EMPLOYMENT TRIBUNALS

Claimant: Claire Bacon

Respondent: Fetch! Retail Limited

Heard: by Cloud Video Platform **On:** 10 and 11 April 2025

Before: Employment Judge Ayre

Representation

Claimant: Christopher Bacon, husband
Respondent: William Haines, Litigation consultant

JUDGMENT

1. The claim for automatic unfair dismissal is not well founded. It fails and is dismissed.

2. The claim for pregnancy and maternity discrimination is not well founded. It fails and is dismissed.

3. The claim for detriment is not well founded. It fails and is dismissed.

REASONS

Background

1. The claimant was employed by the respondent as a Senior Category Manager with continuity of service from 11 April 2022 until 27 March 2024. The claimant issued this claim on 6 February 2024 following a period of ACAS early conciliation that started on 3 January 2024 and finished on 8 January 2024.

The hearing

2. There was a bundle of documents running to 251 pages.

3. The Tribunal heard evidence from the claimant and, on behalf of the respondent, from Ravi Sharma, director, and Peter Brame, Group Head of Trading.

The issues

4. The parties had agreed a list of issues in preparation for this hearing. At the start of the hearing the claimant indicated that she wished to amend one of the allegations she was making, to change an allegation that the respondent had failed to deal with her Subject Access Request to an allegation that the respondent had failed to send to her all of the documents that she was entitled to. The respondent did not object to this amendment and I allowed the amendment.

5. The issues that fell to be decided at the hearing were the following:

Automatic Unfair dismissal (section 99 Employment Rights Act 1996)

1. What was the reason or principal reason for the dismissal? The claimant says it was her taking of maternity leave. The respondent says that it was redundancy.

Pregnancy and Maternity Discrimination (Section 18 Equality Act 2010)

2. Did the respondent treat the claimant unfavourably by doing the following things:

    i. Deciding to delay redundancy consultation with the claimant because the claimant was on maternity leave;

    ii. Not offering the claimant suitable alternative roles with the respondent;

    iii. Cancelling Keeping In Touch Days; and/or

    iv. Failing to send the claimant all of the documents that she was entitled to in response to her Subject Access Request?

3. Was the unfavourable treatment because the claimant was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave?

Detriment (section 48 Employment Rights Act 1996)

4. Did the respondent do the following things:

    i. Decide to delay redundancy consultation with the claimant because the claimant was on maternity leave;

    ii. Not offer the claimant suitable alternative roles with the respondent;

    iii. Cancel Keeping In Touch Days; and/or

    iv. Fail to send the claimant all of the documents that she was entitled to

in response to her Subject Access Request?

5. By doing so, did it subject the claimant to a detriment?

6. If so, was it done for a prescribed reason under section 47C(2)(b) of the Employment Rights Act 1996?

Findings of fact

6. The respondent is an online retailer of pet food, treats and accessories. The claimant was employed as a Senior Category Manager from 11 April 2022 to 27 March 2024. From 11 April 2022 until 1 February 2023 the claimant was employed by a company called Kokoba Limited, trading as 'Paws'.

7. On 1 February 2023 the respondent purchased the business and assets of Kokoba Limited through a pre-pack administration and the claimant's employment transferred to the respondent under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

8. The claimant was on maternity leave from 18 November 2022, returning to work on 6 November 2023. On 6 March 2023 the respondent wrote to the claimant informing her that her employment had transferred to the respondent.

9. Peter Brame, Group Head of Trading, spoke with the claimant on 17th July 2023. He and the claimant agreed that the claimant would work three Keeping in Touch ("KIT") days, on 18 October, 23 October and 30 October.

10. The respondent's business was struggling financially. Prior to the acquisition by the respondent there was a pre-pack administration, and it did not return to profitability following the acquisition. By October 2023 it became apparent that the business was making losses of approximately £20,000 a week. On an annual basis that equated to losses of approximately £1 million.

