



## EMPLOYMENT TRIBUNALS

Claimant

**Ms. S. Norton**

v

**Marston Health & Beauty  
Limited**

Respondent

**Heard at: Birmingham (hybrid) On: 13, 14, 15 & (in chambers) 16  
September 2022**

**Before: Employment Judge Wedderspoon**

**Members : Mr. J. Wagstaffe  
Ms. Wilkinson**

**Representation:**

**Claimant: Mr. Cottam, Lay representative**

**Respondents: Mr. T. Sheppard, Counsel**

## JUDGMENT

1. The claim for arrears of pay is dismissed upon withdrawal.
2. The claim of victimisation is dismissed upon withdrawal.
3. The second named respondent, Mrs. P. Corbett is dismissed from the proceedings.
4. The claim of unfair dismissal is not well founded and is dismissed.
5. The claim of maternity discrimination is not well founded and is dismissed.
6. The claim of direct sex discrimination is not well founded and is dismissed.
7. The claim for wrongful dismissal is not well founded and is dismissed.

## REASONS

8. By claim form dated 18 May 2021 the claimant brought complaints of unfair dismissal, wrongful dismissal, sex discrimination and maternity discrimination. At a Preliminary Hearing on 8 November 2021 the Tribunal identified a draft list of issues which was subject to clarification by way of further and better particulars from the claimant. The claimant provided further and better particulars in a document dated at pages 45 to 47 of the bundle.
9. On the morning of day 2 the claimant clarified the case she pursued. She stated that either the claimant was treated less favourably because she had taken maternity leave, pursuant to section 18 (4) of the Equality Act 2010, when she returned to work or the respondent had made a determination in the protected

period that she would be removed from the business (because the claimant had taken maternity leave) on her return to work following maternity leave.

10. The claimant confirmed the list of issues were those set out in the case management order dated 8 November 2021 and the details of her claims were set out in the further and better particulars document at page 45 to 47.
11. The claimant had notified her claim against the first respondent to ACAS on 14 March 2021 and the certificate was dated 19 April 2021. The claimant obtained her ACAS certificate on 11 June 2021 for the second named respondent Mrs. Corbett following the presentation of her claim on 18 May 2021. Following the case of **Pryce v Baxter Storey Limited (2022) EAT 61** it is clear that by virtue of section 18A (8) of the Employment Tribunals Act 1996 the tribunal has no jurisdiction to consider the claim against Mrs. Corbett. The claimant withdrew her claim against the second respondent and Tribunal dismissed her from the proceedings.
12. Furthermore, there were no details of a protected act in the witness statement of the claimant. Following taking instructions the claimant withdrew the victimisation complaint and the Tribunal dismissed it. Also, the claim for arrears of pay was withdrawn by the claimant and this was also dismissed.

#### Issues

13. The agreed list of issues for the Tribunal to determine is as follows :-

14. **Time limits**

- a. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 15 December 2020 may not have been brought in time.
- b. Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
  - i. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
  - ii. If not, was there conduct extending over a period?
  - iii. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
  - iv. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
    1. Why were the complaints not made to the Tribunal in time?
    2. In any event, is it just and equitable in all the circumstances to extend time?

15. **Unfair dismissal**

There is no dispute the claimant was dismissed by the respondent ?

- 15.1 What was the reason or principal reason for dismissal ?  
The respondent says the reason was redundancy.
- 15.2 the reason was redundancy, did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant? The Tribunal will usually decide in particular whether :
- 15.2.1 The respondent adequately warned and consulted the claimant;
  - 15.2.2 The respondent adopted a reasonable selection decision, including its approach to a selection pool;
  - 15.2.3 The respondent took reasonable steps to find the claimant suitable alternative employment;
  - 15.2.4 Dismissal was within the range of reasonable responses.
  - 15.2.5 The claimant alleges she was replaced by Melissa and she was unfairly selected.

## 16 Remedy for unfair dismissal

- 16.1 Does the claimant wish to be reinstated to their previous employment?
- 16.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?
- 16.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 16.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 16.5 What should the terms of the re-engagement order be?
- 16.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
- 16.6.1 What financial losses has the dismissal caused the claimant?
  - 16.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
  - 16.6.3 If not, for what period of loss should the claimant be compensated?

- 16.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 16.6.5 If so, should the claimant's compensation be reduced? By how much?
- 16.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 16.6.7 Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?
- 16.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 16.6.9 If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
- 16.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- 16.6.11 Does the statutory cap of fifty-two weeks' pay or £86,444 apply?

16.7 What basic award is payable to the claimant, if any?

16.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

## 17 Wrongful dismissal / Notice pay

17.1 What was the claimant's notice period?

17.2 Was the claimant paid for that notice period?

17.3 If not, was the claimant guilty of gross misconduct?

## 18 Direct sex discrimination (Equality Act 2010 section 13)

18.1 The claimant is a woman Did the respondent do the following things:

- 18.1.1 Excluded the claimant from arranging, managing or active involvement in the meeting of 10 July 2022 when arranging, managing and active involvement in such meetings were part of her management responsibilities until she returned from maternity leave;
- 18.1.2 Telling the claimant to arrive later than other staff members thus causing her to arrive later than other

staff members at the meeting on 10 July 2020 when it would normally have been one of her responsibilities to arrange, manage and actively be involved in such a meeting. This also meant that the claimant arrived after the premeeting discussions had taken place and in effect she appeared to have arrived late to other staff and this excluding her from the informal conversations of the workplace further alienating her;

- 18.1.3 Telling claimant on 10 July 2020 at a further meeting between her and the second respondent that she was to undertake treatments only and that her management duties would be split amongst the remaining staff. This had not been discussed or agreed with the claimant having been previously assured by the second respondent that she could continue her management role within her part time hours upon her return from leave
- 18.1.4 On 29 July 2020 telling the claimant that she needed to sort her work hours out because she could not do whatever she wanted having been previously told that she could put herself on the staff rota whenever she wanted to do additional hours;
- 18.1.5 On 15 September 2020 the second respondent arranged a meeting with the claimant. In the meeting she told the claimant that she wasn't sure where she fitted in anymore and that she was separate from the other staff members and that she needed to join in more and needed to do more management duties even though on 10 July 2020 she had been told her management duties would be split amongst the remaining staff and she was to undertake treatments only. Advising the claimant that she was not pulling her weight. At no time did the second respondent however give examples of this or counsel the claimant.
- 18.1.6 On 14 October 2020 deciding upon a new uniform for the salon without consulting the claimant when normally she would have been consulted on such an issue before a decision was made and would have led the meeting concerned regarding this. However on this occasion the claimant knew noting of the decision to change things although other staff members had been clearly involved in this decision and were aware of the change.
- 18.1.7 On 10 July 2020 sharing out to other members of staff the claimant's management responsibilities;
- 18.1.8 In November 2020 failing to pay the claimant during the national lockdown period for undertaking social media activities and for meeting the second

