



EMPLOYMENT TRIBUNALS

Claimant: Ms Charlotte Stemp

Respondent: Caleño Drinks Limited

Heard at: Bristol Magistrates Court

On: 14 to 17 October 2024 (and in chambers 23 October 2024)

Before: Employment Judge C H O'Rourke
Ms L Fellows
Mr K Sleeth

Representation:

Claimant: Mr L Wilson – Claimant's partner
Respondent: Mr A Pickett - counsel

RESERVED JUDGMENT

The Claimant's claims of direct pregnancy discrimination and detriment relating to pregnancy fail and are dismissed.

REASONS

Background and Issues

1. The Claimant was an employee of the Respondent, as an Events Manager, for approximately five months, until her dismissal, with effect 5 May 2023, on stated grounds of redundancy. The Claimant was pregnant at the time. The Respondent company produces and distributes non-alcoholic beverages.
2. As a consequence, the Claimant brings the following claims, as set out in the case management order of 12 March 2024 [48] and as further agreed at the outset of the Hearing and as set out in the agreed List of Issues

[65], less that, as discussed, the Claimant cannot bring a claim of direct discrimination under s.13 of the Equality Act 2010 ('EqA'). This is because, at the point that the claims arose, she was pregnant and therefore in the 'protected period', thus being debarred by s.18(7) of the Act from bringing a claim under s.13.

2.1. Direct Pregnancy and Maternity Discrimination (s.18 EqA)

2.2 Did the Respondent treat the Claimant unfavourably by doing the following things:

2.2.1 Subjecting her to unfounded and unwarranted criticisms in relation to her performance levels on 3 and 27 March 2023;

2.2.2 Failing to undertake a second pregnancy risk assessment following the Claimant's diagnosis of perinatal depression;

2.2.3 Fail to offer the Claimant alternatives to redundancy that had been offered to other employees; and

2.2.4 Dismissing her?

2.3 It is not disputed that any such treatment took place in the 'protected period'.

2.4 Was any such unfavourable treatment because of the pregnancy, or because of illness suffered by her, as a result of the pregnancy?

3. Detriment relating to pregnancy (s.47C Employment Rights Act 1996)

3.1 Were the acts of alleged unfavourable treatment set out above, either acts, or deliberate failures to act, detriments to the Claimant;

3.2 If so, were they done on the grounds of her pregnancy?

The Law

4. We reminded ourselves of the statutory tests (as set out above).
5. We either referred ourselves, or were referred by Mr Pickett, to the following authorities:

- a. **Royal Mail Group Ltd v Efobi [2021] UKSC 33**, which confirmed (in respect of discrimination claims) that the burden of proof does not shift to the employer to explain the reasons for its treatment of the employee, unless the employee is able to prove, on the balance of probabilities, those matters which they wish the tribunal to find as facts, from which, in the absence of any other explanation, an unlawful act of discrimination can be inferred.
- b. **Amnesty International v Ahmed [2009] UKEAT IRLR 884**, in which then President Underhill confirmed that when deciding whether a claimant has proven discriminatory conduct by the respondent, the Tribunal should consider what inferences, if any, can be drawn from the primary facts, the mental processes (conscious or unconscious), the surrounding circumstances and explanations provided by the respondent.
- c. **Williams v Trustees of Swansea University Pension & Assurance Scheme [2018] UKSC 65**, which stated that:

‘Treatment which is advantageous cannot be said to be ‘unfavourable’ merely because it is thought it could have been more advantageous ... Persons may be said to have been treated unfavourably if they are not in as good a position as others generally would be.’
- d. **Bolton School v Evans [2007] IRLR 140 CA**, which stated, in relation to pregnancy-related detriment that pregnancy must be the reason for the act or omission, not the reason detriment arises. In this respect, the burden of proof is on the employer to show the reason for the act, or failure to act (**Edinburgh Mela Ltd v Purnell [2021] UKEAT IRLR 874**

The Facts

6. We heard evidence from the Claimant. On behalf of the Respondents, we heard evidence from Miss Ellie Webb, the Respondent’s owner; Mr Sam Flintham-Ward, a marketing director at the time and Ms Emily Churchill, the Claimant’s line manager at the time. We were also provided with a witness statement from a Ms Jo Griffin, an HR consultant of the Respondent, but as she did not attend to give evidence, we gave that statement little weight.
7. Chronology. We set out the following chronology in this matter:
 - a. 9 November 2022: The Claimant was offered her position, in the newly created role of Events Manager, on a salary of £36,000.

