EMPLOYMENT TRIBUNALS

Claimant: **Miss C Leitch**

Respondent: **CIS Services Limited**

Heard at: **East London Hearing Centre (by CVP)**

On: **6, 7 and 25 October 2022**

Before: **Employment Judge Porter**
Members: **Ms S Harwood**
Dr J Ukemenam

Representation

Claimant: In person

Respondent: Mr Mahmood of counsel

JUDGMENT having been sent to the parties on 31 October 2022 and written reasons having been requested at the hearing by counsel for the respondent in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Issues to be determined

1. At the outset it was confirmed that a preliminary hearing on 1 April 2022 had confirmed that the claims were:

    1.1. Unfair dismissal under s99 Employment Rights Act 1996 (ERA1996); and

    1.2. Discrimination under s18 Equality Act 2010.

2. The claimant did not pursue a claim for unpaid holiday pay, the amount of £146.16 as set out in the Schedule of Loss (pages 50-52).

3. The parties had agreed a List of Issues, which appears at pages 45-49 of the agreed bundle.

4. EJ Porter noted that the List contained a lot of factual issues and a statement of the relevant law. In essence the issues were:

   4.1. Was the claimant dismissed;

   4.2. Was there a mutual agreement to terminate the contract of employment;

   4.3. Did the claimant resign in response to a fundamental breach of contract by the respondent;

   4.4. If dismissed, what was the reason for dismissal;

   4.5. Was the reason for dismissal, or any fundamental breach of contract entitling the claimant to resign, because of:

      4.5.1. the claimant's pregnancy; or

      4.5.2. an illness suffered by her as a result of pregnancy; or

      4.5.3. because the claimant was seeking to exercise, or sought to exercise, the right to ordinary or additional maternity leave.

Orders

5. A number of orders were made for the conduct and good management of the proceedings during the course of the Hearing. In making the orders the tribunal considered the overriding objective and the Employment Tribunals Rules of Procedure 2013. Orders included the following:-

   5.1. The hearing was held by CVP. Neither party raised any objection to this.

   5.2. The start of the hearing was delayed as, at the beginning of the day, the tribunal panel consisted of only the employment judge and one lay member. It was noted that an additional lay member was on his way to the hearing centre, where he would participate in the hearing by way of CVP. It was agreed and ordered that the full panel would undertake its reading exercise in the morning and that the hearing would commence at 2.00pm, with the claimant giving evidence first.

5.3. During the course of giving her evidence on the first day of the hearing the claimant applied for disclosure of:

5.3.1. The text messages exchanged between her and Ms Calder, as identified at pages 119-120 of the agreed bundle;

5.3.2. Unredacted copies of the email exchange contained at pages 116 and 117 of the agreed bundle.

5.4. The claimant confirmed that she had not requested copies of these documents prior to the hearing and that she did not possess copies of the text messages.

5.5. Counsel for the respondent noted that:

5.5.1. The content of the text messages was not relevant and the respondent did not have possession or control of them;

5.5.2. The email exchange was redacted to exclude from disclosure confidential information relating to other employees which had no relevance to the issues to be determined before this tribunal;

5.5.3. He would take further instructions over the break.

5.6. At the start of the second day of the hearing counsel for the respondent confirmed that he had now seen the unredacted emails, which did not contain confidential information and therefore the respondent consented to the disclosure of the unredacted emails.

5.7. By consent, copies of the unredacted email exchange which appears at pages 116 -117 of the agreed bundle were provided to the claimant and the tribunal.

5.8. EJ Porter noted that the respondent was unable to disclose copies of the text messages if it did not have copies or control over them. No order for disclosure was made in relation to those text messages. If there was a conflict as to their content, this could be addressed in the oral evidence.

5.9. The claimant indicated at the outset of the hearing that she wished her mother to stay in the room with her to give her support during the course of the hearing. The claimant indicated that she did want to represent herself and had prepared for the hearing on that basis. However, she did need support during the hearing as she suffered from PTSD. It was explained that the claimant was

allowed to have support from her mother, who could help the claimant find documents and/or formulate questions for cross-examination of the respondent's witnesses and/or advise the claimant on any procedural matters. However, it was imperative that the claimant's mother did not assist the claimant in giving evidence and/or in replying to questions in cross-examination. For this reason, it was ordered that the claimant and her mother sit side by side in front of the camera so that the tribunal could observe the nature and extent of the support given by the claimant's mother.

5.10. The claimant was very upset throughout the hearing and required several breaks. At times, her mother, Mrs Leitch, could be seen as seeking to console the claimant. At the commencement of day 2, EJ Porter noted that the claimant's mother had, during the course of the claimant's evidence, been noted to mutter at times and to gesticulate at times to the documents. The claimant's mother was reminded not to participate in the giving of the evidence of her daughter. The tribunal was satisfied with Mrs Leitch's explanation that she was simply trying to give her daughter emotional support, and was not interfering in the giving of evidence.

5.11. After the announcement of the decision on the substantive merits of the claim a remedy hearing was held. The respondent raised no objection to the claimant providing further evidence, oral and documentary, in support of her claim for compensation. The claimant relied on a Schedule of Loss, a supplemental witness statement and documentary evidence relating to her attempts to mitigate loss and medical evidence as to her treatment for mental impairment including PTSD.

Submissions

6. The claimant made a number of detailed submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-

6.1. The respondent has given inconsistent evidence, has changed its story each time it changes solicitors;

6.2. No ACAS procedure was followed;

6.3. The respondent has failed to provide evidence to support its false assertions about her personality, has failed to provide the CCTV coverage of the meeting on 24 June 2021;

6.4. The respondent has made the claimant feel worthless with these false allegations;

6.5. There were no complaints about her work while she was in employment. She enjoyed working there, she did not want to leave. She was able to manage the challenging work

7. Counsel for the respondent made a number of detailed submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-

7.1. The respondent relied on the summary of legal principles and case law set out in the Agreed List of Issues;

7.2. There is a conflict of evidence as to what occurred at the meeting on 24 June 2021 and the tribunal is invited to prefer the evidence of the respondent's witnesses;

7.3. The claimant has throughout this hearing misunderstood what has been said and it is suggested that this is what happened on the 24 June 2021;

7.4. The respondent's witnesses are consistent as to what happened at the meeting on 24 June 2021. It is entirely credible that Mr. Clark overheard the conversation between the claimant and Ms Calder. The claimant is now suggesting that the CCTV would have helped her win her case and that the respondent intentionally deleted the CCTV footage. However, prior to this hearing the claimant did not establish whether the camera was actually pointed at her desk where the conversation took place, did not establish whether there was an audio recording facility with the CCTV camera;

