas had been discussed by the claimant but that nothing firm had been agreed or settled upon by the claimant as she kept changing her plans. We find that although various suggestions had been made by the claimant and it may have been her intention to return to work after 6 weeks as she suggests, nothing firm had been agreed and no agreement had been made between the respondent and the claimant as regards any additional maternity pay over and above her statutory entitlement.

10.18. On 14 September 2018 the claimant received an advance on her wages of £600 which she agreed to pay back over 3 months (page 114).

First alleged comment

10.19. The claimant contended that during a meeting with AM in October 2018 AM made a comment along the lines of "*but you won't be here will you? For whatever reason you have decided to start a new family and leave us in the lurch at the busiest time of year*". AM denies that he ever made such a comment. We find that this comment was not made as alleged. Even if a reference was made to the claimant not being around at a particular time in the future, we do not find that there is sufficient evidence to find that a negative comment of this nature was made. The claimant strikingly does not mention this comment in her witness statement for this Tribunal. She did not make a complaint about such a comment being made at the time and the first mention of it was 12 February 2019 when her grievance was raised. We preferred the evidence of AM that he did not make a comment of this nature. Given that at this time AM was assisting the claimant financially and was making arrangements for her to return to work (and potentially bring her baby to work if she wanted) this is not behaviour consistent with making such a comment to the claimant.

Second alleged comment

10.20. The claimant alleges that on 2 October 2018 AM made a comment to her about her forthcoming holiday along the lines of "*I don't understand why you are taking holiday when we have so much to do, especially when you*

go on maternity leave in January". AM denies that he said this. He admitted that he did make a comment expressing concern about the claimant taking annual leave at the time but did not mention maternity leave. He said that he had discovered in October that the claimant was planning to take holiday and was concerned at the timing of this because at the time the respondent was involved in the launch of its new website. This website was a big investment for the respondent and was due to be launched at the end of November 2018 to be in place for the very lucrative period in the new year when the respondent was at its busiest. He explained that the respondent had issues in the past with IT projects, in particular an app that had been launched which had never been completed. He said he was very concerned that the website would slip behind schedule and as this was one of the major projects the claimant was working on at the time.

10.21. The claimant told us she was very upset and in tears after this comment had been made and the day after, that JB apologised to her for this and during this conversation she became upset again. She said she told JB during this conversation that she was tired as she was working long hours and that she was not receiving any help at home. The claimant said that later that day, JB offered to pay for a cleaner for her and also invited her to attend a spa afternoon and sent an e mail confirmation of this the same day (page 122-3). The claimant also referred us to copies of a WhatsApp conversation between the claimant and JB on 4 October 2018. This made reference to AM receiving a "*big bollocking*" from JB. It also went on to state that the claimant "*got the shitty end of the stick – we do appreciate you, we just don't show it enough*" to which the claimant replied "*Ah don't worry, it's a good job I'm a bit of a bloke. He'll realise eventually I am not a typical girl and I can be a mom and work my butt off lol xx*" (page 513). The claimant contended that these messages were referencing specifically the comment she said was made by AM on 2 October 2019.

10.22. JB had a different interpretation and recollection of the conversation she had with the claimant at this time. She contends that the reference in the WhatsApp message to her giving AM "*a big bollocking*" was about an unrelated personal matter and happened before the conversation about the holiday took place. She contends that at this time that although she herself knew of the claimant's holiday plans, she had forgotten to inform AM. She admitted that the claimant came to see her after she had spoken to AM about taking holiday and was upset about his reaction but did not mention anything about maternity leave or a comment of this nature being made. She agrees that she apologised to the claimant during their conversation but that this apology related to her forgetting to tell AM that the claimant was taking her holiday at that time. She told us that she did not know why the claimant in her message in reply made reference to being a mom and working hard. JB also states that the spa day and also the offer of a cleaner being made to the claimant were not related to this and did not take place on the day she had the conversation with the claimant about her holiday. She said that the cleaner conversation had taken place well before this and the spa day was something she had organised to coincide with the birthday of another employee, E Male and had invited the claimant along as well.

10.23. We found that AM made a comment about taking holiday and expressed

frustration with the claimant doing this. However we find that he did not go on to make the comment as alleged about not wanting her to take holiday "*especially when you go on maternity leave in January*". We accepted AM's evidence that he was concerned about the timetable for the website launch slipping and this is why complained to the claimant about taking her holiday at that particular time. However we do not accept that there was any linkage made at this time to the claimant's maternity leave. There is no evidence suggesting that AM was objecting to the claimant's taking maternity leave, rather it was the particular timing of this holiday (when the website was due to be launched in November 2018) that was concerning AM. There was much discussion during the hearing whether the website was behind schedule at the time the comment was made. This had been suggested in some of the earlier correspondence and the claimant was adamant that at this stage, she was not behind schedule and had completed all the tasks required of her. However we were satisfied that the respondent was not in fact suggesting that the website was behind schedule at this time, but that AM was concerned that the claimant being absent on holiday at this time could lead to the schedule slipping.

10.24. We also accepted the evidence of JB regarding the conversation she had with the claimant after the holiday conversation between the claimant and AM. Her account was more convincing and plausible and we believe that the claimant has conflated a number of conversations which took place at different times (in respect of the spa day and the offer of a cleaner) in order to support her claim that the adverse comment around maternity leave was made by AM. We acknowledge that the claimant makes reference to being a mom and working hard in the WhatsApp messages sent around this time. However we were not satisfied that this supported in any way the allegation that AM had made the remark about maternity leave as alleged. The reference to being a mom did not in our view have an obvious and direct connection to the claimant taking maternity leave. In our view this was more likely a reference to the fact that the claimant was working hard for the respondent whilst also already being a mother to her teenage daughter. We noted that this comment followed on from earlier messages in the chain between the claimant and JB referencing the claimant organising a birthday party for her daughter at that time.