- b. 12 December 2022: The Claimant commenced employment.
- c. 16 January to 12 February 2023 (all dates hereafter 2023): The Claimant went on a pre-planned and agreed holiday.
- d. 15/16 February: the Claimant informed Ms Churchill of her pregnancy.
- e. 21 February: The Respondent completed a pregnancy risk assessment [113].
- f. 3 March: Ms Churchill completed a probationary review with the Claimant [198].
- g. 21 March: the Claimant informed Ms Churchill of a diagnosis of perinatal depression and that she was undergoing cognitive behavioural therapy (CBT) [236].
- h. 27 March: the Claimant had a further probationary review with Ms Churchill [233].
- i. 19 April: announcement to all staff of the possibility of redundancies and the commencement of a consultation process [262].
- j. 21 April: a collective consultation took place [140].
- k. 25 April: The Claimant was informed that her role has been selected for redundancy [273].
- l. 2 May: the Claimant appealed [394].
- m. 3 May: an appeal hearing was held [152] and the appeal was rejected [330].

8. Claimant's Evidence. We summarise the Claimant's evidence as follows:

- a. That until her first probationary review (which postdated her announcement of her pregnancy), she had received positive feedback for her performance and was meeting the expectations of her role.
- b. However, at probationary reviews held on 3 and 27 March, her performance was unfairly criticised, in respect of timekeeping, preparedness and presentational skills, with no account being taken of her pregnancy, or its symptoms, or her subsequent perinatal depression diagnosis (on 24 March [467]) and their effect

- on her performance. She was effectively threatened that she might not pass her probation.
- c. When she attempted to raise her medical condition, she was told that it was irrelevant to her performance and the issue would be discussed at a separate meeting, but which meeting never took place.
 - d. While a pregnancy risk assessment was undertaken by Ms Churchill, the Respondent did not take account of this in considering the Claimant's workload and driving responsibilities.
 - e. Regardless of her mental health and hyperemesis diagnosis, no second risk assessment was undertaken, despite the initial assessment indicating that it should be an ongoing process.
 - f. The failure to take into account her pregnancy-related health symptoms led to the Respondent taking a pre-conceived view of her ability to perform her role, leading to her pre-determined selection for redundancy. Indications of such pre-determination are the announcement to other staff of the 'diminishment' of her role, prior to the conclusion of the appeal process and the exclusion of her name from the list of those at risk of redundancy, with only her job title being used.
 - g. Despite being told that her role was redundant, the summer schedule of events continued, with Mr Flintham-Ward informing staff of that 'busy' schedule. It was also the case that the Respondent engaged agency staff to execute events that had been planned by the Claimant, with some of those staff having the title 'events manager' and effectively carrying out her role, undermining the argument that the redundancy decision was financially driven.
 - h. She did not accept that the decision to make her role redundant was purely financially-driven, as minutes of a leadership team meeting, on 29 March, stated '*if we lose a head, it's because they aren't delivering what the business needs them to deliver*' and thus that performance was a major issue, for which her pregnancy was not taken into account. (The note did go on to say '*or we feel the work can be integrated into the existing team*' [86]).
 - i. Despite the Claimant proposing alternatives to her redundancy, such as reduced hours or alternative roles, no real consideration was given to these proposals, further indicating the pre-conceived nature of her dismissal.