7.5. the claimant decided to resign, take advice from ACAS and then construct a claim that she was dismissed for a reason relating to her pregnancy;

7.6. there is no reason for the respondent to dismiss the claimant because she was pregnant. The claimant had little continuity of service, the maternity pay would have been a very small amount, the respondent does not have a policy of sacking pregnant employees. To the contrary, the respondent has retained the bookkeeper who became pregnant and returned to work after her maternity leave;

7.7. the respondent's witnesses have been honest in giving their evidence, that the claimant did resign, in light of the letter that was sent on the 28 June 2021 and appears at document 92. That document was sent in error: it did not accurately reflect the fact that the claimant had resigned and had not been dismissed. A dishonest respondent would have relied on that letter and asserted that the claimant was dismissed for conduct. This respondent chose the more difficult but honest defence to the claim;

7.8. The burden of proof does not shift. There are no facts from which the tribunal could incur that the reason for responders conduct related to the claimant's pregnancy;

7.9. The respondent's witnesses have given a non discriminatory explanation relating to the circumstances in which the claimant's employment came to an end,

8. After hearing submissions the tribunal retired to reach a decision. However, the tribunal was unable to reach a decision before the end of the second day. The hearing was therefore adjourned to a later date for announcement of the decision and, if necessary, any remedy hearing.

9. Prior to the resumed hearing the claimant made further written representations to the tribunal and asked that they be taken into account before the tribunal reached its decision. However, the tribunal ordered that it would not consider any further submissions from the claimant as the tribunal was satisfied that the claimant had full opportunity to state her case on the first two hearing dates, following which the tribunal started its deliberations. It is not in the interest of justice or pursuant to the overriding objective to re-open the hearing before the tribunal makes and announces its decision.

10. Following the announcement of the decision on the substantive merits of the claim the parties made further submissions in relation to remedy.

11. The claimant made a number of submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-

11.1. the claimant makes a claim for two weeks of loss of wages as set out in the Schedule of Loss. She makes no claim for ongoing and/or future loss of earnings;

11.2. the claimant claims £30,000 for injury to feelings. She felt degraded and worthless as a result of the dismissal. She has suffered from a lack of confidence. This has had a severe impact on her mental health, as illustrated by the medical evidence showing that the claimant relied on medication for stress and received counselling;

11.3. the claimant's relationship with her partner suffered as a result of the dismissal;

11.4. the claimant does not make a claim for compensation for personal injury;

11.5. it is appropriate to award aggravated damages because the respondent has made the claimant feel worse by lying in the

conduct of the proceedings and making false allegations against her personality;

11.6. it is in the interest of justice to award an uplift of 25% because of the respondent's failure to follow ACAS procedure;

11.7. it is in the interest of justice to award interest.

12. Counsel for the respondent made a number of detailed submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-

12.1. This was a one off event, an isolated incident and falls within the middle to top of the lower Vento band;

12.2. The respondent does not take issue with the claim for loss of earnings;

12.3. There is no valid claim for compensation for personal injury. The claimant has failed to provide medical evidence to show that her PTSD and other mental illnesses were caused by any discriminatory conduct;

12.4. It is not in the interest of justice to award aggravated damages;

12.5. It is agreed that the tribunal could consider an uplift for failure to follow ACAS procedure. The respondent accepts that it did not follow the ACAS procedure but would suggest that the uplift be limited to 10%;

12.6. It is noted that interest can be awarded at 4%.

Evidence

13. The claimant gave evidence.

14. The respondent relied upon the evidence of:-

14.1. Mrs Nicola Calder, Head of Compliance

14.2. Mr Christopher Clark, director

15. The witnesses provided their evidence from written witness statements. They were subject to cross-examination, questioning by the tribunal and, where appropriate, re-examination.

16. An agreed bundle of documents was presented. Additional documents were presented during the course of the Hearing, either in accordance with the Orders outlined above or with consent. References to page

numbers in these Reasons are references to the page numbers in the agreed Bundle.

Facts

17. Having considered all the evidence the tribunal has made the following findings of fact. Where a conflict of evidence arose the tribunal has resolved the same, on the balance of probabilities, in accordance with the following findings.

18. The Respondent designs, installs and maintains customer information and security systems, predominately in the rail industry. It employs some twenty members of staff supplemented by agency and subcontractors as and when work necessitates. Chris Clark is the director of the respondent company.

19. Nicola Calder joined the respondent company in 2019. Her current role is Head of Compliance. As Head of Compliance, she is responsible for the management and compliance of all aspects of the company's business management system ensuring it is conversant with UK legislation and regulations and compliance with all company accreditations. Her role covers the day-to-day provision or administrative activities, human resources support, health, safety and welfare support.

20. The respondent company is supported with its Human Resources by Practical HR limited. The respondent company has an HR portal, hosted by Practical HR, which contains all its HR policies and procedures including a maternity leave and pay policy.

21. The Claimant commenced her employment with the Respondent as an Administrative Assistant on 21 May 2021. Ms Calder provided the claimant with a copy of a contract of employment for signature.

22. The claimant raised concerns in relation to signing the contract of employment provided by Ms Calder, including a concern about the terms of the restrictive covenant. Ms Calder discussed those issues with Mr Clark.

23. Ms Calder did have initial concerns about the claimant's behaviour and her ability to work as part of the team. She did discuss those concerns with Mr Clark on 10 June 2021 as evidenced by the unredacted email exchange between them (pages 116 and 117).

24. Following the discussion Ms Calder wrote the email to Chris Clark dated 11 June 2021 (page 116) in the following terms:

> In reference to Charlotte's recent behaviour in such a short space of time with us, it has led to an element of a lack of trust which needs to be rebuilt if she stays. It could also cause issues going forward if it is not, particularly in the role she is working in which I believe yesterday you agreed with.

However, in respect of Charlotte's contact feedback, I will respond as we agreed.

Should she choose to sign our terms of employment I will, with particular emphasis and professionally, monitor her behaviour and attitude and her ability to act well in a team and towards me as her Line Manager. I took from our discussion that you would also do the same. This is alongside my belief that she possesses aptitude for the Financial role which she has indicated she is keen to fulfill and would do very well in. But we have to work as a team and not the 'isolation' approach.

25. By email dated 14 June 2021 (pg86) Ms Calder answered the claimant's concerns about the contract of employment including the claimant's concerns relating to the restrictive covenant, stating:

In respect of this point, Chris is not willing to remove or amend this wording and this is reflected in all Company employees Contracts of Employment. However, if this is an issue for you, please let me know as we are happy to discuss further if needs be

26. A week later, on Monday 21 June 2021, Ms Calder sent a further email to the claimant and referred to the unsigned contract and the problem the claimant had raised about signing the restrictive covenant. Ms Calder asked if the claimant had any more questions about this point and continued:

"If not, I would be grateful of you would sign and return your contract along with a response to my email regarding background checks which I sent to you on 17th June by Close of Business tomorrow for my return on Wednesday so I can get the ball rolling please."