<u>Power Music invoices</u>

10.25. On 11 October 2018, having previously requested a statement, the claimant received an e mail from David Petty of Power Music (a key supplier of music for the respondent's business) confirming that there was an outstanding debt of $19,352 (page 479). The claimant knew at this stage that some invoices had been missed and said she was also aware she had received some e mails that had not been dealt with. The cashflow statement prepared by the claimant on 2 October 2018 had indicated that just $2,800 was owing to Power Music. There was subsequently a Skype call between the claimant, JB and D Petty of Power Music on 23 October 2018 on business matters when Mr Petty again raised the issue of outstanding amounts due. JB told us that the first time she knew that this sum was due was when she asked the claimant about Mr Petty's comments following the call and said she was horrified at hearing that there was so much

outstanding. The claimant informed JB that she would sort the matter out after her holiday. In the investigation that subsequently took place, the claimant stated that a repayment plan had been discussed and agreed with Mr Petty but when challenged about this then said that there was in fact no formal plan in place for repayment but this had just been mentioned as a possibility. We find that there was no plan in place with Power Music for repayment at this point.

10.26. On 24 October 2018 the claimant and AM interviewed a woman called Anita for the position of book keeper (see above). She had been referred to the respondent by Mr Rochester and at page 124-5 we saw some e mails regarding this interview and the feedback from this. Anita was offered the position and it was agreed that Anita would start on 6 November 2018 and would be taking over the accounts function from the claimant following a handover from the claimant.

10.27. On 26 October 2018 (which was the last day the claimant was in work before her pre booked holiday) the claimant produced an updated cashflow document which indicated that the respondent would need an overdraft of £85,000 in December 2018 and would remain in overdraft going into 2019 (page 471). At the beginning of October 2018 the claimant had produced a cash flow document which indicated that the respondent would need an overdraft of the lower figure of £30,000 for December 2018 but that by February 2019 no overdraft would be needed (see page 470). This had been sent to the respondent's bank HSBC by AM on 2 October 2018 (see page 466) in discussions about extending the respondent's overdraft and in this e mail AM expressly refers to the respondent "*going into the black in mid February*". AM became concerned having seen this cash flow and went to see the claimant straight after this was produced to discuss it with her. AM told us that the claimant said to AM "*don't worry it will be all right*" and then shortly after that left the office for the evening.

10.28. The claimant was on annual leave for a week from 26 October 2018. She travelled to Devon for a holiday and whilst there she became unwell and contracted pleurisy. She was admitted to hospital on 4 November 2018 and was discharged on 6 November 2018.

10.29. On 6 November 2018 the new book keeper Anita started employment with the respondent. The claimant had been due to be in work when Anita started to perform a handover but was still off sick so was unable to do this. Anita was tasked by AM with trying to put the accounts in order and transfer the accounts to the Sage accounting system. Anita was also asked to produce an accurate creditors list (AM said that he had been asking the claimant to produce a creditors list for some time but this had not been done). As she started her work on the accounts, Anita discovered the issue with 123reg payments. On 7 November 2018, JB wrote to Mr Petty of Power music regarding the outstanding invoices that had been raised during their call at the end of October. She stated that the claimant was off sick and she could not find the outstanding invoices to settle them and asked him to send her copies. He responded the same day with an e mail requesting a "*quick arrangement for payment*" (page 409).

10.30. On 12 November 2018 AM and JB sought advice from HR Dept on the issues that they had discovered from Anita's initial work on the accounts, in particular the issue with 123reg. They attended the offices of HR dept and met with SA and Helen Pursehouse (another HR Dept employee). A note made by the adviser was at page 607 and made references to concerns with cashflows not matching and "*some potential fraudulent activity regarding the use of the company credit card*". The advice from HR Dept suggested 2 options to address the matter, either to hold a formal meeting to investigate or to have an informal meeting with claimant to discuss the matter in the first place. The respondent decided that they would have an informal meeting with the claimant to try and resolve matters.

10.31. On 13 November 2018 the claimant returned to the office from her period of holiday and sick leave (she had also been working from home after she was discharged from hospital). The claimant alleged that when she returned she was demoted as roles she had been carrying out were taken from her and that staff were not speaking to her. There are two elements to this complaint. Firstly the allegation of demotion and removal of duties. The respondent accepts that the claimant was no longer doing the accounting or book keeping as that had been taken over by Anita when she started whilst the claimant was on holiday. The respondent contends that the claimant was aware that this was happening and indeed the claimant acknowledged that this was the case in cross examination. The parties also agree that the claimant was not on her return from holiday and sick leave dealing with the day to day staff queries she had previously been doing. However the respondent says, and we accepted the evidence of AM and JB that the claimant had previously complained about the number of queries she was receiving and so staff had been directed not to bother her with these, particularly as she was working on the key project of completing the website for the deadline of the end of November. Therefore we are unable to make a finding of fact that the claimant was in any way demoted. The second element of this complaint is that staff were not speaking to the claimant and told us that the atmosphere was awful and that JB and AM were avoiding her. AM and JB denied that this was the case stating that they were both busy on other matters at the time with JB being involved in filming which took up a large amount of her time. We accepted the evidence that this was the case, but we also nonetheless accept that the atmosphere may have been awkward as in the preceding weeks, AM and JB had discovered the issues relating to cash flows and potential fraudulent card use. This is likely to have meant that perhaps AM and JB were avoiding seeing or speaking to the claimant at length as at that time they were considering a possible disciplinary investigation. As the three had been good friends, it is likely that the claimant perhaps sensed something was amiss on her return. The claimant gave unchallenged evidence that she mentioned that there was an atmosphere to E Male and that she felt it was a constructive dismissal and we accept that she did say this. The claimant's witness statement mentions that E Male agreed with her. However we note that when this conversation is first raised in the grievance meeting she did not say that E Male agreed with her. We find that it is highly unlikely that E Male would have expressed agreement at this time.

Meeting between claimant, AM and JB 19 November 2018

10.32. The claimant attended the meeting at around 4pm. A summary of the issues raised by the respondent during this meeting was shown at page 442. During this meeting the issues around the cashflow and the 123reg card payment were raised by AM and JM. The claimant said that at this meeting she was told that the company was in a dire financial situation and that she was being held responsible for this and that she was also accused of theft. The respondent contends and the evidence of AM and JB was that the issue of the cashflow being inaccurate and the non-payment of $19,000 to a supplier was raised. They also both say that they informed the claimant that they had become aware that the company card had been used for her client's website hosting without their knowledge or consent but denies that they used the word "theft" expressly. We accept that the claimant was informed of the accusation that she had used their debit card without authority although do not find that the word theft was used explicitly. This is consistent with the note of the issues being discussed (page 422) and the evidence of both AM and JB which was more plausible. The claimant told AM and JB that the 123reg matter had been a mistake (explaining how it had happened). She said that she had spotted the error in May 2018 and would pay the money back. She also gave her explanation about why the cashflow was in the position it was. The claimant at one point asked AM and JB what they wanted the outcome of the meeting to be and did they want her to resign. JB replied instantly "*yes*" but AM asked the claimant to wait and not make a silly decision. The claimant suggested during this conversation that she would be paid to the end of the 2018, then take 2 weeks holiday before starting her maternity leave and would then resign in July 2019 after 6 months maternity leave.

