EMPLOYMENT TRIBUNALS

Claimant: Ms A Burns

Respondents: (1) Tralee Ltd
(2) Mr S Sohal

Heard at: **London South Employment Tribunal**

On: **17 & 18 January 2022 (in person)**
19-21 January 2022 (by remote video hearing)

Before: **Employment Judge Ferguson**

Members: **Mr M Cann**
Ms J Cook

Representation
Claimant: In person
Respondents: Mr S Sohal (Director of the First Respondent)

JUDGMENT

It is the unanimous judgment of the Tribunal that:

1. The First Respondent discriminated against the Claimant because of her pregnancy or pregnancy-related illness, contrary to s.18 of the Equality Act 2010, by:

    a. Victoria Styles and Lorraine Standen's treatment of the Claimant on or around 26 November 2019, including accusing her of lying.

    b. Karina Vernau-Pope's treatment of the Claimant in a meeting on or around 27 November 2019.

    c. Karina Vernau-Pope saying to the Claimant, on 1 or 2 December 2019, that she could require the Claimant to start her maternity leave early if standards dropped.

    d. Karina Vernau-Pope handing the Claimant a letter on 31 December 2019 relating to the Claimant's sickness absence and making disparaging comments relating to the Claimant's pregnancy.

e. Victoria Styles, Lorraine Standen and Karina Vernau-Pope's treatment of the Claimant on 1 January 2020.

f. Karina Vernau-Pope removing the Claimant from the staff WhatsApp group on 7 February 2020.

2. The First and Second Respondents discriminated against the Claimant because of her pregnancy or pregnancy-related illness, contrary to s.18 of the Equality Act 2010, by:

a. At a meeting on 30 January 2020 the Second Respondent treating the Claimant's grievance as more of a disciplinary matter.

b. The Second Respondent failing to investigate the Claimant's grievance after 30 January 2020.

c. The First and Second Respondents not supporting the Claimant to return to work after her grievance.

3. The First and Second Respondents victimised the Claimant, contrary to s.27 of the Equality Act 2010, by:

a. At a meeting on 30 January 2020 the Second Respondent treating the Claimant's grievance as more of a disciplinary matter.

b. The Second Respondent failing to investigate the Claimant's grievance after 30 January 2020.

c. The First and Second Respondents not supporting the Claimant to return to work after her grievance.

4. The Claimant is awarded £3,578.84 plus interest of £308.27 in respect of financial losses and compensation for injury to feelings of £17,550.00 plus interest of 3,023.41.

5. The First Respondent must pay the Claimant the total sum of £24,460.52.

REASONS

INTRODUCTION

1. By a claim form presented on 21 March 2020 the Claimant brought complaints of pregnancy/maternity discrimination relating to her employment as a cleaner for Tralee Ltd. At the time of presenting her claim she was still employed by Tralee Ltd but she has since resigned.

2. There was some confusion about the identity of the Respondent(s) because the Claimant had named Mr Sohal, director of Tralee Ltd, as the Respondent in the claim form. After some correspondence between the Claimant and the

Tribunal, the claim form was eventually accepted against both Tralee Ltd and Mr Sohal, but only one response was received, naming Tralee Ltd as the Respondent and Mr Sohal as the point of contact. It was confirmed and agreed at the start of the hearing that the case was against both Tralee Ltd and Mr Sohal personally, and that the response would be accepted as submitted on behalf of both Respondents.

3. The issues were agreed at start of hearing as follows:

1. **Time limits**

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 24 November 2019 may not have been brought in time.

1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
1.2.2 If not, was there conduct extending over a period?
1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
1.2.4.1 Why were the complaints not made to the Tribunal in time?
1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. **Pregnancy and Maternity Discrimination (Equality Act 2010 section 18)**

2.1 Did the Respondents treat the Claimant unfavourably by doing the following things (all allegations are against the First Respondent only unless otherwise stated):

2.1.1 On 14/11/19 Karina calling the claimant into a meeting and telling her the cleaning was not satisfactory. Also telling the claimant she had “two weeks to improve or that’s it” – i.e. she would be dismissed if standards did not improve.
2.1.2 On 14/11/19 Karina proposed a new work rota which amounted to a reduction in the claimant’s hours to 24 hours a week, when her contracted hours were 30 hours a week.
2.1.3 On 26/11/19 Victoria and Lorraine criticised the claimant’s cleaning and made her re-do the hoovering of two rooms

2.1.4 On 27/11/19 Karina called the claimant into her office and accused her of arguing with senior staff the previous day
2.1.5 On or around 28/11/19 Karina completed a risk assessment relating to the claimant without consulting the claimant
2.1.6 On 1/12/19 or 2/12/19 Karina made a comment to the claimant in front of other staff that she could require the claimant to start her maternity leave early if standards dropped
2.1.7 On 4/12/19 Karina reviewed the risk assessment in a meeting with the claimant, but did not allow the claimant's input
2.1.8 On 5/12/19 Lorraine told the claimant to take out an earphone
2.1.9 On 17/12/19 Karina singled out the claimant in relation to the new mobile phone policy by quizzing her about where her phone was
2.1.10 On 31/12/19 Karina handed the claimant a letter about sickness absence (p.8 of bundle). Karina also commented during the meeting that the claimant believed Karina could not get rid of her because she was pregnant.
2.1.11 On 1/1/20 Lorraine and Victoria criticised the claimant in relation to taking a break and Karina told the claimant to go home early
2.1.12 On 30/1/20 treating the claimant's grievance meeting more as a disciplinary matter (*against both Respondents*)
2.1.13 On 7/2/20 Karina removed the claimant from a whatsapp staff group
2.1.14 After 30/1/20 failing to investigate the claimant's grievance (*against both Respondents*)
2.1.15 Not supporting the claimant to return to work after her grievance, thereby forcing her to go on maternity leave on 8/3/20, as opposed to around 2 months later as originally planned. (*against both Respondents*)