11. The respondent decided to take steps to try and reduce its costs and improve the trading position. This included making some employees redundant. By October 2023 there were just two Senior Category Managers in the business, the claimant and a male colleague called Thomas Evans.

12. On 10th October a company meeting took place. At that meeting staff were told that because the business was losing money, the Board had made the decision to undergo a restructure, and that some roles would be put at risk of redundancy. The claimant did not attend that meeting because she was on maternity leave at the time. On 10th October Martina Kutsarova, the respondent's HR Manager, wrote to the claimant providing her with an update on the situation. In the email she wrote that the claimant's role was not one of those provisionally selected for redundancy.

13. The other Senior Category Manager, Thomas Evans, was placed at risk of redundancy in October 2023 and redundancy consultation began with him. He resigned and left the business before the consultation concluded.

14. The reason why the claimant was informed on 10 October 2023 that her role was not at risk of redundancy was that the respondent had received advice from its HR advisors that the claimant should not be put at risk of redundancy whilst she was on maternity leave, but that instead the respondent should wait until her return to work following the end of her maternity leave. The respondent also wanted to try and avoid the need to make the claimant's role redundant, hoping that the position would improve.

15. The claimant was due to attend work on 18 October for a KIT day. Her line manager Peter Brame was by then very busy with the restructure and with redundancy consultation. He was personally involved in the redundancies of five members of staff. On the morning of 16th October he wrote to the claimant asking to postpone the KIT day due to consultations that were taking place that week.

16. The second KIT day was due to take place on 23 October. Mr Brame wrote to the claimant on the morning of 23 October, apologising for the short notice and asking to postpone that KIT day also. The reasons given in his email to the claimant were that "*we still have a lot of elements in motion here within Fetch whilst we re-evaluate how to move the business forward*" and carrying out the KIT day "*whilst we have so many moving elements will ultimately mean potential disruption which we need to avoid*".

17. Mr Brame sent a further email to the claimant on 25 October cancelling the KIT day that was pencilled in for 30 October. He did not give any reason for the cancellation in his email. In his evidence to the Tribunal, which I accept, Mr Brame said that the reason the KIT days were cancelled was because he was busy with the restructuring.

18. On 6 November 2023 the claimant returned to work. A meeting took place between the claimant, Mr Brame and Ms Kutsarova during which the claimant was informed that her role was in fact now at risk of redundancy. The claimant was invited to a redundancy consultation meeting the following day.

19. After the meeting on 6 November Ms Kutsarova wrote to the claimant summarising what had been discussed. In the letter she explained the reasons behind the respondent's decision to put the role at risk of redundancy, namely the need to streamline the business in order to drive profitability. She set out the consultation process that would be followed and what would be discussed during the consultation process.

20. On 7 November 2023 a first redundancy consultation meeting took place. Present at the meeting were the claimant, Peter Brame and Martina Kutsarova. Minutes were taken of the meeting and were shared with the claimant after the event. During the meeting Mr Brame provided more information about what had led to the redundancy situation and the steps that had been taken to reduce costs. He explained that part of the consultation was to discuss alternatives to redundancy and there was a discussion about alternative roles in the business.

21. The claimant was asked about her experience and was told that the business

could potentially survive without the role of Senior Category Manager. The claimant went into some detail about her experience in other roles prior to joining the respondent. The claimant asked why the respondent had waited to tell her about the redundancy situation until her first day back from maternity leave, and Mr Brame told her that this was because they were looking for ways to avoid the redundancy.

22. On 10 November 2023 the claimant wrote to Ms Kutsarova and Mr Brame raising a grievance about the consultation process. In the grievance the claimant complained, in summary, that:

1. She was not informed of the risk of redundancy until she returned to work on 6 November 2023;

2. A letter was sent to her on 10 October informing her that her role was not at risk of redundancy;

3. She had been deprived of her rights under Regulation 10, discriminated against because of her maternity leave and subjected to detriment for taking maternity leave;

4. Her KIT days had been cancelled;

5. A role as Category Manager had been advertised by another of the group companies, and should have been discussed with her; and

6. The respondent had delayed in informing her of the redundancy situation to avoid having to offer her alternative employment.