- respondent whereas other members of staff were paid for such activities;
- 18.1.9 In December 2020 telling the claimant to do cleaning whereas other staff were carrying out the claimant's previous role
- 18.1.10 In December 2020 the second respondent told the claimant she should join in more and that she couldn't carry out her management role in her part time hours whereas previously she had told the claimant she could
- 18.1.11 Not sending the claimant a memorandum in advance of a team meeting taking place on 5 January 2021 whilst the remainder of the staff participating in the meeting had received one
- 18.1.12 Advising the claimant prior to their meeting on 5 January 2021 that she was attending the salon to carry out a year end stocktake but then convening without warning the claimants in advance, a team meeting of the staff. It was clear to the claimant that the other staff members were prepared for this and had been asked to come with ideas to the meeting. This represented a deliberate humiliation of the claimant by the second respondent;
- 18.1.13 The second respondent telling the claimant on 2 December 2020 that it was hard to perform her management role whilst working 3 days a week in response to the claimant's request to be allowed to continue her management role and telling her to stop diverting calls from her mobile telephone a simple administrative task humiliating her in front of the rest of the staff;
- 18.1.14 The second respondent on 2 December 2020 insisting on the claimant making her a cup of coffee personally and reprimanding her when she asked Melissa a beauty therapist to make one whilst Melissa was doing nothing and the claimant was decorating the office Christmas tree suggesting Melissa was busy when she wasn't;
- 18.1.15 At a meeting between the second respondent and the claimant on 9 January 2021. The second respondent advised her that the manager's position didn't exist anymore and that she should have made the claimant redundant whilst she was on maternity leave.
- 18.1.16 The second respondent offered the claimant an alternative position as a beauty therapist without a management title or role at a salary of £11.20 per hour. This took place on 15 January 2021 which was 6 months after the claimant's return and after 6 months of deliberate humiliation of the claimant by the second respondent.

- 18.1.17 The second respondent suggested at a meeting on 9 January 2021 with the claimant that she should in effect henceforward report to Melissa who was to be her supervisor. Melissa had always reported to the claimant working for the first respondent and had been managed and reported to the claimant prior to her going on leave.
- 18.1.18 The second respondent made clear at a meeting on 9 January 2021 that she didn't want her to attend to work at the first respondent's premises. This made it impossible for the claimant to perform her role
- 18.1.19 The second respondent sending the claimant a letter of offer on 15 January 2021 for the position of a therapist
- 18.1.20 The second respondent sending on 15 January 2021 the claimant a redundancy calculation offering £2,000;
- 18.1.21 The second respondent purporting to make the claimant redundant on 19 January 2021 and to undergo a redundancy consultation meeting with her cohabitant and Michelle Smith one of the first respondent's accountants present. The claimant wasn't consulted about her redundancy in this meeting and her views were not canvassed. This was not adequate. She was not allowed to ask the questions she had prepared.
- 18.1.22 The second respondent omitted to ask the claimant at the meeting on 19 January 2021 to complete any documentation.
- 18.1.23 The second respondent refusing the claimant entitled to sickness pay on 1 February 2021 despite her providing the first respondent a sickness note of 1 February 2021.

18.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

18.3 If so, was it because of sex ?

18.4 Did the respondent's treatment amount to a detriment?

## 19 Pregnancy and Maternity Discrimination (Equality Act 2010 section 18)

19.1 Did the respondent treat the claimant unfavourably by doing the following things:

- 19.1.1 Excluded the claimant from arranging, managing or active involvement in the meeting of 10 July 2020 when arranging, managing and active involvement in such meetings were part of her management responsibilities until she returned from maternity leave;
- 19.1.2 Telling the claimant to arrive later than other staff members thus causing her to arrive later than other staff members at the meeting on 10 July 2020 when it would normally have been one of her responsibilities to arrange, manage and actively be involved in such a meeting. This also meant that the claimant arrived after the premeeting discussions had taken place and in effect she appeared to have arrived late to other staff and this excluding her from the informal conversations of the workplace further alienating her;
- 19.1.3 Telling claimant on 10 July 2020 at a further meeting between her and the second respondent that she was to undertake treatments only and that her management duties would be split amongst the remaining staff. This had not been discussed or agreed with the claimant having been previously assured by the second respondent that she could continue her management role within her part time hours upon her return from leave
- 19.1.4 On 29 July 2020 telling the claimant that she needed to sort her work hours out because she could not do whatever she wanted having been previously told that she could put herself on the staff rota whenever she wanted to do additional hours;
- 19.1.5 On 15 September 2020 the second respondent arranged a meeting with the claimant. In the meeting she told the claimant that she wasn't sure where she fitted in anymore and that she was separate from the other staff members and that she needed to join in more and needed to do more management duties even though on 10 July 2020 she had been told her management duties would be split amongst the remaining staff and she was to undertake treatments



only. Advising the claimant that she was not pulling her weight. At no time did the second respondent however give examples of this or counsel the claimant.

- 19.1.6 On 14 October 2020 deciding upon a new uniform for the salon without consulting the claimant when normally she would have been consulted on such an issue before a decision was made and would have led the meeting concerned regarding this. However on this occasion the claimant knew noting of the decision to change things although other staff members had been clearly involved in this decision and were aware of the change.
- 19.1.7 On 10 July 2020 sharing out to other members of staff the claimant's management responsibilities;
- 19.1.8 In November 2020 failing to pay the claimant during the national lockdown period for undertaking social media activities and for meeting the second respondent whereas other members of staff were paid for such activities;
- 19.1.9 In December 2020 telling the claimant to do cleaning whereas other staff were carrying out the claimant's previous role
- 19.1.10 In December 2020 the second respondent told the claimant she should join in more and that she couldn't carry out her management role in her part time hours whereas previously she had told the claimant she could
- 19.1.11 Not sending the claimant a memorandum in advance of a team meeting taking place on 5 January 2021 whilst the remainder of the staff participating in the meeting had received one
- 19.1.12 Advising the claimant prior to their meeting on 5 January 2021 that she was attending the salon to carry out a year end stocktake but then convening without warning the claimants in advance, a team meeting of the staff. It was clear to the claimant that the other staff members were prepared for this and had been asked to come with ideas to the meeting. This represented a deliberate humiliation of the claimant by the second respondent;
- 19.1.13 The second respondent telling the claimant on 2 December 2020 that it was hard to perform her management role whilst working 3 days a week in response to the claimant's request to be allowed to continue her management role and telling her to stop diverting calls from her mobile telephone a simple administrative task humiliating her in front of the rest of the staff;
- 19.1.14 The second respondent on 2 December 2020 insisting on the claimant making her a cup of coffee

personally and reprimanding her when she asked Melissa a beauty therapist to make one whilst Melissa was doing nothing and the claimant was decorating the office Christmas tree suggesting Melissa was busy when she wasn't;

- 19.1.15 At a meeting between the second respondent and the claimant on 9 January 2021. The second respondent advised her that the manager's position didn't exist anymore and that she should have made the claimant redundant whilst she was on maternity leave.
- 19.1.16 The second respondent offered the claimant an alternative position as a beauty therapist without a management title or role at a salary of £11.20 per hour. This took place on 15 January 2021 which was 6 months after the claimant's return and after 6 months of deliberate humiliation of the claimant by the second respondent.
- 19.1.17 The second respondent suggested at a meeting on 9 January 2021 with the claimant that she should in effect henceforward report to Melissa who was to be her supervisor. Melissa had always reported to the claimant working for the first respondent and had been managed and reported to the claimant prior to her going on leave.
- 19.1.18 The second respondent made clear at a meeting on 9 January 2021 that she didn't want her to attend to work at the first respondent's premises. This made it impossible for the claimant to perform her role
- 19.1.19 The second respondent sending the claimant a letter of offer on 15 January 2021 for the position of a therapist
- 19.1.20 The second respondent sending on 15 January 2021 the claimant a redundancy calculation offering £2,000;
- 19.1.21 The second respondent purporting to make the claimant redundant on 19 January 2021 and to undergo a redundancy consultation meeting with her her cohabitant and Michelle Smith one of the first respondent's accountants present. The claimant wasn't consulted about her redundancy in this meeting and her views were not canvassed. This was not adequate. She was not allowed to ask the questions she had prepared.
- 19.1.22 The second respondent omitted to ask the claimant at the meeting on 19 January 2021 to complete any documentation.
- 19.1.23 The second respondent refusing the claimant entitled to sickness pay on 1 February 2021 despite

her providing the first respondent a sickness note of 1 February 2021.