10.33. The claimant attended the office the next day and it is clear that AM had a conciliatory conversation with the claimant whereby the claimant said she had not done anything wrong and AM told her that he did not want to lose her from the business. AM explained that the claimant was embedded into the business and was so pivotal to the completion of the website. AM e mailed the claimant on 21 November and suggested that if she wanted to work from home she could do this (page 664). We found this was not an instruction but a suggestion to do this.

10.34. On 22 November 2018 Anita produced a credit report showing outstanding liabilities of £135k (pages 463). This was sent to the claimant by AM on 23 November 2018 asking her to review it.

Meeting between claimant and JB

10.35. On 22 November 2018 the claimant attended for work and became very upset at the start of the day and had cried in the car outside. She was due to attend a meeting with JB and AM that day to discuss content of the new website but only JB attended with her. At the end of the website discussion the claimant raised the issues discussed in the last meeting. JB informed the claimant that she did not want to discuss this without AM but it is clear that there was then a heated discussion between the two. The claimant says that JB became angry, accused her of "*taking food off their table*" and

made comments about the failure of the claimant's business whilst the claimant remained calm. JB said that she was calm and it was the claimant that became angry with her and accused her of having poor management skills. JB denied making the comment about food off the table but said she had made a comment that the claimant had used the respondent's "*hard earned cash*" for her own clients. We find that both the claimant and JB became heated and used raised voices with each other during this meeting, and it became fractious on both sides. The claimant herself in her e mail sent on the evening of the meeting refers to what she was going to suggest "*before we got a bit heated*." We find that JB made the comment that the claimant was taking the respondent's hard earned cash rather than that she was taking food of their table, and in particular we rely on the e mail sent by the claimant on the evening of this meeting (page 154) where she refers to the comment about hard earned cash and does not include any reference to being accused of taking food from their table. This appears to be an example of the claimant embellishing her account of events in hindsight. The meeting on 22 November 2018 ended with the claimant stating that she wished to resign and that she wanted to have HR Dept involved as the respondent had not followed the correct process.

10.36. The claimant was sent an e mail from JB on 22 November 2018 (page 155) inviting her to attend a meeting on 26 November and that HR Dept would be involved. This e mail referred to the claimant having made a request for an exit strategy and asked the claimant to provide that in writing. The claimant responded to this e mail on 22 November 2018 (page 154) indicating that she felt the relationship had passed the point of repair. She repeated the same offer of working until 20 December 2018 , taking the first two weeks as holiday before going on maternity leave. She then made reference to receiving maternity pay at 90% for 6 weeks and then "*statutory of £145 a week after that*". The claimant then said she would resign after that. The claimant did not in this e mail make any reference to any agreement that had been in place as she now alleges that the respondent would pay her at full pay for six months, nor that she would return to work after six weeks. The claimant went on to state that the 123reg invoices were a mistake and she had not made the time to rebill clients. She also suggested she had told Jo at Rochesters that these were her debts. She suggested that the remaining balance owing should be written off (as a gesture of goodwill as she had earlier turned down a pay rise on the basis that the respondent would look after her when she was on maternity leave). She went on to say that she did not know why things had become so bad since she had gone on holiday.

10.37. A further e mail was sent on 23 November from JB to the claimant (page 159) setting out what would be discussed at the forthcoming meeting including the 123reg card issue, the provision of inaccurate cashflows and the failure to pay a critical supplier, Power Music. This e mail also mentioned overspend on the basis of the claimant's reporting and the poor financial shape of the respondent. It went on to inform the claimant that this was not a dismissal meeting.

Investigation meeting between claimant, AM, JB and SA on 26 November 2018

10.38. A number of matters were discussed during this meeting and the minutes were shown at pages 271-275. The claimant suggested that the main focus of the meeting had been her exit terms and that SA did not want to discuss or listen to what she had to say on other matters. The claimant had prepared a document in advance of this meeting but did not hand it in to the respondent during the meeting. SA, AM and JB have a different version of events which reflect the minutes taken by SA and say that a number of matters were discussed during that meeting primarily the 123reg issue and the cashflow and it was at the end of the meeting that the discussion moved to terms of exit. We accept this account of events as being consistent with the minutes and with each respondent's witness account of events. Although it is clear the claimant did not get the minutes of this meeting until later, she did not dispute the content of these when they were provided. Terms were discussed and agreed in principle during the meeting and the understanding was at the end of that meeting that those agreed terms would formalized by HR Dept and sent to the claimant. We do not and indeed should not explore the precise details of these discussions as they were without prejudice, save to say that e mails were exchanged about the terms of possible settlement. The ultimate outcome was that an agreement was not reached on an amicable exit.

10.39. The claimant's baby was born on 8 January 2019 and she commenced maternity leave the following day.

10.40. On 24 January 2019 the claimant confirmed by e mail to the respondent that the exit package offer that was then on offer was rejected and that she would be submitting a formal grievance (pages 212 and 215). As agreement had not been reached, the previous disciplinary investigation was then restarted (as previous e mails sent to the claimant had indicated would take place).

10.41. The respondent changed the claimant's e mail password after the decision had been made to recommence the disciplinary investigation. The claimant contended that this had been done when she commenced maternity leave on 8 January 2019. However the claimant was able to send an e mail to JB on 24 January 2019 so we find it must have been after this date. We accepted the evidence of AM that he did this because the claimant's e mail address was still the main point of contact for creditors and e mails were still being sent to her at this e mail address. He explained that he needed the new bookkeeper Anita to have access to these and that given that financial irregularities were now again under investigation, he was concerned that the claimant might delete e mails that were relevant for the business or the ongoing investigation. He said he was doing this to protect the business. AM discussed this with SA in a meeting on 25 February and a process was agreed to ensure that any personal e mails would be sent to the claimant without being opened by the respondent. A note of this meeting was shown on the HR Dept notes system at page 606. We accepted this evidence which we found to be honest and entirely consistent with the contemporaneous documents. The claimant was also asked to

return her laptop at this time by SA (see page 222).