2.2 Was the unfavourable treatment because of the pregnancy? (all acts)

2.3 Was the unfavourable treatment because of illness suffered as a result of the pregnancy? (para 2.1.10)

3. **Victimisation (Equality Act 2010 section 27)**

3.1 Did the Claimant do a protected act as follows:

3.1.1 Submitting a grievance on 2/1/20?

3.2 Did the Respondents do the following things (all allegations are against both Respondents unless otherwise stated):

3.2.1 On 30/1/20, treating the claimant's grievance meeting more as a disciplinary matter

3.2.2 On 7/2/20 Karina removed the claimant from a whatsapp staff group (against the First Respondent only)
3.2.3 After 30/1/20 failing to investigate the claimant's grievance
3.2.4 Not supporting the claimant to return to work after her grievance, thereby forcing her to go on maternity leave on 8/3/20, as opposed to around 2 months later as originally planned.

3.3 By doing so, did it subject the claimant to detriment?

3.4 If so, was it because the claimant did a protected act?

4. **Remedy for discrimination or victimisation**

4.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

4.2 What financial losses has the discrimination caused the claimant?

4.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

4.4 If not, for what period of loss should the claimant be compensated?

4.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

4.6 Should interest be awarded? How much?

4. We heard evidence from the Claimant. On behalf of the Respondents we heard evidence from Karina Vernau-Pope (formerly Karina Carter-Pope) and from the Second Respondent.

5. The hearing began as an in-person hearing, but was converted to CVP with the agreement of the parties on the third day after one of the participants in the hearing tested positive for Covid-19.

FACTS

6. The Claimant commenced employment with the First Respondent on 7 March 2019 as a cleaner in Tralee Rest Home, a care home for the elderly. The registered manager was, and remains, Karina Vernau-Pope. The Claimant was employed to work 30 hours a week, 8am to 2pm five days a week.

7. The Claimant's unchallenged evidence is that she always had good working relationships with her colleagues until October 2019 and always had good feedback from her manager, Ms Vernau-Pope. Prior to her pregnancy the Claimant had one day off sick on 31 May 2019.

8. In addition to her work as a cleaner, the Claimant occasionally worked for the Respondent as a carer over the summer of 2019. Ms Vernau-Pope's evidence is that the Claimant was a very good carer, and in September 2019 Ms Vernau-Pope recommended the Claimant for an NVQ course in caring and made arrangements with a training body for her to do the course if she wanted. The Claimant later decided not to pursue this.

9. On or around 8 October 2019 the Claimant informed Ms Vernau-Pope that she was pregnant.

10. On 9 October 2019 the Claimant was involved in a car accident and took one day off sick.

11. On 22-23 October 2019 the Claimant was off sick due to morning sickness. The Respondent did not produce any records of this sickness absence but the Claimant's evidence was that it was due to morning sickness and that was not challenged.

12. The Respondent's system was to record sickness absence on a "self-certification form" but in practice these would be completed by the manager based on what they had been told by the employee.

13. On 2 & 3 November 2019 the Claimant was off sick. The absence form records "suffered a migraine". The Claimant's evidence was that this was in fact pregnancy-related, although that is not recorded on the form. Her evidence as to whether she told Ms Vernau-Pope that it was pregnancy-related was somewhat unclear. Ms Vernau-Pope denied the Claimant had said it was pregnancy-related. On the balance of probabilities we find the Claimant did not expressly say the migraine was pregnancy-related but for reasons we will come on to explain we do not consider that to be determinative of any of Claimant's complaints.

14. On 14 November 2019 Ms Vernau-Pope sent to all cleaning staff by WhatsApp a proposed new work rota with the message "Can you take a look at this rolling rota? Thoughts please. I hope to implement in December. Thanks". The rota showed a two-week pattern and the Claimant was only given four 6-hour shifts in one of the weeks, when she should have had five according to her contract. One of the other staff members was given one additional shift. The Claimant believes this was done in order to disadvantage her because she was pregnant. Ms Vernau-Pope's evidence was that it was simply a mistake. It is not in dispute that the Claimant raised the issue with Ms Vernau-Pope straight away and Ms Vernau-Pope said it was a mistake and withdrew the proposed rota.

15. It is not in dispute that there was a meeting in November 2019 when the Claimant and another cleaner, Debbie, were called into Ms Vernau-Pope's office. The precise date was disputed but we do not consider it necessary to resolve that. The Claimant's evidence was that she and Debbie were placed on a development plan and "this coincided with my first trimester and ongoing bouts of severe morning sickness and fatigue". She says Ms Vernau-Pope said "you have two weeks to improve or that's it", which the Claimant interpreted as saying she would be dismissed if she did not improve. The

Claimant said this was directly mainly at her, rather than Debbie, and that Ms Vernau-Pope shouted at her. Ms Vernau-Pope accepts raising the issue of cleaning standards with both the Claimant and Debbie in the meeting and saying that she would review the matter in two weeks. She denies shouting at or targeting the Claimant She says both cleaners were spoken to professionally. She said that the meeting had been prompted by complaints from staff, residents and relatives about poor cleanliness of the home.

16. On or around 26 November 2019 the Head of Care ("HOC"), Lorraine Standen, and a senior carer, Victoria Styles, approached the Claimant at around 1.50pm, 10 minutes before the Claimant was due to end her shift, and said that two of the rooms the Claimant was assigned to clean had not been vacuumed. The Claimant's evidence was:

> "they were condescending and confrontational, Victoria asked me in a sarcastic manner 'have you even hoovered today?' and stared at me in a demeaning way. I told her that I had hoovered the areas early in the day, but she had told me I was 'lying' and to re do two rooms and the hallway again. This involved carrying the hoover down steps at the front of the building for a second time and was unreasonably physically demanding, I did agree to re do the two rooms, but I didn't have time to do the hall a second time. This was an unrealistic and un-necessary request putting pressure on me and was only made to make me feel inadequate."