23. On 14 November 2023 Ms Kutsarova wrote to the claimant inviting her to a meeting on 16 November 2023 to discuss her grievance. Following the grievance meeting Ms Kutsarova wrote to the claimant on 11 December setting out her findings. She made no findings in relation to the claimant's allegations of discrimination and other breaches of employment law, but did write in general terms that the grievance was being upheld. Ms Kutsarova concluded that:

"*….the Company did not follow standard procedure by putting your role as Senior Category Manager at risk of redundancy with a delay. However, it is important to note that this deviation from procedure was not intended to be detrimental to you. In fact, your role was not put at risk of redundancy during the initial consultations held with your colleagues, as the Company actively sought ways to avoid putting your role at risk….*

….there were no suitable employment opportunities available during the initial redundancy consultations while you were on maternity leave, so the decision to put your role at risk of redundancy upon your return did not cause you any detriment….

…. The company did identify a vacancy in another business entity under Paramount Retail Group Holdings Limited (Vital Pet Group) and the Company was intending to discuss this vacancy with you during your 2nd redundancy consultation. Although this role may not have met suitability requirements due to the office location being a

significant distance from your home and the role requiring full-time office attendance, it would have been offered to you.

….the Company is not legally obligated to offer KIT days. While some KIT days were initially agreed upon, they had to be cancelled due to unforeseen circumstances and lack of availability on our side, as your KIT days coincided with the redundancy consultations being held at the time. Unfortunately, the Company is not obligated to offer you compensation for the childcare costs you incurred as a result of the cancelled KIT days. However, as a gesture of goodwill, the Company has agreed to pay you in full for the 2.5 cancelled KIT days…."

24. The claimant was informed of her right to appeal against the grievance outcome, but did not appeal.

25. The claimant also made a written Subject Access Request on 10 November 2023 including in the request her personal email address. She set out in the request a list of 22 phrases that she asked the respondent to search against.

26. On 10 December 2023 Ms Kutsarova sent an email to the claimant's personal email address headed "*SAR Update and Completion"*. Attached to the email were "*all files in relation to your SAR request*". It appears that the claimant either did not see or did not receive the email, because on 12 December she wrote to Ms Kutsarova from her work email address chasing a response to her Subject Access Request. Rather than referring to the email she had sent to the claimant with the results of the request, Ms Kutsarova apologised for the delay in responding.

27. Ms Kutsarova did not attend the Tribunal to give evidence, having left the respondent's employment in June 2024, so was not present to explain the contradiction between the emails she sent to the claimant on 10 and 12 December 2023 about the Subject Access Request. This was a very busy time for HR given the restructure and the redundancy consultations which were taking place, and the email of 10 December was sent on a Sunday.

28. A second redundancy consultation meeting took place on 13 December 2023. Present at that meeting were the claimant, Mr Brame and Ms Kutsarova. During that meeting there was a discussion about a role within a different group company, Vital Pet Group, as a Category Manager. That role was more junior than the one the claimant was performing, and the salary was £50,000, £15,000 lower than the claimant's salary as Senior Category Manager.

29. Mr Brame told the claimant that the role was a full-time position based in Goldthorpe and that he assumed that was too far for the claimant to commute. The claimant did not dispute that assumption. The claimant told the Tribunal that the journey from her home to Goldthorpe would take between 4 and 5 hours each way. Mr Brame did say to the claimant that if the role was of interest to her they would discuss it in more detail. The claimant asked if the role would be a remote one, and Mr Brame explained that it was based near Sheffield. The claimant said that it would not be a viable option for her as she lived in Essex. She did not ask whether it would be possible to do the role as a hybrid. The salary for the role was £50,000 which

was approximately 23% lower than the salary that the claimant was earning at the time. The role was also a more junior one with less responsibility.