- j. We summarise the evidence the Claimant gave in cross-examination as follows:
- i. She said that the first '*negative experience*' that she'd had with Ms Churchill was in relation to a disagreement over the taking of Time Off in Lieu (TOIL), but when it was pointed out to her that perhaps this was her misunderstanding, as it referred to days off in lieu, rather than hours, she said '*I guess*'. She did, however, consider the refusal to give her TOIL, for additional hours worked, as unfair, despite her contract of employment not allowing for any such TOIL, or extra pay. In any event, this matter pre-dated her pregnancy.
 - ii. She was asked as to why, in her statement, she had referred to an alleged negative reaction from Ms Churchill to her announcement of her pregnancy ('*what to do with this information?*'), but had made no mention of such reaction in her nine-page detailed particulars of claim [16], when such alleged first reaction by her line manager would be very important to her claim of pregnancy discrimination? She said that the particulars of claim were '*rushed*' due to the three-month time limit and were completed in the month before she gave birth and therefore that '*other things were at the forefront of my mind*'.
 - iii. She was challenged as to why, in her witness statement, she had referred to being '*rushed*' into signing the pregnancy risk assessment document, when, at the time, she gave no such indication, didn't ask for more time or explanation, referring to it as '*perfect*' [191] and in fact only signed it four days after it was sent to her and she said that she was hoping to get more information, but wanted to be cooperative. She didn't include this information in her particulars of claim as she was '*not in the right frame of mind at the time, to remember everything*'.
 - iv. She disagreed that the feedback given to her in the probationary reviews was constructive and while there were some positive points, it was more negative than positive. She was asked whether she disagreed with any of the areas of criticism, despite stating at the time that '*all feedback above made sense to (her)*' [200] and that her strengths lay in '*execution*' and that she had less experience of '*logistics, strategy and planning*' and that this role was very different from her previous employment at Waitrose. She said that

she found the criticism unfair, particularly as it was not taking account of her pregnancy. When asked where, in the notes, she had mentioned her pregnancy, or its effects upon her, she said that they *'were not my notes'*, but in any event said that she didn't mention it as she *'didn't want to be a hindrance'* or to *'be difficult'*, but that by stating that she *'didn't feel 100%'* she *'implied'* it. She said that she *'wanted them to think me capable and didn't want to be negative'*. When it was pointed out to her that by this point, she had only been in the role for two (working) months and that she was still learning, she agreed that she had not had *'as much free rein before'* (in previous roles). When it was suggested to her that the criticism she now levelled and the reliance she placed on her pregnancy was *'after the event'* thinking by her and an attempt *'re-write the narrative'*, she denied that assertion but stated *'I wanted to move past this. I was still in my probationary period and in a very vulnerable position'*.

- v. She was challenged as to the references in her statement to having to undertake long hours and lengthy drives. She agreed that in first such reference, to a trip to Bradford, she had travelled with a sales representative but had not asked him/her to share the driving. When it was suggested that it was her choice to do so, she said that it was *'my job'* and that it was *'expected'* of her.
- vi. She asserted in her witness statement (31c) that, in the week of 6 to 10 March (*'the same week as 8th-9th March'*), she had been *'labelled "difficult" and "not a team player" when I refused to do more'*, by an unnamed person. When asked who had said this and when, she said Mr Flintham-Ward, in the review meeting on 3 March. When asked why, when she had dealt with that meeting in detail, earlier in her statement, she had not mentioned these comments, she said that she *'just wanted to get on with the job ... and it was more relevant in this part of the statement'*. She had no answer to the point that the alleged statements were clearly not made in *'the same week'*, as she had stated.
- vii. In response to the Claimant's assertion that Ms Churchill had been unsupportive, it was suggested to her that the documentary evidence ran counter to that, she agreed that Ms Churchill *'kept in touch, but never acted on my concerns and never asked about my workload'* her supportive statements in messages being *'superficial'*. When it was

further suggested to her that to suggest that Ms Churchill '*never*' acted on her concerns, in the face of many supportive messages and encouragement to take time off, or to pass work to others, she agreed that she '*shouldn't have said never*' but would '*expect a manager to ask if she was capable of completing her workload.*' At a later point, when challenged that Ms Churchill had been entirely supportive, during a residential training event, when the Claimant had not wished to attend a '*celebration meal*' due to being tired, by not only not criticising her for that absence, but stating '*all good! Can I make you a plate to bring down? XX*' [245] and that that had been '*kind and generous*', the Claimant said simply that Ms Churchill had a '*duty of care*' to her.

