EMPLOYMENT TRIBUNALS

Claimant: Mrs E Rooney

Respondent: Your Friendly Local Ltd

Heard at: Sheffield **On:** 2, 3, and 4 May 2023

Before: Employment Judge Ayre
Mrs N Arshad-Mather
Mr G Harker

Representation

Claimant: In person
Respondent: Did not attend and was not represented.

JUDGMENT

The unanimous decision of the Tribunal is as follows:

1. The claimant was automatically unfairly dismissed because of her pregnancy and maternity contrary to section 99 of the Employment Rights Act 1996.

2. The respondent discriminated against the claimant contrary to section 18 of the Equality Act 2020 (pregnancy and maternity) by:

    a. Not carrying out a pregnancy risk assessment;
    b. Issuing the claimant with a new hourly paid contract shortly before her maternity leave started;

c. Requiring the claimant to move out of her accommodation at the public house;

d. Not allowing the claimant to return to her role at the end of her maternity leave; and

e. Dismissing her.

3. The claim for holiday pay succeeds.

4. The respondent is ordered to pay the claimant the sum of £40,743.65 by way of compensation.

REASONS

The Background

1. The claimant was employed by the respondent as a Pub Manager from 3 May 2019 and was provided with a salary and accommodation above the pub where she worked, which was known as The Colin. On 23 June 2022, following a period of early conciliation that started on 10 May 2022 and ended on 20 June 2022, she issued a claim, naming Chris Windle as the respondent. The claim was rejected on 4 July 2022 because the name of the respondent was different to the name on the ACAS Early Conciliation Certificate (YFL Ltd).

2. On 12 July 2022 the claim was accepted after reconsideration, with YFL Ltd named as the respondent. A response was filed on behalf of Your Friendly Local Ltd. In that response the respondent submitted that the claimant had not been dismissed, because her employment had transferred under TUPE to the new tenant of the pub where she worked.

3. There have been three preliminary hearings in this claim. The first took place on 10 October 2022 before Employment Judge Davies. At that hearing The Colin Kimberworth Ltd (who took over the pub in July 2022) was joined as a Second Respondent to the claim. The claims were identified as being ones of automatic unfair dismissal (or, in the alternative ordinary unfair dismissal), pregnancy / maternity discrimination and holiday pay. The name of what became the First Respondent, and is now the respondent, was changed to Your Friendly Local Ltd.

4. The second preliminary hearing took place before Employment Judge R S Drake on 16 December 2022. That hearing was postponed and relisted because the Second Respondent had only recently received notice of the claim and did not appear yet to have filed a response.

5. A third preliminary hearing took place on 20 January 2023 before Employment Judge D N Jones. At that hearing the issues that fell to be determined at the final hearing were discussed and orders were made to prepare the case for final hearing.

6. Prior to the final hearing the claimant withdrew her claim against the Second Respondent. A separate judgment has been issued dismissing the claim against the Second Respondent on withdrawal. The claim therefore proceeded against Your Friendly Local Ltd only.

The Proceedings

7. The claimant attended the hearing, the respondent did not. The claimant did not have a witness statement or a bundle of documents and explained that her witness statement and the documents she wished to rely upon had been sent to the Tribunal by email, an Order having been made previously that the respondent should produce a bundle for use at this hearing.

8. The claimant also indicated that she believed the respondent was insolvent. A check on Companies House online register showed that, as at 9.30 am on 2 May 2023 the respondent was still listed as an active company.

9. A member of Tribunal staff contacted Mr Chris Windle, director of the respondent. He said that the respondent had gone into administration, although he subsequently said that it was being voluntarily wound up. The member of staff also spoke to an individual (whose details had been provided by Mr Windle) who said his firm had been appointed as liquidators of the respondent.

10. The respondent and its liquidators were asked to send in written confirmation of the nature of the respondent's insolvency.

11. It was not possible to continue with the hearing on the first day until the status of the respondent was clarified, and until a bundle of documents was produced. We therefore adjourned the hearing, and the claimant was asked to produce a bundle for use the following day.

12. At the start of the second day of the hearing Jeremy Bleazard, Liquidator, wrote to the Tribunal confirming that the respondent was placed into Creditors' Voluntary Liquidation on 13 April 2023 and that he had been appointed as Liquidator. A further search on Companies House website revealed that the respondent was still showing as an active company.

13. Having received confirmation that the insolvency was Creditors' Voluntary Liquidation, we decided to proceed with the hearing.

14. The claimant attended with the original documents that she wished to rely upon. She had not been able to obtain copies or produce a bundle. A member of Tribunal staff indicated to the claimant that the Tribunal could copy the documents but there would be a charge. The claimant agreed to that. The Tribunal agreed to work from one copy of the documents between the panel, to keep the costs down for the claimant.

15. We adjourned for a copy of the documents to be made, and then started the hearing. The claimant had not produced a witness statement, but we took her Claim Form as her statement and asked her questions under oath. We also heard submissions from the claimant.

The Issues

16. The issues that fell to be determined during the hearing had been identified at the last preliminary hearing and were as follows:

Time limits

17. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before **11 February 2023** may not have been brought in time.

    a. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010?:

        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?:

            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? Unfair dismissal

18. Was the claimant dismissed by the First Respondent?

19. If so, was it on 28 March 2022, 6 June 2022 or 13 July 2022?

20. Was the reason or principal reason for the dismissal pregnancy, maternity, ordinary or additional maternity leave (section 99 of the Employment Rights Act 1996)?

21. Was the reason or principal reason for the dismissal the transfer of an undertaking from the First Respondent to the Second Respondent (Regulation 7 of the Transfer of Undertakings (Protection of Employment) Regulations 2006?

22. Alternatively, what was the reason or principal reason for dismissal, and did it fall within a category defined in section 98 of the Employment Rights Act 1996?

23. If so, did the First Respondent act reasonably in all the circumstances in treating that as a sufficient reason for dismissal?

Remedy for unfair dismissal

24. Does the claimant wish to be reinstated to her previous employment or re-engaged to comparable or other suitable employment?

25. Is reinstatement or re-engagement practicable and did the claimant cause or contribute to the dismissal such that it would not be just and equitable to make either order?

26. If the claimant were to be re-engaged, what should the terms of the re-engagement order be?

27. What financial losses has the dismissal caused the claimant?

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

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

30. 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 such that the compensation should be reduced?