30. The only other role for which the respondent was recruiting around the time of the redundancies was a role as an Assistant Category Manager. This role was an administrative role with a salary of £28,000, substantially lower than the £65,000 that the claimant was earning. The duties of the role were very different to those carried out by the claimant. The recruitment was taking place to replace an employee who had left the business in July 2023. This role was not discussed with the claimant.

31. Mr Brame asked the claimant if she had any further thoughts about anything that would add value to the business, and the claimant said that she had not.

32. Following the meeting on 13 December Ms Kutsarova wrote to the claimant summarising what had been discussed. The claimant was invited to a further consultation meeting on 3 January 2024. At the meeting on 3 January the claimant was asked if she had any questions and there was a discussion about what would happen next.

33. On 4 January 2024 Martina Kutsarova wrote to the claimant giving her notice of termination of her employment. In the letter she wrote that the claimant's role as Senior Category Manager was being made redundant because the respondent was losing thousands of pounds a week and needed to make redundancies to reduce costs. Ms Kutsarova summarised the consultation process that had been followed and stated that steps had been taken to avoid making the claimant's role redundant.

34. Ms Kutsarova also informed the claimant in the letter of her right to appeal against the decision to dismiss her. The claimant did not appeal.

35. The letter stated that the last day of the claimant's employment would be 27 March 2024. In her evidence to the Tribunal the claimant said that her employment terminated before 27 March 2024 because she began a new job with another employer on 4 March. In her claim form to the Tribunal however she stated that her employment ended on 27 March. The respondent stated in its response that the claimant's employment terminated on 27 March 2024. I find on balance that the claimant's employment with the respondent did in fact terminate on 27 March 2024.

36. A total of seven people were made redundant around the same time as the claimant. The decision to make redundancies was taken with a view to cutting costs because the respondent was, at the time, making losses of approximately £20,000 a week, which would equate to losses of approximately £1 million over the course of a year.

37. The claimant was not required to work her notice period and was effectively put on garden leave. She applied for other jobs and in mid-January was offered two positions, once of which she accepted.

38. The claimant was earning a salary of £65,000 a year whilst employed by the respondent. On 4 March 2024 she began working in a new role with another

employer. In that role she earns a basic salary of £73,000 and has received a bonus of £9,800.

The Law

Automatic Unfair Dismissal

39. Section 99 of the Employment Rights Act 1996 ("ERA") 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,
….
(b) ordinary, compulsory or additional maternity leave…."

40. In a complaint under section 99 of the ERA an employee does not need to have two years' continuous employment. Where an employee does not have two years' service however, the burden of proving, on the balance of probabilities, that the reason for dismissal was an automatically unfair one lies with the employee (***Smith v Hayle Town Council 1978 ICR 996***).

41. In an automatically unfair dismissal claim under section 99 the claimant will succeed if the Tribunal is satisfied that the reason or the principal reason for the dismissal is the prescribed reason. When deciding this issue the Tribunal must consider the reason that operated on the employer's mind at the time of the dismissal. This was summarised by the Court of Appeal in ***Abernethy v Mott, Hay and Anderson [1974] ICR 323*** as being "*the set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee"*.

42. This approach was also approved by Lord Justice Underhill in ***Croydon Health Services NHS Trust v Beatt [2017] ICR 1240***, when he held that the reason for a dismissal is 'the factor or factors operating on the mind of the decision-maker which cause him to dismiss the employee'.

43. In the case of ***Fecitt and ors v NHS Manchester (Public Concern at Work intervening) [2012] ICR 372***, Lord Justice Elias confirmed that the causation test for unfair dismissal is stricter than that for unlawful detriment (in that case under section 47B of the ERA).

44. The Tribunal can draw inferences as to the real reason for dismissal. In ***Kuzel v Roche Products Ltd [2008] ICR 799***, the Court of Appeal confirmed that, when considering the reason for the claimant's dismissal, a Tribunal can draw 'reasonable inferences from primary facts established by the evidence or not contested in the evidence'. The Tribunal is not however under any obligation to draw an inference.