- viii. When it was suggested to her that there had been no information from her, at the time, as to her, now stated, concerns she said that she '*felt criticised and needed to prove myself capable and not a hindrance*'.
- ix. She was queried on her account of being subjected to '*an exhausting 27-hour workload*' (WS 31.b) on 8 and 9 March, suggesting that she had exaggerated the time she was committed to on the 8th and that it had been her choice to drive from London to Bristol, for an event the next day (rather than stop off at her home in Reading for the night and then drive to Bristol the next morning). She said that the stock in her vehicle was required in Bristol at 7.30 that morning and that it was better to drive when the roads were quiet.
- x. In her witness statement (32) she said that she gave a presentation to the management team on 10 March, '*despite raising concerns about being unprepared due to the week's workload*' and had tried to reschedule it. She felt '*underprepared and exhausted*' and was subject to criticism, for the standard of the presentation. When asked where she had raised such '*concerns*', she said that she had done so orally. On reiterating her desire not to be seen as a '*hindrance*', she was challenged as to why her now-stated concerns were always raised orally and never in writing, at the time, when if she had made such comments orally, there can have been no reason for her not to also do so in writing. It was suggested to her that her off-stated desire not to be a '*hindrance*' indicated that she didn't in fact, at the time, raise such concerns and that she is now embellishing her account.

In response, she said that there were such written messages but that they were not in the bundle.

- xi. She agreed that in respect of her conversation with Ms Churchill, on 21 March, as to her mental health that Ms Churchill had in her subsequent messages [222 to 225] been '*supportive and empathetic*', putting her probationary review back, cancelling an event and stating that the team would '*look out for*' her and not '*push*' her '*over the next few weeks*'. She agreed that it was her decision to respond, saying '*It's up to you. I feel much better on my feet doing stuff than behind a desk currently, so happy to still do Thursday*'.
- xii. As to the decision to make her role redundant, she confirmed that she did not consider that the role was redundant; that it was not for cost saving purposes and that reasonable alternatives had not been considered. She agreed that from a list of previously scheduled events for the rest of the year [84], a large number had been cancelled, the surviving events being ones earlier in the Summer, to which the Respondent was already committed. She agreed that the 'A&P' budget for the rest of the year [96], reduced in a range from £200k to £60k, but said that costs may have gone up elsewhere. She also agreed that it was clear that the Respondent was '*going through difficult times and that their start-up funding had ended, and they were not profitable.*' but did not agree that their decision to make two roles redundant and to reduce other roles' hours were actions aimed at reducing costs, or which achieved that aim.
- xiii. She was challenged as to why she did not raise the fact of her pregnancy and her current claim of discrimination in her appeal, focusing instead on the validity of the redundancy, or otherwise, of her role. While she had said previously that she didn't wish '*to rock the boat*', it was suggested that by this stage, there was no point in holding back and she could be entirely frank. She responded by saying that she '*was still hoping, up to that point, that it was not to do with my pregnancy and that it was only later when I spoke to a solicitor that I was told it could be pregnancy discrimination.*'
- xiv. As to the non-consideration of alternatives to redundancy, she said that '*in the short term, events were happening, and the Respondent was hiring additional (agency) staff.*' She also said that other staff had been offered reduced hours,

whereas she had not. She did not accept that as those persons worked in smaller teams, it was not feasible to remove roles completely and that reducing hours was the only option.