31. Did the First Respondent or the claimant unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures such that the award should be increased or decreased by up to 25%?

32. If the claimant was dismissed, did she cause or contribute to the dismissal by blameworthy conduct such that it would be just and equitable to reduce the claimant's compensatory award?

33. What basic award is payable to the claimant having regard to the claimant's age at the effective date of termination of the employment, length of service and gross weekly wage?

34. Would it be just and equitable to reduce or extinguish the basic award because of any conduct of the claimant before the dismissal?

Pregnancy and maternity discrimination (Equality Act 2010 section 18)

35. Didi the First Respondent treat the claimant unfavourably by doing the following things:

    a. Not carrying out a risk assessment in respect of her pregnancy?

b. Requiring the claimant to change her contract from salaried to hourly paid just before her maternity leave?

c. Not allowing her to return to her role?

d. Dismissing her?

36. Did any of the above and the admitted requirement for the claimant to move out of her accommodation amount to unfavourable treatment?

37. If so, did any of the 5 events take place in a protected period?

38. If so, were any of the 5 events unfavourable treatment because of pregnancy?

39. Were any of the 5 acts of alleged unfavourable treatment because the claimant was on compulsory maternity leave, exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave?

Remedy for discrimination

40. Should the Tribunal make a recommendation that the First Respondent take steps to reduce any adverse effect on the claimant?

41. What financial losses has the discrimination caused the claimant?

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

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

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

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

46. Did the First Respondent or the claimant unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures such that the award should be increased or decreased by up to 25%?

Holiday pay (Working Time Regulations 1998)

47. Did the respondent fail to pay the claimant for annual leave accrued by the claimant from 29 August 2021?

48. If so, by how much? What sum is the claimant entitled to by way of holiday pay?

Transfer of an undertaking

49. It being accepted that there was a transfer of an undertaking from the First Respondent to the Second Respondent on 13 July 2022, was the claimant assigned to the organised group of employees that was subject to the transfer?

50. If so, what liabilities have transferred from the First Respondent to the Second Respondent? **Findings of Fact**

51. The following findings of fact are made on a unanimous basis.

52. The respondent was at the material time a Rotherham based pub company operating five sites in South and West Yorkshire. The respondent was run by a Mr Chris Windle and his daughters Kennedy and Shannon. The claimant was employed by the respondent as manager of The Colin pub. Her employment with the respondent started on 3 May 2019. The Colin is a sports bar and the claimant worked at The Colin from August 2019 onwards. She was not required to work in other pubs, except on one occasion when she helped out for a couple of hours at an event.

53. The claimant was given a contract of employment which provided for her to be paid a salary of £21,000 a year. The contract contained the following relevant clauses:

a. "*2. Place of Employment*

Your normal place of work is:- The Colin, 1 Old Wortley Road, Kimberworth, Rotherham, S61 1NQ

However, you accept that you would work at any other site or establishment, of the Company throughout the UK as your Contract with the Company shall so require for the needs of the Business. You also agree that you will make visits to clients or other establishments of the Company as may be required…

4. Hours

The hours you work each week will vary dependent on the requirements of the business…

5.Holidays

Your annual holiday entitlement is 5.6 weeks per annum including any entitlement to public holidays.

Rules as to holidays and holiday pay are set out in the Employee Handbook provided with the Statement of Terms and Conditions…

10.Accommodation

You shall during your employment and as a condition thereof occupy the premises and personally and permanently reside there. However, the following conditions shall apply:-

1) *Such occupation shall be a condition of your employment and shall not create any relationship of Landlord and Tenant between you or any person unless previously agreed with the Company. Your occupation shall cease forthwith upon the termination of your employment…*

2) *If you have cause for any reason whatsoever not to occupy the premises overnight you shall obtain prior consent form the Company.*

3) *The Company shall unless otherwise agreed pay for all necessary lighting, heating and water consumed on the premises…*

14.<u>Notice</u>

(i) You are obliged to give a minimum of four weeks notice to terminate your employment.

(ii) Except in circumstances when your employer is entitled to dismiss you summarily for gross misconduct, you are entitled to receive a period of notice of:

a) *One day for continuous employment with the employer for any period of up to four weeks; or*

b) *One week for continuous employment with the employer for any period of between four weeks and two years (subject to clause (i)); or*

c) *One week for each continuous year of such employment between two and twelve years; or*

d) *Twelve weeks for such employment of twelve years or more…"*

54. In practice the claimant worked an average of 50 hours a week. Her duties included bar work, taking deliveries, cleaning and paperwork / administration. She was entitled to 5.6 weeks' holiday a year and the holiday year ran from the beginning of the tax year in April to the end of the tax year the following April.

55. As part of the role the claimant was provided with a three bedroomed flat above the pub, where she lived with her children and, for a while, her partner. Her contract provided that residing in the flat was a condition of employment and that her occupation of the flat would end upon the termination of her employment.

56. The accommodation was provided free of charge, and the claimant did not have to pay for utilities, except for council tax and her TV licence.

57. The contract also contained notice provisions. The claimant was obliged to give four weeks' notice of termination and save in cases of gross misconduct, was entitled to statutory notice from her employer.

58. In February 2021 the claimant discovered that she was pregnant. She told Chris Windle, director of the respondent, about the pregnancy during a meeting that took place in the pub to discuss its reopening following the Covid lockdown. Mr Windle's response was "Are you stupid? What in the world have you done that for?" The meeting was cut short, and Mr Windle said that they would have to come up with a new plan and rethink what they were going to do.

59. The pub was due to reopen in April 2021 following lockdown. Risk assessments were carried out at the time to identify Covid related risks. In May or June 2021 the claimant asked Mr Windle's daughter, Kennedy, who would be carrying out her pregnancy risk assessment. The claimant had worked in the pub with two pregnant members of staff and had carried out risk assessments for each of them.

60. The claimant was particularly concerned that the Euro football competition was due to start, and that she may have to remove unruly customers from the premises as well as going down into the cellar. Her duties involved moving barrels of beer and cleaning using chemical products. Kennedy, who was involved in running the respondent's business, told the claimant not to worry because they would be putting door staff on for the England games. She did not address all of the claimant's concerns or arrange for a risk assessment.

61. No risk assessment was ever carried out to assess the risks to the claimant and her unborn child of working in the pub during the claimant's pregnancy.