19.2 Did the unfavourable treatment take place in a protected period?

19.3 If not did it implement a decision taken in the protected period?

19.4 Was the unfavourable treatment because she exercised ordinary or maternity leave ?

## **20 Remedy for discrimination**

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

20.2 What financial losses has the discrimination caused the claimant?

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

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

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

20.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

20.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

20.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

20.9 Did the respondent or the claimant unreasonably fail to comply with it ?

20.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

20.11 By what proportion, up to 25%?

20.12 Should interest be awarded? How much?

Hearing

- 21 The Tribunal was provided with a file of documents of 121 pages. This was added to by the claimant without objection from the respondent. The claimant added details of hours worked during the maternity leave at pages 120 and 121. A further six pages consisting of screenshots of messages were added to the bundle at pages 122 to 127. The claimant relied upon her own evidence. The respondent relied upon the evidence of Pamela Corbett, Director and owner of the business; Katie Phillips (appearing via video link from Australia), beauty therapist and Melissa Adams, beauty therapist. The respondent also submitted a written representation from Barbara Cartwright, the sister of Pamela Corbett. This witness did not attend to be cross examined so the weight to be attached to her statement was minimal.
- 22 Following dealing with preliminary issues on day 1 of the hearing, the claimant and her team decided to leave the tribunal and conduct the case remotely from the claimant's representative's office. The respondent and its team conducted the case remotely. Mr. Wagstaffe, Tribunal member, sat remotely; the Tribunal Judge and Tribunal member, Ms. Wilkinson sat in the tribunal.
- 23 The case was timetabled with evidence and submissions concluding on the morning of day 3 and the tribunal deliberating and drafting a judgment on the afternoon of day 3 and day 4.

FACTS

- 24 From 17 November 2015 the claimant was employed as a health and beauty manager at the Marston salon. Pamela Cornett was the owner of the business and she also employed two beauty therapists, Melissa and Katie. The salon was in the business of providing beauty treatments including nail treatments, facials, massage and reflexology.
- 25 The claimant's contract is at pages 48-63. The claimant was employed on a 40 hour contract. The claimant's responsibilities were day to day management of the salon and its employees which meant that she carried out monthly stock takes and ordered products; met with beauty brand sales representatives and dealt with sickness of the beauty therapists. She did not take allocated time out of her day for management duties; she fitted them in around the beauty treatments. She did not have authority to appoint employees or dismiss them or make changes to terms and conditions of employees; that was the remit of the business owner Mrs. Corbett. The claimant also conducted 1 to 1s with the other beauty therapists individually on a monthly basis.
- 26 Mrs. Corbett adopted a "hands off" approach to the management of her business allowing the claimant to run the business day to day. She had no complaints as to the claimant's performance in her role. The relationship between the claimant and Mrs. Corbett was a good one and Mrs. Corbett had confidence in the claimant that she was managing the business well.

- 27 In January 2019 the claimant informed Ms. Pamela Corbett the director of the business that she was pregnant. Mrs. Corbett sent the claimant a letter on 31 January 2019 formally congratulating the claimant and setting out details relating to her maternity related entitlements (page 79 and gave the claimant a spare cot and baby clothes, blankets and toys. The Tribunal found that this reflected the good relationship the claimant had with Mrs. Corbett and the support Mrs. Corbett was willing to give in respect of the claimant's pregnancy.
- 28 On 12 September 2019 (page 80) Mrs. Corbett wrote to the claimant confirming her 10 keeping in touch days and attaching a proposed schedule of dates. The claimant wanted to use keeping in touch days and to switch to shared parental leave in order to be able to utilise shared parental leave in touch days. The respondent accommodated this (see pages 80-1). In a further letter of the same date (page 82) Mrs. Corbett confirmed that when the claimant returned from maternity leave her pay would be increased by 50 pence per hour to £13 per hour. On the basis that the claimant had expressed a wish to earn £1300 net per month on a three day week, Mrs. Corbett set out in a schedule attached to the letter a number of optional working schedules to achieve this. Mrs. Corbett was supportive of the claimant's aspirations. The claimant continued to work in her management role until 3 October 2019 (the day before her baby arrived). It was agreed that the claimant would return in July 2020 as a manager over 3 days. The claimant popped into the salon with her baby; and she was paid for this time. The claimant was encouraged by Ms. Corbett to take her maternity leave fully other than on KIT and SPLIT days.
- 29 Following the birth of her child the claimant wanted to continue managing the salon from home and she was permitted to do so. However, on 1 February 2020 the claimant asked Ms. Corbett if she could step back from managerial duties because she was unable to concentrate on her baby as she was constantly being contacted. Mrs. Corbett again was supportive of the claimant's request and agreed. There was a dispute of evidence as to whether Mrs. Corbett was content with this but the Tribunal finds on the balance of probabilities that she was as Mrs. Corbett's evidence was consistent with the support she had historically given to the claimant.
- 30 In March 2020 due to the COVID pandemic the salon was shut and the two beauty therapists Melissa and Katie were furloughed. At this point the claimant remained on maternity leave. Melissa and Katie volunteered to post on social media for the salon and posted videos on Instagram with beauty tips and suggestions for clients. Melissa nor Katie were paid by the respondent for this work during this period by way of an additional top up to furlough pay.
- 31 During the claimant's maternity leave she was paid statutory maternity pay. Melissa Adams was given a supervisor badge but in reality this was not a change of role and the claimant remained the manager of the salon. The tribunal found that Mrs. Corbett gave instructions in the absence of the claimant.