27. Ms Calder was not in the office on Tuesday 22 June 2021.

28. The claimant was absent from work on Wednesday 23 June 2021, when the claimant sent a text message to Ms Calder, informing her that she was unable to attend work that day because she needed to attend hospital as she was pregnant.

29. The claimant was pregnant from 23 June 2021 until after the end of the termination of her employment.

[The respondent concedes that the claimant was pregnant at this time]

30. On 24 June 2021 the claimant arrived at work and had an informal meeting with Ms Calder at her desk in the open office. No-one else was present in the office. The claimant informed Ms Calder that she was pregnant. Ms Calder asked the claimant how she was feeling. The claimant explained that she was a little overwhelmed. She explained that she previously had miscarriages and was not sure if this pregnancy would be successful. She told Ms Calder how distraught she and her partner were over losing their previous twins and now having a home and a job would be different. She told Ms Calder that she had lost a baby when she was homeless and without a job. The claimant did not tell Ms

Calder that she wanted to leave. After the claimant told Ms Calder about the pregnancy and previous miscarriage, Ms Calder informed the claimant that she had not signed her contract of employment and so "we have no obligation to keep you on". The claimant was then given the option of leaving there and then, working until the end of the day or until the next day. The claimant said that she would need the money so requested that she work until the next day, which was the end of the week.

[On this the tribunal accepts the evidence of the claimant. The evidence of the claimant in cross examination was largely consistent as to what had happened at the meeting. The evidence of the respondent's witnesses relating to this meeting and the manner in which the employment of the claimant came to an end is unsatisfactory and inconsistent.]

31. After the meeting Ms Calder sent the claimant an email at 9:41 on 24 June 2021 (p88) stating:

> Thank you for being honest this morning. It is clear you have been through traumatic experiences in the past and therefore, with that and your health and wellbeing in mind, we have both come to the agreement that tomorrow, Friday 25th June, will be your last day with CIS Services. Please confirm for my records that you are happy with this agreement that your time with us will terminate on the above date?

32. The claimant replied to Ms Calder on 24 June 2021 at.10:04 (p88) in the following terms:

> Thank you for being understanding and yes agreed that tomorrow the 25th will be my final day. ……It has been a pleasure assisting you all and I wish you all the best for the future.

33. The claimant telephoned ACAS on 24 June 2021 to enquire whether she had any rights.

34. On 25 June 2021 the claimant handed over her work and passwords to her colleague, Katie. There was no discussion between her and Ms Calder about the circumstances which had led to this being her final day of work.

35. At 15:21 on 25 June 2021 the claimant sent an email to Ms Calder stating:

> Dear Nicola and Chris,
>
> I am sending this email at the end of the day as I didn't want further aggravation (sic) whilst handing over to Katie.
>
> Following the informal conversation with Nicola yesterday morning the 24th June 2021 I would like to raise the following;

Prior to informing Nicola how far my pregnancy is, I was given three options. A. To leave then. B. To work to the end of the day. C. To work until the end of the week which would include the dates 24th - 25th June 2021. Nicola had informed that Chris had been made aware I was pregnant but I am unsure if the decision for me to leave the company was down to Nicola or Chris. An email sent from Nicola suggests that I volunteered to leave due to a previous traumatic experience. This is not the case and by revealing to Nicola my previous miscarriage, had this used against me. I find this extremely disrespectful to use my grief as a potential get out of keeping me under the Company's employment.

The reason given for me to leave was purely that, I have not been with the company long enough or have not signed a contract. The basic terms of the contract were agreed but a few aspects were to be adjusted. As per Nicola, this supposedly excuses the Company from any legal obligation to offer maternity rights or keep me on. I informed Nicola that my pregnancy may not be successful, due to a history and gene, but that was not considered. Nicola raised that pressurised working conditions caused by Chris would create potential stress that she didn't want.

As I had mentioned at the time I was in a state of shock and did not handle the situation to the best of my ability or to my best interest. I agreed to leave as I felt pressurised to do so and felt that I had no rights to argue. Having had the opportunity to digest the circumstance I am addressing this formally and professionally in writing. I will also be seeking legal advice.

With reference to the above. I have been working for the company for over 1 month. I joined on the 21st May 2021. With or without a contract I have the right to a one week notice period. Although I am only 10 weeks pregnant, the protective period of pregnancy under Section 18 of the Equality Act, begins from the start of the pregnancy.

I feel that I have succeeded in my role and have been given an automatum purely due to my condition. As per the discussion and reasoning there was no previous intention to dismiss me from my role prior to my pregnancy. I legally did not have to inform the company at this stage but demonstrated my honesty in hope it would give the company an opportunity to assess my needs and prepare in advance for any leave.

On the 24th June, I was concerned and not in a position to react formally. I feel the discussion held was rushed and pressured me into a decision without formality or defence. Pushing me to unemployment at such an early stage of my pregnancy puts more stress on myself therefore I do not see how my best interest has been considered. When accepting the role I was informed that remote working was feasible if necessary. This was not considered either as a way to potentially adapt the role if Nicola truly felt Chris's working methods would cause a problem.

I was informed that the out of office Bookkeeper could complete the tasks in my role. This contradicts any reasoning for me to not be offered the same conditions as them, remote working.

At no point had I ever raised concerns or that any part of the role was stressful. I have been thoroughly enjoying the tasks, implementing cost saving routes and was excited about changes to come in the form of the new accounting

software and involvement in securing new contracts and contractors for the company.

I would like confirmation that the Employment Act is complied with and I am paid to include the correct notice period. I would also like a response to my accusation (sic) "I have been discriminated by the HR Manager. Why does the company feel it is acceptable to discriminate me for being pregnant and not abide the Equality Act or Employment Acts?".

As I am sure you can appreciate this has made me feel uncomfortable, created an immediate financial stress additional to being made to feel that I and my baby are insignificant to the company. I am extremely disheartened that I have been treated this way and the trust and support which was expected from HR or the Director was not offered. Feel free to respond now or await to hear from the Solicitor. Kindest regards

36. On Mon, 28 Jun 2021 at 16:18, Nicola Calder wrote to the claimant:

Please find attached a letter in response to your e-mail which confirms the reason for your termination of employment with the Company.

