



EMPLOYMENT TRIBUNALS

Claimant: Mrs N. Ramsay

Respondent: Root2Shoot Executive Lawncare Limited

Heard at: East London Hearing Centre (by Cloud Video Platform)

On: 30 September 2021 and in chambers on 28 October 2021

Before: Employment Judge Hallen,
Members: Ms. J. Forrest
Mrs. F. Betts

Representation

Claimant: In person
Respondent: Mr. R. Taylor- Solicitor

RESERVED JUDGMENT

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V by Cloud Video Platform. A face-to-face hearing was not held because the relevant matters could be determined in a remote hearing.

The unanimous judgment of the Tribunal is that: -

1. The Claimant's claim for direct marriage discrimination contrary to section 13 Equality Act 2010 ('EA') is made out and succeeds.
2. The Claimant's claim for pregnancy and maternity discrimination pursuant to section 18 EA is not made out and is dismissed.
3. The Claimant's claim for victimization pursuant to section 27 EA is not made out and is dismissed.
4. The Claimant's claim for unauthorized deductions from wages pursuant to section 13 Employment Rights Act 1996 ('ERA') is made out and succeeds.
5. The Claimant is awarded compensation in the amount of £10,568.00 net after tax has being deducted by the Respondent in respect of her claim for unauthorized deductions from wages and £5,000 for injury to feelings

in respect of her claim for direct marriage discrimination making a total award of £15, 568.00.

REASONS

Background and Issues

1. The Claimant was employed as an Administrative Manager by the Respondent from 1 August 2015 and was also the company secretary in the business which was owned by her husband at the time, Mr. Stephen Ramsay who was the Managing Director and principal shareholder.
2. In her Claim Form received by the Tribunal on 16 December 2019, she brought complaints of pregnancy or maternity discrimination and marriage discrimination. She also made a complaint of unlawful deduction of wages.
3. The Claimant was employed by her then husband Mr. Ramsay in the business, Root2Shoot Executive Lawncare Ltd. It was her case that she was treated less favourably on the grounds of marriage when she was removed from the business on 20 September 2019, her marriage to Mr Ramsay having broken down on 19 September. It was her case that on 20 September she was asked for the keys to the office and told by text message that she was no longer required at the business.
4. The Claimant was pregnant, and her case was that she had previously notified the Respondent of her pregnancy and of her intention to start maternity leave on 1 November 2019. Due to being kept out of the office from 20 September, it was her case that she began her maternity leave that day.
5. It was the Claimant's case that the Respondent firstly, disputed her right to maternity pay and secondly, deducted her pay during her maternity leave and that these were both incidents of pregnancy/maternity discrimination.
6. The Claimant's case was that she was paid a net salary of £1,500 on the 28th day of every month for over 12 months, while working for the Respondent and that was her salary. On 28 September, the first payday after the marriage breakdown, the Respondent deducted £250 from her net salary. The Respondent continued to make deductions from her salary from September 2019 until October 2020 when she left the business to take up alternative employment.
7. The parties attended a preliminary hearing on 18 June 2020 at which Employment Judge Jones identified the claims and issues to be determined by this Tribunal at this substantive hearing which was to decide the liability and remedy issues.
8. The first claim was for direct marriage discrimination pursuant to section 13, Equality Act 2010. The Claimant alleged that the Respondent's Managing Director treated her less favourably because of the breakdown of their marriage. The Tribunal had to decide if the Respondent did the following things: take the Claimant's keys to the office on 19 September 2019; inform the Claimant by text that she was 'no longer needed'; cease to pay the Claimant's car insurance payments; take away the Claimant's laptop given to her for work

purposes; stop the fuel card given to her for business purposes; stop paying for the mobile phone given to her for work purposes; reduce the Claimant's pay by £250 per month and then by greater amounts from 28 March 2020 until she left her employment in 1 November 2020 to take up another job as a Financial Consultant.

9. The Tribunal had to determine whether this was that less favourable treatment? The Tribunal had to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal would have to decide whether she was treated worse than someone else would have been treated. The Claimant said that she was treated worse than other members of staff or another administrator would have been if they had been working for the Respondent.