9. Respondent's Evidence. We summarise the Respondent's witnesses' evidence as follows:
- a. All three denied any discrimination against the Claimant on grounds of her pregnancy.
 - b. Mr Flintham-Ward took a decision, in September 2022, that the Respondent company should recruit for the new position of Events Manager, which role included planning and researching events, booking, managing and briefing events staff and coordinating the logistics for each event. Previously, such functions had been organised within the Marketing Team and staffed by both Company employees and agency staff.
 - c. While, at that point, the Respondent felt optimistic about growth for 2023, sales in late 2022 and early 2023 did not bear that out.
 - d. Following the announcement of the Claimant's pregnancy, a pregnancy risk assessment was completed, and Miss Webb denied that there was any failure to follow the outcome of that assessment, referring to regular welfare checks and numerous supportive communications between the Claimant and Ms Churchill (WS 21). Ms Churchill stated that the Claimant never again mentioned the risk assessment, after she had signed it.
 - e. On or about 21 March, Miss Webb was made aware, by Ms Churchill, of the Claimant's diagnosis of perinatal depression. Ms Churchill said that the Claimant did not, at the time, express the severity of her condition in the stark terms she has done in her witness statement (*'mental health crisis ... hadn't slept well for the past month despite being physically and mentally exhausted ... daily breakdowns ... panic attacks ... suicidal thoughts'* (WS 38)). She said that when she offered the Claimant time off and being 'watched out for', *'the general response I got when I asked what she needed was that she wanted to be kept busy and be out and about.'*
 - f. All three witnesses confirmed that they were unaware of any request by the Claimant for a further risk assessment to be completed. They deny any failure in this respect, but also that any such failure was on the grounds of the Claimant's pregnancy.

- g. The witnesses also denied the claimed lack of support to the Claimant, disputing the Claimant's reliance, in particular on the events of 8 and 9 March, stating that whatever the events of those days, they were at the Claimant's choice.
- h. The performance reviews were fair and were accepted as such by the Claimant, at the time. Miss Webb and Mr Flintham-Ward, in the 27 March review stated that *'it is our goal to get you to a place where you can pass your probation period'* [235]. They both denied that the Claimant had been told that her pregnancy was 'irrelevant', but said that medical issues would be discussed separately, which there was plenty of opportunity for the Claimant to do, with Ms Churchill.
- i. Both Miss Webb and Mr Flintham-Ward gave evidence as to a drastic downturn in the Company's performance, with a cash-flow warning being given in late March, with particular emphasis on the Advertising and Promotion ('A&P') budget, which stood at £1.7m at the time. To boost cash-flow, they decided to reduce that budget by 70% [117-122]. They also considered redundancies, focusing on the larger sales and marketing teams (six persons each, as opposed to two persons, in finance and operations). These decisions led, inevitably, to consideration as to the redundancy of the Claimant's role. Five roles were placed at risk, with, in the end, the Claimant's role and that of the National Account Manager being made redundant.
- j. The witnesses denied that the summer marketing events schedule continued much as planned, referring to numerous events that were cancelled and others proceeding only because the Company had already committed to them. They also denied that agency staff were used, at similar or greater expense, to 'replace' the Claimant, stating that before the Claimant had been appointed, it was normal to fill in gaps not filled by employees with agency staff, who, being paid only for their attendance at events were less costly, in the long-term, than permanent staff.
- k. Both Miss Webb and Mr Flintham-Ward stated that they did consider the Claimant's suggestions as to alternatives to redundancy, but did not consider them realistic, in particular that reduced hours would not have achieved the savings necessary.
- l. Mr Flintham-Ward said that the Claimant's reliance on him saying, on 22 April, to the marketing team, words to the effect of there needing to be *'a constant drum beat of activity over the summer ...*

going to be known as a brand that is everywhere out and about all summer', with the inference that that belied the stated downturn in marketing activities, had been taken out of context. He said that it was made 'to steady the ship for the team, as it was a time of huge change and uncertainty ... I wanted to emphasise that the Respondent was still in business and despite reduced budget for everyone, and reduced team, we would get noticed as a brand and all our efforts would be worth it.'

- m. Miss Webb denied that she had informed staff, prior to considering the Claimant's appeal that the Claimant's position was to be made redundant and pointed out that in fact the Claimant herself had done this, in communications with other staff [286].
- n. It was undisputed evidence of Miss Webb that the cuts made at the time of the Claimant's dismissal continued thereafter, further redundancies being made in October, reducing the then staff headcount from 13 to 5 (including Mr Flintham-Ward).
- o. Evidence given in cross-examination is summarised as follows:
 - i. Miss Webb said that being pregnant herself at the time, she fully understood the possible effects pregnancy could have on the Claimant's performance and that both she and Ms Churchill were dependent on the Claimant raising such matters, but she did not. She denied that the Claimant had raised such concerns, as she now says, orally, in meetings, but was sure that if the Claimant had done so, she and Ms Churchill would have been sympathetic.
 - ii. Mr Flintham-Ward denied that he had threatened the Claimant with not passing her probation, by stating that *'our goal is to get you to a place where you pass your probation but it's important to acknowledge that not everyone does'* [248] stating that he *'would have said that to anyone in that position'*. When asked, he said that every other employee had passed, previously but there had been some who had had their probation period extended. He did not agree that insufficient account was taken of the Claimant's pregnancy in respect of these reviews and considered that the criticism levelled was fair, constructive and balanced
 - iii. When challenged about the extent of the requirement for the Claimant to drive, or to stand at events, Miss Webb said that the Claimant drove entirely willingly numerous times and was quite capable of herself arranging a seat at events and if