37. The attached letter (p92) stated as follows:

Dear Charlotte, I write further to your email at 3.21pm on the 25th June 2021. As you are aware, I sent you a copy of your contract of employment on the 20th May 2021, prior to you starting with CIS Services on the 21st May 2021. This contract set out the terms under which you would be employed. Despite starting with us on the due date, you declined to sign your contract of employment, on the basis that you did not agree with the post termination restrictions within it. I subsequently spoke to Chris about this particular aspect of your contract, on your behalf as your line manager, to see if he was willing for it to be removed. This I duly did, but Chris was adamant that this particular clause should remain in the contract. I accordingly advised you of this by email on the 14 th June 2021. You did not reply and therefore on 21st June 2021 I ask that you therefore, return the signed contract back to me by Tuesday 22nd June 2021. You failed to provide a signed copy of your contract and therefore the decision was taken to bring your employment to an end. The reason for your contract being terminated had nothing to do with you advising me on the 23rd June 2021 that you were pregnant and as set out above, was due to the fact you were not prepared to accept the terms under which you were offered employment. Given that you had advised me of your previous miscarriages, I did not want you to be under any undue stress and hence why I gave you 3 options about when you could leave. I am aware how stressful your role can be, especially when Chris gives very short deadlines, by which he wants something done. You chose to leave at the end of the week. Had it not been for your pregnancy, you would not have been given the option as to when you could leave, and such a decision would have been made for you by the Company. The Company is fully aware of its legal obligations with regard to pregnant employees. However, the decision to terminate your employment was made irrespective of you being pregnant and we categorically deny that we have discriminated against you as alleged. I can confirm that you are entitled to one week's notice of termination, but you will not be required to work your notice. In the short time you have worked for the Company you have taken and been paid for more than your entitled days annual leave. Unfortunately, you would have only accrued 3.2

days annual leave (inclusive of bank holidays) up to your termination date. This means that you have taken 2 days more annual leave than you would have accrued in the current holiday year, and in accordance with regulation 14 of the Employments Right Act 1996, the Company reserves the right to deduct from your final payment a sum equivalent to the excess annual leave taken, as it amounts to an overpayment of salary. Accordingly, your date of termination was the 25th June 2021 and a payment in lieu of a week's notice has already been made to you as of today, 28th June 2021 and in line with the above. Your P45 will be forwarded to your home address. It is always regrettable to have to end employment, but we do wish you all the very best for the future.

38. Ms Calder asserts that the letter was drafted by the company's external HR advisers and that she read it before signing and sending it to the claimant. Mr Clark confirms that the letter was drafted by external HR advisers and that he read it before it was sent to the claimant.

39. In the ET1 the claimant states:

"Nicola said that as I have not signed my contract they had no obligation to offer me maternity or keep me on…. she told me that I had no rights and gave me three options. To leave there and then, work until the end of the day or work until the end of the week. I asked, as I would need the money, if I could work until the end of the week and Nicola agreed which was then emailed."

40. The claimant did not keep any contemporaneous notes of the meeting on 24th June 2021. Neither did Ms Calder nor Mr. Clark.

41. The respondent has retained another pregnant employee in employment and that employee has returned to work for the respondent after maternity leave as an external bookkeeper.

42. The Response includes the following:

On 24 June 2021, a discussion took place at the Respondent's premises between Mrs Calder and the Claimant regarding the fact that the Claimant was yet to sign and return her contract of employment. During this conversation, the Claimant also explained she had previously suffered miscarriages and was concerned this may occur again. Mrs Calder explained to the Claimant in the event she wished to leave her employment, the Respondent could facilitate the same and options were put to her accordingly, namely, the Claimant could leave her employment at that time, she could work until the end of her shift or could work out her notice until 25 June 2021. The Claimant confirmed during that discussion that her preference was to leave on 25 June 2021.

20. The Claimant had agreed with the Respondent that her employment would come to an end on 25 June 2021, and to this end the Respondent denies that a dismissal had taken place.

21. The Respondent further denies that such a discussion took place due to the fact that the Claimant was pregnant, rather, the mutual agreement for the Claimant's employment to end was reached following the discussion with the Claimant on 24 June 2021 during which she expressed concerns she had previously miscarried.

43. The Response does not say that the conversation between the claimant and Ms Calder was overheard by Mr. Clark.

44. The claimant found alternative employment within two weeks of her termination of employment with the respondent. This was a position which she had applied for prior to her commencing employment with the respondent. Her claim for financial loss is restricted to two weeks wages in the sum of £791.86. The respondent did not challenge the amount claimed in loss of wages.

45. The dismissal had a serious impact on the claimant. She had told Ms Calder that she had lost a baby when she was homeless and without a job. The claimant hoped that her personal circumstances had changed, she did have a partner, she was not homeless, and she did have a job. However, without warning on 24 June 2021 the claimant was without a job. She felt worthless, she was worried about the effect on her unborn child. The claimant was hurt and distressed by the decision to dismiss. Her relationship with her partner was badly affected by the dismissal and the claimant's reaction to it.

[On this the tribunal accepts the evidence of the claimant.]

46. Following the termination of employment sadly the claimant did lose her unborn child. The claimant suffers from PTSD and continues to be emotionally distressed by the loss of her employment with the respondent and the loss of her child. The claimant suffers from severe anxiety and has been prescribed medication and counselling. However, the claimant has provided no satisfactory medical evidence to support an assertion that the claimant's PTSD and the severe anxiety was caused by the respondent's discriminatory act. It is clear that the loss of her child has had an extremely severe effect on the claimant's mental health. The tribunal extends to the claimant its sincere sympathy and condolences for her loss.

47. The respondent failed to follow any ACAS procedure before dismissing the claimant and failed to provide a right of appeal.

The Law

48. The burden of proof falls on the employee to show a dismissal. The standard of proof is that of the 'balance of probabilities' as normally applied in civil courts: the tribunal must consider whether it was more likely than not that the contract was terminated by dismissal rather than, for example, by resignation or by mutual agreement between employer and employee.

49. Doubt may arise as to whether a dismissal has taken place when the words or actions of the employer or employee give rise to ambiguity, either by their nature or because of the circumstances in which they took place. Furthermore, an apparent resignation may be treated as a

dismissal if it was the result of an ultimatum along the lines of 'resign or you'll be fired', or if the resignation was induced by deceit or trickery on the part of the employer.

50. The test as to whether ostensibly ambiguous words amount to a dismissal or a resignation is an objective one:

- all the surrounding circumstances (both preceding and following the incident) and the nature of the workplace in which the misunderstanding arose must be considered

- if the words are still ambiguous, the tribunal should ask itself how a reasonable employer or employee would have understood them in light of those circumstances.