10. The second claim was for pregnancy and maternity discrimination pursuant to the Equality Act (EA) section 18. The Tribunal had to decide whether the Respondent treated the Claimant unfavourably by doing the following things: denying her entitlement to maternity pay and reducing her pay during her maternity leave period. The Tribunal had to decide if the unfavourable treatment took place in a protected period. It was the Claimant's case that the Respondent had treated her unfavourably during her maternity leave period. The Respondent disputed this. If not did it implement a decision taken in the protected period? Was the unfavourable treatment because of the pregnancy? Alternatively, was the unfavourable treatment because the Claimant was on compulsory maternity leave / the Claimant was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave?

11. The third claim was for victimisation pursuant to the EA section 27. The Tribunal had to decide: Did the Claimant do a protected act as follows: issue proceedings in the employment tribunal on 16 December 2019? Did the Respondent do the following things: reduce her salary further, by totals below her contractual net wage of £1,500 and by doing so, did it subject the Claimant to detriment? If so, was it because the Claimant did a protected act? The Claimant asserted that the protected act was the filing of the Claim Form on 16 December 2019.

12. The final claim was for unauthorised deductions from wages under section 13 Employment Rights Act 1996 (ERA). The questions for the Tribunal were to determine if the wages paid to the Claimant at the end of September, October, November, December 2019, January, February, March, April, May, June, July, August, September and October 2020 were less than the wages she should have been paid? Was any deduction required or authorised by statute? Was any deduction required or authorised by a written term of the contract? Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made? Did the Claimant agree in writing to the deduction before it was made? How much is the Claimant owed?

13. With regard to remedy the Tribunal had to decide how much should the Claimant be awarded in respect of quantifiable losses and injury to feelings if her discrimination complaints were upheld?

14. The Claimant in her witness statement raised for the first time a claim of unfair dismissal. It was explained to her that this claim was not raised in the Claim Form, at the preliminary hearing nor had any application been made to amend the claim. The Claimant agreed that she would not make such an application to amend her claim last minute at the

hearing and wished only to proceed with the claims outlined above and outlined by Judge Jones in the preliminary hearing on 18 June 2020.

15. The Tribunal had an agreed bundle of documents in front of it. The Claimant gave evidence under oath and made herself available for cross examination and questions from the Tribunal. She had prepared a written witness statement. The Respondent was represented the hearing by its legal adviser, but its Managing Director, Mr. Stephen Ramsay chose not to give sworn evidence to the Tribunal or be subject to any questions from the Claimant or the Tribunal. The Respondent also chose not to cross examine the Claimant. The Tribunal was satisfied that the Respondent being professionally represented understood the consequences of this. The Respondent asked the Tribunal to read the witness statement of Mr. Ramsay which the Tribunal agreed to do. The Tribunal placed little weight to the statement of Mr. Ramsay because he did not give sworn evidence to the Tribunal nor was he subject to cross examination or questions from the Tribunal.

Facts

16. The Claimant started working for the Respondent on 1 August 2015 and worked 16 hours per week on a term time basis. At the time her salary equated to a net pay of £1200 per calendar month. The business was owned by Stephen Ramsay the Claimants husband. He was the sole shareholder. When Mr. Ramsay referred to “The company” or “The business”, these terms referred to himself.

17. In her role the Claimant over saw the administrative duties of both Root2Shoot Executive Lawn Care and Root2Shoot Greenkeeping Services both companies were owned by her husband. She was also appointed company secretary. During her employment, the office moved from the couple’s home into a commercial unit, to facilitate the expansion of the company. At the time of the Claimants departure from the company in November 2020 it employed the Managing Director, the Claimant, an assistant administrator and four crew members who had vans provided to them. The business of the Respondent was lawn care for residential and commercial clients. The Respondent employed an administrative assistant to support the Claimants expanding workload. The Claimant fully trained the new member of staff and built systems and processes to support the growing customer base. During her employment, her first maternity leave with the Respondent commenced in July 2016. The couple’s daughter, their third child, was born on 22 July 2016. The Claimant took 12 months maternity leave and was paid her full salary for those 12 months rather than statutory maternity pay. Mr Ramsay admitted in his statement that he was being a good and supportive husband and paid full wages to the Claimant rather than statutory maternity pay. In this regard the Tribunal found as a fact that even though the Claimant did not have a written contract of employment, the Respondent due to the closeness of the relationship between the Managing Director and the Claimant provided her with a paid phone for business and personal use, a fuel card for business and personal use and insured her vehicle for business and personal use. In addition, the Tribunal found as a fact that but for the couples marital difficulties in September 2019, it was very likely that the Respondent would have permitted the Claimant to take a year off work on full pay of £1500 net per month for the time she was off on maternity leave with the couples fourth child and was ready to return to work after it. This would have been for the period from September 2019 until the end of October 2020.