17. Neither Ms Styles or Ms Standen were called as witnesses. The Respondent produced notes of an interview with Ms Styles, conducted on 14 January 2020 following the Claimant raising a grievance about this and other incidents, which records Ms Styles account as follows:

> "I was doing the room checks and it was evident that room 10 had not been hovered and AB signed the room check stating it had been done. Ms Styles asked AB to hoover the room again as she still had 10mintues until she finished. AB was not happy about this."

18. The Claimant explained in her evidence to the Tribunal that even if the room did require vacuuming that could have been due to use of the room since she had vacuumed in the morning.

19. There is little factual dispute about the interaction between the Claimant and Ms Styles/Ms Standen. The Claimant's account of what was said has not been challenged. Given Ms Styles's statement which at least implies that the Claimant had falsely signed the room check, and in the absence of either Ms Styles or Ms Standen giving evidence to the Tribunal, we accept the Claimant's account, and that one or both of them accused the Claimant of lying.

20. Ms Vernau-Pope held a further meeting with the Claimant and Debbie, with a senior carer also present, towards the end of November or early December 2019. It is not in dispute that Ms Vernau-Pope accused the Claimant of arguing with senior staff, or that when the Claimant started to give her version of events, the Claimant was then accused again of being argumentative. The

only real dispute about this meeting is whether Ms Vernau-Pope raised her voice and on that issue there is a straight dispute between the Claimant and Ms Vernau-Pope. We do not consider it necessary to make a finding as to whether Ms Vernau-Pope raised her voice. It is clear that Ms Vernau-Pope challenged the Claimant about being argumentative with senior staff, the Claimant was unhappy about that and was unable to put forward her side of the story because she was again told she was arguing.

21. On 28 November 2019 the Claimant was off sick due to morning sickness. There is no dispute that the Claimant said it was morning sickness and that it what is recorded in the absence form.

22. Also on 28 November 2019 Ms Vernau-Pope completed a risk assessment regarding the Claimant's pregnancy. She did so initially without any input from the Claimant.

23. The Claimant says that on 1 or 2 December 2019 "there was a light-hearted conversation about my growing 'bump' with other staff. The manager Karina made a comment in front of all other staff that if she saw me slowing down in the 11 weeks before my baby was due, she had the power to force me to start my maternity leave". Ms Vernau-Pope in her witness statement says "I did not say anything about forcing Miss Burns to take maternity leave". The notes of the interview with Ms Vernau-Pope relating to C's grievance, however, state as follows:

> "(SS) what was the conversation about early pregnancy leave
> (KC-P) AB said she would leave two weeks before due date and KC-P said she would be regular reviewing how she is coping as pregnancy progressed."

24. We consider that that account is more consistent with the Claimant's version of events than the one given in Ms Vernau-Pope's witness statement. Ms Vernau-Pope did not dispute there was a conversation about early maternity leave, or that she said the date of maternity leave might depend on Ms Vernau-Pope "reviewing how [the Claimant] is coping". We are satisfied that she said what the Claimant alleges and that it was said in front of other staff.

25. On 3 December 2019 the Claimant saw Mr Sohal, director of the Respondent, in the home and asked him about a risk assessment for her pregnancy. He told the Claimant to speak to Ms Vernau-Pope about it.

26. The Claimant and Ms Vernau-Pope had a meeting about the risk assessment on 4 December. The risk assessment Ms Vernau-Pope had completed previously was amended in light of the discussion and the Claimant initialled each of the entries. It was agreed that the Claimant would not be required to move beds, which is something that in any event would only happen when deep cleaning a room. The document also records that the Claimant "will sit down when necessary" to address "standing for long periods as pregnancy progresses". Ms Vernau-Pope's witness statement described the risk assessment as having recorded that the Claimant "should take regular short breaks so that she wasn't standing for too long". Ms Vernau-Pope also said in her oral evidence that the senior staff were made aware of the contents of the

risk assessment, including the need for the Claimant to sit down for a few minutes every now and again. Although the document only refers to "sitting down", which Mr Sohal sought during the hearing to distinguish from taking a break, we are satisfied that the Claimant and Ms Vernau-Pope both understood the Claimant was entitled to short additional breaks where required and that that information had been conveyed to senior staff.

27. The Claimant says that on 5 December 2019 Ms Standen came up to her and said "Lose it Anna" in an aggressive way, referring to the Claimant having an earphone in. The Claimant accepts that she was not meant to listen to music or radio with earphones while working, but says she had started to do this as a diversion from the "detrimental and uninclusive atmosphere". We have not heard evidence from Ms Standen, but in the notes of her interview for the grievance she accepted asking the Claimant why she was wearing headphones. We accept the Claimant's account of this incident, including that it was said in an aggressive way.

28. On 14 December 2019 the Claimant was off sick. The absence record states "diarrhoea and vomiting". The Claimant says that this was pregnancy-related illness. Again, it is not clear whether the Claimant expressly said it was pregnancy-related at the time, but Ms Vernau-Pope accepted in her evidence that it could be and that she did not ask the Claimant.

29. Shortly before 17 December 2019 the Respondent introduced a new mobile phone policy which said that staff were not allowed to have their phones on them while at work.

30. On 17 December when the Claimant arrived for her shift Ms Vernau-Pope asked the Claimant where her phone was and the Claimant said it was in the car. The Claimant believes that she was singled out and says that she saw other staff using their phones on the same day. Ms Vernau-Pope's evidence was that she had asked all the care staff the same question about their phones when they started their shift earlier at 7.30am, and that some were left in cars and some in her office. The only exception was staff who had young children, who were allowed to make or receive calls about their children. The Claimant was not in a position to challenge Ms Vernau-Pope's evidence about the conversation with care staff in the morning, and nor could she say that the people she saw using their phones were not those who were exempted because of having young children. We are therefore not satisfied that the Claimant was singled out in respect of the mobile phone policy.