Detriment

45. Section 47C of the Employment Rights Act 1996 (Leave for family and domestic reasons) contains the following provisions:

"(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.

(2) A prescribed reason is one which is prescribed by regulations made by the Secretary of State and which relates to –
(a) pregnancy, childbirth or maternity,
….
(c) Ordinary, compulsory or additional maternity leave…."

46. Section 48 of the Employment Rights Act 1996 gives employees the right to make a complaint to an Employment Tribunal that they have been subjected to a detriment in contravention of section 47C(1) of the Employment Rights Act 1996.

47. 'Detriment' is not defined in the legislation. In ***Ministry of Defence v Jeremiah [1980] ICR 13*** Lord Justice Brightman held that there is a detriment if a 'reasonable worker' might take the view that the actions of the employer were to her detriment, and Lord Justice Brandon said that detriment meant 'putting under a disadvantage'. In ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337*** the House of Lords held that an unjustified sense of grievance did not amount to a detriment.

48. In ***De Souza v Automobile Association [1986] ICR 514*** the Court of Appeal held that detriment meant 'disadvantaged in the circumstances and conditions of work' and suggested that the issue should be considered from the point of view of the alleged victim of discrimination, provided that the victim's view is a reasonable one.

Pregnancy and maternity discrimination

49. Section 18 of the Equality Act 2010 states that:

"*(2) A person (A) discriminates against a woman if, in or after 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 in that protected period as a result of the pregnancy.

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

Burden of proof

50. The relevant statutory provisions are set out in section 136 of the Equality Act 2010 as follows:

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

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

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.
….
(5) A reference to the court includes a reference to –
(a) an employment tribunal…."

51. Section 136 creates, in discrimination cases, a two stage burden of proof (***Igen Ltd (formerly Leeds Careers Guidance and others v Wong [2005] ICR 931*** and ***Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205***) which is generally more favourable to claimants, in recognition of the fact that discrimination is often covert and rarely admitted to.

52. In the first stage, the claimant has to prove facts from which the Tribunal could decide that discrimination has taken place. If the claimant does this, then the second stage of the burden of proof comes into play and the respondent must prove, on the balance of probabilities, that there was a non-discriminatory reason for the treatment.

53. The Supreme Court has confirmed, in ***Royal Mail Group Ltd v Efobi [2021] ICR 1263,*** that a claimant is required to establish a prima facie case of discrimination in order to satisfy stage one of the burden of proof provisions in section 136 of the Equality Act. So, a claimant must prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination.

54. In ***Glasgow City Council v Zafar [1998] ICR 120***, Lorde Browne-Wilkinson recognised that discriminators ' do not in general advertise their prejudices: indeed they may not even be aware of them'.

55. It is not sufficient for a claimant merely to say, 'I was badly treated' or 'I was treated differently'. There must be some link to the protected characteristic or something from which a Tribunal could draw an inference. In ***Madarassy v Nomura International plc [2007] ICR 867*** Lord Justice Mummery commented that: "*the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."*

Conclusions

56. The following conclusions are reached having considered carefully the evidence before me, the relevant legal principles and the submissions of the parties.

Automatic unfair dismissal

57. The first question for consideration was whether the reason or, if more than one, the principal reason for the claimant's dismissal was that the claimant took maternity leave. In reaching my conclusions on this issue I have reminded myself that it is for the claimant to establish, on the balance of probabilities, that the reason for the dismissal was the maternity leave, but also that I can draw inferences as to the real reason for the dismissal.

58. The respondent asserts that the reason for dismissal was redundancy, the claimant asserts that it was because she took maternity leave. The weight of the evidence before me suggests that redundancy was in fact the real reason for the claimant's dismissal. Both of the respondent's witnesses gave evidence that the respondent was facing a serious financial situation, making losses of £20,000 a week. They also gave evidence that other employees were made redundant. Mr Brame was personally involved in 5 redundancies and Mr Sharma spoke of a total of 7 redundancies.