18. In October 2018 the Claimant’s monthly salary increased from £1200 net per calendar month to £1500 net per calendar month. The couple found out that they were

expecting their fourth child in March 2019. This was a planned pregnancy, and the baby was due on 20 November 2020. To facilitate her maternity leave, the Administrative Assistant had agreed to increase her hours and spread her working week across more days. The Claimant was in the office as per her weekly rota. Her 16 hours were spanned across three days. She worked Monday, Tuesday and Thursday. This meant between she and her assistant who worked Tuesday, Wednesday, and Friday, the full week (Monday – Friday) was covered and gave her a day where the two crossed over.

19. The Respondent's Managing Director and the Claimant separated on Wednesday 18 September 2019 when the Claimant was 31 weeks pregnant. The Claimant had questioned her husband Stephen Ramsay, over 3 receipts she had found. Each for £179.99 totalling £539.97 spent on online adult entertainment services within a 23 hour period.

20. On Thursday 19 September, the Claimant's keys had been taken from her by Mr. Ramsay. On her personal set of keys apart from her personal keyrings there were her house key, her work key, and her car fob. She was left with her car fob, but her house and work key had both been taken without her knowledge or consent. The house key was returned to her by Mr. Ramsay but not the office keys.

21. On Thursday 19 September the Claimant woke up to text messages and WhatsApp messages on her phone telling her not to come into work as she was not needed. These messages were full of abuse. Mr. Ramsay in his statement admitted sending these inappropriate messages to the Claimant and confirmed that he had told her not to come in to work. In the message, Mr. Ramsay said, *'You are not needed, not like you did anything anyway,.....Why are you still working. I don't want you having anything to do with it anymore..... I would rather fold my business than give you anything from them.....After everything you have done over the past couple of years you don't deserve anything and if you try I will make sure I have nothing to give you.'*

22. On Thursday 19 September 2019 the Claimant continued to receive calls and messages from the Respondent's employees who were completely unaware of the situation relating to the couple's marital problems. They were contacting her to ask specific work-related questions regarding their day or customers. The Claimant replied to any question she was asked in a professional manner as she would have always done. On the same day the Claimant was then sent more messages from Mr. Ramsay which were aggressive and inappropriate and related to the breakdown of the marriage.

23. Over the days following the separation the Claimant received many messages via Whatsapp and text regarding her employment from Mr. Ramsay. These messages were threatening and abusive. This conduct did not only occur in written communication via messages but also occurred in person.

24. On Friday 20 September 2019 the Claimant's fuel card which was supplied and paid for by the Respondent for personal and private use was stopped by the Respondent and this was due to the couple's marital problems. The Claimant's phone was also stopped. In a message, Mr. Ramsay said, *'Your fuel card will not be working from today..... You will need to sort out a new phone as soon as possible as I won't be funding that either.'*

25. The Claimant also received a message from Mr. Ramsay asking her when she wanted her maternity leave to commence. She had always planned to start it on 1 November, just under three weeks before her due date and made the Respondent aware

of this. Due to the couples marital difficulties, she had decided to take it right away. Mr. Ramsay also referenced putting in place her maternity pay in the message. In the message, Mr. Ramsay said, *'You will need to let me know when you plan to start maternity leave so I can put in place your maternity pay. You can find a new job to start at the end of your leave.'* As the Tribunal referenced above, as with the couple's third child, the Respondent but for the marital issues would have continued to pay the Claimant at the rate of £1500 net for the period of time that she was off on maternity leave with the couples fourth child as he did for the third child because he was being a good and supportive husband. This would have been for the period from October 2019 to the end of October 2020 as confirmed in Mr. Ramsay's message.