Third alleged comment

10.42. The claimant having noticed on 26 January 2019 that she was unable to access her emails, sent a WhatsApp message to AM raising this (in reference to being unable to reply to work related matters). During a telephone conversation on 26 January 2019 the claimant alleges that AM made a comment to her along the lines of "*go and get another job, lots of women have to return to work straight after having a baby*". AM says that during this telephone call, there was a discussion about the settlement discussions that had been taking place. He said that the claimant made a comment about how the respondent should compensate her to which he responded by asking where was his and JB's compensation, as although the claimant could leave and get another job, he and JB were locked into the business as owners and were liable for the debts. The claimant having responded by saying she could not get another job (which AM took to mean because she had just had her baby) led AM to say *"Why not? Lots of women who have babies have to get jobs"*. He says that the claimant is taking a comment he did make, embellishing it and putting it completely out of context. We prefer AM's account about what was said during that conversation as it is internally consistent and makes more sense in the context of the overall conversation.

Request to return to work on 19 March 2019

10.43. On 19 March 2019 the claimant emailed SA to state that she should at this stage be back at work as her baby was 6 weeks old and it was agreed with the respondent that she would now be working from home and receiving her full wage. She asked whether she was now suspended from duty. SA responded to the claimant on 20 March 2019 stating that she was not aware of any written notification about maternity leave and her return to work. It went on to (correctly) inform the claimant of the statutory position that maternity leave starts on a date notified or by default the day after the baby is born and then runs for 52 weeks unless the employee notifies the employer that they wish to return early. She explained that if no return date is set that the claimant is required to given 8 weeks' notice of an early return to work. She explained that the claimant was not suspended as this was not necessary to mitigate any risks, as the claimant was on maternity leave. The claimant informed SA that she felt that there were e mails confirming the agreement for her return and this had been agreed with AM and JB. This was subsequently dealt with as part of the grievance appeal process.

Grievance and grievance appeal

10.44. On 6 February 2019 the claimant raised a grievance (page 227-8). This complained of a breach of trust and confidence in relation to the events that took place since she returned to holiday and that the claimant "*suspects discrimination*". It did not detail any of the comments the claimant says were made by AM. MG was appointed to hear the grievance and a grievance meeting was held on 12 February 2019 (the minutes of that meeting were at page 241). The claimant prepared a document in advance of that

meeting which was shown at page 236-239 and brought this with her to the grievance meeting. This document set out the claimant's timeline of all the events and in this document mentions the various comments she now relies upon as set out above. During the grievance meeting the claimant raised the issues in her timeline and also stated that she felt that she had been suspended as she was meant to be on full pay whilst she was on maternity leave as there was a verbal agreement that she would be looked after during maternity leave.

10.45. Following the grievance meeting, MG commenced an investigation into the claimant's grievance. She interviewed AM on 19 February 2019 (page 259-61) and JB on 26 February 2019 (page 283). Both gave a consistent account of events as the one given in their witness statement and evidence. The claimant was provided with an outcome to her grievance on 28 February 2019 confirming that he grievance was not upheld (letter from MG dated 28 February 2019 at page 299). The claimant appealed against the grievance outcome by a letter dated 5 March 2019 (page 309). The respondent in conjunction with HR Dept appointed OR to hear the claimant's appeal against her grievance as he was a manager at another branch and had not been involved in the process to date. A grievance appeal meeting was held on 19 March 2019. The claimant raised a number of points of appeal including that in the grievance outcome a finding had been made that the website was behind schedule (and this is why work was redirected) and this was not the case; that there was evidence that the comment made by AM was about pregnancy and that it had been agreed with the respondent that she would be paid in full for her 6 months maternity leave. She mentioned that there was an e mail where this agreement was addressed.

10.46. Following that meeting OR carried out further investigations including regarding the website timing and gathering evidence of WhatsApp messages. He also further investigated an allegation made by the claimant that there had been an e mail between AM and the accountant at Rochesters about her maternity leave and what she would be paid. The claimant was given access to her e mails with OR present on 2 April 2019 to see if she could find this e mail but she was unable to do so and at this point said to OR that she believed the e mail had been deleted. She emailed OR that evening (page 408) setting out details of what she said the e mail contained and that it was an e mail from E Checkley at Rochesters clarifying the cost of the claimant's maternity leave from around October 2018. OR investigated this and firstly asked AM to request the original e mail from the accountants. This was done on 3 April 2019 and Mr Checkley replied on 4 April 2019 to say that he did not have any such e mail. OR provided his appeal outcome on 18 April 2019 turning down the claimant's appeal and in particular confirming that he could find no evidence that the period of six months maternity leave on full pay had been agreed and that there was no evidence that an e mail had been sent nor had been deleted by anyone. We also are unable to find any cogent evidence to make any findings of fact that any such e mails were deleted.

Investigation and disciplinary process

10.47. On 7 March 2019 the claimant was sent a letter inviting her to an investigatory meeting regarding the disciplinary allegations against her (page 316). Prior to that meeting SA had been assisting AM to carry out investigations into matters that had arisen with the claimant. This included allegations that an apparent overpayment of wages had been made to the claimant and an allegation that the claimant had failed to pay over some monies received for a Sports Relief event they organized to that charity. AM also discovered information about the Hurst Media issues referred to above. The letter referred to these additional matters as well as the issue regarding cashflow forecasts and 123reg payments. The meeting took place on 13 March 2019 and was attended by AM, JB and SA. The minutes were shown at pages 449-457. This was a detailed meeting and many issues were discussed and the claimant gave her explanation on each of the matters raised. Following that meeting further investigations took place and a final investigation report was produced by SA on 8 April 2019. This concluded that there was sufficient evidence to convene a disciplinary hearing to consider 5 allegations against the claimant, namely the presentation of grossly inaccurate cashflow forecasts, the overpayment of £1000 to the claimant outside of payroll, the failure to pay creditors on time, the failure to pay monies collected to sports relief and the unauthorised use of the respondent's card. SA recommended that the cashflow allegation and the allegations re failure to pay creditors and Sports relief were allegations of gross negligence and the use of the card and overpayment of £1000 were allegations of gross misconduct. The claimant was invited to a disciplinary meeting by a letter dated 9 April 2019 (page 507). The claimant was given further access to her e mails on request in advance of the disciplinary hearing. In advance of the meeting the claimant also submitted further information and a letter setting out her view on the investigation (page 527)