51. The general rule is that unambiguous words of dismissal or resignation may be taken at their face value without the need for any analysis of the surrounding circumstances- **Sothern v Franks Charlesly and Co 1981 IRLR** 278 CA. There are, however, important qualifications to the general rule that plain words are to be taken at their face value. Lord Justice Fox LJ thought that there might be an exception in the case of an immature employee, a decision taken in the heat of the moment or an employee being jostled into a decision by the employer. Dame Elizabeth Lane agreed, referring to exceptions in the case of 'idle words or words spoken under emotional stress which the employers knew or ought to have known were not meant to be taken seriously… [or] a case of employers anxious to be rid of an employee who seized upon her words and gave them a meaning which she did not intend'. In such cases, it may be appropriate to investigate the context in which the words were spoken in order to ascertain what was really intended and understood. However, absent such special circumstances, an unambiguous resignation will be valid.

52. It has long been established that if an employee is told that he or she has no future with an employer and is expressly invited to resign, then that employee is to be regarded as having been dismissed — see, for example, **East Sussex County Council v Walker 1972 7 ITR 280, NIRC.**

53. The principles to be considered in such circumstances were set out by the Court of Appeal in **Martin v Glynwed Distribution Ltd 1983 ICR 511, CA**. Sir John Donaldson MR said that: 'Whatever the respective actions of the employer and employee at the time when the contract of employment is terminated, at the end of the day the question always remains the same, "Who really terminated the contract of employment?". If the answer is the employer, there was a dismissal.' He went on to hold that this question was one of fact for the tribunal to decide in the circumstances of the particular case.

54. S99 ERA 1996 provides that an employee shall be regarded as having been unfairly dismissed if the reason or principal reason for the dismissal is of a prescribed kind, or the dismissal takes place in prescribed circumstances. S99(3) sets out the prescribed reasons or set of circumstances caught by these provisions, which expressly include reasons related to 'pregnancy, childbirth or maternity'

55. The Maternity and Paternity Leave Regulations Reg 20(1) provides that an employee who is dismissed will be regarded as unfairly dismissed under s 99 ERA 1996 if the reason or principal reason for the dismissal is of a kind specified in Reg 20(3) – Reg 20(1)(a). The reasons for dismissal specified in Reg 20(3) are reasons connected with: the pregnancy of the employee.

56. The phrase 'connected with her pregnancy' is potentially wide enough to cover ante-natal care, miscarriages and pregnancy-related illnesses. In **Clayton v Vigers 1989 ICR 713** the EAT considered that the words 'connected with' had to be read widely.

57. There is no qualifying period to claim automatically unfair dismissal under s99 ERA 1996, but the effect of an employee having less than two years' continuous service is that the employee bears the burden of proof in showing that the reason for dismissal was a prescribed reason within the meaning of s99 ERA 1996 and the applicable regulations. In **Smith v Hayle Town Council 1978 ICR 996,** CA Lord Denning MR said that tribunals should weigh the evidence according to 'the proof which it [is] in the power of one side to have produced and in the power of the other side to have contradicted'. Once an employee has presented some prima facie evidence that he or she was dismissed for the prohibited reason, it is up to the employer to produce evidence to the contrary.

58. The tribunal must be satisfied that the prohibited reason is the principal reason for dismissal: a claim for automatically unfair dismissal will not succeed if the prohibited reason is merely a subsidiary or indirect reason for dismissal.

59. S18 Equality Act 2010 (EqA) provides that an employer (A) discriminates against a woman if, in the 'protected period' in relation to a pregnancy of hers, A treats her unfavourably:

- because of the pregnancy , or
- because of illness suffered by her as a result of it

60. The 'protected period', in relation to a woman's pregnancy, starts when the pregnancy begins and, if she has the right to ordinary and additional

maternity leave, ends either at the end of additional maternity leave or when she returns to work, if earlier s 18(6)(a).

61. S139 EqA provides that, once there are facts from which an employment tribunal could decide that an unlawful act of discrimination has taken place, the burden of proof 'shifts' to the respondent to prove a non-discriminatory explanation.

62. In order to establish a prima facie case of pregnancy and maternity discrimination and shift the burden to the employer to provide a non-discriminatory explanation, a claimant will need to prove, on the balance of probabilities, that she has suffered unfavourable treatment and that there are facts from which it can be inferred that the reason for such treatment was one of the four reasons prohibited in s18 EqA. Such an inference might be drawn where there is a close temporal link between the unfavourable treatment and the claimant informing the employer of her pregnancy.

63. An award of compensation for injury to feelings may be made where a claimant has suffered discriminatory treatment under s18 Equality Act 2010. The onus is on the claimant to establish the nature and extent of the injury to feelings. The amount of the award under this head should be made taking into account the degree of hurt, distress and humiliation caused to the complainant by the discrimination. The tribunal has considered the case of **Armitage Marsden & HM Prison Service -v- Johnson (1997) ICR 275** and in calculating the award for injury to feelings in this case have applied the principles as set out therein which the tribunal summarises as follows:-

1. Awards for injury to feelings are compensatory not punitive.

2. Awards should not be too low, as that would diminish respect for the policy of anti-discrimination legislation. Nor should they be so excessive as to be viewed as "untaxed riches".

3. Awards should be broadly similar to the whole range of awards in personal injury cases.

4. Tribunals should remind themselves of the value in every day life of the sum they have in mind.

5. Tribunals should bear in mind the need for public respect for the level of awards made.

64. The tribunal has also considered the case of **Alexander -v- The Home Office [1998] IRLR 190 CA** wherein the Court of Appeal said that the level of injury to feelings awards should not be minimal, because this would tend to trivialise or diminish respect for the public policy to which the (Race Relations) Act gives the effect. On the other hand awards

should not be excessive because this does almost as much harm to the same policy.

65. Compensation for injury to feelings may include an added element of aggravated damages where the respondent has behaved in a high-handed, malicious or oppressive manner in committing the discriminatory act. **Alexander -v- The Home Office** (supra). ***In* Commissioner of Police of the Metropolis v Shaw 2012 ICR 464, EAT**, Justice Underhill identified three broad categories of case:

    - where the manner in which the wrong was committed was particularly upsetting. This is what the Court of Appeal in Alexander meant when referring to acts done in a 'high-handed, malicious, insulting or oppressive manner'

    - where there was a discriminatory motive — i.e. the conduct was evidently based on prejudice or animosity, or was spiteful, vindictive or intended to wound. Where such motive is evident, the discrimination will be likely to cause more distress than the same acts would cause if done inadvertently; for example, through ignorance or insensitivity. However, this will only be the case if the claimant was aware of the motive in question — an unknown motive could not cause aggravation of the injury to feelings, and

    - where subsequent conduct adds to the injury — for example, where the employer conducts tribunal proceedings in an unnecessarily offensive manner, or 'rubs salt in the wound' by plainly showing that it does not take the claimant's complaint of discrimination seriously.