26. On Wednesday 25 September (1 week after the couple's separation) Mr. Ramsay moved out of the family home.

27. On Thursday 26 September the Claimant's appointment as Administrative Director was terminated without her knowledge or consent and this was again due to the couples marital difficulties. Her car insurance had always been arranged and paid for by the Respondent for personal and business use. She received a message on 28 September 2019 at 08:20 advising her that her car insurance would cease at midnight of that day. This gave her less than 15 hours to sort out new insurance. The Claimant's salary was paid on the 28 September and was reduced from £1500 net to £1250 net. A sum of £250 net was deducted. The Claimant did not consent to the deduction from her wages either orally or in writing. The Respondent continued to make deductions from the Claimant's wages from October 2019 to October 2020. The Tribunal found as a matter of fact that all these actions were taken by the Respondent due to the couples' marital difficulties.

28. The deductions made to the Claimant's wages without consent or legally valid reason were: For October 2019, £250, for November 2019, £250, for December 2019, £250, for January 2020, £250, for February 2020, £250, for March 2020, £250, for April 2020, £875, for May 2020, £875, for June 2020, £1,068, for July 2020, £1,500, for August 2020, £1,500, for September 2020, £1,500 and for October 2020, £1,500. The total amount deducted was £10,568.00 net. The Tribunal found as a matter of fact that these deductions were made by the Respondent due to the couples' marital problems and without prior consent or agreement from the Claimant. Had the Claimant continued in employment, she would have been on maternity leave during this period and as with the earlier period of maternity leave with her third child, the Respondent would have continued to pay her £1500 per month net. The Claimant claimed fuel costs of £401.47 and car insurance costs of £516.96 but did not produce any evidence to prove such losses.

29. In October 2019, the Claimant initiated divorce proceedings. The couple's further child, a daughter was born on 28 November 2019. The Claimant's maternity leave started on 1 November 2019 and was due to end on 31 October 2020. The Claimant did not return to work after the end of her maternity leave and started a new job as a Financial Consultant on 1 November 2020.

30. The emotional worry and intimidation that the Claimant faced as a consequence of the actions of the Respondent's Managing Director had caused her worry which at such a late stage in her pregnancy caused a bleed brought on by stress. The Claimant had to wake up to find her work key stolen from her personal possessions which was traumatic for her. She was told via text that she was no longer required at her place of work and losing all her access to any work systems which were revoked without notice also impacted adversely on

her as did the stopping of her fuel card and car insurance without notice or prior warning. Having 3 small children and being heavily pregnant trying to organise car insurance without any details being provided to her of previous insurer caused the Claimant stress. She repeatedly requested payslips which were missing and had not been provided to her which were crucial in order for her to claim Universal Credit to be able to support herself due to being on her own, were withheld from her for months. The continued harassment regarding her wages and the onslaught of irrelevant and threatening emails received from the Mr. Ramsay also caused her anxiety. The Claimant's mortgage was in arrears alongside many other bills that were unpaid due to her salary being slowly decreased and stopped caused the Claimant additional stress.

Law

Direct marriage discrimination

31. Pursuant to the Equality Act 2010 ("EqA"), s13(1) 'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others'. S13(4) states 'If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (Work) only if the treatment is because it is B who is married or a civil partner'.

32. 29.EqA s4 sets out the protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

28. EqA s8 defines the protected characteristic of marriage and civil partnership:

8 Marriage and civil partnership

(1) A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner.

(2) In relation to the protected characteristic of marriage and civil partnership—

(a) a reference to a person who has a particular protected characteristic is a reference to a person who is married or is a civil partner;

(b) a reference to persons who share a protected characteristic is a reference to persons who are married or are civil partners.

33. One result of the statutory wording is that the protection only works one way: it only prohibits discrimination against married persons; it does not prohibit discrimination against unmarried persons. As stated in the explanatory notes to the EqA and in Harvey on Industrial Relations and Employment Law, Division L, Chapter 2E, at para 187, under EqA s8 "*There is no equivalent protection for those who are single, cohabiting and/or divorced or where the civil partnership has been dissolved*".