10.48. The disciplinary hearing was chaired by AG with AM in attendance to present the investigation report. The minutes of the hearing are at pages 543- 572. Each of the allegations made against the claimant was discussed in detail and the claimant was given the opportunity to give her account of events on each allegation in detail. AG gave evidence of her findings on the various disciplinary allegations which we accepted entirely. She found that the claimant had used the respondent's card for her own business use and the claimant acknowledged this had been done (albeit in error). She found that the claimant became aware of this in March or May 2018 and did nothing about this. On this basis she upheld this allegation of gross misconduct as she had used the respondent's credit card without their knowledge for their own benefit and this was a serious matter (although she felt that the claimant did not appreciate the gravity of this allegation). AG concluded that this went to the heart of the employment relationship which is about trust and of itself this matter could result in summary termination. She also upheld the allegation of gross misconduct around the overpayment of £1000 finding that the claimant was aware this was an overpayment and not a bonus (as she knew that the respondent was not out of overdraft) and had not raised this with the respondent with a view to reimbursing this sum when the condition that it was a bonus (i.e. that the respondent was out of overdraft) was not met. AG did not uphold the allegation of gross negligence as regards to cashflow forecasts as she felt that she was unable to draw a conclusion as to whether the claimant was responsible entirely for

this. She upheld the allegation of gross negligence as regards to the failure to pay invoices to Hurst Media and Power Music, having not made the director's aware of issues with non-payment and the threat of legal action and so had failed to carry out her duties. She also found that the failure to pay the sums to Sports relief which the claimant admitted had fallen off her radar was also an act of gross negligence. She confirmed it was her recommendation that summary dismissal was appropriate.

10.49. This recommendation was discussed with AM on 6 May 2019 and he confirmed that he accepted the recommendation in its entirety and decided to dismiss the claimant for the reasons AM had given. When asked whether her decision to uphold the allegations and recommend dismissal was influenced by the respondent AG categorically denied that this was the case and said she arrived at her own conclusion. The outcome letter was prepared and sent to the claimant on 7 May 2019 (page 573-578). The claimant was given a right to appeal against the outcome but did not do so.

The Relevant Law

Automatically unfair dismissal, unlawful detriment for reasons which relate to pregnancy, maternity or childbirth and unlawful deduction from wages complaints

11. The relevant sections of the ERA we considered were as follows:

13 Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—
(a)the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
(b)the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—
(a)in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
(b)in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

47C Leave for family and domestic reasons.
(1) An employee has the right not to be subjected to any detriment by any act,

or any deliberate failure to act, by his employer done for a prescribed reason.

(2) A prescribed reason is one which is prescribed by regulations made by the Secretary of State and which relates to—

(a) pregnancy, childbirth or maternity,

94. The right

(1) An employee has the right not to be unfairly dismissed by his employer.

95. Circumstances in which an employee is dismissed.

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if)—

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or]

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

99. Leave for family reasons.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason or principal reason for the dismissal is of a prescribed kind, or

(b) the dismissal takes place in prescribed circumstances.

(2) In this section " prescribed " means prescribed by regulations made by the Secretary of State.

(3) A reason or set of circumstances prescribed under this section must relate to—

(a) pregnancy, childbirth or maternity,

(b) ordinary, compulsory or additional maternity leave,

Pregnancy discrimination and harassment complaints (ss 18 and 26 EQA)

12. The relevant sections of the EQA applicable to this claim are as follows:

18 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).

26 Harassment
(1)A person (A) harasses another (B) if—
(a)A engages in unwanted conduct related to a relevant protected characteristic, and
(b)the conduct has the purpose or effect of—
(i)violating B's dignity, or
(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a)the perception of B;
(b)the other circumstances of the case;
(c)whether it is reasonable for the conduct to have that effect."

136 Burden of proof
(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.

13. The relevant authorities which we have considered are as follows:

Anya v University of Oxford & Another [2001] IRLR 377 **-** it is necessary for the employment tribunal to look beyond any act in question to the general background evidence in order to consider whether prohibited factors have played a part in the employer's judgment. This is particularly so when establishing unconscious factors.

Igen v Wong and Others [2005] IRLR 258 and Madarassy v Nomura International PLC [2007] IRLR 246.

The employment tribunal should go through a two-stage process, the first stage of which requires the claimant to prove facts which could establish that the respondent has committed an act of discrimination, after which, and only if the claimant has proved such facts, the respondent is required to establish on the balance of probabilities that it did not commit the unlawful act of discrimination. In concluding as to whether the claimant had established a prima facie case, the tribunal is to examine all the evidence provided by the respondent and the claimant.

Nagarajan v London Regional Transport [1999] IRLR 572, HL,-The crucial question in every case was, *'why the complainant received less favourable treatment … Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?'*

Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830, [2001] ICR 1065, HL, - The test is what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously was their reason? Looked at as a question of causation ('but for …'), it was an objective test. The anti-discrimination legislation required something different; the test should be subjective: *'Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.'*

Bahl v Law Society [2003] IRLR 640 – "*where the alleged discriminator acts unreasonably then a tribunal will want to know why he has acted in that way. If he gives a non-discriminatory explanation which the tribunal considers to be honestly given, then that is likely to be a full answer to any discrimination claim. It need not be, because it is possible that he is subconsciously influenced by unlawful discriminatory considerations. But again, there should be proper evidence from which such an inference can be drawn. It cannot be enough merely that the victim is a member of a minority group. This would be to commit the error identified above in connection with the Zafar case: the inference of discrimination would be based on no more than the fact that others sometimes discriminate unlawfully against minority groups*."

Richmond Pharmacology V Miss A Dhalliwell [2009] ICR 724. There are two alternative bases of liability in the harassment provisions, that of purpose and effect, which means that the respondent may be held liable on the basis that the effect of his conduct has been to produce the prescribed consequences even if that was not a purpose, and conversely that he may be liable if he acted for the purposes of producing the prescribed consequences but did not, in fact, do so. A respondent should not be held liable merely because his conduct has had the effect of producing the prescribed consequence. It should be reasonable that the consequence has occurred and that the alleged victim of the conduct must feel that their dignity has been violated or that an adverse environment has been created. Therefore, it must be objectively decided whether or not a reasonable person would have felt, as the claimant felt, about the treatment in question, and the claimant must, additionally, subjectively feel that their dignity has been violated, etc.