- 32 The claimant's maternity leave ended on 1 July 2020. By letter dated 22 May 2020 (p84) the respondent confirmed that the claimant had accrued 14 days holiday which could be used at any time before the end of the holiday year in December. The claimant chose to have a holiday before she returned from maternity leave and was due into work on or about 15 July 2020.
- 33 The claimant stated that all the acts of discrimination took place from her return to work in July 2020 following maternity leave. The respondent agreed that the claimant could return to the salon for just two days per week from 6 July. The claimant was to return for 2 days working on Wednesday and taking the second day, Thursday, as a holiday. By letter dated 1 July 2020 (page 85) the claimant was informed it was unlikely that the salon would open on or by 6 July 2020 due to government restrictions. From 8 July 2020 the claimant would be paid for 2 days per week and that the respondent informed the claimant it would access the furlough scheme. The claimant took this first week off as annual leave and she was due to return to the salon on 15 July 2020.
- 34 A meeting was arranged for 10 July 2020 to discuss arrangements for the opening up of the salon following lockdown. The claimant was not invited to the meeting along with Melissa and Katie but she became aware of the meeting via her colleague, Melissa. The claimant contacted Mrs. Corbett as to whether she could attend and Mrs. Corbett stated that she could. Mrs. Corbett believed that the claimant was not due back until the following Wednesday. The claimant saw the failure to directly invite her to the meeting as a deliberate attempt to sideline her. Mrs. Corbett disputed this; her evidence is that she thought it was reasonable for the claimant to have time with her child and she could update the claimant on her return to work as to the arrangements for the re-opening of the salon. The Tribunal preferred the respondent's evidence on this point in the context that the respondent and the claimant had a good relationship, Mrs. Corbett had supported the claimant's maternity leave and return to work with an increased salary and the claimant had indicated in February 2020 that she wished to step back whilst on maternity leave from the role of management to focus on her child.
- 35 On 10 July 2020 Melissa arrived at the salon at about 9.45 a.m. to prepare drinks. Katie and Pam arrived. The claimant arrived last. The claimant's evidence was that she did not know if anyone was directed to arrive before her and she did not know that for sure. The claimant stated that the others were chatting before she entered the salon; again the claimant saw this as an attempt to side line her. This was disputed by all three of the respondent's witnesses. The Tribunal preferred the evidence of the respondent; Melissa and Katie were in the habit of arriving to the salon before it opened and in any event the meeting did not start until all four were present. There was no attempt to sideline the claimant.
- 36 At the meeting they discussed covid secure practices, including cleaning stations. It was now the responsibility of each therapist to clean their own stations; they were to have 10 minute gaps between clients; screens and signage to be used and that facials could not be carried out.
- 37 A further meeting took place that day between Mrs. Corbett and the claimant. There is a significant factual dispute between the parties as to what occurred. The Tribunal finds on the balance of probabilities that the claimant expressed

nervousness at returning to work as she had not done any beauty treatments for some time. The claimant asked to use Tuesdays as management time but Mrs. Corbett explained that there was not much management to be done so there was no requirement for dedicated management time on Tuesdays. The position is that the salon had been shut for 3 months and there was sufficient stock. The beauty brand representatives had stopped visiting the salon since the covid pandemic and Mrs. Corbett had organised the work rotas of the staff prior to the claimant's return to work. Mrs. Corbett did not tell the claimant her management duties were being split between the other members of staff.

- 38 The salon had always had Phorest software to assist with booking appointments. Following the re-opening of the salon the software was also used to order stock so that there was no longer a need for the claimant to conduct monthly stock takes. Only one stock take per year was required. Mrs. Corbett determined that this annual stock take could be undertaken by all of the employees together.
- 39 Further following the claimant's maternity leave, Mrs. Corbett took a more hands on approach in terms of her business. Prior to maternity leave the claimant had undertaken 1 to 1 meetings with each beauty therapist individually each month, Mrs. Corbett preferred to hold team meetings with Melissa and Katie. Mrs. Corbett deemed this was more helpful as it meant the therapists could exchange thoughts and discuss things with each other. Mrs. Corbett, Melissa and Katie agreed this way of meeting worked well.
- 40 On 22 July 2020 a customer complained to Mrs. Corbett about the claimant that she was speaking in a loud voice and Mrs. Corbett spoke to the claimant about her conduct.
- 41 On 29 July 2020 there is a further dispute as to what was said by Mrs. Corbett to the claimant. The claimant alleges that Mrs. Corbett told her "*she needed to sort out her hours out because she could not do whatever she wanted*". The Tribunal do not accept this. The Tribunal found on the balance of probabilities that Mrs. Corbett had informed the claimant in their meeting on 10 July she was welcome to work additional hours to her normal working hours in order to perform treatments. Further in August 2020 the claimant asked if she could increase her working week to 3 days from 14 October and Mrs. Corbett agreed. The claimant also requested in September 2020 to change her working hours on Thursdays from 1 pm to 8 pm to 12 pm to 8pm to fit in with her child care arrangements. This was agreed by Mrs. Corbett.
- 42 On 15 September 2020 a further meeting took place between the claimant and Mrs. Corbett. There is a dispute of fact as to what was said. The Tribunal concluded on the balance of probabilities that the claimant stated that she did not know where she fitted in anymore. Mrs. Corbett encouraged the claimant to join in with the staff more. The Tribunal rejects the claimant's evidence that Mrs. Corbett told her she was not pulling her weight and she needed to do more management duties. Mrs. Corbett had already told the claimant that there was not much management to do at the salon.

- 43 The claimant also alleged that a decision was made about staff uniform. The tribunal finds that Mrs. Corbett did discuss a new uniform with the claimant and the two beauty therapists. It was suggested that leggings and an apron would be a good idea. Although the claimant did not object to this suggestion, Melissa and Katie agreed along with Mrs. Corbett and the majority decision was taken.
- 44 The salon closed again from 4 November 2020 until 3 December 2020 due to a second covid 19 lockdown and all three staff were furloughed. The claimant volunteered to undertake some social media activities for the salon and the fact she did this work is evidenced in the screen shot exchanges provided to the Tribunal. The claimant alleges that there was a one hour meeting relating to this with Mrs. Corbett and that the claimant received no pay. During cross examination the claimant changed her evidence to say that there was a phone call and no meeting. The Tribunal preferred the respondent's evidence that the claimant volunteered to do some social media activities. Melissa and Katie did do things on social media. None of the therapists were paid for this. On 16 November 2020 the claimant noted that her post had been altered; Katie responded that she had slightly amended it.
- 45 In December 2020 all the therapists assisted in the salon to get it ready for opening; this included all therapists assisted in cleaning. Mrs. Corbett asked the claimant if she would make a coffee for her. The salon had a machine and although the claimant felt this undermined her, the Tribunal found that this to be overly sensitive and the instruction was indicative of the team working implemented by Mrs. Corbett at this time.
- 46 The claimant agreed to meet Mrs. Corbett on 5 January 2021 for a few hours and do a stock take. A team meeting in fact took place and Mrs. Corbett invited the claimant and the other therapists about any ideas. The claimant believes that there was a memo sent round but she was excluded. The Tribunal were not persuaded by this. The claimant relied upon the fact that the other therapists had a list of ideas with them. On further cross examination the claimant said she did not know whether a memo was sent out before the meeting but others were prepared to discuss new ideas for the salon and she was not. The Tribunal preferred the evidence of Katie Philips who stated there was no memo but there was discussion earlier that any new ideas would be discussed in the new year.
- 47 On 6 January 2021 (page 86) the claimant emailed Mrs. Corbett stating that following the meeting on 5 January she felt awful. The claimant stated that she was really upset and felt left out. She felt no one was interested in her opinion. She stated that as the manager she did not seem to have a voice anymore and no one is interested in her opinion.
- 48 By letter dated 8 January 2021 (page 87) the respondent wrote to the claimant to inform her they were placing her on furlough and sought the claimant's agreement.
- 49 On 9 January 2021 the claimant met with Mrs. Corbett. There is a factual dispute as to what occurred. On the balance of probabilities, the Tribunal determined that the claimant requested that she wanted the workplace to go back to the way it was prior to her maternity leave. At the meeting Mrs. Corbett did not say, on the



balance of probabilities that she did not want the claimant to work there anymore. She told the claimant she did not mean to leave the claimant out. The claimant went onto say she wanted Mrs. Corbett to give any information to her about the salon which she would pass onto the beauty therapists and that Mrs. Corbett could attend meetings but only as an observer. Mrs. Corbett felt this was insulting as the salon was her business and she felt she needed closer eyes on the business going forward. The Tribunal found that this conversation caused Mrs. Corbett to reflect on whether she really required a manager of the salon.