34. Historically, discrimination on the ground of marriage was not uncommon. It was established practice, for example, for air hostesses, female secretaries and civil servants to, as a matter of policy, be dismissed as soon as they became married (see *Hawkins v Atex Group Ltd* [2012] IRLR 807 at paragraph 10). Examples of women being dismissed simply because they became married include *Bick v Royal West of England Residential School for the Deaf* [1976] IRLR 326 and *North East Midlands Co-operative Society Ltd v Allen* [1977] IRLR 212.

35. As stated by Underhill P in *Atex* (at para 9) *“In my view it is clear that (to use the terminology of the 2010 Act) the characteristic protected by s.3(1) [of the Sex Discrimination Act 1975] is the fact of being married – or, to put it the other way round, that what is proscribed is less favourable treatment on the ground that a person is married. That is what the language used says. The same is true of the section in its pre-amendment form: ‘marital status’ naturally means the fact of being married”*.

36. We also considered another case in which the EAT *Gould v St John’s Downshire Hill* [2017] UK EAT/0115/17. In this case, Simler P in the EAT confirmed that marriage must play an operative part in the reason for less favourable treatment in order for protection from marital discrimination to be engaged, i.e. in a claim for discriminatory treatment because of marital difficulties the emphasis must be on ‘marital’ rather than ‘difficulties’. The less favourable treatment must not simply be because the relationship was in difficulties, the fact that the relationship was a marriage must play an operative part. In its decision, the EAT held at paragraph 27 *“...on a reasonable reading of his pleaded claim, it is clear that the claimant was complaining that the discrimination flowed from the composite reason of his being married and having marital difficulties”*. It went on to conclude:

“36. Thus for all those reasons the Employment Judge was wrong to conclude that this case did not engage the protected characteristic in section 8 of marriage. On a reasonable reading of the claimant’s pleaded case, the facts give rise to an arguable case that it was his married status and his marital difficulties as a married man that led to his dismissal. That composite reason was, on his case, the reason for the respondent’s treatment of him and that case should have been permitted to proceed.”

37. In *Chief Constable of West Yorkshire Police v Khan* [2001] ICR 1065 (at para 29) Lord Nicholls explained that outside the field of discrimination law:

“Sometimes the court may look for the ‘operative’ cause or the ‘effective cause’. Sometimes it may apply a ‘but for’ approach. For the reasons I sought to explain in *Nagarajan v London Regional Transport* [1999] ICR 877, 884-885, a causation exercise of this type is not required either by section 1(1)(a) [direct discrimination] or section 2 [victimisation]. The phrases ‘on racial grounds’ and ‘by reason that’ denote a different exercise: why did the alleged discriminatory act as he did?”

38. In *Khan* the Chief Constable had withheld a reference from a police officer who had brought race discrimination claims against the force. The Chief Constable could not give a reference because the proceedings were still live, and he did not want to be prejudiced by any reference given at that stage. Thus, as a matter of “but for” causation, had it not been for the race discrimination claims, a reference would have been supplied. At paragraph 77 Lord Scott observed under the heading ‘The causation point’:

“Was the reference withheld “by reason that” Sergeant Khan had brought the race discrimination proceedings? In a strict causative sense it was. If the proceedings had not been brought the reference would have been given. The proceedings were a *causa sine qua non*. But the language used in s.2(1) is not the language of strict causation. The words “by reason that” suggest, to my mind, that it is the real reason, the core reason, the *causa causans*, the motive, for the treatment complained of that must be identified.”

39. In *Amnesty International v Ahmed* [2009] ICR 1450, Underhill P explained at para 3

“We turn to consider the “but for test” [...] This is therefore a useful gloss on the statutory test; but it was propounded in order to make a particular point, and we do not believe that Lord Goff intended for a moment that it should be used as an all-purpose substitute for the statutory language. Indeed, if it were there would plainly be cases in which it was misleading. The fact that a claimant’s sex or race is a part of the circumstances in which the treatment complained of occurred, or of the sequence of

events leading up to it, does not necessarily mean that it formed part of the ground, or reason, for that treatment.”