62. At some point in 2020 or 2021 the claimant's then partner, Josh, moved into the pub accommodation with the claimant and her children.

63. In July 2021 the claimant took a week's holiday. When she returned from holiday, she was then off sick and isolating for two and a half weeks with Covid. She returned to work in August 2021 for approximately a week to ten days. She then took three days' holiday and started her maternity leave on 29 August 2021. She told the respondent that she intended to take 9 months' leave and to return to work at the end of May / beginning of June 2022.

64. The respondent took steps to arrange maternity leave cover for the claimant. Originally it was intended that another of the respondent's employees, Mr Udell, would work as the relief manager during the claimant's maternity leave. The intention was however that the claimant would stay living in the accommodation above the pub during her leave.

65. Mr Udell started working at the Colin in June 2021, so that there could be a handover period during which he would work alongside the claimant and receive onsite training. After approximately three weeks however, in late June or early July, Mr Udell left suddenly, telling the claimant that the job was too hard, and he couldn't do it.

66. The claimant then spoke to her partner Josh, and they agreed that he would offer to take on the relief manager job during the claimant's maternity leave. He was by that stage living in the pub with the claimant. It was subsequently agreed with Mr Windle that Josh would act as the claimant's maternity leave cover.

67. In August 2021, shortly before the claimant began her maternity leave, she and Josh were presented with new contracts of employment. Josh's contract contained an annual salary of £21,000 and a job title of House Manager. The contract that was presented to the claimant also contained a job title of House Manager. It was to all extents and purposes the same as her previous contract, save in relation to remuneration which was stated as being £10 an hour rather than £21,000 a year. The hours of work clause was the same as in her previous contract.

68. Neither the claimant nor Josh signed their contracts. The respondent, in its ET3, suggested that it had been agreed that the claimant would move to a Bar Manager role. We find that there was no such agreement. We accept the claimant's evidence that at no point did she agree to a change either in her salary or in her role. Her intention always was to return to the House Manager full time role following her maternity leave. The respondent also suggested that the claimant had agreed to a zero hours contract. We find that she did not. At no point did the claimant agree that she would be employed on a zero hours' contract.

69. The claimant's evidence, which we accept, is that Mr Windle explained the change in her contract by saying that 'there is nothing to worry about, the pub is still your baby' but that it was not possible for tax purposes to have both her and Josh on contracts with salaries of £21,000.

70. The claimant continued to be paid at the rate of £21,000 until the start of her maternity leave, with the exception of the time that she was off sick and isolating with Covid. Her maternity pay was calculated using the salary of £21,000.

71. The claimant began her maternity leave on 29 August 2021 and her baby was born on 16 September that year. Her partner Josh provided maternity leave cover for the claimant until February 2022 when their relationship broke down and he decided to leave the pub.

72. In January 2022 Mr Windle decided to stop running the pub. He gave six months' notice to the landlord of the pub, Greene King, to terminate his lease of the premises. On 18 January 2022 he had a meeting with the claimant and Josh at which he told them about this. He said that he may still operate the pub for six months, although this period could be shortened if a new tenant was found sooner. He told the claimant

and her partner that they would transfer to whoever took on the lease, and that he would update them when he knew more.

73. The claimant and her partner considered taking over the lease themselves. Had they done so the lease would have been in the claimant's name, with Josh working in the pub. The claimant had discussions about this possibility with Mr Windle initially and subsequently with Barry Aspinall, Area Manager of Greene King. It was only at the end of June 2022, after Mr Aspinall provided her with details of the rent she would be expected to pay for the pub, that the claimant decided not to take on the lease.

74. In February 2022 Josh spoke to Shannon, the other of Mr Windle's daughters and told her that he could not continue in the role of relief manager. The claimant was visiting her mother at the time and did not know that Josh was about to do this. Shannon called her and said that they had taken the keys from Josh and asked him to move out. The claimant tried contacting Josh but was unable to reach him.

75. The claimant stayed at her parents until Shannon called her and told her that Josh had moved out, when she and her children returned to the accommodation above the pub. Mr Windle telephoned her from Portugal, where he was on holiday, and asked if she was OK. He told her not to worry and that they would chat and come

up with a plan as to what would happen when she was ready to return to work.

76. Mr Windle subsequently asked the claimant to attend a meeting on 1 March 2022. During that meeting he told the claimant that he had to find someone else to replace Josh. The claimant replied that that was understandable and that she was happy to do the paperwork and other back-office work to support Josh's replacement but was not ready to come back to front of house work yet.

77. During the meeting Mr Windle gave the claimant a letter which stated:

"*Due to the impending sale of The Colin public house, Your Friendly Local Limited hereby are giving you 14 days notice to vacate the accommodation situated above the premises.*

We require you to have fully vacated the accommodation….on or before 14th March 2022…"

78. This came as a total shock to the claimant, who said it would be impossible for her to move out in 14 days. Mr Windle later gave her another letter giving her until 12 noon on 28 March 2022 to move out.

79. On 8 March the claimant sent an email to Mr Windle asking what was happening with her job and whether she was being dismissed. In response Mr Windle telephoned her, on or around 14 March and asked what the claimant wanted to come back to work as. The claimant said that she wanted the job that she had before maternity

leave. Mr Windle said that he couldn't offer her full-time work but that he or one of his friends, who also ran pubs in the area, would be able to find her something part-time. He also offered her redundancy.

80. The claimant asked him what job role she would be coming back to and what was on offer by way of redundancy. She wanted him to put the options to her so that she could consider them. She did not hear anything from him until 6 April when he sent her an email attaching a letter dated 4 April 2022.

81. In his letter of 4 April Mr Windle referred to the claimant's paid period of maternity leave coming to an end at the end of May 2022 and asked whether she intended to return to work and on what date.

82. The claimant replied on 6 April in an email to Mr Windle in which she wrote:

"*As previously discussed verbally I do intend to return to work at the end of my maternity pay at the end of May.*

As you explained to me that my position was no longer available to me after my maternity leave finished, and there was not a job suitable to match my hours, wage and living accommodation, which was part of my salary package.

You advised that there was no full time employment for me but you could find me

part time work or to take voluntary redundancy.