Pemberton v Inwood [2018] EWCA Civ 564. Underhill J "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b)).

Submissions

14. The claimant made oral submissions and Ms Clarke produced a written skeleton argument (referring to additional authorities) and supplemented this with oral submissions. We have considered all of these carefully.

Conclusions

EQA, section 18: discrimination because of pregnancy/maternity; EQA section 26 Harassment related to pregnancy/maternity; ERA section 47C Detriment because of maternity pregnancy

15. It is clear from the claimant's evidence at the Tribunal hearing that she believes she has been discriminated against because she was pregnant and took maternity leave. For us to reach the conclusion that the claimant has been subjected to discrimination, there must be evidence, although it is of course possible for that evidence to be by way of inferences drawn from the relevant circumstances. A belief, that there has been unlawful discrimination, however strongly held is not enough.

16. All of the alleged treatment complained of took place in the protected period i.e when the claimant was either pregnant or when she was on maternity leave. In order to decide the complaints of pregnancy/maternity discrimination under section 18, we had to determine firstly whether the respondent subjected the claimant to the unfavourable treatment complained of and then go on to decide whether any of this because of pregnancy/maternity.

17. We applied the provisions of the two stage burden of proof test referred to above. We first considered whether the claimant had proved facts from which, if unexplained, we could conclude that the treatment was because of pregnancy/maternity. This would shift the burden of proof over to the respondent. The next stage was to consider whether the respondent in question had proved that the treatment was in no sense whatsoever because of pregnancy/maternity.

18. The claimant also brings each of these complaints as complaints of harassment under s26 EQA. The test for this claim is different, we firstly need to decide whether the claimant was subject to unwanted conduct of the type described; then determine whether the conduct was related to pregnancy/maternity. We are then required to consider whether the conduct had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, having regard to: (a) the

perception of the claimant; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.

19. The claimant also alleges that the comments made by AM (set out at paragraph 6 (a), (b) and (g) above) were acts of unlawful detriment contrary to section 47C ERA. We again had to determine whether any such comments, if made, were firstly detriments and then go on to consider whether the reason for making such comments was because of pregnancy and maternity.

20. We also had to determine whether the allegations were presented within the time limits set out in 123(1)(a) & (b) of the EQA and if they weren't whether time should be extended on a "just and equitable" basis. We have considered first the substance of the complaints, before returning to the issue of time limits and whether we have jurisdiction to consider the complaints which we deal with globally at the end. We set out below our conclusions on each of these questions for each allegation listed in the List of Issues above with reference to each paragraph number where the allegation is listed:

a. In September/October 2018 AM made an adverse comment when discussing the marketing plan for January he said "but you won't be here will you? For whatever reason you have decided to start a new family and leave us at the busiest time of the year".

21. We found as a fact (paragraph 10.19 above) that AM did not make the comment complained of as alleged by the claimant. Therefore as this is not made out on the facts, we do not need to go on to consider whether this was detrimental treatment and whether pregnancy/maternity was the reason nor whether the test for harassment is met. This allegation of pregnancy/maternity discrimination contrary to section 18 EQA; pregnancy/maternity harassment contrary to section 26 EQA and detrimental treatment on the grounds of pregnancy contrary to section 47C ERA does not succeed and is dismissed.

b. In October 2018 AM said to the claimant prior to her taking annual leave: "I don't understand why you are taking holiday when we have so much to do, especially when you go on maternity leave in January."

22. We found as a fact that AM did not make the comment complained of in the way the claimant suggests (paragraph 10.23 above). However we did find that AM did complain about the claimant taking holiday in October 2018 (albeit he did not refer to her maternity leave whilst doing so). As the factual allegation is found at least in part, we have therefore gone on to determine whether the comment about the claimant taking holiday at the time was made because the claimant was pregnant or on maternity leave. We conclude that it was not. The claimant has not shown a prima facie case that AM made this comment because of pregnancy/maternity to even shift the burden of proof to the respondent to explain that it was not. We conclude this largely because our findings of fact about this above provide a clear reason for the comments being made (paragraphs 10.23 and 10.24). The explanation of AM as to why he complained about the claimant taking holiday was also convincing and eminently plausible and was consistent with the other evidence we heard about the website from both the respondent's witnesses and also the evidence gathered during the investigation and disciplinary process. Therefore, as the

claimant has not proved primary facts from which the Tribunal could conclude that the treatment was because of pregnancy, we do not find that this shifts the burden of proof to explain the reason for the treatment. It is clear from the bare facts found above what the reason for the comment was. Even if the burden had shifted it, the respondent has clearly discharged that burden. The allegation of pregnancy and maternity discrimination fails.

23. As we do not conclude that the comment related to pregnancy, maternity of childbirth, the claimant's allegation of harassment is also unsuccessful. It is a key element of a harassment complaint that the unwanted conduct has to relate to the protected characteristic, here the claimant's pregnancy and maternity. As it did not, the claim for harassment fails. Similarly the complaint of unlawful detriment contrary to section 47C ERA also fails as the reason for any such comment being made was not related to pregnancy, maternity or the taking of maternity leave.

c. On return from holiday and after being hospitalised for pleurisy and time off sick, the claimant returned to the office on 12 November 2018 and found that she had been demoted and staff were not speaking to her.

24. Our findings of fact above (paragraph 10.31) were that the claimant was not demoted on her return to the office on 12 November 2018. The duties which she was no longer performing in relation to accounts were well known to the claimant as she knew a book keeper would be starting to take over his role. We accepted the respondent's contention that they also asked staff not to bother her with queries in order that the claimant could focus on the key task of ensuring the website was delivered on time. We did accept that there may have been a different and perhaps hostile atmosphere once the claimant returned from her holiday and sickness in particular from AM and JB. However we conclude as per our findings of fact that this primarily arose because of what the respondent had discovered during the claimant's absence, in particular the issues with cashflow and the unauthorised use of their credit card. There is no evidence and it is entirely lacking in credibility that any such hostility was in fact because the claimant was pregnant. The claimant has not satisfied the first stage of the two stage burden of proof of showing facts from which the Tribunal could conclude that the treatment was because of pregnancy, we do not find that this shifts the burden of proof to explain the reason for the treatment. It is clear from the facts found above what the reason was. Even if the burden had shifted it, the respondent has discharged it. This allegation of pregnancy and maternity discrimination fails.