40. In relation to direct marriage discrimination and pregnancy discrimination claims, the burden of proof rests initially on the employee to prove on the balance of probabilities facts from which the tribunal could decide, in the absence of any other explanation, that the employer did contravene that provision. To do so the employee must show more than merely that he was subjected to detrimental treatment by the employer and that the relevant protected characteristic applied. There must be something more. If the employee can establish this, the burden of proof shifts to the employer to show that on the balance of probabilities it did not contravene that provision. If the employer is unable to do so, we must hold that the provision was contravened, and discrimination did occur. We also considered the well-known provisions of *Igen Ltd v Wong* [2005] IRLR 258 in this respect, which we do not repeat here.

Pregnancy and Maternity Discrimination

41. S18 EqA defines what it means to discriminate because of a woman’s pregnancy or maternity, as distinct from her sex, in specified situations within work. This protects a woman from discrimination because of her current or a previous pregnancy. It also protects her from maternity discrimination. There is no definition of pregnancy in the EqA. Maternity is defined in s213 EqA.

42. S18 EqA provides:

- (i) ...
- (ii) 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.
- (iii)
- (iv)
- (v)
- (vi) 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.
- (vii) 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 the reason mentioned in paragraph (a) or (b) of subsection (2), or
 - b) It is for a reason mentioned in subsection (3) or (4).
 - c)

43. The claimant’s protected period began when her pregnancy began. In this instance the Claimant asserts that she was denied her entitlement to maternity pay and the Respondent reduced her pay during her maternity leave period, i.e. within the protected period. She asserts that this was due to her pregnancy or alternatively, was unfavourable

treatment because she was on compulsory maternity leave or was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave and this was due to her pregnancy.

44. The key difference between the special protection from pregnancy discrimination and the general protection from direct discrimination (under s13 EqA) is that s18 EqA does not require the claimant to compare the way they have been treated with the way a male comparator has been or would have been treated. In contrast, s18 merely requires that the claimant show that they have been treated unfavourably and no question of comparison arises. This recognises the fact, as confirmed by the case law of the European Court of Justice, that pregnancy is a condition unique to women, such that it makes no sense for the claimants to be required to compare their treatment to treatment that would have been accorded to a man in similar circumstances – see *Dekker v Stichting Vormingscentrum voor Jong Volwassenen (VJV-Centrum) Plus* 1992 ICR 325 and *Handels-og Kontorfunktionaerernes Forbund I Danmark v Dansk Arbejdsgiverforening* 1992 ICR 332.

Victimisation

45. Section 27 EqA provides:

- (1) A person A victimises another person B if A subjects B to a detriment because:
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act:
 - (a) bringing proceedings under this Act;...

46. There is no requirement for a comparator in a victimisation complaint. Also, as with direct discrimination, victimisation need not be consciously motivated.

47. When the protected act and detriment have been established, the tribunal must examine the reason for that treatment. These are often linked. It must be shown that the unfavourable treatment of a person alleging victimisation was because of the protected act. A simple 'but for' test is not appropriate.

48. There must be a link in the mind of the discriminator between the doing of the protected act and the treatment. If the treatment was due to another reason the victimisation claim will fail. The protected act must be a reason for the treatment complained. It is a question of fact for the tribunal. However, it is not necessary for a person claiming victimisation to show that the unfavourable treatment was meted out solely by reason of his having done a protected act.

Unlawful Deduction from Wages

49. Under Section 13 of the Employment Rights Act 1996, "(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."

Conclusion and Findings

50. In relation to this case, the first claim was for direct marriage discrimination pursuant to section 13, Equality Act 2010. The Claimant alleged that the Respondent's Managing Director treated her less favourably because of the fact of their marriage and its subsequent marital difficulties which played out in the workplace. The Tribunal had to decide if the Respondent did the following things: take the Claimant's keys to the office on 19 September 2019; inform the Claimant by text that she was 'no longer needed'; cease to pay the Claimant's car insurance payments; take away the Claimant's laptop given to her for work purposes; stop the fuel card given to her for business purposes; stop paying for the mobile phone given to her for work purposes; reduce the Claimant's pay by £250 per month and then by greater amounts from 28 March 2020 until she left her employment in 1 November 2020 to take up another job as a Financial Consultant.