Can you please advise and give more information as what you are able to offer me to return to work on 06.06.22 including salary package, could I also request the information regarding the redundancy and costs so that I can look at my options fairly…"

83. Mr Windle replied on 13 April. In his email he wrote that:

"*When you stepped down from your position as a salaried manager at The Colin prior to having your baby, you requested to go on an hourly paid staff contract. With Josh your partner taking over as salaried manager.*

Once the baby was born you informed us that you would see how it went with caring for your children and when you were ready to return to work. You also said you would let us know what you were able to work due to childcare.

The purpose of my letter was to enquire if this was still the case and what your planned returned to work date would be and what your availability looked like.

Could you please confirm the above in writing giving 8 weeks' notice of your intentions?

84. The claimant responded to Mr Windle on the same day. She sent an email containing the following:

"*I am going to seek further advice on the matter, as it wasn't by my choice that I stepped down. Myself and Josh was under the impression that his position was maternity cover. Obviously Josh left his own job to help as the manager that was originally lined up, Billy, backed out at the very last minute.*

As per my last email I have given 8 weeks notice with my planned return to work date the 6th of June. When I left to go on maternity leave I was full time until that point. I have asked for further information on what position and how many hours I will be returning to and for information on the redundancy that you said was an option. I do intend to return to work but my intention was full time. So now I do need to look at my options as previously discussed…"

85. Mr Windle emailed the claimant on 16 May asking her whether she was still intending to return to work and what her availability was so that he could look at rotas. He sent a follow up email on 20 May chasing a response. On 26 May Mr Windle sent a letter to the claimant in which he wrote:

"*…I have tried to contact you via email and phone with no success. I have attached the most recent email trail for your attention. As highlighted and as you aware we do our rotas 2/3 weeks in advance, therefore, we need to know your availability. This is due to the fact you have previously highlighted childcare issues. As a result, it would be pointless in us creating a rota without us knowing your availability.*

With regards to your comment about returning full time. I am not aware that this matter was ever discussed. You signed a zero-hour contract on 26th July 2021 at a rate of £10.00 per hour. You would therefore return to work based on this contract. As you know, we will be vacating the Colin very soon. At that time, you would transfer over to the new tenants under TUPE. I am eager for us both to agree what is the best for you based on your circumstances…

Please let me have your availability as soon as you can…"

86. The claimant did not reply to this letter and there was no further communication between the claimant and the respondent after the letter of 26 May 2022. The claimant did not return to work on 6 June 2022 or indeed at any point thereafter.

87. After the claimant moved out of the pub on 28 March, the accommodation remained empty until after the management of the pub transferred from the respondent to The Colin Kimberworth Limited. The pub continued to operate however and was managed by another manager who had previously worked at the Droppingwell pub.

88. On 13 July 2022 The Colin Kimberworth Limited took over the lease of the Colin pub and began to manage it. On 14 July Shannon sent an email to one of the directors of

The Colin Kimberworth Ltd, Craig Isaacs, with details of staff employed at the pub. She gave the names of four people whose employment would transfer. The claimant's name was not on the list.

89. The claimant spoke to Barry Aspinall of Greene King in June and on 17 June he provided her with a figure for the rent of the pub. After that conversation the claimant decided that she could not take on the pub. She was not in a good place and had a very precarious living situation. Having been told to move out of the pub by Mr Windle, she was sleeping on a mattress on the floor in the dining room of her grandparents' one bedroomed bungalow, with her baby. She subsequently told Mr Aspinall that she had decided not to try and take on the lease of the pub.

90. The claimant continued to receive payslips from the respondent until January 2023. She was last paid by them however in early June 2022 when she received her last payment of Statutory Maternity Pay. She had not received any pay from them since then, nor has she received a P45. She has not given notice to terminate her employment with the respondent and has not received notice from the respondent.

91. The claimant has not taken or been paid for any holiday since August 2021.

92. The claimant contacted a Citizens' Advice Bureau in April 2022. At that point she became aware of the possibility of bringing an employment tribunal claim and of the existence of the three month time limit. In May 2022 the claimant contacted ACAS and began early conciliation. When asked why she waited until May 2022 to start early conciliation the claimant said that it was only when she looked back at things that had happened as a whole that she thought 'that's not right'.

93. Whilst she was employed by the respondent the claimant earned £404 a week gross, £338 a week net. Since June 2022 she has earned £864.77 net for two weeks' work in a wine bar in October, and £652.19 net for working temporarily at Jo Malone in the run up to Christmas. The claimant has not worked since 23 December 2022. She has been applying for jobs and is now considering going back to college to study.

94. The claimant was born on 19 July 1988.

95. Since March 2022 the claimant has been in receipt of Universal Credit. She initially received £1,137.04 a month before deductions. From 6 June onwards she has received the following sums:

30 June 2022	£1,553.26
30 July	£1,251.23
30 August	£1,251.23
30 September	£1,251.23
30 October	£1,251.23

30 November	£1,365.29
30 December	£1,303.14
30 January 2023	£1,251.23
28 February	£1,251.23
30 March	£1,251.23
30 April	£1,251.23

Total benefits received : £14,231.53

96. As a result of having to move out of the flat above the pub and find alternative accommodation, the claimant has incurred a number of expenses that she would not otherwise have had to incur. These include the following:

Removal van and storage	£450
Rent 1 April to 31 July	£2,400
Utilities 1 April to 31 July	£1,600

97. On 1 August 2022 the claimant and her children moved into a council house which she hopes will be a long-term home. She pays rent of £390.46 a month for the house, gas and electricity of £200 a month and water of £60 a month. She has had to buy electrical goods and furniture for the house, including an oven for £450, a sofa for £2,100 and a TV at £655.99. She has also had to buy new wardrobes at a cost of £776 as her old wardrobes were damaged in transit. She has paid £1,995 for carpets and flooring in the house.

98. As a result of the actions of the respondent, the claimant and her three children, including her young baby, were without a home of their own for four months. Fortunately they were able to stay in the one-bedroom bungalow of the claimant's grandparents, who moved out temporarily. The claimant and her baby slept on a mattress on the dining room for four months. Her two other children both have autism and need their own room. They had to share a room for four months.

99. The claimant was, understandably, panicked by the situation that she found herself in, and experienced stress and anxiety. She felt very distressed and humiliated by what happened, and particularly vulnerable as she was on maternity leave and still breast feeding her baby. The stress of the situation caused her to have painful mastitis and she has been prescribed anti-depressant medication. She is still on medication for depression and anxiety and feels betrayed by the respondent.