- 50 By letter dated 15<sup>th</sup> January 2021 (page 89) Mrs. Corbett informed the claimant that she decided to abolish the role of manager. She offered the claimant the alternative position of therapist working the same hours at a rate of £11.30 per hour. The respondent invited the claimant to meet with her on 19 January 2021 to make any comments or counter proposals or raise queries. Mrs. Corbett stated the consultation period would run until 22<sup>nd</sup> January 2021. She assured the claimant that she had no intention to make her feel ignored or overlooked. Further it was stated that if the claimant did not accept the alternative position, the claimant would be dismissed. She provided the claimant with a redundancy payment estimate
- 51 The claimant emailed Mrs. Corbett on 16 January 2021 (page 92) stating that on her return from maternity leave she felt isolated and marginalised and her position was abolished whilst she was off on leave. She was going to seek advice about the respondent's proposals. She requested that the proposed meeting for 19 January to another date.
- 52 By letter dated 18 January 2021 p.94 Mrs. Corbett suggested that the claimant obtain advice from an employment law specialist. Mrs. Corbett stated "*It is not a procedural requirement that the consultation meeting is postponed while you obtain legal advice.*" but she was willing to postpone the meeting until 10 am on Wednesday if the claimant wished to obtain advice.
- 53 On 19 January 2021 (page 101) the claimant attended the meeting with her partner, Kevin McAllister. Pam Corbett was present along with a note taker, Michelle Smith. The claimant had a list of questions which she put to Mrs. Corbett and took the lead in the meeting. The claimant's evidence was that she was dissatisfied with the answers given. The Tribunal found that Mrs. Corbett was candid that covid had changed the business; it was no longer making money and Mrs. Corbett had taken a closer hand in running the business. Mrs. Corbett did state there was an opportunity for the claimant to return as a manager but when in the future was uncertain and was dependent on the business returning to "normal" post covid.
- 54 On receipt of the meeting notes the claimant provided very detailed amendments. By email 20 January 2021 the claimant was asked whether she had recorded the meeting. The claimant refused to answer this question. Mrs. Corbett confirmed that it was a commercial decision for the respondent to abolish the role of manager. She stated that she could not think of other options to give effect to Mrs.

Corbett's wish to manage her own business. She was providing the claimant with an opportunity to make any counter proposals.

- 55 By her email dated 20 January 2021 the claimant stated that her notes were an accurate representation of the meeting. The claimant stated that she did not consider the offer of the role of therapist as suitable alternative employment because the rate of pay was at a lower rate; she would be working alongside staff as an equal where she was their previous manager; one therapist was to be a supervisor and the remuneration for the role is not commensurate with her current role.
- 56 On 21 January 2021 Mrs. Corbett responded to the claimant stating that no therapist had supervisory responsibility for another therapist. She stated that the claimant felt ignored or overlooked as a consequence of the diminution in her role as Mrs. Corbett became more involved in the business. The claimant on 21 January 2021 stated she was entitled to 7 weeks notice pursuant to her contract. The claimant also stated that she felt Mrs. Corbett had made it very clear that she did not want the claimant to return to the salon that she had a baby. Mrs. Corbett agreed that the claimant was entitled to statutory redundancy pay but not notice pay. By a further letter dated 22 January 2021 Mrs. Corbett stated she was confused over the duration of the claimant's notice entitlement which was a genuine error. She accepted that the claimant had a notice entitlement of 7 weeks. Mrs. Corbett denied the allegation that she did not want the claimant to work at her salon with a baby.
- 57 By email dated 29 January 2021 the claimant sought to appeal the decision to dismiss her by reason of redundancy. The claimant alleged the dismissal was unfair; that she had been unfairly selected; the alternative proposed role was unsuitable; the redundancy was not genuine; there was a breach of contract to pay the correct notice and there was a breach of the equal opportunities policy. On 1 February 2021 the claimant requested all future correspondence be via email.
- 58 On 5 February 2021 (page 117-119) Mrs. Corbett rejected the claimant's appeal. She referred to a number of changes in the business since COVID including the new computerised system of ordering; there was no longer a requirement for the claimant to conduct regular stock takes and no longer were brand representatives attending the salon. She referred to accommodating the claimant's request to change her hours for over 6 months on her return to the business following maternity leave and suggested this was inconsistent with any suggestion she had decided that she did not want the claimant to work at the salon. She reiterated the reason for dismissal is redundancy; she wished to manage the business herself.
- 59 During the claimant's notice period she was signed off sick and received statutory sick pay. Mrs. Corbett did not know if the claimant had received any notice pay; she did not do wages in the business.

## The Law

- 60 Pursuant to section 98 of the Employment Rights Act 1996 the employer has the burden of establishing the reason or principal reason for the dismissal and whether it was for an “admissible” reason pursuant to section 2. An admissible reason includes redundancy.
- 61 Redundancy is defined in section 139(1)(b) of the Employment Rights Act 1996 as *“the fact that the requirements of that business (i)for employees to carry out work of a particular kind or (ii)for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish.”*
- 62 **Williams v Compair Maxam Limited** set out guidance to be followed for a fair dismissal on the grounds of redundancy which includes providing the maximum warning of impending redundancies; consultation including individual consultation; the application of objective criteria and consideration of suitable alternative employment.
- 63 Section 13 of the Equality Act 2010 states “A person (A) discriminates against another (B) if because of a protected characteristic A treats B less favourably than A treats or would treat others.

13. Pursuant to section 23 (1) of the Act, on a comparison for the purposes of section 13, there must be no material difference between the circumstances relating to each case.

14. Section 136 (2) and (3) of the Equality Act 2010 states  
*“(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.”*

If the Claimant can prove a ‘prima facie’ case of discrimination, then the burden shifts to the Respondent to show that such discrimination did not in fact occur. In the recent Supreme Court case of **Royal Mail Group Limited v Efofi (2019) EWCA Civ 18** it was confirmed that the burden does not shift to the employer to explain the reasons for its treatment of the claimant unless the claimant is able to prove on the balance of probabilities those matters which he wishes the tribunal to find as facts from which in the absence of any other explanation an unlawful act of discrimination can be inferred.