51. As can be seen from the facts section of this judgment, we found that the Respondent's Managing Director and the Claimant separated on Wednesday 18 September 2019 when the Claimant was 31 weeks pregnant. On Thursday 19 September, the Claimant's keys had been taken from her by Mr. Ramsay. On her personal set of keys apart from her personal keyrings there were her house key, her work key, and her car fob. She was left with her car fob, but her house and work key had both been taken without her knowledge or consent. The house key was returned to her by Mr. Ramsay but not the office keys. On Thursday 19 September the Claimant woke up to text messages and WhatsApp messages on her phone telling her not to come into work as she was not needed. These messages were full of abuse. Mr. Ramsay in his statement admitted sending these inappropriate messages to the Claimant and confirmed that he had told her not to come in to work. In the message, Mr. Ramsay said, '*You are not needed, not like you did anything anyway*'. On Friday 20 September 2019 the Claimant's fuel card which was supplied and paid for by the Respondent for personal and private use was stopped by the Respondent. The Claimant's phone was also stopped. In a message, Mr. Ramsay said, '*Your fuel card will not be working from today..... You will need to sort out a new phone as soon as possible as I won't be funding that either.*' On Thursday 26 September the Claimant's appointment as Administrative Director was terminated without her knowledge or consent. Her car insurance had always been arranged and paid for by the Respondent for personal and business use. She received a message on 28 September 2019 advising her that her car insurance would cease at midnight of that day. This gave her less than 15 hours to sort out new insurance. The Claimant's salary was paid on the 28 September and was reduced from £1500 net to £1250 net. A sum of £250 net was deducted. The Claimant did not consent to the deduction from her wages either orally or in writing. The Respondent continued to make deductions from the Claimant's wages from October 2019 to October 2020.

52. All of the above examples of less favourable treatment of the Claimant occurred because of the fact that she was married to Mr. Ramsay. We asked ourselves if Mr. Ramsay would have acted in this way towards a hypothetical comparator who was in exactly the same position as the Claimant as Administration Manager but who Mr. Ramsay was not married to. We concluded that Mr. Ramsay would not have acted in the way that he did towards such a hypothetical comparator. We considered if any explanation was offered by the Respondent for such less favourable treatment. We noted that no sworn evidence was adduced by the Respondent to explain why Mr. Ramsay had acted in this way. As no reasonable explanation was offered by the Respondent, we found that the reason for the less favourable treatment of the Claimant was due to direct marriage discrimination by the Respondent. We reminded ourselves of the guidance in *Gould v Simler P* in the EAT in

which she said that marriage must play an operative part in the reason for less favourable treatment in order for protection from marital discrimination to be engaged, i.e. in a claim for discriminatory treatment because of marital difficulties the emphasis must be on 'marital' rather than 'difficulties'. The less favourable treatment must not simply be because the relationship was in difficulties, the fact that the relationship was a marriage must play an operative part. We find that in this case the fact of the marriage was an operative part in the less favourable treatment of the Claimant. As we have said above, Mr. Ramsay would not have acted in the same way that he did towards a hypothetical comparator to whom he was not married.

53. In relation to the second claim made by the Claimant she said she was subject to pregnancy and maternity discrimination pursuant to the Equality Act section 18. The Tribunal had to decide whether the Respondent treated the Claimant unfavourably by doing the following things: denying her entitlement to maternity pay and reducing her pay during her maternity leave period. The Tribunal had to decide if the unfavourable treatment took place in a protected period. It was the Claimant's case that the Respondent had treated her unfavourably during her maternity leave period. The Respondent disputed this. If not did it implement a decision taken in the protected period? Was the unfavourable treatment because of the pregnancy? Alternatively, was the unfavourable treatment because the Claimant was on compulsory maternity leave / the Claimant was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave?