31. On 28 and 29 December 2019 the Claimant was off sick. The absence record states "sickness and extreme fatigue". The Claimant says this was pregnancy-related. Again, it is not clear whether the Claimant expressly said at the time it was pregnancy-related, but Ms Vernau-Pope accepted it could have been and that she did not ask the Claimant.

32. On 31 December 2019 the Claimant was called into a meeting with Ms Vernau-Pope and was handed a letter. The letter states:

> "Dear Anna,

> Since commencing your employment at Tralee Rest Home on the 7th March 2019 you have had 10 days off sick, on 7 separate Occasions. I have listed them below for your reference:-
>
> 31st May 2019
> 10th October 2019
> 22nd and 23rd October 2019
> 2nd, 3rd and 28th November
> 14th, 28th and 29th December
>
> This is not acceptable, and it puts all the other staff under extra pressure to
> cover your shifts.
>
> I hope to see an improvement in your sickness. If not, this may result in disciplinary action.
>
> Should you require any information regarding this letter please do not hesitate to contact me."

33. The Respondent produced in the bundle an absence management policy and an undated letter or email which Mr Sohal said was sent to all managers, and which sets out actions that should be taken in response to a series of sickness absences. Ms Vernau-Pope has never said that she was guided by either of these documents when deciding to send the letter of 31 December and in any event we cannot reconcile the letter with any of the steps that are recommended in either document.

34. In her oral evidence when asked about trigger points, Ms Vernau-Pope was not very clear about whether she believed a particular trigger had been reached, but she said she ignored the absences relating to the car accident and the morning sickness. She said that, knowing now that the majority of the absences were pregnancy-related, it was a mistake to send the letter, and that she should have investigated more at the time.

35. The Claimant's evidence was that she told Ms Vernau-Pope during the meeting on 31 December that the absences were pregnancy-related, but that Ms Vernau-Pope said pregnancy is "not in itself an illness" and the Claimant being pregnant does not stop her from "getting rid" of the Claimant. Ms Vernau-Pope denies making these comments.

36. It is to Ms Vernau-Pope's credit that she accepted in her evidence she should have investigated the reasons for the absences more at the time, to establish if they were pregnancy-related. But that does not alter the fact that the illnesses reported, in particular the diarrhoea and vomiting on 14 December and the sickness and extreme fatigue on 28-29 December were highly likely to be pregnancy-related and Ms Vernau-Pope does not appear to have been interested in establishing whether they were. We consider that attitude is consistent with the comments the Claimant alleges Ms Vernau-Pope made. On balance we accept that Ms Vernau-Pope made those comments.

37. On 1 January 2020 Ms Vernau-Pope was not at the home, so Ms Standen

was in charge. A dispute arose about the Claimant's breaks. Leaving aside the pregnancy risk-assessment, the Claimant was entitled to a 15-minute break in each shift and had to ask permission as to when to take it.

38. It is not in dispute that at around 10.30am the Claimant took a break and made a cup of tea for herself and for one of the laundry staff. The Claimant says she needed a drink and "to take a few moments as I was feeling lightheaded". She had a cup of tea and a sit down with another member of staff in the laundry room. The Claimant says this lasted about five minutes.

39. We have no direct evidence from Ms Styles or Ms Standen, but when they were asked about this after the Claimant's grievance they said the Claimant's morning break lasted around 20-25 minutes and the Claimant did not ask permission for it. The dispute arose when the Claimant took a break at around 1.00pm and Ms Styles and Ms Standen told her this was not allowed because she had already had her break.

40. As to the length of the break in the morning, we give the Claimant's version of events more weight because we heard live evidence from her and she maintained her account in cross-examination, whereas we have no direct evidence at all from the Respondent on the issue. We take account of the notes of the grievance interviews with Ms Styles and Ms Standen, but we note that neither Ms Styles or Ms Standen say that they challenged the Claimant in the morning as to either the length of the break or the fact that she did not ask for permission. That in itself casts doubt on the reliability of their accounts, and on balance we accept the Claimant's version that she took a short break of around five minutes in the morning because she was feeling lightheaded. We also accept that this was the type of break that was envisaged and permitted by the risk assessment.

41. There is not much factual dispute as to what happened later. The Claimant was told she was not allowed to take a break when she sought to do so at around 1.00pm. The Claimant became upset and went to the conservatory, which was out of the main building. Ms Standen and Ms Styles asked the Claimant to return and speak to them. The Claimant initially refused and then Ms Standen called Ms Vernau-Pope on the phone. Ms Vernau-Pope told the Claimant to go home early and that they would discuss it the following day. She used the word pathetic. Her account is that she said the situation was pathetic. The Claimant says Ms Vernau-Pope called her pathetic. When asked about this incident in cross-examination Ms Vernau-Pope said that she had reminded Ms Standen and Ms Styles on the phone about the Claimant's entitlement to additional breaks due to pregnancy.

42. On 2 January 2020 the Claimant was off sick due to stress. She also submitted a grievance on the same day, alleging pregnancy and maternity discrimination in relation to the following:

    42.1. Being placed on the development plan

    42.2. The proposed rota

    42.3. The incident on 26 November 2019

42.4. The meeting with Ms Vernau-Pope where she was accused of being argumentative

42.5. An incident where the senior carer rolled her eyes when the Claimant said she had to go to a midwife appointment at short notice

42.6. Ms Vernau-Pope's comment about starting maternity leave early

42.7. The risk assessment being done initially in the Claimant's absence

42.8. The incident on 5 December with the headphones

42.9. Being targeted on 17 December regarding the mobile phone policy

42.10. The letter of 31 December and Ms Vernau-Pope's comments in the meeting. The Claimant asserted that 8 of the 10 days' absence were pregnancy-related

42.11. The incident on 1 January

43. The Claimant alleged there was on ongoing culture of bullying and discrimination due to her pregnancy. This had caused her anxiety and distress and she had attended her GP as a result.