15. To establish a prima facie case, the Claimant has to show that she was treated less favourably than others were or would have been treated, and in addition to this also needs to show ‘something more’ which indicates that discrimination may have occurred:

*‘The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination’.*

**(Madarassy v Nomura International plc [2007] ICR 867 at [56] per Mummery LJ)**

- 64 Section 18 (4) of the Equality Act 2010 states that “ 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 rights to ordinary or additional maternity leave.”

Submissions

- 65 The respondent provided a written submission. The respondent referred the Tribunal to the following cases **Iceland Frozen Foods Limited v Jones (1983) ICR 17, EAT; James W. Cook & Co (Wivenhoe) Limited v Tipper (1990) ICR 716; Williams v Compare Maxam Limited (1982) ICR 156; Polkey v AE Dayton Services Limited (1988) ICR 142; Thomas and Betts Manufacturing Co v Harding (1980) IRLR 255, MacDonald v MoD (2003) ICR 937; Madarassy v Normura International plc (2007) EWCA Civ 33; Chief Constable of West Yorkshire Police v Khan (2001) ICR 1065; Bahl v Law Society (2004) EWCA Civ 1070; Wong v Igen; R (on the application of E) v Governing Body of JFS and Admissions Appeal Panel of JFS and ors (2010) IRLR 136.**
- 66 The respondent submitted that there was a fair dismissal; an employer should be afforded a wide degree of latitude of seeking to establish that there were commercial and/or economic reasons which justified the decision to make redundancies; **James W. Cook and Co. Wivenhoe Limited.** An employer should do what it can so far as is reasonable to seek alternative work following Thomas and Betts. A degree of consultation or discussion will be required with an employee in many cases of SOSR but the employer’s procedural duty is necessarily fact sensitive; see the **Phoenix House** case. The range of reasonable response test applies to the question of whether an employer adopted a fair procedure before deciding to dismiss the employee; (**J. Sainsburys v Hitt**).
- 67 Further the respondent submitted there was no evidence before the Tribunal that the alleged acts of discrimination are linked or provide a continuing course of conduct. The respondent submitted allegations 1 to 11 and 14 and 15 were out of time and there was no jurisdiction to determine the complaints. The claimant failed to put allegations 7,9,10,11,12,13,14,15 and 23 to the respondents’ witnesses and therefore the Tribunal cannot find in favour of the claimant. The respondent submitted that the late disclosure of text messages in relation to limited social media work the claimant undertook during November 2020 lockdown does not undermine PC’s credibility. PC remembers the claimant mentioning that she would undertake some work but could not recall what if any work was carried out by the claimant. In respect of allegation 9 there was a one hour meeting about social media work and the claimant did not submit a claim for work done during that period; no one was paid for any social medial work until the third lockdown in early 2021.
- 68 The respondent submitted that the claimant has not established that a hypothetical man would have been treated any less favourably in the same circumstances namely having come back to work following an absence of nearly 6 months into the new pandemic and the something more required by the case of **Madarassy** is missing here. The respondent submitted that the treatment had nothing to do with the fact the claimant had exercised her right to maternity leave.

PC gave several of her grandchildren's possessions to assist with the claimant with a young child; agreed to the initial period of 2 days work per week; with 1 of those days initially taken as holiday and agreed to change C's hours of work to accommodate her childcare needs; agreed to an increase in work to the claimant to 3 days per week. The decision to make the claimant redundant was not taken until 6 months after her return from work. The reason for the treatment was the diminution in the need for a manager role; see the appeal letter dated 5 February 2021 (page 117-9).

- 69 The respondent submitted that the claimant was made redundant which is a potentially fair reason. The need for a manager had diminished due to the impact of COVID 19 on the business and the changes in efficiency brought about in response to the pandemic and the claimant's time away from the salon. There was no longer a need for monthly stock takes; one annual stock take alone was required at the end of the financial year; the one to one meetings had been replaced by team meetings a change supported by MA and KP and not objected to by the claimant. Contact from representatives had all but ceased and the practice had developed that staff would order stock via Phorest without the need to go through the claimant first. The respondent consulted with the claimant about redundancy; was offered alternative employment as a therapist and afforded a right of appeal determined in writing on the claimant's request. The dismissal was fair. However, any different procedure would not have resulted in a different outcome as there was only one manager role at the time which was no longer required. The claimant was entitled to a longer period of notice to that afforded to her under statute. The claimant was signed off work during the notice period and was paid statutory sick pay. The claimant received all the notice pay that was due to her and the wrongful dismissal claim fails.
- 70 The claimant provided an oral submission and a short written representation and submitted that discriminatory acts were part of a continuing act so that events prior to 15 December 2020 are in time. The redundancy was a sham. Pam Corbett's evidence was inconsistent. There were no issues with the claimant's management prior to her maternity leave period. The claimant was undermined. Mrs. Corbett determined to stop stock taking every month along with 1 to 1s with the therapists. The purported redundancy consultation meeting on 19 January 2021 was anything but consultation; it should be a meeting to explore ways of avoiding redundancies. The claimant submitted the respondent had form to dismissing pregnant employees. (The Tribunal had not heard any evidence about this). Melissa Adams hesitated in her evidence when asked whether she was the supervisor following the claimant's return to work; she later said it was the claimant when she was present and Mrs. Corbett when the claimant was not; she should not have hesitated in her evidence

#### Conclusions

- 71 The claimant and Mrs. Corbett enjoyed a good working relationship prior to the claimant's maternity leave and Mrs. Corbett was supportive of the claimant. On the claimant's return to work following maternity leave Mrs. Corbett continued to be supportive to the claimant.
- 72 The Tribunal concluded that as a result of the COVID pandemic a number of changes occurred to the respondent's business. The business owner, Mrs.

Corbett took a more hands on approach to the day to day running of the business. Before the claimant's maternity leave, the claimant had been running the business herself and Mrs. Corbett had been happy for her to do so, Mrs. Corbett determined that she needed to keep a closer eye on the business in the context that it had been closed for a number of months and was losing money. Further Mrs. Corbett played a more active role in the business to sort out the work schedule of the beauty therapists. The role of stocktaking carried out by the claimant each month was not required upon the re-opening of the salon in July 2020; there was sufficient stock in the business to mean that not much stock ordering was required. Furthermore, the extended use of the Phorest system meant that stock could be ordered via this. Due to the effect of COVID the respondent required the claimant along with the beauty therapists to focus on conducting beauty treatments to increase the income of the business. The business evolved in the context of COVID to require less management input by the claimant. As early as 10 July Mrs. Corbett identified in her meeting with the claimant that there was not much management required in the salon. This was a direct consequence of COVID and the fact that Mrs. Corbett had decided to take a more active part in her business.