54. As can be seen from the facts section of this judgment, we found that the Respondent did reduce the Claimant's pay during the protected period and that this was unfavourable treatment. However, we find that this unfavourable treatment was not due to the fact that the Claimant was pregnant or that she took maternity leave. We find that the reason for the treatment was due to the couple's marital difficulties starting in September 2019 and was not due to the Claimant's pregnancy or the fact that she wished to take or took compulsory maternity leave / or was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave. As a consequence, we did not find this claim proven.

55. The third claim was for victimisation pursuant to the Equality Act section 27. The Tribunal concluded that the Claimant did do a protected act which was the issuing of proceedings in the employment tribunal on 16 December 2019. The Tribunal also found that the Respondent did reduce her salary below her contractual net wage of £1500 per month and that this was subjecting the Claimant to detriment. However, we did not find that this was because the Claimant did a protected act namely the filing of the Claim Form on 16 December 2019. Again, we concluded that the detriment of the wage reduction was due to the couples marital difficulties starting in September 2019 and not due to the protected act.

56. The final claim made by the Claimant was for unauthorised deductions from wages under section 13 Employment Rights Act 1996. We found that the Respondent did make unlawful deductions from the Claimants wages from the end of September, October, November, December 2019, January, February, March, April, May, June, July, August, September and October 2020. We found that during her employment, her first maternity leave with the Respondent commenced in July 2016. The couple's daughter, their third child, was born on 22 July 2016. The Claimant took 12 months maternity leave and was paid her full salary for those 12 months rather than statutory maternity pay. Mr Ramsay admitted in his statement that he was being a good and supportive husband and paid full wages to the

Claimant rather than statutory maternity pay. In this regard the Tribunal found that even though the Claimant did not have a written contract of employment, the Respondent due to the closeness of the relationship between the Managing Director, allowed the Claimant as much time as she needed to take on maternity leave as she needed in respect of the couples third child. The Tribunal found that but for the marriage being in difficulties in September 2019, it was very likely that the Respondent would have permitted the Claimant to take a year off work on full pay of £1500 net per month for the time she was off on maternity leave with the couples fourth child and was ready to return to work after it. This would have been for the period from September 2019 until the end of October 2020.

57. We found that instead of continuing to pay the Claimant at the rate of £1,500 net per month from October 2019 to the end of October 2020, the Respondent made unlawful deductions from her wages. The deductions made to the Claimant's wages without consent or legally valid reason were: For October 2019, £250, for November 2019, £250, for December 2019, £250, for January 2020, £250, for February 2020, £250, for March 2020, £250, for April 2020, £875, for May 2020, £875, for June 2020, £1,068, for July 2020, £1,500, for August 2020, £1,500, for September 2020, £1,500 and for October 2020, £1,500. The total amount deducted was £10,568.00. The Tribunal found that these deductions were made by the Respondent due to the couples' marital difficulties and without prior consent or agreement from the Claimant. Had the Claimant continued in employment, she would have been on maternity leave during this period and as with the earlier period of maternity leave with her third child, the Respondent would have continued to pay her £1500 per month net. As a consequence, we found that the Claimant is owed £10,568.00 net in respect of unlawful deduction from her wages by the Respondent and it is ordered to pay her this amount. The Respondent sought to argue that the Claimant's wages would have been reduced due to the covid pandemic during some of the above period but adduced no evidence to support such contention.

58. The Claimant claimed fuel costs of £401.47 and car insurance costs of £516.96 but did not produce any evidence to prove such losses. As a consequence, the Tribunal did not award her these payments in respect of her unlawful deduction from wages claim.

59. Finally with respect to the Claimant's claim for injury to feelings in respect of her claim for direct marriage discrimination, she claimed £5,0000 for such injury. The Respondent did not object to the Claimant's assessment of £5,0000. The Tribunal found that the actions of the Respondent in the facts section of this judgment did cause her emotional worry and stress as described. As a consequence, we awarded her £5,000 for injury to feelings compensation.

60. The total award to be paid by the Respondent to the Claimant is £10,568.00 in respect of unlawful deduction of wages and £5,000 for injury to feelings compensation. The total compensation awarded to the Claimant is £15,568.00.

**Employment Judge Hallen
Date: 1 November 2021**