The Law

Unfair dismissal

100. Section 94 of the Employment Rights Act 1996 contains the right for employees not to be unfairly dismissed. Section 95 sets out the circumstances in which an employee is dismissed for the purposes of unfair dismissal:

> "*(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if) –*
>
> *(a) The contract under which he is employed is terminated by the employer (whether with or without notice),*
> *(b) He is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or*
> *(c) The employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.*"

101. Section 99 of the Employment Rights Act 1996 provides that:

> "*(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if –*
>
> *(a) The reason or principal reason for the dismissal is of a prescribed kind, or (b) The dismissal takes place in prescribed circumstances.*
>
> *(2) In this section "prescribed" means prescribed by regulations made by the Secretary of State.*
>
> *(3) A reason or set of circumstances prescribed under this section must relate to –*
>
> *(a) pregnancy, childbirth or maternity…*"

Pregnancy and maternity discrimination

102. Section 18 of the Equality Act 2010 states as follows:

> "*(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.*
>
> *(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably –*
>
> *(a) because of the pregnancy, or*
> *(b) because of illness suffered by her as a result of it.*

(3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

(5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).

(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends –

(a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
(b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.

(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as –

(a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or
(b) it is for a reason mentioned in subsection (3) or (4)."

Time limits in discrimination claims

103. Section 123(1) of the Equality Act 2010 provides that complaints of discrimination may not be brought after the end of:

> "*(a) the period of 3 months starting with the date of the act to which the complaint relates, or…*
> *(b) Such other period as the employment tribunal thinks just and equitable.*

104. Section 123 (3) states that:

> "*(a) conduct extending over a period is to be treated as done at the end of the period;*

(a) Failure to do something is to be treated as occurring when the person in question decided on it."

105. In discrimination cases therefore, the Tribunal has to consider whether the respondent did unlawfully discriminate against the claimant and, if so, the dates of the unlawful acts of discrimination. If some of those acts occurred more than three months before the claimant started early conciliation the Tribunal must consider whether there was discriminatory conduct extending over a period of time (i.e., an ongoing act of discrimination) and / or whether it is just and equitable to extend time. Tribunals have a discretion as to whether to extend time but exercising that discretion should not be the general rule. There is no presumption that the Tribunal should exercise its discretion to extend time: ***Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434***.

106. In ***Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686*** the court held that in order to prove that there was a continuing act of discrimination which extended over a period of time, the claimant has to prove firstly that the acts of discrimination are linked to each other and secondly that they are evidence of a continuing discriminatory state of affairs.

TUPE

107. Regulation 4 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**") contains the following relevant provisions:

"*(1) Except where objection is made under paragraph (7), a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.*

(2) Without prejudice to paragraph (1), but subject to paragraph (6), and regulations 8 and 15(9), on the completion of a relevant transfer –

(a) all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulations to the transferee; and

(b) any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.

(3) Any reference in paragraph (1) to a person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to a relevant transfer, is a reference to a person so employed immediately before the transfer, or who would have been so employed if he had not been dismissed in the circumstances described in regulation 7(1)…."

108. Regulation 7(1) of TUPE provides that: "*Where either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee is to be treated for the purposes of Part 10 of the 1996 Act (unfair dismissal) as unfairly dismissed if the sole or principal reason for the dismissal is the transfer.*"

Holiday pay

109. Claims for holiday pay can be brought either as complaints of breach of contract or under the Working Time Regulations 1998 ("**the WTR**"). Regulations 13 and 13A of the WTR contain the right for all workers to 28 days' paid holiday a year. Regulation 14 deals with compensation for untaken annual leave on the termination of employment and provides that:

"*(1) Paragraphs (1) to (4) of this regulation apply where –*

(a) A worker's employment is terminated during the course of his leave year, and
(b) On the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be –

(a) Such sum as may be provided for the purposes of this regulation in a relevant agreement, or
(b) Where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula

(AxB) – C

Where –

> ***A*** *is the period of leave to which the worker is entitled under regulation 13 and regulation 13A*
>
> ***B*** *is the proportion of the worker's leave year which expired before the termination date, and*
> ***C*** *is the period of leave taken by the worker between the start of the leave year and the termination date."*

Basic Award: Unfair dismissal

110. Section 118 of the Employment Rights Act 1996 ("**the ERA**") provides that:

> "*(1) Where a tribunal makes an award of compensation for unfair dismissal…the award shall consist of –*
>
> *(a) A basic award (calculated in accordance with sections 119 to 122 and 126), and*
> *(b) A compensatory award (calculated in accordance with sections 123, 124, 124A and 126."*

111. Section 119 of the ERA contains the provisions for calculating a basic award, which shall be done by:

> "*(a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,*
> *(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and*
> *(c) allowing the appropriate amount for each of those years of employment…"*

Unfair dismissal compensatory award

112. Section 123 of the ERA contains the power to make a compensatory award where an employee has been unfairly dismissed, of "*such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer*".

Compensation for discrimination

113. Section 124 of the Equality Act 2010 sets out the remedies available in a successful discrimination claim. Section 124(2) provides that the tribunal may "*order the respondent to pay compensation to the complainant*". Section 124(6) states that "*The amount of compensation which may be awarded under*

subsection (2)(b) corresponds to the amount which could be awarded by the county court…under section 119".

114. Where a Tribunal finds that a dismissal is both discriminatory and unfair, compensation for financial losses can only be awarded once, to avoid double recovery. Section 126 of the Employment Rights Act 1996 provides that:

> "*(1) This section applies where compensation falls to be awarded in respect of any act both under-*
> *(a) The provisions of this Act relating to unfair dismissal, and (b)*
> *The Equality Act 2010.*
>
> *(2) An employment tribunal shall not award compensation under either of those Acts in respect of any loss or other matter which is or has been taken into account under the other by the tribunal (or another employment tribunal) in awarding compensation on the same or another complaint in respect of that act."*

115. Normally compensation will be awarded under the discrimination legislation (***D'Souza v London Borough of Lambeth [1997] IRLR 677***) although in some cases it may be more appropriate to award unfair dismissal compensation. This approach was approved by the EAT in ***Cooper and anor v Smith EAT 0452/03*** where the Tribunal was unable to calculate damages for discrimination net of social security benefits because it did not have the necessary information about benefits received, and instead awarded compensation for unfair dismissal to which the Recoupment Regulations applied.