66. Features of mitigation, including the proffering of an apology, should be taken into account in assessing the level of aggravated damages. **Armitage, Marsden & HM Prison Service -v- Johnson (supra)**

67. The presence of high-handed conduct will not necessarily be enough, on its own, to lead to an award of aggravated damages. As the authorities cited previously make clear, aggravated damages are compensatory, not punitive. This means that there must be some causal link between the conduct and the damage suffered if compensation is to be available. In **HM Prison Service v Salmon 2001 IRLR 425, EAT,** the EAT made it clear that 'aggravated damages are awarded only on the basis, and to the extent, that the aggravating features have increased the impact of the discriminatory act or conduct on the applicant and thus the injury to his or her feelings'.

68. The tribunal has considered the decision and guidance given by the Court of Appeal in **Vento v Chief Constable of West Yorkshire Police (No.2) [2003] IRLR 102** and the updates to the amount recommended to be awarded for the three levels of award. The Court of Appeal

confirmed that in carrying out an assessment of compensation tribunals should have in mind the summary of the general principles on compensation for no-pecuniary loss by Smith J in Armitage v Johnson (above). The Court of Appeal observed: Three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury, can be identified:

1) The top band. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the grounds of sex or race. Only in the most exceptional cases should an award of compensation for injury to feelings exceed the top limit.

2) The middle band should be used for serious cases, which do not merit an award in the highest band.

3) Awards of lesser sums are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence.

69. There is within each band considerable flexibility allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case. Regard should also be had to the overall magnitude of the sum total of the awards of compensation for non-pecuniary loss made under the various headings of injury to feelings, psychiatric damage and aggravated damage. In particular double recovery should be avoided by taking appropriate account of the overlap between the individual heads of damage. The extent of overlap will depend on the facts of each particular case.

70. In **Vento** Mummery LJ identified the lowest of the three bands as being appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. This does not, however, translate to a rule that all one-off occurrences must fall within the lower band – some isolated or one-off occurrences will be sufficiently serious to warrant an award in one of the upper two bands. In **Base Childrenswear Ltd v Otshudi EAT 0267/18** the EAT noted that whether the discrimination was a one-off act or a course of conduct was a relevant factor for the tribunal to take into account but it was not determinative. The tribunal correctly focused on the effect the dismissal had on the claimant, concluding that it was a serious matter which justified an award in the middle band.

71. The tribunal notes the formal revision of these bands in the case of **Da'Bell v NSPCC 2010 IRLR 19** and the Presidential Guidance which states:

In respect of claims presented on or after 6 April 2021, the Vento bands shall be as follows: a lower band of £900 to £9,100 (less serious cases); a middle band of £9,100 to £27,400 (cases that do not merit an award in

the upper band); and an upper band of £27,400 to £45,600 (the most serious cases), with the most exceptional cases capable of exceeding £45,600.

72. The relevant date for the purpose of calculating interest differs according to whether the interest relates to a sum for injury to feelings or to arrears of remuneration, and whether there would be serious injustice caused by an application of the normal rules. For injury to feelings awards, Reg 6(1)(a) provides that the period of the award of interest starts on the date of the act of discrimination complained of and ends on the day on which the employment tribunal calculates the amount of interest — the 'day of calculation'. It must be presumed that where discrimination extends over a period, the tribunal will be afforded some discretion to decide when the discrimination can be said to start.

73. For all other awards, interest is awarded for the period beginning on the 'mid-point date' and ending on the day of calculation : Reg 6(1)(b). The 'mid-point date' is the date halfway through the period beginning on the date of the act of unlawful discrimination and ending on the day of calculation- Reg 4(2). No award of interest can be made in relation to losses which will arise after the day of calculation.

74. In both cases the rate is currently eight per cent.

75. S207A Trade Union and Labour Relations (Consolidation) Act 1992 provides:

> If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
>
> (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
>
> (b) the employer has failed to comply with that Code in relation to that matter, and
>
> (c) that failure was unreasonable,
>
> the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

76. The tribunal has considered and where appropriate applied the authorities referred to in submissions.

Determination of the Issues

77. This includes, where appropriate, any additional findings of fact not expressly contained within the findings above but made in the same manner after considering all the evidence.

78. The respondent was aware that the claimant was pregnant on 23 June 2021, when the claimant sent a text to Ms Calder, informing her that the claimant was unable to attend work that day because she needed to attend hospital as she was pregnant.

79. The key question is whether, during the conversation between the claimant and Ms Calder on 24 June 2021, there was a dismissal, resignation, or termination by mutual agreement.

80. The burden falls on the claimant to prove that she was dismissed.

81. We have considered with care the evidence of the claimant, Ms Calder and Mr Clark as to what was said at that meeting on 24 June 2021. We note that none of them made a contemporaneous note of what was said at that meeting. Both parties are somewhat vague as to the exact words used. That is not surprising in the absence of any audio recording or contemporaneous note. We note in particular Ms Calder's evidence in chief, her witness statement, in which she states that the claimant:

> "told me she was 11 weeks pregnant and then proceeded to give me a traumatic account of previous pregnancies which ended in miscarriages. The claimant advised me that she was concerned that this may occur again. The claimant made it clear to me from her subsequent comments during our conversation that she wanted to protect her pregnancy and did not want to continue working for the company ie she wished to resign……

82. During the course of cross examination Ms Calder said that the claimant told her that she needed to protect her pregnancy and asked to leave. Mr Clark does not give any satisfactory evidence as to the actual words used between the claimant and Ms Calder. It is clear that he was not in the room at the time. His evidence is that he was on the first few steps leading up to the open plan office where the conversation took place. There is a dispute between the parties as to the distance between the stairs and the desk where the conversation took place. No plan has been provided of the office to assist the tribunal. It is noted that Mr Clark and Ms Calder had a conversation after the meeting with the claimant to discuss what had been said. The tribunal puts very little if any weight on the evidence of Mr Clark on what was said between the claimant and Ms Calder.

83. We note the Response which states of this meeting

> "During this conversation, the Claimant also explained she had previously suffered miscarriages and was concerned this may occur again. Mrs Calder explained to the Claimant in the event she wished to leave her employment, the Respondent could facilitate the same and options were put to her accordingly, namely, the Claimant could leave her employment at that time, she could work until the end of her shift or could work out her notice until 25 June 2021. The Claimant confirmed during that discussion that her preference was to leave on 25 June 2021. "

84. Again, the Response does not set out the precise words used.

85. We note the email which Ms Calder sent to the claimant at 9:41 on 24 June 2021 (p88) stating:

> Thank you for being honest this morning. It is clear you have been through traumatic experiences in the past and therefore, with that and your health and wellbeing in mind, we have both come to the agreement that tomorrow, Friday 25th June, will be your last day with CIS Services. Please confirm for my records that you are happy with this agreement that your time with us will terminate on the above date?