that was not the case and she had made the Respondent aware of it, whatever was needed would have been provided. An alternative driver was arranged when the Claimant made the Respondent aware of her diagnosis.

- iv. Mr Flintham-Ward was challenged about the events of 8/9 March and said that the Claimant '*had been encouraged to leave the truck, but it was her choice to drive that night and in any event, there were lots of people available the next day to help her unload.*' He disagreed that there was any requirement for the Claimant to be on-site on 9 March by 07.30, stating that the rest of the Team did not arrive until 09.30.
- v. Miss Webb was challenged as to why the Claimant was not given access to private healthcare cover and she said that that was only provided on completion of probation, which was the case for all employees. She agreed that the offer letter [174] could have been clearer in this respect.
- vi. She denied any 'emotional disconnect' from the Claimant, by the Claimant's name not being used in the redundancy discussion, instead her job role, when other employees' names were and pointed out that one other employee '*digital*' had been similarly listed by job role [86]. She was asked why the '*content and social*' role was not, in the end, made redundant when it is suggested in this document that it could be, and she said that this was in the lead up to the redundancy exercise and '*we were looking at all the possibilities.*' A factor against making some roles redundant was that they were lower-paid and thus would not result in the necessary savings.
- vii. She denied that any element of either the decision to dismiss on grounds of redundancy, or to refuse the appeal was pre-conceived.
- viii. Both Miss Webb and Mr Flintham-Ward stood by their evidence that cuts were necessary to save the business, that they could be best made in the A&P budget and that despite the need to engage some agency staff during the summer that aim was achieved.
- ix. Miss Webb said that she had decided to remove the Claimant's access to the Company's email and 'slack' messaging service, after the appeal hearing, as she

considered that the Claimant had been emotional and had raised her voice in the appeal meeting and seemed hostile and therefore she decided she might need to protect the business. She felt this decision justified as subsequently she discovered that the Claimant had been sending company information to her private email.

- x. Ms Churchill agreed that *'on reflection, it may not have been solely down to the Claimant to inform me of her needs and that some of this may have been my responsibility, but I was waiting for some signal.'* Mr Flintham-Ward also agreed that both the Claimant and the Respondent shared responsibility for her welfare, but that it was very important that there be input from the Claimant, of which there was little.

10. Closing Submissions. Both parties provided written closing submissions, with Mr Pickett adding some oral submission, which we take into account below, as we consider relevant. We are grateful to both representatives for their preparation and conduct of this Hearing, but in particular to Mr Wilson, who despite being both a lay representative and the Appellant's partner, maintained a professional and measured tone throughout, where many in his position may have found it difficult to do so.

Conclusions

11. Alleged unfavourable acts/detriment. We consider each as follows:

- a. Unfounded and unwarranted criticisms in the March reviews. We don't consider such criticisms as were levelled at the time as unfavourable acts/detriments, for the following reasons:
 - i. The 'criticism' was constructive and balanced with considerable praise in respect of other elements of the Claimant's performance.
 - ii. Its stated aim (which we accept) was to encourage and direct the Claimant towards passing her probation.
 - iii. We are entirely confident that any other employee, in similar circumstances, would have had the same comments made about their performance and therefore there can be no conclusion drawn that this was unfavourable treatment (**Williams v Trustees Swansea ..**).
 - iv. The Claimant expressed no concern or dispute at the time (including in her appeal) with the feedback given. In

evidence at the Hearing, she effectively accepted that the criticisms were warranted, but that insufficient allowance had been made for her pregnancy.