44. The grievance letter was sent to Mr Sohal. Mr Sohal attempted to arrange a meeting with the Claimant to discuss her grievance, but due to her sickness and other reasons which are not relevant to the complaints we have to determine the meeting did not ultimately take place until 30 January 2020. The Claimant remained off sick during this whole period due to stress.

45. In the meantime Mr Sohal conducted interviews with Ms Vernau-Pope, as well as the member of laundry staff whom the Claimant had been with on 1 January, Ms Styles and Ms Standen. He asked Ms Vernau-Pope about the risk assessment, the performance-related meetings, the rota change, the alleged comment about early maternity leave and the incident on 1 January 2020. He did not ask her about the sickness absences or the allegation about the mobile phone policy.

46. Mr Sohal asked Ms Styles about the incident on 26 November and the one on 1 January 2020. He asked Ms Standen about the incident on 5 December with the headphones and the incident on 1 January.

47. The meeting on 30 January took place in another care home run by Mr Sohal. The attendees were Mr Sohal, his father and the Claimant. Mr Sohal introduced the meeting by saying "This meeting is in respect to the grievance you have raised and to go through how I came to the decision after investigating the whole matter." Mr Sohal went on to say that Ms Vernau-Pope had followed correct company policy in relation to the sickness absence. In his oral evidence to the Tribunal he said that in order to investigate this issue he had looked at the absence forms. He accepted he had not discussed with Ms Vernau-Pope or the Claimant whether the

absences were pregnancy-related. Mr Sohal then said that the risk assessment had been signed by the Claimant and the records showed they had been completed in the correct way. He acknowledged Ms Vernau-Pope had made a mistake with the rota, but said she had changed it and "everything was fine with this". He did not accept that the Claimant was singled out, either in relation to cleaning standards or mobile phone use. As for the incident on 1 January 2020, Mr Sohal said the Claimant had left the building without letting a senior member of staff know, and this was a serious issue as regards fire procedures. He said he had spoken to everyone involved and the evidence showed they were right to ask the Claimant to speak to the manager. Again, he said the Claimant had not been singled out.

48. The Claimant said she was not happy, and asked if it was possible to relocate to another home run by Mr Sohal. He said he would check if there were any domestic vacancies.

49. On 4 February 2020 Mr Sohal wrote to the Claimant as follows:

> "Thank you for attending the meeting on 30/01/20. I have conducted my investigation with taking statements from relevant staff members and meeting yourself and have come to the conclusion that there were no unfair practices.
>
> I have taken your suggestion onboard regarding the breaks and I have now introduced a break allocation giving clear instructions to staff members going forward.
>
> Regarding your query on antenatal appointments, there is no legal obligation to paid time off for antenatal appointments as stated in our company policies.
>
> Furthermore, regarding your request to move to a different site of employment, at present we do not have any vacancies."

50. On 4 February 2020 the Claimant asked to take annual leave from 22 February 2020 before starting her maternity leave on 10 March. She also said that her baby was due in the week 24-30 May 2020. The proposal about annual leave and maternity leave dates was agreed.

51. On 7 February 2020 the Claimant submitted a further sick note signing her off until 21 February.

52. On 7 February 2020 Ms Vernau-Pope removed the Claimant from the staff WhatsApp group. It is not in dispute that the WhatsApp group was used to communicate with staff about a range of matters, including daily work issues, staff policies and procedures and social matters. Ms Vernau-Pope said she did this to avoid the Claimant having to receive messages about daily work matters.

53. On 8 November 2020 the Claimant resigned from Tralee, saying she had decided not to return after her maternity leave "due to the circumstances surrounding the pending tribunal". The Claimant's employment ended on or

around 8 December 2020.

THE LAW

54. The Equality Act 2010 ("EQA") provides, so far as relevant:

> **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)
>
> …
>
> **27 Victimisation**
> (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;
> (b) giving evidence or information in connection with proceedings under this Act;
> (c) doing any other thing for the purposes of or in connection with this Act;
> (d) making an allegation (whether or not express) that A or another person has contravened this Act.

…

136 Burden of proof

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

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

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

CONCLUSIONS

55. All of the Claimant's complaints relate to incidents that took place in the protected period for the purposes of s.18 EQA. The questions for us are whether the complaints are made out on the facts, whether they amounted to unfavourable treatment, and whether the conduct was because of the Claimant's pregnancy or pregnancy-related illness. In respect of the victimisation complaints we must also decide whether the conduct amounted to detriments and whether the Respondent(s) subjected the Claimant to that treatment because she had done a protected act. The Respondents do not dispute that the Claimant's grievance amounted to a protected act and we are satisfied that it was. She made a clear allegation in the grievance that she had been subjected to pregnancy discrimination.

<u>Complaints we do not find proved</u>

56. There are a number of the Claimant's complaints that we find are either not made out the facts, did not amount to unfavourable treatment or we do not accept that the treatment was because of the Claimant's pregnancy:

2.1.1: Performance plan

56.1. The Claimant has not given evidence of any drop in standards and there is no basis on which we could find that any issues that were identified were due to her pregnancy. Further, we are not satisfied that Ms Vernau-Pope targeted the Claimant in the meeting when the two-week performance plan was mentioned. Regardless of whether it was justified or reasonable to put the Claimant and Debbie on a performance plan, or whether Ms Vernau-Pope made the comment "two weeks to improve or that's it", the performance issues were raised with both the Claimant and Debbie (who was not pregnant). We are not satisfied that this treatment was directed at the Claimant because of her pregnancy.

2.1.2: Proposed new rota

56.2. We are satisfied that this was a simple error and was nothing to do with the fact that the Claimant was pregnant. The error was only in relation to one shift and it was corrected as soon as Ms Vernau-Pope was alerted to it. There is no basis on which we could find it was a deliberate attempt to disadvantage the Claimant.