25. As we do not conclude that the comment related to pregnancy, maternity of childbirth, the claimant's complaint of harassment also fails and is dismissed.

d. On 19 November 2018 the claimant was accused of theft

26. Our findings of fact above were that the claimant was not accused of theft during the meeting on 19 November 2018. However it is clear that the allegation that she had used the respondent's card without their authority or knowledge was put to her so we have gone on to consider whether the reason this was done was due to her pregnancy or maternity. This is clearly not the case. Our findings of fact above are clear on this. The respondent discovered

that the card was being used when the claimant was on holiday and when the new book keeper started. This was, understandably, concerning to them and they rightly put this allegation to the claimant when they met with her. This was clearly the reason this was done and the claimant is not near in satisfying the first stage of the two stage burden of proof in showing that pregnancy could be the reason for the treatment. The burden does not pass to the respondent to explain the treatment (although we are entirely satisfied that they have done so in any event). The claim for maternity discrimination under section 18 EQA fails and because the treatment was not related to pregnancy/maternity the claim for harassment under section 26 EQA also fails.

e. On 26 November 2018 disciplinary proceedings were commenced against the claimant;

27. Our findings of fact above show that although an initial investigatory interview was held with the claimant on this date (see paragraph 10.38), the respondent did not commence disciplinary proceedings until later on, in March 2019 when she was invited to a formal investigatory interview and indeed was not subsequently invited to a disciplinary hearing until 9 April 2019 (see paragraph 10.47). We have however gone on to consider whether the decision to commence disciplinary proceedings against the claimant was related to her pregnancy and maternity. Applying the two stage burden of proof we were not satisfied that the claimant has shown facts which suggest that this was because of her pregnancy or maternity. We accepted the evidence of the respondent's witnesses was that the reason disciplinary proceedings were commenced was because of the matters that had been discovered during the investigation namely the allegations inaccurate cashflow allegation, the failure to pay creditors/suppliers, the failure to pay sports relief money, the unauthorised use of the company card and the overpayment of £1000. These were all perfectly valid concerns for the respondent to have and there was sufficient and extensive evidence to support the commencement of disciplinary proceedings against the claimant. The respondent would have satisfied the burden of proof second stage had it passed to them. We conclude that the commencement of disciplinary proceedings was not related to or because of pregnancy or maternity and so the complaints of pregnancy/maternity discrimination and or pregnancy/maternity related harassment fail and are dismissed.

f. Following the birth of her child on 8 January 2019 maternity leave commenced; the claimant's passwords were changed and she was required to hand over her laptop;

28. Our findings of fact above (paragraph 10.41) show that the claimant's password was changed and she was required to hand over her laptop on or around 25 January 2019. However we were not satisfied that the claimant has adduced sufficient evidence to show that this was related to her pregnancy or maternity. This action was taken once it became apparent that the respondent and the claimant would not be able to reach an amicable settlement on the claimant's exit. The respondent had taken a decision to instigate an investigation and potentially take disciplinary action against the claimant for the maters that had already come to light. We entirely accepted the explanation of AM that this was done in order to protect the business; to prevent the deletion of any relevant e mails by the claimant and to ensure the new book keeper had access to all

necessary business information. Other than the proximity to the birth of her child, the claimant has not been able to show any connection or link at all to her pregnancy and we were entirely satisfied that this was not done for a reason related to pregnancy or maternity. Therefore these allegations of both pregnancy discrimination and harassment are not successful and are dismissed.

g. On 26 January 2019 AM told the claimant to "*go and get another job, lots of women have to return to work straight after having a baby*"

29. Our findings of fact at paragraph 10.42 above are that a comment of this nature was made by AM (albeit not exactly as alleged by the claimant). However our findings support the respondent's contention that these comments have been taken entirely out of context by the claimant. There is clearly a mention of women returning to work after having a baby and AM admits he made a statement about women having to return to work after childbirth. However this was made in the context of the discussion about compensation and the fact that the claimant was able to walk away from the business if it failed whereas AM and JB were not able to do this as its owners. He made the point when the claimant suggested that she could not work, that many women did return to work straight after having a baby. He did not tell the claimant to go and get another job but was making a factual statement that many women do return to work straight after they had a baby. Accordingly whilst the comment references maternity leave and pregnancy, it is in no way unfavourable or detrimental treatment for AM to have made this comment in this context. It is factual comment about the situation many women are in when they return to work after having a baby. Simply because the comment referenced pregnancy and maternity does not make this an act of discrimination, harassment or unlawful detriment as the claimant seems to suggest. For these reasons we do not conclude that this amounted to an act of pregnancy discrimination, an act of harassment or an act of detrimental treatment so the allegation made on the basis of these three complaints are therefore dismissed.

h. The claimant was denied the right to return to work on 19 February 2019 as had been previously agreed by the directors AM and Ms Belcher;

30. We firstly already found that there was no agreement between the claimant and either AM or JB that the claimant would return to work on 19 February 2019 (see paragraph 10.17). Therefore this allegation is not made out as pleaded. The claimant did make a request to return to work or at least intimated that she wished to return to work in her e mail of 19 March 2019 (see paragraph 10.43). However the claimant was not denied the right to return to work but was informed that in accordance with the legislation she was required to give 8 weeks' notice if she wanted to return from maternity leave early. This was an entirely appropriate response to the question raised and does not amount to less favourable treatment or a detriment in any way at all. This allegation of pregnancy and maternity discrimination also fails. As the conduct relied on as an act of harassment did not take place, the claim goes no further and this complaint of harassment is also dismissed.

i. The respondents deleted e mails which evidence the agreement that she would return to work on 19 February on contractual pay.

31. We have not been able to make any findings of fact that the conduct alleged by the claimant has not been shown to have taken place (see paragraph 10.46). No facts have been proved by the claimant and we are unable to draw any adverse inferences from the surrounding factual matrix to suggest that any deletion of e mails as alleged took place. We accept the contention that it is highly unlikely that an e mail of this nature (which may not have been conclusive in any event on the issue in question) would have been deliberately deleted by a professional accountant upon the respondent's request. This allegation of pregnancy and maternity discrimination and harassment fails on the facts.

32. For completeness we should not that because of our conclusions above on the claimant's harassment claims it was not necessary for us to go on to answer the remaining questions as to whether the conduct was unwanted, what its purpose or effect is. In any event our view is that none of the conduct could be said to have the purpose that is required and we also doubt that given the findings of fact and the evidence of the claimant even at its highest, none of the allegations could even have said to have had this effect.