- v. All the evidence indicates that the Claimant did not raise concerns about her pregnancy, related illness, or its effect upon her, instead wishing to present as not being a '*hindrance*' or '*difficult*'. While that is understandable, on her part, being in her probationary period, and '*feeling vulnerable*' there is some duty on her to voice such matters, if she genuinely considered them relevant to her performance. How individual women manage the early stages of their pregnancy will differ enormously from one person to another and there could therefore be no 'stock' assumption to be made by the Respondent, unless alerted by the Claimant.
- vi. (Even, in the event that any such criticisms were unfounded and unwarranted, there is no evidence whatsoever that they were '*because of*' her pregnancy, or because of related illness, but, instead, were routine matters of appraisal that the Respondent would have undertaken with any employee. As pointed out by Mr Pickett, there is no requirement for 'reasonable adjustments' to be made in respect of pregnancy, as there might be for disability.)

b. The Failure to undertake a Second Risk Assessment. We don't consider the failure to undertake a second risk assessment as either unfavourable treatment, or a detriment (by deliberate omission), for the following reasons:

- i. The Claimant clearly did not consider it such, at the time, as she neither requested one, nor complained of the Respondent's omission in doing so. While, as honestly accepted by Ms Churchill, she might have been, in retrospect, more proactive in this matter, she was given no indication by the Claimant that such an assessment was necessary, indicating that the failure to do so was certainly not 'deliberate'.
- ii. It would seem unlikely that this omission by the Respondent was one of any real effect on the Claimant, or a concern of hers, at the time, when Ms Churchill's evidence (which we accept) was that the Claimant had never again referred to the first assessment, after having signed it.

- iii. While it is common ground that the Claimant referred the Respondent to her diagnosis of perinatal depression, there is no evidence as to the detail she provided as to such diagnosis. On this point, we prefer the evidence of Ms Churchill, as set out above.
- iv. (At this point, we digress into consideration of the relative credibility of the various witnesses' accounts, and it is our conclusion that where there is a conflict between the evidence of the Claimant and the Respondent's witnesses, we prefer the evidence of the latter, for the following reasons:
 1. The Respondent witnesses' evidence was straightforward and matter of fact, with no attempt at evasion or exaggeration. They were willing to accept, in retrospect, that they may not have got everything right at the time.
 2. In contrast, the Claimant's evidence had the following flaws:
 - a. She was, on occasion, overly categorical about her answers, giving the impression that she felt that the more she emphasised her position, the more likely it was to be accepted. She was challenged, successfully, in respect of a few such answers, being obliged to 'row back' from them, more accurately reflecting the events in question. An example is her allegation that she was labelled '*difficult*' and '*not a team player*', and when challenged as to when and by whom made and whether such comments were specific to her, said, initially they were, but subsequently accepted that they were general comments, but which she '*took as directed*' at her. She also accepted that contrary to her statement they were not allegedly made when she had stated they were.
 - b. Her unwillingness to accept, on occasion, the obvious interpretation of events, giving the impression that she considered that any concession on her part may weaken her case. An example of this is her absolute

unwillingness to accept, in the face of all the evidence, that Ms Churchill had not only not criticised her for missing the celebratory dinner, but in fact went the 'extra mile' in offering to bring a plate of food to her room, but which she could not bring herself to agree was '*kind and generous*', when it clearly was.

- c. The implausibility of her evidence as to all her stated raising of concerns having been done orally, but never in writing, despite the voluminous correspondence between her and her managers. Such now-alleged concerns (which cannot be corroborated) are also inconsistent with her evidence that she didn't wish to be seen as a '*hindrance*' or '*negative*'. A further undermining of her credibility in this respect is that when challenged on this point, she said, for the first time that in fact the concerns were contained in other messages, but which were not included in the bundle.
 - d. Her 'fleshing-out', or the making, in her statement, of allegations not mentioned in her particulars of claim. We don't accept her explanation that she was '*rushed*' in completing the particulars, or because it was close to the birth of her child, as the particulars are very detailed, lengthy and couched in clearly-researched legalistic terminology, indicating that a great deal of thought was given to them.)
 - v. We consider this claim to be an 'after the event' complaint, in the hope of linking a sequence of events to her dismissal.
- c. The Failure to offer Alternatives to Redundancy. The Claimant alleged that she was unfavourably treated/subjected to a detriment, in comparison to Ms Bea Renshaw and persons in the Finance and Operations team who were offered reduced hours, as an alternative to redundancy, when she was not. There is no dispute, in respect of the Finance and Operations team that this was the case and therefore, on the face of it that was unfavourable treatment, or a detriment, but we don't consider that the Claimant has established a *prima facie* case that this was because of her pregnancy. We find this for the following reasons:

- i. The only link the Claimant can make to pregnancy being the reason for such treatment (and also for her dismissal) is the fact of her pregnancy, the Respondent's awareness of it and the proximity in time between her announcement and her dismissal. She has provided no other evidence, whatsoever, to support her assertion in this respect. If this were all that was needed to prove such a claim, then every pregnant woman who is dismissed, for whatever reason, will have been discriminated against. It is an obvious point, of course that such claims can be difficult to prove, as discriminators will rarely admit to such behaviour and will make every effort to 'cover their tracks'. This is why, as established in **Amnesty International v Ahmed**, a Tribunal can draw inferences from the primary facts, the mental processes (conscious or unconscious) of the Respondent, the surrounding circumstances and explanations provided by the Respondent, in deciding whether or not there has been such discrimination. However, in this case, we see no such adverse inferences that can be drawn. All the evidence indicated that this Respondent was a company that had, perhaps unwisely, over-extended their remit, recruiting the Claimant to a new role, but had very quickly fallen foul of that decision and needed to take drastic measures to rectify the situation, to the Claimant's detriment. The Claimant accepted, in the Hearing that overall, the decision to undertake a redundancy exercise was a genuine one (having previously alleged a 'sham' redundancy), which in view of the evidence as to the Respondent's financial position then and subsequently and there having been two redundancies then, and more later, is obviously the case. It is clearly open to the Claimant to have the suspicion that regardless of the genuine nature of that process, the fact of her pregnancy led the Respondent to the 'convenient' conclusion that they could dismiss her on grounds of redundancy, which they might not have done, had she not been pregnant. However, any such suspicion, without more, is insufficient to found such a claim.
- ii. We note also, in respect of this subject that such inferences as we might draw are in favour of the Respondent. We had no reason to doubt the Respondent's witnesses' genuine concern for the Claimant's wellbeing and that they took such steps as they considered appropriate to assist her in her role and no doubt, if more was requested, it would have been done.

- iii. Even were the Claimant to show a *prima facie* case, the Respondent has provided entirely reasonable explanations for their decisions in respect of choosing her position for redundancy, based on team size, the focus on savings being on the A&P budget and the relative newness of her role, without which they had coped previously (and as summarised in Mr Pickett's written submissions (paragraphs 8 & 9)).
 - iv. The evidence indicated that Ms Renshaw was not, in fact, offered reduced hours, but she was, nonetheless, made redundant six months later.
- d. The Claimant's Dismissal. Obviously, as conceded by the Respondent, a dismissal is always going to be unfavourable treatment/a detriment, so the focus is on the reason for such dismissal. We don't consider the Claimant's dismissal to be because of her pregnancy, for the following reasons:
- i. We reiterate our conclusions at paragraphs 11.c above.
 - ii. It is highly significant, evidentially that at the time the Claimant did not consider her pregnancy to be the reason for her dismissal and that it was only several months later, on taking legal advice, that she considered this possibility.
 - iii. The financial reasons for making her role redundant would have applied, regardless of her pregnancy. Her performance, whether or not affected by her pregnancy, was not a factor.

Judgment

12. Accordingly, the Claimant's claims of direct pregnancy discrimination and detriment on the grounds of pregnancy fail and are dismissed.
13. The proposed remedy hearing of 25 November 2024 is vacated.

Employment Judge O'Rourke

Dated: 24 October 2024

RESERVED JUDGMENT SENT TO THE
PARTIES ON
24 October 2024 By Mr J McCormick

FOR THE TRIBUNAL OFFICE