2.1.5 and 2.1.7: Risk assessment

56.3. We do not accept that there was any unfavourable treatment in relation to the risk assessment. Ms Vernau-Pope did complete one, and the Claimant was able to give her input six days later. The Claimant signed the document and we are satisfied she had the opportunity to raise any specific issues she wanted to raise. The Claimant has not identified any omissions from the assessment in terms of adjustments that were required.

2.1.8: Ear phone incident

56.4. Although Ms Standen spoke to the Claimant rather abruptly, we are not satisfied that asking the Claimant to remove her headphones was unfavourable treatment in circumstances where the Claimant knew she was not allowed to listen to music or the radio while at work and had not communicated to anyone that she was doing so for reasons relating to her pregnancy or unfavourable treatment.

2.1.9: Mobile phone use

56.5. We have already found that the Claimant was not singled out in relation to the mobile phone policy so this complaint is not made out on the facts.

<u>Complaints against Ms Styles and Ms Standen</u>

2.1.3: Incident on 26 November 2019
2.1.11: Incident on 1 January 2020

57. Given that the Claimant's case is that there was a culture of bullying and discrimination against her because of her pregnancy, and she has made two allegations against Ms Styles and Ms Standen's joint behaviour towards her, on 26 November 2019 and 1 January 2020, we consider it appropriate to assess the evidence as to the reasons for their behaviour by looking at the two incidents together.

58. We have found that Ms Styles and/or Ms Standen accused the Claimant of lying on 26 November 2019. That is obviously unfavourable treatment. The question for us is whether Ms Styles and/or Ms Standen acted as they did because the Claimant was pregnant. There is no dispute that both Ms Styles and Ms Standen knew the Claimant was pregnant.

59. We are prepared to accept that Ms Styles and Ms Standen genuinely believed the rooms needed vacuuming, and that they were entitled to ask the Claimant to do so given that she was still on her shift, but the real issue is that they accused her of lying and were confrontational and intimidating in their manner. The fact that the rooms may have required vacuuming was not a sufficient or fair basis on which to accuse the Claimant of lying. We consider their conduct was unreasonable.

60. We have accepted the Claimant's account that the morning break was only for around five minutes, and was in accordance with what was agreed in the risk assessment. In those circumstances we find that Ms Styles and Ms Standen's response to the Claimant wishing to take her normal break at around 1.00pm was obviously unreasonable and contrary to the risk assessment. It was unfavourable treatment of the Claimant.

61. It is difficult for us to make findings as to the reasons for Ms Styles and Ms Standen's conduct, having not heard from them. We have found that their behaviour on both occasions was unreasonable. Given that it is not in dispute the Claimant had a good relationship with all staff before her pregnancy, and both incidents involved the Claimant being accused of not doing her job properly, the most likely explanation for their conduct is that they had formed the view that the Claimant was treating her pregnancy as an excuse not to pull her weight. In the absence of any alternative and satisfactory explanation for them treating the Claimant in they way that they did, we are satisfied that the Claimant's pregnancy was an effective cause of their behaviour on both occasions.

62. Complaints 2.1.3 and 2.1.11, as regards the conduct of Ms Styles and Ms Standen, therefore succeed.

<u>Complaints against Ms Vernau-Pope</u>

2.1.4: Meeting on 27 November 2019
2.1.6 and 2.1.10: Comments about starting maternity leave early and comments on 31 December 2019

63. It is clear that Ms Vernau-Pope had accepted Ms Styles and Ms Standen's account of the incident on 26 November regarding the vacuuming and was not prepared to hear the Claimant's side of the story. We consider that was an unreasonable way of managing the situation and amounted to unfavourable treatment.

64. We have accepted that Ms Vernau-Pope made the comment about forcing the Claimant to start her maternity leave early. We have also accepted she made comments in the meeting on 31 December 2019 along the lines that pregnancy was not an illness and just because the Claimant was pregnant, it did not mean Ms Vernau-Pope could not get rid of her. Both were threatening and amounted to unfavourable treatment.

65. Those comments are very strong evidence that Ms Vernau-Pope had formed a negative impression of the Claimant since being informed of her pregnancy, and similarly to Ms Styles and Ms Standen, was at least suspicious of the Claimant using the pregnancy as an excuse. On the basis of those comments and the lack of any satisfactory explanation for treating the Claimant as she did in the meeting of 27 November 2019, we find that Claimant's pregnancy was a significant reason for the treatment.

2.1.10: Letter of 31 December 2019

66. We consider it obviously unfavourable treatment to be handed the letter of 31

December 2019. The letter stated the absences were unacceptable and that they put other staff under extra pressure. It also threatened disciplinary action. Ms Vernau-Pope did not retract that threat after the Claimant said that most of the absences were pregnancy-related.

67. We are satisfied that all of the absences except the ones on 31 May 2019 and 10 October 2019 were pregnancy-related. Clearly the letter would not have been sent if the pregnancy-related absences had not been taken into account. To the extent that there was any doubt at the time about whether the absences were pregnancy-related, Ms Vernau-Pope made no effort to find out more information from the Claimant. Even once the Claimant told her during the meeting that they were pregnancy-related, Ms Vernau-Pope made the disparaging comments about pregnancy itself not being an illness and that she could still get rid of the Claimant. We are therefore satisfied that Ms Vernau-Pope gave the Claimant the letter and made the comments because of the Claimant's pregnancy-related illness.

68. We are also satisfied, for the reasons already given as to Ms Vernau-Pope's negative attitude towards the Claimant, that it was also in part because of the Claimant's pregnancy itself.

2.1.11: Incident on 1 January 2020 (Ms Vernau-Pope's involvement)

69. We are not satisfied that Ms Vernau-Pope's decision to send the Claimant home was unreasonable, given that it was near the end of her shift and it was a way of defusing the tension. We do consider however that it was unjustified to use the word pathetic, whether directed at the Claimant or the situation. She should not have made that kind of judgment until finding out more about the situation and in particular the Claimant's side of the story. We find this was unfavourable treatment, and it was because of Ms Vernau-Pope's negative attitude towards the Claimant and her pregnancy.