Automatic Unfair dismissal claim and allegation of pregnancy discrimination

33. The question we have to determine is whether reason or principal reason for dismissal that the claimant relating to pregnancy, childbirth or maternity or ordinary, compulsory or additional maternity leave. The burden of proof is not upon the claimant to prove this but the employee must adduce some evidence to raise the issue as to whether the reason is connected with pregnancy. However we have with any unfair dismissal claim have to consider whether the employer has established the reason they rely upon. The respondent contends that it dismissed the claimant for misconduct/negligence and points to the matters set out in the dismissal letter as constituting those acts of misconduct negligence. The same question needs to be determined for the allegation that the claimant's dismissal was an act of pregnancy discrimination under s 18 EQA.

34. The dismissal decision was made by AM on the recommendation of AG who conducted the disciplinary hearing on behalf of the respondent (see paragraphs 10.48 and 10.49). We were entirely satisfied that both AM and AG genuinely believed that the claimant had committed the acts of misconduct and negligence and that her actions had undermined the trust and confidence inherent in the employment contract. The suggestion that the belief held by both AM and AG had been deliberately concocted to conceal the fact that the claimant was being dismissed because of pregnancy, and that all the allegations were exaggerated as a ruse to get rid of the claimant because she was pregnant and going on maternity leave simply not stand up to scrutiny. AG gave entirely clear and convincing evidence at the hearing as to what she had concluded at the time of dismissal and there is no evidence which casts any doubt as to the genuineness of this belief. We can in no way conclude that AG was in any way influenced by the claimant's pregnancy or maternity leave in making her decision to dismiss. AM followed the recommendation of AG entirely and dismissed the claimant for the reasons provided by AG. The matters which led to the claimant's dismissal were extremely serious allegations. The claimant was found to have knowingly allowed the

respondent's credit card for her own personal benefit without their knowledge or consent. Although the initial use of this card may have been in error, the claimant subsequently became aware of this and allowed the payments to continue to be taken. The claimant admitted the underlying facts of this allegation but seems to suggest that this is just a minor infraction which at most merited a warning. This Tribunal does not agree with this suggestion and concludes that this is a serious matter involving the trust which is at the heart of the employment relationship. The allegations of gross negligence in respect of non-payment of suppliers and Sports relief are also extremely serious matters. The respondent had been threatened with legal action which the claimant failed to inform its directors of which is a serious matter. The non-payment of charity monies received by the claimant on behalf of Sports Relief is also a highly significant matter which could have caused huge reputational damage to the respondent had this become known at the time. The claimant's failure to appreciate the seriousness of the matters she was accused of is telling.

35. The claimant has failed to produce sufficient evidence that her dismissal was related to her pregnancy. We refer to our findings of fact and conclusions on the comments alleged to have been made by AM above which seem to form the basis for the claimant's suggestion that her dismissal was pregnancy related. It is simply not credible given the facts we have found above that the respondent changed its view of the claimant's pregnancy from being supportive and accommodating at the outset to being openly hostile to it on the claimant's return from holiday. We conclude that the reason for the change which ultimately led to the claimant's dismissal was not her pregnancy or her impending absence on maternity leave, but rather the discovery whilst she was on holiday of the issues of inaccurate cashflow forecasts, non-payment of suppliers and, most significantly, the unauthorised use of the respondent's debit card. The last matter in particular involved a significant breach of the high degree of trust the respondent had in the claimant as an employee. That we conclude was ultimately the reason the claimant was dismissed and not for any reason related to her pregnancy.

36. The claim against the respondent for unfair dismissal is therefore dismissed. We do not find that the claimant was dismissed because of pregnancy or maternity and her allegation of pregnancy/maternity discrimination under section 13 EQA is also dismissed.

Time limits / limitation issues

37. Although none of the claimant's complaints have been held to be successful, we have also considered the issue of limitation as this was identified on the List of Issues. The claimant presented her claim on 10 April 2019. The early conciliation period was between 11 February and 11 March 2019. Given these dates, all of the allegations referred to above that took place before 12 November 2018 may have been presented out of time unless they formed part of a continuing act ending with an act of discrimination presented in time. Since we have not found any of the complaints to be well founded on their merits, these cannot form part of a continuing act of discrimination with any later acts.

38. The Tribunal, therefore, only had jurisdiction to consider allegations if it is just and equitable to do so in all the circumstances. Considering the relevant law, we concluded it would have been just and equitable to extend time to consider these and accordingly we determined all such allegations on their merits as set out above. As the evidence had all been collated and prepared by the respondent and presented and heard at the time we were considering this issue, it caused no prejudice to the respondent for us to determine all allegations.

Unlawful deductions from wages

39. The remaining claim is whether the respondent, in breach of an agreement that the claimant would return to work after 6 weeks and would receive full pay for 6 months, made unauthorised deductions from the claimant's wages in accordance with ERA section 13 by refusing her the right to return to work on 19 February 2019 and pay her for the period thereafter. To address that question we refer to our findings of fact at paragraph 10.17 above and in particular that there was no such agreement that the clamant would return to work after 6 weeks and receive full pay during her first 6 months of maternity leave. Therefore as no wages were properly payable to the claimant in respect of this period her claim for unlawful deduction of wages is therefore dismissed.

Section 38 ERA determination

40. The claimant also complains that she was not issued with a contract of employment in writing and so invites the tribunal to make an award of compensation under section 38 ERA. It is clear that the claimant did not have a written contract of employment (see paragraphs 10.3 and 10.7 above). Had the claimant been successful in any of her complaints it is likely that the Tribunal would have made an award and this would have been at the maximum amount of 4 weeks pay. The claimant should have been issued with a written contract as this is a fundamental requirement of the employment relationship and a statutory entitlement. It matters not of the seniority of the employee or whether they themselves were involved in drafting those contracts for other employees. The respondent is a small employer, but it has HR support from HR Dept and there is no reason why written contracts should not have been in place. The informality of the relationship does not excuse this failure. However we are unable to make an award of this nature to the claimant because none of the other claims she has made have been successful. This is not a freestanding claim but one which only arise off the back of other successful statutory claims and so there is no provision which allows us to make an award to the claimant.

Employment **Judge Flood**
Date: 28 September 2021