116. In assessing compensation for discrimination account must be taken of social security benefits received so as to avoid double recovery. In ***Chan v London Borough of Hackney [1997] ICR 1014*** the EAT held that "*where a benefit is paid only because of incapacity to earn a wage, such payment ending immediately such incapacity is removed, it cannot…be right in assessing compensation to allow both the lost earnings and that benefit*".

117. Section 119 of the EQA contains the remedies available to the county court where it makes a finding of discrimination and includes, at section 119(4) the power to award compensation for injured feelings (whether or not it includes compensation on any other basis).

118. In determining the amount of injury to feelings, the tribunal must take account of the guidelines laid down by the Court of Appeal in ***Vento v Chief Constable of West Yorkshire Police (No. 2) 2003 ICR 318****,* as subsequently revised, and of

the Presidential Guidance on Employment Tribunal awards for injury to feels and psychiatric injury, issued in September 2017 and subsequently updated.

119. The Vento guidelines, in summary, are that:

a. The top band applies in only the most serious cases, such as where there has been a lengthy campaign of harassment;
b. The middle band applies to serious cases that do not merit an award in the top band; and
c. The lower band applies in less serious cases, for example involving a one off or isolated act of discrimination.

120. The Presidential Guidance provides that for claims presented on or after 6 April 2022 the Vento bands are as follows: a lower band of £990 to £9,900 (less serious cases); a middle band of £9,900 to £29,600 (cases that do not merit an award in the upper band); and an upper band of £29,600 to £49,300 (the most serious cases), with the most exceptional cases capable of exceeding £49,300. These bands take account of the 10 per cent uplift set out in ***Simmons v Castle [2012] EWCA Civ 1288***.

Interest

121. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 SI 1996/2803 give employment tribunals the power to award interest on awards made in discrimination cases. The Tribunal is required to consider whether to award interest, even if the claimant does not include a sum for interest in her schedule of loss.

122. Under Regulation 3 interest is calculated as simple interest that accrues from day to day, and the current rate of interest is 8%. Interest on awards of injury to feelings runs from the date of discrimination to the 'calculation date' on which the tribunal makes its decision on remedy. Interest on other awards of compensation for discrimination, such as compensation for loss of earnings, runs from the mid-point between the date of discrimination and the calculation date.

Conclusions

123. The following conclusions are reached on a unanimous basis.

Unfair dismissal

124. In order to be able to pursue a complaint of unfair dismissal the claimant has to prove that she was dismissed. The starting point in deciding this question is section 95 of the Employment Rights Act 1996.

125. In her claim form, submitted on 23 June 2022 the claimant said her employment was continuing. The respondent in its response denied that the claimant was dismissed. It submitted that there was an automatic transfer of her employment to The Colin Kimberworth Limited on 13 July 2022 when that company took over running the pub. That was, in our view, an attempt to avoid liability for its actions.

126. We find that in this case the respondent did not give the claimant express notice of termination of her employment. Nor did the claimant resign. On 1 March 2022 the respondent gave her notice to move out of the accommodation that was tied to her employment. Subsequently it made clear that she could not return to her original role and that it considered, erroneously in our view, that she was employed on a zero hours contract.

127. The respondent's conduct in requiring the claimant to move out of the accommodation that was tied to her employment, and in not allowing her to return from maternity leave to the role that she had done previously amounted to a dismissal. The respondent made clear to the claimant through its conduct that her previous role of House Manager at the Colin was not available to her, and that the best that was available was part-time hours. The claimant had made it clear that she wanted to return full time to her original role. The respondent also suggested that she had agreed to a zero hours contract shortly before starting maternity leave when she had not agreed to such a contract. The contract that she was presented with in August 2021 was not a zero hours contract. Rather the hours clause in that contract was exactly the same as the hours of work clause in her original contract. There was no mention of zero hours.

128. The claimant had repeatedly made clear to the respondent that she wanted to return to work following maternity leave on 6 June 2022 to her previous role on a fulltime basis. The respondent did not allow her to return to her old role and made it clear that, whilst there may be some work available to her, it was fundamentally different to the role that she had been carrying out previously. She would not be the House Manager of The Colin – someone else was doing that role – and she would not be guaranteed any hours or level of pay. She had previously had a fixed salary of £21,000. There was still a need for a House Manager at the Colin but for some unexplained reason the respondent gave that role to someone else.

129. We therefore find that the respondent, through its actions, dismissed the claimant and that this dismissal took effect on 6 June 2022 when the claimant was due to return from maternity leave. The fact that the claimant, when completing her claim form, said that she thought she was still employed is not conclusive of the question. The claimant is a litigant in person who is, understandably, not familiar with the legal concept of dismissal. She clearly ticked the unfair dismissal box on the claim form, indicating that she intended to bring a complaint of unfair dismissal.

130. We find that the reason for the dismissal fell within section 99 of the Employment Rights Act 1996 (leave for family reasons) and was automatically unfair. The claimant was dismissed because she took maternity leave. If she had not taken maternity leave the claimant would not have been dismissed. There was no evidence whatsoever to suggest that there were any performance or conduct issues, to the contrary, the claimant said that she had previously had a good relationship with Mr Windle. The end of the respondent's lease of The Colin was not the reason for the dismissal as Mr Windle had indicated an intention to replace the claimant, and that there would be a TUPE transfer at the end of the lease.

131. Things seemed to change when the claimant fell pregnant and subsequently took maternity leave, and in particular when the claimant's maternity leave cover left. This was not the fault of the claimant. Mr Udell left within a few weeks because he found the job too hard. Josh left in February 2022, because he also found the job too hard, and his relationship with the claimant was breaking down. The respondent's attitude towards the claimant was demonstrated by Mr Windle's negative comments when

the claimant told him she was pregnant, and by the failure to carry out a risk assessment in relation to the claimant's pregnancy. The respondent appeared to view the claimant's pregnancy and maternity leave as a problem for them and showed a distinct lack of care for the claimant. This was demonstrated by the comments made by Mr Windle when the claimant told him she was pregnant, by the failure to carry out a pregnancy risk assessment and by the way in which the claimant, her baby and other children were forced to move out of their home on just four weeks' notice whilst the claimant was on maternity leave.

