



EMPLOYMENT TRIBUNALS

Claimant: Ms Yan Yan Yung

Respondent: First Recruitment Ltd

Heard at: Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE

On: 3 August 2026

Before: Employment Judge Adkinson sitting alone

Appearances

For the claimant: Mr L Ng (husband)

For the respondent: Ms S Kane, Counsel

JUDGMENT

UPON hearing from the claimant's representative and from Counsel for the respondent
IT IS THE TRIBUNAL'S JUDGMENT THAT

1. The claimant's complaint for automatic unfair dismissal under the **Employment Rights Act 1999 section 99** and regulations made thereunder is dismissed;
2. The claimant's complaint of discrimination because of pregnancy or maternity leave is dismissed;
3. The respondent unfairly dismissed the claimant. The respondent would nonetheless dismissed the claimant on the same date if it had followed a fair procedure. Therefore
 - 3.1. There shall be a further hearing to determine the amount of any basic award, but
 - 3.2. There shall be no compensatory award.

REASONS

4. The claimant, Ms Yan Yan Yung, brings claims of ordinary unfair dismissal, dismissal for pregnancy related reasons and discrimination because of maternity or pregnancy. The respondent, First Recruitment Ltd, denies the claims.

5. The hearing proceeded as follows.
 - 5.1. Mr Lawrence Ng, husband, represented Ms Yung.
 - 5.2. Ms Samantha Kane, Counsel acting on direct access, represented the respondent.
 - 5.3. I heard oral evidence from Ms Yung and from Mr Adris Mohammed, the respondent's accounts manager.
 - 5.4. I received hearsay evidence on the respondent's behalf from Ms Wictoria Balinska, then recruitment co-ordinator and Mr Tsz-Him Cheuk, then recruitment co-ordinator and consultant.
 - 5.5. There is a bundle of documents that consists of 108 pages plus some other loose documents. To this the claimant added her contract of employment.
6. We took breaks as appropriate. No party asked for other adjustments. Nothing happened that led me to think a party required them.
7. There are two procedural issues of note.
 - 7.1. The first related to bundles and compliance with case management directions. I do not believe I need to go into this further because the parties eventually agreed that everything relevant was in the respondent's bundle with the addition of the claimant's contract of employment, and that we could have a fair hearing.
 - 7.2. The second was the claimant applied for an anonymity order for herself. She cited 3 reasons in her written application:
 - 7.2.1. There would be disclosure of sensitive medical information.
 - 7.2.2. Disclosure in public would present a risk of harm to her health.
 - 7.2.3. Use of her name would impact on her prospects of future employment.
 - 7.3. In submissions she explained that she works in human resources (HR). HR regularly interrogate data from HM Revenue and Customs and from the Employment Tribunal for candidates. Therefore her co-workers would know in due course she had presented a claim. She would prefer therefore if she were anonymous.
 - 7.4. Rule 49 requires the Tribunal to give full weight to the principle of open justice and to balance the rights to privacy where engaged (Article 8 of the European Convention of Human Rights) with the right to a fair and public hearing (Article 6) and the right to freedom of expression (Article 10). I noted that redacting a person's name is an obvious derogation from open justice that requires cogent justification: **BBC v Roden [2015] IRLR 627 EAT**; **F v G [2012] ICR 246 EAT**. **F v G** makes clear that there is no difference between the Tribunal and proceedings

and any other type of claim. I also note that in **Frewer v Google UK Ltd [2022] IRLR 472 EAT** there is an importance to naming those involved, and that a lack of relevance of names is not a touchstone. I also considered the guidance in **XY v AB [2026] ICR 47 EAT** at [93] and especially [107]. The cases make it clear that the party seeking anonymity must persuade the Tribunal to depart from the principle they are named.

7.5. The claimant did not persuade me to grant an anonymity order for the following reasons.

7.5.1. There is no evidence beyond a bare assertion that disclosure would be harmful to her health.

7.5.2. There is no evidence that if she is not anonymised, she will suffer an adverse impact on her prospects of future employment. Even if I accept that some recruiters carry out checks with HM Revenue and Customs or look at the database of Employment Tribunal decisions, it does not persuade me without more that the mere existence of a claim means she will be unable to secure a job in HR. It is merely a bare assertion.