59. The process followed by the respondent prior to the claimant's dismissal, together with the documentary evidence before me, were consistent with redundancy being the true reason for the dismissal. The claimant was put at risk of redundancy and three consultation meetings took place. There were discussions about alternatives to redundancy and about a possible alternative role within the business. There was no evidence before me to suggest that this process was a sham designed to cover up an alternative reason for dismissal, and no evidence from which I could draw an inference that in fact the real reason for dismissal was the claimant's maternity leave.

60. A highly relevant factor in this case was that a male colleague of the claimant, who was doing the same role as the claimant and who was not on maternity leave, was also put at risk of redundancy. There were two Senior Category Managers within the respondent's business at the time the redundancy situation arose in October 2023, the claimant and Tom Evans who was not on maternity leave. Both the claimant and Mr Evans were placed at risk of redundancy and left the business. There was no evidence to suggest that they were replaced.

61. I am satisfied on the evidence before me that the reason the claimant was dismissed was because there was a reduction in the respondent's need for employees to carry out the work of a Senior Category Manager, and that the reason for dismissal fell within the definition of redundancy in section 139 of the Employment Rights Act 1996.

62. The claimant has not established that the reason or principal reason for the dismissal was the fact that she took maternity leave. The fact that she took maternity leave immediately prior to being made redundant was merely coincidental. The claim for automatically unfair dismissal fails and is dismissed.

Pregnancy and maternity discrimination

63. The claimant makes four allegations of discrimination. The first question I have had to consider is whether the alleged acts that the claimant says were discriminatory did in fact take place.

64. The first alleged act of discrimination is that the respondent decided to delay redundancy consultation with the claimant because she was on maternity leave. I find that this did take place. The respondent's witnesses accepted in evidence that the respondent had decided not to put the claimant at risk of redundancy whilst she was on maternity leave. There were two reasons for this. Firstly, the advice that they received from their HR advisors, and secondly a hope that the financial position in the business would improve such that they would not have to make the claimant redundant.

65. The second allegation of discrimination relates to the assertion that the respondent failed to offer the claimant suitable alternative roles within the business. I find on the evidence before me that this allegation is not made out. The respondent is a small business, albeit part of a larger group. There were only two roles that were being recruited for at or around the same time as the claimant's redundancy situation arose. The first was a much more junior role as an Assistant Category Manager. This role was an administrative role with a salary of £28,000, substantially lower than the £65,000 that the claimant was earning. The duties of the role were very different to those carried out by the claimant. The recruitment was taking place to replace an employee who had left the business in July 2023. This would not have been a suitable alternative role for the claimant.

66. The second role was in a different group company as a Category Manager, on a salary of £50,000. The role was a more junior one than the claimant's and on a salary that was approximately 23% lower than the claimant's salary. The role was an office based one, with the place of work being Goldthorpe, approximately four or five hours drive from the claimant's home. This role was discussed with the claimant during the redundancy consultation meeting, and she made it clear to the respondent that she was not interested in the position. She did not ask whether it would be possible to do the role on a hybrid basis or express any interest in it.

67. During cross examination, it was put to Mr Brame that this role could have been done on a hybrid basis and, to his credit, Mr Brame accepted that he would have

considered that. At the time however, in light of the claimant's clear indication that she was not interested in the role, it was understandable that Mr Brame did not consider the role being performed on a hybrid basis.

68. In light of the fact that the role as a Category Manager was a more junior one, which would have involved a significant pay cut and at least some work in an office which was an 8 to 10 hour round trip away from the claimant's home, I find that the role did not constitute suitable alternative employment for the claimant.

69. There was no evidence before me to suggest that there were any other roles available within the respondent's business that would have been suitable for the claimant. The allegation that the claimant was not offered suitable alternative roles within the respondent is therefore not made out. There were no suitable alternative roles that the claimant could have been offered.

70. The third allegation of discrimination relates to the cancellation of the claimant's KIT days. The respondent admitted cancelling three KIT days.