2.1.13 & 3.2.2: Removal from WhatsApp group

70. Ms Vernau-Pope's evidence about this was contradictory and illogical. She said at first that anyone on maternity leave or long-term sickness absence would be removed from the group, but later said that she would not necessarily remove someone who was simply going on maternity leave. She also said she would not remove someone on annual leave. As at 7 February 2020 Ms Vernau-Pope knew that the Claimant would be off sick for a further two weeks, and would then be on annual leave, then maternity leave. She must have realised that the Claimant might interpret her removal from the group as a way of isolating her or discriminating against her, but she did not even warn the Claimant about it let alone ask her if she wished to remain in the group. Given our findings as to Ms Vernau-Pope's attitude towards the Claimant's pregnancy generally, we are satisfied that the Claimant's pregnancy was a significant reason for the decision to remove her from the group.

71. The Claimant also claims that this was an act of victimisation. We are not satisfied that there is a sufficient basis for us to find that Ms Vernau-Pope was motivated by the Claimant having brought a grievance, as opposed to the

generally negative impression she had formed of the Claimant due to her pregnancy. The victimisation complaint does not succeed.

Complaints against Mr Sohal

2.1.12. 2.1.14 & 2.1.15: Mr Sohal's handling of the grievance

72. We consider that Mr Sohal's investigation was wholly inadequate. In particular he did not explore with either the Claimant or Ms Vernau-Pope the issue of whether the absences were due to pregnancy-related illness, which was one of the most important issues to investigate. He did not investigate the mobile phone policy allegation at all. We find that he reached the conclusion that all of the matters raised in the grievance were unfounded before he even spoke to the Claimant. That is evident from the way he opened the meeting, saying it was "to go through how I came to the decision *after investigating*", and the fact that there was no investigation after 30 January 2020. We do not accept Mr Sohal's contention that the meeting with the Claimant was the "final piece in the puzzle" of his investigation. The meeting was not investigatory in nature at all. It consisted of Mr Sohal telling the Claimant why her points were not well founded and accusing her of having not complied with company policies. We accept there is no suggestion of any of these matters being pursued through a disciplinary process, but we agree with the Claimant that he treated the meeting as "more of a disciplinary matter".

73. The allegation of "not supporting the Claimant to return to work after her grievance" is somewhat vague, but we are satisfied that an inevitable consequence of Mr Sohal failing to investigate the grievance properly, and failing to uphold it, in particular in relation to the letter of 31 December 2019 and the incident on 1 January 2020 which caused the Claimant's sickness absence from 2 January 2020, was that the Claimant would not feel able to return to work. We find that she chose to start her maternity early purely in order to ensure she did not have to return to work or extend her sickness absence.

74. We find that all three of these allegations are made out and amounted to unfavourable treatment. As for the reasons for them, the Claimant relies on these matters as pregnancy discrimination, victimisation or both.

75. We find that Mr Sohal had a completely closed mind to the issue of the Claimant's absences being related to her pregnancy. The Claimant had clearly asserted in her grievance that the absences were pregnancy-related and Mr Sohal unreasonably failed to investigate that issue and came to the completely unjustified conclusion that Ms Vernau-Pope was right to send the letter. That raises serious doubt as to Mr Sohal's motivations. He has not put forward any satisfactory explanation for his conduct. We find that he, like the other senior staff, had also formed a negative impression of the Claimant as a difficult employee or a "complainer", because of her pregnancy and because she had made an allegation of pregnancy discrimination. We therefore find both the pregnancy discrimination and victimisation complaints succeed in relation to these three allegations, against both Mr Sohal personally and against the First Respondent.

Summary

76. By reference to paragraph numbers in the list of issues:

    76.1. The following complaints of pregnancy discrimination succeed: 2.1.3, 2.1.4, 2.1.6, 2.1.10, 2.1.11 & 2.1.13 (against the First Respondent); and 2.1.12, 2.1.14 & 2.1.15 (against both Respondents).

    76.2. The following complaints of victimisation succeed against both Respondents: 3.2.1, 3.2.3 & 3.2.4.

77. As we have only upheld complaints relating to incidents from 26 November 2019 onwards, no issue arises as regards time limits.

REMEDY

78. The Claimant seeks declarations and compensation. She agreed that any compensation should be awarded against the First Respondent only.

Financial losses

79. The Claimant claims financial losses based on the fact that she was on sick leave, then started her maternity leave early, and ultimately resigned from the Respondent, she says because of the discrimination. She was then unemployed for a time, but in receipt of Universal Credit on a joint basis with her partner, until starting a new job and her losses ended on 24 June 2021.

80. We have heard further evidence from the Claimant and make the following factual findings.

81. We are satisfied that the Claimant's sickness absence from 2 January 2020 was caused by the discrimination we have found proved, and in particular the conduct of Ms Vernau-Pope, Ms Styles and Ms Standen on 31 December 2019 and 1 January 2020.

82. We also have already found that the Claimant's decision to bring forward her maternity leave was due to the discrimination, in particular Mr Sohal's failure to deal with the grievance properly and to uphold the grievance relating to the letter of 31 December 2019.

83. As for the Claimant's resignation, we find that the primary reason for it was the fact that the Claimant believed the culture at Tralee was hostile and discriminatory, and she did not have any confidence that things would have changed for the better given Mr Sohal's response to her grievance. She said at the time that she was not returning "due to the circumstances surrounding the pending tribunal". Even if the fact of the Tribunal proceedings was a factor in the decision, that is also something that flowed from the discrimination. We are satisfied that any losses after the Claimant left the First Respondent are attributable to the discrimination such that they are recoverable in principle, subject to the duty on the Claimant to take reasonable steps to mitigate her losses.