132. We have no hesitation in finding that had the claimant not taken maternity leave, she would not have been dismissed. The Colin is still operating as a pub and there is no evidence to suggest that the claimant would not have been retained as the House Manager on the TUPE transfer.

133. We therefore find that the claimant was automatically unfairly dismissed contrary to section 99 of the Employment Rights Act 1996 because she became pregnant and took maternity leave. The claimant was not dismissed in connection with the TUPE transfer.

<u>Pregnancy / maternity discrimination</u>

134. There are five separate allegations of discrimination and we set out below our conclusions on each.

<u>First Allegation : failure to conduct a risk assessment</u>

135. Regulations 3(1) and 16 of the Management of Health and Safety at Work Regulations 1999 SI 199/3242 impose an obligation on employers to carry out a

suitable and sufficient risk assessment in respect of pregnant and breastfeeding employees.

136. The claimant notified the respondent of her pregnancy in February 2021 and in May or June 2021 she specifically asked for a risk assessment to be carried out in relation to her pregnancy. The respondent did not carry out a risk assessment, despite being asked to do so.

137. Failure to carry out a risk assessment can amount to sex or pregnancy discrimination (***Day v T Pickles Farms Ltd [1999] IRLR 217*** and ***Hardman v Mallon t/a Orchard Lodge Nursing Home [2002] IRLR 516***).

138. The failure to carry out a risk assessment was in our view a detriment and was because of the claimant's pregnancy. It occurred when the claimant was pregnant and therefore during the protected period.

139. We therefore find that the respondent discriminated against the claimant contrary to section 18 of the Equality Act by failing to carry out a risk assessment during the claimant's pregnancy.

Second Allegation : change in contract

140. We also find that the issuing of a new contract to the claimant in August 2021 was unfavourable treatment because the contract changed her salary from a fixed amount of £21,000 per annum to £10 an hour. This was not a benefit to the claimant, but to her detriment, as she lost the protection of a fixed salary. On the evidence before us, it appears us that the only reason for this treatment was the fact that the claimant was pregnant and about to go on maternity leave. The suggestion by the respondent in its response form that it was the intention of both parties that the claimant would move to a Bar Manager role was not supported by the evidence.

141. The claimant was presented with the contract as a fait accompli. She did not sign it and did not agree to any change in her terms and conditions. But for her pregnancy Mr Windle would not have issued her with the new contract. He then went on whilst she was on maternity leave to suggest that this contract was a zero hours contract when it was not.

142. The issuing of the contract was unfavourable treatment because of the claimant's pregnancy and/or because she was seeking to exercise her right to take maternity leave. It took place during the protected period and was unlawful under section 18 of the Equality Act.

Third Allegation : Requiring the claimant to move out

143. The respondent admits that it required the claimant to move out whilst she was on maternity leave. In its response to the claim the respondent wrote:

"*…Josh walked out of his role as House Manager giving no notice. This meant that the Respondent needed to replace Josh with a new House Manager.*

18. The Claimant was spoken to by Mr Windle about the need to put a new manager in place and the impact this would have on the Claimant's use of the accommodation. The claimant and Mr Windle discussed at length whether the Claimant would be able to move back into the role of House Manager at that time in order to fill the gap that had been left…

19. A letter was then sent to the Claimant on 1st March 2022 giving formal notice of 28 days to vacate the accommodation. "

144. The reason the claimant was given notice to vacate the premises was because she was on maternity leave at the time and the respondent wanted to find a maternity leave cover who would live on site. We find that this would not have happened had the claimant not been on maternity leave. There had never been any question of her leaving until she went on maternity leave. The respondent has not sought to argue that the reason she was required to leave the premises was the potential TUPE transfer in July 2022. The claimant was required to move out during the protected period.

145. We therefore find that the claimant was discriminated against when the respondent required her to move out of the premises.

Fourth Allegation : Not allowing the claimant to return to her role

146. We have no hesitation in finding on the evidence before us that the claimant was not allowed to return to her role as House Manager because she took maternity leave. Up until the claimant's maternity leave there was no suggestion whatsoever that the claimant's employment would not continue. She had been doing the role for two years and there was no evidence before us to suggest any performance or conduct concerns. The claimant had not agreed to any change in her role, and certainly did not agree to work on a zero hours' contract or for £10 an hour.

147. The claimant was prevented from returning to the role during the protected period as she sought to return approximately 9 months after starting maternity leave, when her maternity pay was due to run out. This was during the period of additional maternity leave and therefore within the protected period.

148. The respondent therefore discriminated against the claimant contrary to section 18 of the Equality Act by not allowing her to return to her role as Pub Manager at The Colin.

Fifth Allegation : the dismissal

149. The final allegation of discrimination relates to the dismissal. For the reasons set out above we find that the claimant was dismissed because of her maternity leave, and this allegation therefore succeeds.

Time Limits

150. The claimant began early conciliation on 10 May 2022. Any allegations relating to acts that occurred on or before 11 February 2022 are therefore outside the primary time limit.

151. The first two allegations (relating to the risk assessment and the issuing of the new contract) are therefore on the face of it out of time. The last three allegations are in time. We have therefore gone on to consider whether the first two allegations were part of a continuing act of discrimination and/or whether it would be just and equitable to extend time in relation to these allegations.

152. In ***Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530*** the Court of Appeal held that the focus of the Tribunal should be on whether the respondent was responsible for an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. This approach was approved by the Court of Appeal in ***Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548***, where it was clarified that Tribunals should look at the substance of the complaints in question (as opposed to the existence of a policy or regime) and decide whether those are part of one continuing act by the employer.

153. We find on balance that there was a continuing act of discrimination which started when the respondent failed to carry out a risk assessment for the claimant and ended with her dismissal on 6 June 2022. There was a continuing state of affairs in which the claimant was treated unfavourably because of her pregnancy and her maternity leave, and for which Mr Windle and one of his daughters were responsible. All of the claims of discrimination are therefore in time.

154. In the alternative, we would have found that it was just and equitable to extend time to allow the claimant to pursue the earlier allegations because:

a. The claimant was not aware of the legal implications of what was happening to her or of the right to bring a Tribunal claim until she went to the CAB for advice in April 2022;

b. She acted promptly having received that advice and started early conciliation on 10 May;

c. The claimant was in a particularly difficult position in early 2022 in that her relationship had broken down and she found herself potentially homeless with

three children including a 5-month-old baby. She ended up sleeping on a mattress on the floor in her grandparents' house with the baby. This was a particularly difficult time for her; and

d. The merits of the discrimination claim are strong. This is a case in which there was a blatant disregard for the claimant and her rights by Mr Windle and his daughter. The respondent evicted the claimant from her home when she had a young baby and two other children.