71. The final allegation relates to the respondent's response to the claimant's Subject Access Request. This allegation was amended by consent at the start of the hearing from an allegation that the respondent failed to deal with the request, to an allegation that the respondent failed to send the claimant all of the documents that she was entitled to in response to her Subject Access Request.

72. The evidence before me demonstrates that on 10 December 2023 Martina Kutsarova sent a response to the claimant's Subject Access Request to the claimant at the email address identified by the claimant in the Subject Access Request itself. Attached to that email were a number of documents and zip files. It is clear from that evidence that the respondent did take steps to gather and send to the claimant documents that she had requested. The claimant has not identified any specific documents that she says existed and were not provided.

73. The claimant's assertion that there were other documents that should have been sent to her is just that, an assertion. It is speculation based upon the claimant's belief and is not supported by any evidence. It is unfortunate that, after sending the email on 10 December, Ms Kutsarova appears to have forgotten that she sent it, and wrote a further email to the claimant suggesting that the search for documents was ongoing, but that could very well have been an oversight due to the pressures on HR at the time in light of the restructuring and redundancies that were taking place, as evidenced by the fact that Ms Kutsarova sent an email to the claimant on a Sunday.

74. The allegation that the respondent failed to send the claimant all of the documents she was entitled to is therefore not, on the balance of probabilities, made out.

75. I have then gone on to consider whether the delay in the redundancy consultation amounted to unfavourable treatment. There is no definition of 'unfavourable treatment' in the Equality Act, but it is generally considered to mean 'putting at a disadvantage'.

76. I find that the delay in the redundancy consultation did not put the claimant at any disadvantage. Rather the respondent was acting to try and protect the claimant's employment whilst she was on maternity leave, was following the advice from its HR advisors, and was hoping that things might change such that a redundancy situation could be avoided. The law recognises that those on maternity leave require additional protection against redundancy and the respondent gave the claimant additional protection.

77. There was no evidence whatsoever before me to suggest that the respondent was motivated in any way by a desire to avoid having to comply with its obligations under Regulation 10 of the Maternity and Parental Leave etc Regulations 1999 SI 1999/3312 to offer the claimant suitable alternative employment in preference to other employees. In any event, there was no suitable alternative employment available.

78. The delay in the redundancy consultation resulted in the claimant's employment being extended to the end of March 2024, which gave her more time to find alternative employment. Had redundancy consultation started earlier, it is likely that she would have been dismissed sooner and would have had less time to find new work. The claimant was treated more favourably because of her maternity leave and was not put at any disadvantage by the delay in consulting with her. The delay in starting redundancy consultation does not therefore amount to unlawful discrimination.

79. Turning next to the question of the cancelled KIT days, I find that this was unfavourable treatment of the claimant. She was clearly upset by the cancellations, one of which was at very short notice, and had prepared to attend work by booking her son into childcare.

80. I have therefore gone on to consider wither the unfavourable treatment was because the claimant was exercising or had exercised her right to maternity leave, taking account of the burden of proof provisions in section 136 of the Equality Act 2010. I accept Mr Brame's evidence that the reason the KIT days were cancelled was because he was too busy with the redundancy consultation involving other staff and wanted to prioritise that consultation. There was therefore a good business reason for cancelling the KIT days which was not related to maternity leave. The KIT days were not cancelled because the claimant was on maternity leave.

81. The claim under section 18 of the Equality Act 2010 is not well founded. It fails and is dismissed.

<u>Detriment claim</u>

82. For the same reasons as set out above in relation to the complaint under section 18 of the Equality Act 2010, I find that the delay in redundancy consultation did not amount to a detriment. The complaint that the delay in starting redundancy consultation was an unlawful detriment contrary to section 47C of the Employment Rights Act therefore fails.

83. I also find, for the reasons set out above, that the cancelling of the KIT days, whilst a detriment, was not done for a prescribed reason falling within section 47C(2) of the Employment Rights Act 1996.

84. The detriment claim therefore also fails and is dismissed.

Employment Judge Ayre

Date: 11 April 2025

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/