- 73 The Tribunal do not doubt that the claimant genuinely felt isolated and sidelined but this was not deliberate or in fact the reality of the situation. The business had changed and with the increased hands on management approach of the business owner Mrs. Corbett and implementation of the Phorest ordering system there was a diminished need for the claimant to carry out management duties she had enjoyed prior to maternity leave and COVID.
- 74 Following the meeting between the claimant and Mrs. Corbett in January 2021, when Mrs. Corbett was offended by the demands of the claimant to effectively run everything through her, Mrs. Corbett considered whether she really required a manager. There was a diminished need for the claimant to undertake a management role following the greater involvement of Mrs. Corbett in the business and the impact of COVID on the business as set out above. In the circumstances the Tribunal was satisfied that there was a genuine redundancy situation because there was a diminution in the need for a manager at the salon.
- 75 The Tribunal takes into account that the salon is a small business with one business owner and three therapists including the claimant who had management responsibility. The respondent presented the claimant with its position that her role as manager was no longer required in the letter dated 15 January 2021 at page 89 and sought observations from the claimant. Although a larger organisation may well have engaged in more detailed discussions, the Tribunal takes into account the size of the business and its administrative resources. The claimant had been made aware in July 2020 that there was a reduced need for management duties. The claimant came to the meeting on 19 January 2021 with a list of questions and took a lead in the meeting. Although the claimant was not happy with the answers the Tribunal found that Mrs. Corbett was candid and clear that a manager was no longer required but there was a continuing need for a therapist. Mrs. Corbett was the business owner and determined that in the interests of the business with her involvement the role of manager was not required. The Tribunal determines that although consultation was a short period and the respondent had determined its decision prior to the meeting on 19 January 2021 that the management role was no longer required save and unless the claimant could provide any alternative, a

longer period of consultation would not have made any difference to the decision to make the role of manager redundant. The business owner was taking a more hands on approach and the business had changed as a consequence of covid.

76 The Tribunal found that the offer of a therapist role was suitable alternative employment. The respondent is a small employer. The claimant's management function was limited in any event and she had always performed therapies. There was a consequent drop in salary but the Tribunal did not consider in the circumstances that this was substantial.

77 In the circumstances of this case the Tribunal determined that the claimant was fairly dismissed in all of the circumstances.

78 The claimant relies upon the same factual allegations for both sex and her maternity discrimination allegations. The Tribunal considers each of the allegations in turn :-

(a) Excluded the claimant from arranging, managing or active involvement in the meeting of 10 July 2020 when arranging, managing and active involvement in such meetings were part of her management responsibilities until she returned from maternity leave.

The Tribunal did not find that this allegation was made out. The claimant was not due back to work until 15 July 2020. The claimant had requested and was permitted by Ms. Corbett to step back from managerial duties to focus on her child. On 10 July 2020 a meeting took place. The claimant was not initially invited because she was not due back in work until 15 July. However on finding out about the meeting she was welcomed to attend it by Mrs. Corbett. There was no exclusion of the claimant as alleged or at all. The claimant has failed to establish a prima facie case of discrimination.

(b) Telling the claimant to arrive later than other staff members thus causing her to arrive later than other staff members at the meeting on 10 July 2020 when it would normally have been one of her responsibilities to arrange, manage and actively be involved in such a meeting. This also meant that the claimant arrived after the premeeting discussions had taken place and in effect she appeared to have arrived late to other staff and this excluding her from the informal conversations of the workplace further alienating her;

The Tribunal did not find this allegation made out. The claimant conceded in cross examination that she did not know if others had been told to attend the workplace before her. The Tribunal preferred the evidence of the respondent's witnesses who informed the Tribunal that they tended to turn up at work early and the meeting did not commence until the claimant was present. The claimant has failed to establish a prima facie case of discrimination.

(c) Telling the claimant on 10 July 2020 at a further meeting between her and the second respondent that she was to undertake treatments only and that her management duties would be split amongst the remaining staff. This had not been discussed or agreed with the claimant having been previously assured by the second respondent that she could continue her management role within her part time hours upon her return from leave

The Tribunal found that the claimant was informed by Mrs. Corbett as the salon owner that there were few management duties and she told the claimant to focus on treatments. This was in the context of the covid pandemic; there was little stock to

order; a new system had been introduced for ordering and stock taking. The Tribunal rejected the claimant's evidence that she was told that management duties were being divided between the staff. By reason of covid all therapists were required to undertake cleaning; there was a protocol to follow to ensure the safety of the therapists and clients. The Tribunal do not find that the claimant has established a prima facie case of discrimination.

(d)On 29 July 2020 telling the claimant that she needed to sort her work hours out because she could not do whatever she wanted having been previously told that she could put herself on the staff rota whenever she wanted to do additional hours;

This allegation was not put to the respondents witnesses. The Tribunal finds the claimant has failed to establish a prima facie case of discrimination.

(e)On 15 September 2020 the second respondent arranged a meeting with the claimant. In the meeting she told the claimant that she wasn't sure where she fitted in anymore and that she was separate from the other staff members and that she needed to join in more and needed to do more management duties even though on 10 July 2020 she had been told her management duties would be split amongst the remaining staff and she was to undertake treatments only. Advising the claimant that she was not pulling her weight. At no time did the second respondent however give examples of this or counsel the claimant.

The Tribunal rejects this allegation as pleaded. The Tribunal accepts that the claimant raised that she felt isolated; Mrs. Corbett was supportive and tried to encourage the claimant to have confidence in doing treatments. The allegation is totally inconsistent with the claimant's previous allegation that alleged Mrs. Corbett told her there was a reduction in management duties. This allegation is not made out on the evidence.

(f)On 14 October 2020 deciding upon a new uniform for the salon without consulting the claimant when normally she would have been consulted on such an issue before a decision was made and would have led the meeting concerned regarding this. However on this occasion the claimant knew nothing of the decision to change things although other staff members had been clearly involved in this decision and were aware of the change.

The claimant along with other members of staff were consulted about ideas for uniform. The claimant had an opportunity to comment upon the suggestion of leggings and an apron but did not object. There was no lack of consultation; the claimant failed to participate in this discussion led by Mrs. Corbett.

(g)On 10 July 2020 sharing out to other members of staff the claimant's management responsibilities;

The Tribunal does not accept that this occurred on 10 July 2020. There were changes in the business by reason of Mrs. Corbett's increased involvement as business owner in the context of covid; there was no stock to be re-ordered; in any event the phorest system was to be used for this.

(h)In November 2020 failing to pay the claimant during the national lockdown period for undertaking social media activities and for meeting the second respondent whereas other members of staff were paid for such activities;

The Tribunal accepted that the claimant posted on social media in November 2020 which was amended by her colleague. However the respondent's witnesses informed the Tribunal that they were not paid for their work on social media. There was no less favourable or unfavourable treatment here. This allegation fails.

(i)In December 2020 telling the claimant to do cleaning whereas other staff were carrying out the claimant's previous role

The Tribunal did not find this allegation made out. All therapists in the context of the pandemic were required to clean; it was a means of keeping clients and staff safe. The



Tribunal does not accept that the claimant was only required to clean. The salon was working as a team as undertaking all necessary tasks for the business. The Tribunal does not accept that other therapists were conducting management roles. Mrs. Corbett as business owner had a greater input as she was entitled to do.

(j) In December 2020 the second respondent told the claimant she should join in more and that she couldn't carry out her management role in her part time hours whereas previously she had told the claimant she could

The Tribunal did not accept this allegation. Although it is accepted that Mrs. Corbett spoke to the claimant about joining in more this was in the context that the salon therapists had to work more as a team to get the business going following a series of lockdowns and loss of business. There was no suggestion that the claimant could not carry out her management duties because of part time working; the fact is there was a reduced need for management duties by reason of the greater day to day involvement of Mrs. Corbett; the consequences of covid whereby changes were made to working including a reduced need to order and stock take on a monthly basis.