84. The parties have agreed the Claimant's net monthly salary was £1,031.30.

85. We find that but for the discrimination, the Claimant would have remained employed, earning £1,031.30 net until she started her maternity leave on 10 May 2020, two weeks before her due date. She then would have received maternity pay of 90% her contractual earnings for 6 weeks, i.e. £928.17 a month, and then statutory maternity pay of £151.20 a week until the end of her maternity leave.

86. We find she would have returned to work when her statutory maternity pay was exhausted, i.e. after 9 months, on 10 February 2021. There was some discussion about the Claimant's evidence that she was assessed as clinically vulnerable so did not want to work until she had had her first Covid-19 vaccination, but it is not in dispute that if she had remained employed by Tralee she would have received the vaccination in January 2021, in time for a return to work on 10 February 2021. She would then have remained employed until beyond the date on which her claim for loss of earnings ends, 24 June 2021.

87. There is a dispute about whether the Claimant made reasonable efforts to mitigate her losses after leaving Tralee. Her evidence is that after she resigned her confidence was at an all-time low, and soon afterwards she was told she was clinically vulnerable. Her first vaccination was booked for 6 March 2021 and she started applying for jobs in late January 2021 with a view to starting work after her first vaccination. We do not consider that that approach was unreasonable, especially bearing in mind the Claimant was in receipt of Universal Credit so her losses were not substantial at this stage.

88. The Respondents argued that in view of the Claimant's evidence on this issue her loss of earnings were attributable to Covid-19 and her vulnerable status, not to any discrimination. We do not accept that. The Covid-19 situation is the background to all of our lives. There was no intervening act that meant the Respondents should not be liable for any losses thereafter.

89. The Claimant says she applied for around 15 jobs, but has not produced any evidence to support that, she says because she is not legally represented and did not realise it was required. The Respondent has not produced evidence of particular jobs it says the Claimant unreasonably failed to apply for, but it is not in dispute that there were a large number of vacancies in early 2021 due to the Brexit-related staff shortages in the care industry. The Claimant applied for her current job in April or early May 2021. She had an interview on 9 May and started the job on 24 June. Throughout this time the Claimant was in receipt of Universal Credit so her losses were not significant. Even if the Claimant could have made more strenuous efforts to find a job to start sooner after her first vaccination, we do not consider it unreasonable that it took her around two months to find a job that she wanted. The Claimant raised an issue about not being able to get a reference from the First Respondent but we place no weight on that because the Claimant did not even ask the Respondents what kind of reference they would give her, and given she was already engaged in this litigation she should have had some confidence that any reference would be no worse than neutral.

90. Overall we are satisfied that the Claimant made reasonable efforts to mitigate her losses.

91. On the basis of those findings we have calculated the amount the Claimant would have received, but for the discrimination, from 1 January 2020 to 24 June 2021, as follows:

- 1/1/20 to 10/5/20 (4.33 months) @ £1,031.30 a month = £4,465.53
- 10/5/20 to 21/6/20 (1.5 months) @ £928.17 a month = £1,392.26
- 21/6/20 to 10/2/21 (7.5 months) @ £151.20 a week = £4,914
- 10/2/21 to 24/6/21 (4.5 months) @ £1,031.30 a month = £4,640.85

TOTAL = £15,412.64

92. The Claimant's actual earnings over the period 1 January 2020 to 24 June 2021 are not in dispute and are as follows:

- Sick pay, annual leave and maternity pay until the end of the Claimant's employment with the Respondent (based on the Claimant's pay from her payslip dated 5/2/20, as set out in her Schedule of Loss) = £6,196.06
- Half of the joint Universal Credit payments from December 2020 until July 2021 = £5,637.74

TOTAL = £11,833.80

93. The total loss is £3,578.84 and we award that sum.

94. Interest accrues on financial losses from the mid-point between date of discrimination and the date of calculation. The period from 26 November 2019 to 21 January 2022 is 786 days. Interest accrued for half of that period, i.e. 393 days, at 8%. We award interest of £308.27.

<u>Injury to feelings</u>

95. The applicable Vento bands for claims presented between 6 April 2019 and 5 April 2020 are as follows:

> "In respect of claims presented on or after 6 April 2019, the Vento bands shall be as follows: a lower band of £900 to £8,800 (less serious cases); a middle band of £8,800 to £26,300 (cases that do not merit an award in the upper band); and an upper band of £26,300 to £44,000 (the most serious cases), with the most exceptional cases capable of exceeding £44,000."

96. We have found a number of acts of discrimination, by four different senior members of staff at the First Respondent, over a period of more than two months, from 26 November 2019 to 7 February 2020. The discrimination was relatively serious in itself, in that it included the Claimant's manager making disparaging comments about the Claimant's pregnancy and threatening her with disciplinary action and dismissal. Some of the comments were made in front of other staff.

97. The Claimant complained of the discrimination in accordance with the First Respondent's grievance policy and her complaints were rejected without any proper investigation or consideration. We have found that Mr Sohal took against the Claimant because of her pregnancy and because she raised a grievance complaining of discrimination. That aggravated the impact of the original discrimination.

98. The discrimination had a very significant impact on the Claimant, in that she was off sick with stress for around six weeks. She says she suffered anxiety, severe stress, insomnia and at times she felt depressed. Although this was not so severe as to require treatment or medication, we are satisfied that she did experience these symptoms and that it must have been particularly difficult for her given that she was pregnant at the time.

99. We consider the lower band of Vento is certainly not appropriate. Nor is the upper band appropriate. We accept the end result was she did not feel able to return to her employment with the First Respondent, but the Claimant was not actually disciplined or dismissed. Nor were the disparaging comments the most egregious form of pregnancy-related bullying.

100. We consider an appropriate award is one falling in the middle of the middle band, i.e. £17,550.

101. We award interest on the injury to feelings award for the whole period of 786 days at 8%, amounting to £3,023.41

102. The total sum awarded to the Claimant, payable by the First Respondent only, is £24,460.52.

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Employment Judge Ferguson

Date: 24 January 2022