86. That email does not say that the claimant resigned and her resignation was accepted. It refers to an agreement that the claimant's employment would terminate on 25 June 2022.

87. We note the claimant's reply:

> "Thank you for being understanding and yes agreed that tomorrow the 25th will be my final day. ……It has been a pleasure assisting you all and I wish you all the best for the future."

88. The claimant does not in that reply confirm that the reason for termination of contract is her resignation. This confirms the claimant's evidence that, having been given 3 options for the last day of employment she chose and agreed the last day offered – the next day 25 June 2021.

89. On that day, the claimant sent an email at 15.21, without giving the respondent the chance to respond before she left. We have considered that email (see paragraph 31 above). This email, sent to the respondent at 15:21 on the last day of employment, clearly challenged Ms Calder's email stating that the claimant had agreed to the termination of her employment.

90. Although the claimant did not give the respondent the opportunity to respond to the email, or to have a discussion with her on the points raised in it before she left, the respondent did not call the claimant back for a meeting for further discussion and/or clarification.

91. On Monday 28 June 2021 at 16:18, Nicola Calder wrote to the claimant by email, attaching the letter referred to at paragraph 33 above. That letter makes no reference whatsoever to the claimant resigning or the employment having been terminated by mutual agreement. It is consistent with the claimant's assertion that she was dismissed and that the only option she was given was as to the date of termination of the contract.

92. Ms Calder asserts that the letter was drafted by the company's external HR advisers and that she read it before signing and sending it to the claimant. Mr Clark confirms that the letter was drafted by external HR advisers and that he read it before it was sent to the claimant. Both now

say that this letter, written with the benefit of legal advice from HR advisers, is inaccurate and wrongly states that the claimant was dismissed.

93. On balance we find that the respondent's evidence as to the way in which the employment of the claimant was brought to an end is inconsistent and unsatisfactory.

94. On balance we accept the evidence of the claimant and find that during the meeting on 24 June 2021 the claimant did not tell Ms Calder that she wanted to leave. After the claimant told Ms Calder about the pregnancy and previous miscarriage, Ms Calder informed the claimant that she had not signed her contract of employment so they had no obligation to keep her on. The claimant was then given the option of leaving there and then, working until the end of the day or until the next day. The claimant stated that she said that she would need the money so requested that she work until the next day, which was the end of the week.

95. These were not express words of dismissal.

96. The test as to whether ostensibly ambiguous words amount to a dismissal or a resignation is an objective one. We bear in mind that:

- all the surrounding circumstances (both preceding and following the incident) and the nature of the workplace in which the misunderstanding arose must be considered

- if the words are still ambiguous, the tribunal should ask itself how a reasonable employer or employee would have understood them in light of those circumstances.

97. We have considered with care the authorities including the decision of the Court of Appeal in Martin **v Glynwed Distribution Limited** (above).

98. Having considered all the circumstances of the case we find that it was the employer who terminated the contract of employment. It is clear that the claimant was very upset on 24 June 2021 and shared with Ms Calder traumatic events relating to previous pregnancies and a miscarriage and her genuine concerns for her unborn child. Words were spoken under emotional stress and Ms Calder took advantage of the situation and took steps to terminate the claimant's employment, giving the claimant options as to the date when she would leave, and seeking, in the first instance, to make out that this was a mutual agreement. However, as soon as the claimant challenged that, Ms Calder did not persist with that false assertion, but sent the letter confirming that the claimant had, indeed been dismissed. We reject the evidence of the respondent's witnesses and find that that the letter sent to the claimant on 28 June 2021 accurately recorded that the claimant had been dismissed. It is simply not credible that a letter, drafted by an external adviser providing

HR advice, seen by both Ms Calder and Mr Clark before it was sent, would inaccurately state that the claimant had been dismissed.

99. In all the circumstances we find that the claimant was dismissed and the effective date of termination was 25 June 2021.

100. The dismissal was unfavourable treatment within the meaning of s18 Equality Act 2010 during the protected period. The respondent does not dispute that the claimant was pregnant at the time.

101. The dismissal of the claimant during an informal meeting when the claimant informed the respondent that she was in the early stages of pregnancy and was concerned about the well-being of her unborn child, having suffered traumatic events and a miscarriage in the past, is a fact from which the tribunal could infer that the reason for the claimant's dismissal was pregnancy or because of illness suffered by her as a result of it. The claimant had advised the respondent by text message the previous day that she was absent from work because she was pregnant and needed to go to the hospital. The conversation between the claimant and Ms Calder arose when the claimant returned to work the following day and found Ms Calder at her desk. The claimant was not called to a formal meeting. No formal meeting had been set up prior to the 24 June 2021 to discuss the possible termination of the claimant's employment because she had failed to sign and return the contract of employment. The burden passes to the respondent to provide an explanation for the unfavourable treatment.

102. The respondent's evidence is unsatisfactory and inconsistent. They dispute that the claimant was dismissed. They deny that the letter dated 28 June 2021 (page 92) accurately reflects the position. The respondent asserts that it had concerns about the claimant's behaviours and performance, that it had concerns about her failure to sign the contract of employment, that it had decided to terminate the claimant's employment if she did not sign the contract of employment. However, Ms Calder does not, in evidence before the tribunal, say that this was the reason for the termination of the claimant's employment on 24 June 2022. In evidence to the tribunal Ms Calder is adamant that she simply listened to the claimant's account and, when the claimant indicated that she wanted to leave, gave the claimant options for the timing of her leaving. Ms Calder has provided no satisfactory explanation as to why, on the morning of 24 June 2021, having heard the claimant give her distressing account, she decided that the claimant could no longer work there and dismissed her. We agree with counsel for the respondent that payment of statutory maternity pay would not have been a huge expense for the respondent. We note that the respondent has retained another pregnant employee in employment and that that employee has returned to work for the respondent after maternity leave as an external bookkeeper. However, those facts do not provide an explanation for the dismissal, a dismissal which the respondent denies.