Holiday pay

155. The claimant took no holiday after 29 August 2021 when she started maternity leave. She is therefore entitled to accrued holiday pay up to the date of termination of her employment on 6 June 2022.

TUPE

156. In light of our findings above, we find that the claimant's employment did not transfer to The Colin Kimberworth Limited because she was dismissed before the transfer took place on 13 July 2022 and the reason for her dismissal was not linked to the transfer.

Remedy

157. The remedy sought by the claimant was compensation. The claimant did not request reinstatement or re-engagement. In light of this and of the fact that the respondent is in liquidation, it was not appropriate to make a recommendation.

Basic Award

158. The basic award is calculated by multiplying a week's gross pay of £404 by the multiplier of 3, as the claimant was aged 33 at the time she was dismissed and had been continuously employed for 3 years. This results in a basic award of **£1,212**.

Compensation for unfair dismissal

159. We have decided to award loss of earnings following the claimant's dismissal by way of compensation for discrimination under the Equality Act, and not as compensation for unfair dismissal. We do however award the claimant the sum of **£350** for the loss of her statutory employment rights.

Compensation for financial losses incurred as a result of the discrimination

160. It would in our view be just and equitable to award the claimant loss of earnings from 6 June 2022 through to 4 May 2023, the date upon which compensation is calculated. We have some concerns that the claimant has not applied for many jobs during this period, although we are satisfied that it would not be appropriate to make

any deduction in compensation for a failure to mitigate. The claimant has had to find alternative accommodation for her and her children, one of whom is still a baby, and has carried out some work. We do not however make any award for future losses, as the claimant is now considering her options and may very well return to studying.

161. The claimant was paid £338 net a week. Her net loss of earnings between 6 June 2022 and 4 May 2023 (a period of 47.43 weeks) is **£16,031.34**. During that period she earned a total of **£1,516.96** (£864.77 from her work at the wine bar and £652.19 from her work with Jo Malone). This gives a net loss of earnings of **£14,514.38** (£16,031.34 - £1,516.96).

162. During the period from 6 June 2022 to 4 May 2023 the claimant received benefits totalling **£14,231.53**. We have deducted this sum from the net loss of earnings, giving a net loss to the claimant of **£282.85** (£14,514.38 - £14,231.53).

163. We also award the claimant the sum of **£13,886.41** in respect of the additional costs that she has incurred as a result of the discrimination, and which have caused her additional financial loss. This sum is broken down as follows:

a. Rent, gas, electricity, water and other bills from 1 April 2022 to 4 May 2023: £9,386.41; and

b. Cost of furnishing her new house, buying furniture and electrical items and carpets: £4,500.

164. This gives compensation for the financial losses incurred by the claimant as a result of the discrimination of **£14,169.26** (£282.85 + £13,886.41).

Injury to feelings

165. In considering what amount to award the claimant for injury to feelings, we have reminded ourselves that compensation for injury to feelings is compensatory and not punitive.

166. We have upheld all five of the allegations of discrimination. Those acts of discrimination occurred over a period spanning approximately one year. They included the eviction of the claimant and her children from their home, and her dismissal.

167. It is clear from the evidence before us that the discrimination had a significant impact on the claimant. She found herself without a home or a job whilst still on maternity leave and with a young baby. The actions of the respondent have caused her significant distress and affected her mental health. She is still receiving treatment for depression and anxiety.

168. In these circumstances, an award in the middle Vento band would in our view be appropriate. In light of the number of acts of discrimination and the impact of the

discrimination on the claimant, we award the claimant **£20,000** by way of injury to feelings.

Interest

169. We award interest on the compensation for discrimination under the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. We calculate the interest at the rate of 8%.

170. Interest on the compensation for financial losses runs from the midpoint between the date of the discrimination and the date upon which interest is calculated. We have taken the starting point for financial losses as 6 June 2022, which is 332 days before the date upon which interest is calculated. The midpoint between those two dates is 166 days and we therefore calculate the interest on financial losses as follows:

166 x 0.08 x 1/365 x £14,169.26 = **£515.53**

171. On the injury to feelings award interest runs from the date of discrimination. We have taken this as being 1 June 2021, the approximate date upon which the first act of discrimination (the failure to carry out a risk assessment) occurred. There are 702 days between 1 June 2021 and 4 May 2023. Interest on the injury to feelings award is therefore calculated as follows:

702 x 0.08 x 1/365 = **£3,077.26**.

Holiday pay

172. We award the claimant holiday pay from the period 29 August 2021 (when she started maternity leave) through to 6 June 2022, a period of 9 months. A full year's holiday entitlement for the claimant is 28 days. We award her 75% of this, namely 21 days holiday. We calculate the daily rate of pay as £67.60 net (£338 divided by 5), resulting in a total award of holiday pay of **£1,419.60** (21 x £67.60).

173. The total award to the claimant is therefore:

a. Basic Award: £1,212
b. Loss of statutory rights: £350
c. Compensation for financial losses: £14,169.26
d. Injury to feelings: £20,000
e. Interest on financial compensation: £515.53
f. Interest on injury to feelings: £3,077.26
g. Holiday pay: £1,419.60.

Grand total: £40,743.65

174. In light of our findings above, and of the lack of evidence from the respondent, it would not be appropriate to make any deduction from the compensation awarded to the claimant on the basis that there was a chance that the claimant's employment would have ended anyway. There is no evidence to suggest that the claimant's employment would have come to an end had she not taken maternity leave, given that the pub continues to operate, and that Mr Windle told the claimant he needed a manager to run it.

175. Similarly, it cannot in our view be said that the claimant contributed to her dismissal. She did nothing wrong. She did not return from maternity leave because of the way in which the respondent treated her, and not at as a result of any culpable or blameworthy conduct on her part.

176. The respondent is therefore ordered to pay the claimant the sum of £40,743.65.

Employment Judge Ayre

Date: 29 May 2023

JUDGMENT SENT TO THE PARTIES ON

20 June 2023

M.McGuigan FOR THE TRIBUNAL OFFICE

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