(k) Not sending the claimant a memorandum in advance of a team meeting taking place on 5 January 2021 whilst the remainder of the staff participating in the meeting had received one.

The claimant in her evidence was unable to state that a memo was sent to other team members. The Tribunal do not uphold this allegation.

(l) Advising the claimant prior to their meeting on 5 January 2021 that she was attending the salon to carry out a year end stocktake but then convening without warning the claimants in advance, a team meeting of the staff. It was clear to the claimant that the other staff members were prepared for this and had been asked to come with ideas to the meeting. This represented a deliberate humiliation of the claimant by the second respondent.

The Tribunal accepted that the claimant was invited to a stock take on 5 January. The respondents witnesses had diarised a further meeting for 6 January 2021. It was determined to hold the meeting on 5 January 2021. There was no deliberate humiliation of the claimant. It was unfortunately that the claimant was not aware of a meeting on 6<sup>th</sup> which was brought forward to 5 January 2021. Nevertheless the claimant was involved in the meeting and had the opportunity to contribute if she so wished. She did not request a postponement of this meeting. The Tribunal do not find that the claimant established a prima facie case.

(m) The second respondent telling the claimant on 2 December 2020 that it was hard to perform her management role whilst working 3 days a week in response to the claimant's request to be allowed to continue her management role and telling her to stop diverting calls from her mobile telephone a simple administrative task humiliating her in front of the rest of the staff.

This allegation was not put to the respondent's witnesses and is rejected by the Tribunal.

(n) The second respondent on 2 December 2020 insisting on the claimant making her a cup of coffee personally and reprimanding her when she asked Melissa a beauty therapist to make one whilst Melissa was doing nothing and the claimant was decorating the office Christmas tree suggesting Melissa was busy when she wasn't.

This allegation is disputed by Mrs. Corbett and the evidence of Melissa is that it did not occur. On the balance of probabilities the Tribunal have determined that the claimant was asked by Mrs. Corbett to make a coffee for her using the machine. It was at a time when Melissa was conducting other duties. The request was not demeaning in the context that the therapists were seeking to work as a team to get the business up and running. The Tribunal do not find that the claimant has established a prima facie case.

(o)At a meeting between the second respondent and the claimant on 9 January 2021. The second respondent advised her that the manager's position didn't exist anymore and that she should have made the claimant redundant whilst she was on maternity leave.

There were no notes made of this meeting. However, the Tribunal determines on the balance of probabilities that the second respondent did state that there was not much management to do. This was reflecting the reality that changes following covid and the involvement of Mrs. Corbett in the day to day running of the business. However, Mrs. Corbett did not state that she should have made the claimant redundant whilst she was on maternity leave. The Tribunal find this because Mrs. Corbett has been very supportive of the claimant before and during her maternity leave and on her return from leave. The claimant has not established a prima facie case.

(p)The second respondent offered the claimant an alternative position as a beauty therapist without a management title or role at a salary of £11.20 per hour. This took place on 15 January 2021 which was 6 months after the claimant's return and after 6 months of deliberate humiliation of the claimant by the second respondent.

Mrs. Corbett made this offer of alternative employment in the context that there was little management duties to perform. For the reasons rehearsed above the business had changed by reason of covid and the increased involvement of Mrs. Corbett. There was a reduced need for management but a continuing need for therapists to carry out treatments on clients. It was not intended as a humiliation of the claimant but an offer of alternative employment in the light of the diminution of management duties.

(q)The second respondent suggested at a meeting on 9 January 2021 with the claimant that she should in effect henceforward report to Melissa who was to be her supervisor. Melissa had always reported to the claimant working for the first respondent and had been managed and reported to the claimant prior to her going on leave.

The Tribunal do not accept this allegation. The Tribunal reject that the claimant was informed she should report to Melissa. Although the Melissa was given a badge saying supervisor it made no difference to her role as a therapist; she received no increased pay and she was managed by either the claimant or Mrs. Corbett.

(r)The second respondent made clear at a meeting on 9 January 2021 that she didn't want her to attend to work at the first respondent's premises. This made it impossible for the claimant to perform her role.

This allegation was not put to the respondent and the Tribunal rejects it.

(s)The second respondent sending the claimant a letter of offer on 15 January 2021 for the position of a therapist.

Mrs. Corbett did send the claimant a letter of offer on 15 January 2021 for the position of therapist because of the diminished need for any management duties. It was offered as alternative employment to the claimant. There is no prima facie case here of discrimination.

(t)The second respondent sending on 15 January 2021 the claimant a redundancy calculation offering £2,000;

Mrs. Corbett did send this calculation to the claimant. Mrs. Corbett had determined that the manager role was redundant and set out the offer of £2,000 for redundancy for the claimant's consideration if she did not wish to accept the therapist role. This had

nothing to do with the claimant's sex or that she had taken maternity leave; as already found by the Tribunal a number of changes occurred in the business as a result of covid which meant that there was a diminished need for the claimant's role as a manager in the salon. There is no prima facie case here of discrimination.

(u)The second respondent purporting to make the claimant redundant on 19 January 2021 and to undergo a redundancy consultation meeting with her and her cohabitant and Michelle Smith one of the first respondent's accountants present. The claimant wasn't consulted about her redundancy in this meeting and her views were not canvassed. This was not adequate. She was not allowed to ask the questions she had prepared.

The respondent's view was that the claimant's position as manager of the salon was redundant. The meeting on 19 January was to permit the claimant to raise any points she wished. The notes of the meeting indicate that the claimant had a pre prepared list of questions; she asked her list of questions and she in fact took control of the meeting. The claimant did not seek to offer alternatives. The meeting occurred to provide the claimant with an opportunity to put her views forward as to the decision by Mrs. Corbett to make the manager role redundant. As indicated above this had nothing to do with the claimant's sex or the fact she had taken maternity leave.

(v)The second respondent omitted to ask the claimant at the meeting on 19 January 2021 to complete any documentation.

This allegation was not put to the respondent's witnesses and is dismissed.

(w)The second respondent refusing the claimant entitled to sickness pay on 1 February 2021 despite her providing the first respondent a sickness note of 1 February 2021.

The respondent has conceded that this was rejected by mistake. The Tribunal finds that this was an error and had nothing to do with the claimant's sex or that she had taken maternity leave.

79 The respondent also contends that a substantial number of the claimant's complaints are brought outside the primary limitation period; the claimant has only just applied to extend time and there is no positive case put before by the claimant to extend time. The claimant asks the Tribunal to extend time because it is just and equitable to do so. Time is an issue which had already been identified at the preliminary hearing on 8 November 2021. On the basis that none of the allegations have been successful the Tribunal does not need to determine this issue.

#### Breach of contract

80 The claimant complains that she was not paid 7 weeks notice. The claimant was in receipt of statutory sick pay at the time. The respondent states that it is unsure whether the claimant has been so paid. There is no dispute between the parties that the claimant is entitled to 7 weeks notice to terminate her contract. In the circumstances that the claimant was on sick leave at the time and was paid

statutory sick pay, the Tribunal finds that the claimant is not entitled to any further notice pay.

**Employment Judge Wedderspoon**

**Date: 08/01/2023**