103. Further and in any event, we do not accept that the motivating factor behind the respondent's actions on 24 June 2021 was the claimant's performance and/or her failure to sign the contract of employment. The tribunal accepts the evidence of Ms Calder that she had some concerns about the claimant's performance, and that she discussed these with Mr Clark, as evidenced by the emails on 9 June 2021 at pages 121-2. However, we find that these concerns have been exaggerated and were not active at the time of dismissal. We accept the evidence of the claimant and find that she was never told about these concerns about her conduct and/or performance. The respondent has called no witnesses to the specific incidents – for example the external bookkeeper and/or the claimant's work colleague, Katie. It is simply not credible that the respondent would have been chasing the claimant to sign her contract of employment on 21 June 2021 if they had made the decision to terminate that contract for performance and/or conduct issues. The tribunal does not accept the evidence of the respondent that Ms Calder and Mr Clark had agreed to terminate the claimant's employment if she had failed to sign the contract. By email dated 21 June 2021 (page 86) Ms Calder referred to the unsigned contract and the problem the claimant had raised about signing the restrictive covenant. Ms Calder asked if the claimant had any more questions about this point and continued "If not, I would be grateful of you would sign and return your contract along with a response to my email regarding background checks which I sent to you on 17th June by Close of Business tomorrow for my return on Wednesday so I can get the ball rolling please."

104. This is not a warning that failure to sign the contract within the time stated would place the claimant at risk of dismissal. There was no expression of urgency in this email, which simply reads as a follow up to the email on 14 June 2021, when Ms Calder explained that the restrictive covenant would remain as drafted.

105. The respondent concedes that Ms Calder was absent from work on the next day, 22 June 2021. The claimant was absent for a reason related to pregnancy on 23 June 2021. On the morning of the 24 June 2021 the claimant arrived at work and during an informal meeting was dismissed. The claimant was not asked whether she had signed her contract , as requested by the email, at the beginning of the meeting. Both the claimant and Ms Calder agree that the only reference to the contract of employment was after the claimant had explained her problems relating to the pregnancy and Ms Calder noted that the contract had not been signed.

106. On balance we accept the evidence of the claimant that Ms Calder said the claimant had not signed the contract and "we have no obligation to keep you on".

107. The respondent has failed to provide a satisfactory non-discriminatory explanation for the dismissal, has failed to show that dismissal was not

because of the pregnancy or because of an illness arising from the pregnancy.

108. The claim under s18 Equality Act is well-founded.

109. In relation to the claim under s99 ERA 1996 the burden falls on the claimant to prove, on the balance of probabilities that the reason for dismissal was for a reason connected with her pregnancy, in this case, her pregnancy or pregnancy related illness. We have weighed the evidence provided by the parties. We have considered in particular the timing of the decision to dismiss, immediately after the claimant told Ms Calder that she was pregnant, how she had suffered a miscarriage in the past and was concerned about her unborn child. The claimant had been absent from work the day before her dismissal because she had to go to hospital in relation to her pregnancy. The claimant has presented prima facie evidence that she was dismissed for the prohibited reason, that is for a reason connected with the claimant's pregnancy. We have looked to the respondent to produce evidence to the contrary. We have considered how Ms Calder did have concerns about the conduct and behaviours of the claimant. However, the tribunal does not accept that the concerns about her past behaviours or reluctance to sign the contract of employment were active concerns at the time of dismissal. We refer to our findings above. The tribunal is satisfied and finds that the conduct or performance of the claimant, her failure to sign the contract of employment, were not the motivating factors behind the dismissal. The respondent's evidence about the way in which the claimant's employment came to an end, and the reason for it, has been unsatisfactory and inconsistent. On balance, having considered all the circumstances, we find that the principal reason for dismissal, the reason uppermost in Ms Calder's mind was the claimant's pregnancy and the claimant's history of pregnancy related illness. The claimant was dismissed for a reason connected with her pregnancy.

110. The claim under s99 ERA is well-founded.

REMEDY

111. We first award compensation for the claim under s18 EqA 2010.

112. The claimant makes a claim for financial loss, namely two weeks wages in the sum of £791.86. The respondent does not challenge that sum.

113. The claimant makes a claim for compensation for injury to feelings.

114. In deciding the appropriate band under the Vento guidelines we note that the discriminatory act is the one-off act of dismissal. We have considered the effect on the claimant and accept her evidence and find that the dismissal had a serious impact on her. She had told Ms Calder that she had lost a baby when she was homeless and without a job. The claimant hoped that her personal circumstances had changed, she did

have a partner, she was not homeless and she did have a job. Suddenly without warning on 24 June 2021 the claimant was without a job. She felt worthless, she was worried about the effect on her unborn child. The claimant was hurt and distressed by the decision to dismiss. In these circumstances we have decided that compensation should fall within the middle Vento Band. In deciding the level of compensation the tribunal has considered all the circumstances including the fact that the claimant did obtain alternative employment within 2 weeks. Her claim for financial loss is restricted to two weeks loss of earnings. Whereas we accept the claimant's evidence that her relationship with her partner was badly affected, that after termination of employment she suffered mental health problems including PTSD, there is no satisfactory evidence that any continuing injury to feelings was caused by the discriminatory act of the respondent. In all the circumstances we award compensation in the sum of £10,000.

115. We accept and note that the claimant has struggled to cope with these proceedings and the effect on her of reliving the events in June 2021 has been severe. However, it is not in the interest of justice to award further compensation by way of aggravated damages. The respondent has not acted in a high-handed or offensive manner in the conduct of these proceedings. The fact that the respondent has provided unsatisfactory and inconsistent evidence before the tribunal is not sufficient to justify an award of aggravated damages.

116. The respondent failed to follow the ACAS procedure. The claimant was given no warning of the dismissal. She was not given the right of appeal. The respondent took advantage of the claimant's emotional distress and dismissed her at an informal meeting. It is in the interest of justice to increase the award under s207A Trade Union and Labour Relations (Consolidation) Act. An uplift of 25% is appropriate.

117. It is in the interest of justice to award interest at 8% in accordance with the rules set out above.

118. The loss of earnings arose on 2 July 2021. The mid way point between 2 July 2021 and date of calculation, 25 October 2022, is 16 February 2022. The number of days from the mid way point is 251 days. The daily rate of interest is 0.22p. The award of interest is £55.22.

119. Interest on the award for Injury to feelings runs from the date of the discriminatory act - 24 June 2021 to the date of calculation, 25 October 2022. A total of 489 days at a daily rate of £2.74. The award of interest is £1,339.86.

Award of compensation

120. The tribunal awards the sum of £14,884.90 calculated as follows:

	£
120.1. Financial loss	791.86

120.2. Add 25% under s207A	197.96
120.3. Injury to feelings	10,000.00
120.4. Add 25% under s207A	2,500.00
120.5. Interest -financial loss	55.22
120.6. Interest- injury to feelings	1,339.86

121. No award of compensation is made in relation to the claim under s99 ERA 1996. The claimant is not entitled to a basic award because of her length of service. Her financial loss has been compensated under the s18 EqA 2010 claim. She is not entitled to compensation for loss of statutory rights as she had not accrued 2 years' service at the date of termination. The claimant is not entitled to double recovery.

122. The recoupment regulations do not apply.

Employment Judge Porter
Date: 12 December 2022