7.5.3. The bare assertions carry no weight.

7.5.4. I do not accept her current employers are going to carry out checks about her and find out about this claim. They have no reason to do so. Even if they did, they cannot lawfully dismiss her for bringing a discrimination claim.

7.5.5. The sensitive medical information relates to her mental health being affected by the circumstances that give rise to this claim – in summary it resulted in depression and taking anti-depressants for a time. That is not relevant to liability but might be to remedy. I assume without deciding that it falls within the **Employment Tribunals Act 1996 section 12**, albeit this is not a disability discrimination claim. I am persuaded that this means that the claimant's article 8 rights are engaged.

7.5.6. However the reasons for maintaining privacy in my view do not outweigh the full weight of the principle of open justice, the right to freedom of expression or the right to a public hearing. The reasons for seeking privacy are, at best, weak. I do not consider the medical evidence is such that it justifies anonymity. Members of the public are well-aware and can be trusted to recognise that people suffer adverse mental health from time to time without thinking anything less of the person suffering it. The stigma that mental health issues may once have had has significantly

- lessened – if not disappeared – because mental health issues are now well within the public domain and knowledge. The issue here does not present to me a compelling case for departing from the norm.
- 7.5.7. That it is her preference carries no weight, applying **XY**.
- 7.5.8. I also recognise the claimant chose to present proceedings in a Tribunal which sits in public and did not raise the issue until shortly before the hearing. While these might not be conclusive arguments, applying **XY**, they are relevant to understanding that she is here in a public hearing by choice.

Issues

8. Employment Judge Heap in her case management order of 13 February 2025 identified the issues. After hearing the evidence they are as follows.

Automatically unfair dismissal – Section 99 Employment Rights Act 1996 read with the Maternity and Parental Leave etc. Regulations 1999

9. Was the reason or principal reason for the Claimant's dismissal her pregnancy or that she had taken maternity leave? If so, the claimant will be regarded as unfairly dismissed.
- No party sought to distinguish between whether the alleged reason was pregnancy or maternity leave particularly, or the type of maternity leave. I therefore approach it as a composite reason since the distinction is not an issue.
10. If the reason for dismissal was not of itself because of pregnancy or maternity leave,
- 10.1. was it not practicable by reason of redundancy to continue to employ the Claimant during her pregnancy or maternity leave or under her existing contract at that time?
- 10.2. If it was not,
- 10.2.1. Were there any suitable, available vacancies within the respondent before her employment otherwise ended?
- 10.2.2. Did the respondent offer them to the claimant in preference to employees who were not absent on maternity leave?
- 10.2.3. If so, did the respondent offer them under a new contract that provided that
- 10.2.3.1. the work to be done was of a kind which is both suitable in relation to the Claimant and appropriate for her to do in the circumstances; and
- 10.2.3.2. The provisions as to the capacity and place in which the employee is to be employed

and as to the other terms and conditions of employment were not substantially less favourable to the Claimant than if she had continued to be employed under the previous contract?

“Ordinary” unfair dismissal – Sections 94 and 98 Employment Rights Act 1996

11. If the Claimant’s dismissal was not automatically unfair what was the reason or principal reason for dismissal? The Respondent says that the reason was redundancy.
12. If the reason was redundancy, did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent’s size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The

Pregnancy and maternity discrimination – Section 18 Equality Act 2010

13. Did the Respondent treat the Claimant unfavourably by dismissing her?
14. If so, was the reason for that unfavourable treatment one which falls within **Equality Act 2010 Sections 18(2), (3) or (4)**? Again no party has raised any issue about which of the actual provisions the claimant falls into. Again I treat it similarly as a composite reason of pregnancy or maternity leave to reflect how the claimant falls within the protection of **section 18** is not an issue between the parties.

Facts

15. I make the following findings of fact on balance of probabilities. I only make those necessary for me to decide the case. I am not going to consider issues that in my view do not assist me to decide the case. The evidence of the live witnesses showed me they believed what they said. I do not consider the hearsay evidence assists to resolve the key disputed issues and I pay it little heed.
16. The respondent is an employment agency. They take on employees and then send them to work with clients. They employ 65 people. The respondent’s main office is in Slough, Berkshire. The respondent had an office in Northampton at which the claimant was assigned when her employment began. By the times relevant to this claim, the respondent had closed it, and she was based at the Leicester office.
17. At the times relevant to this claim, 95% of their employees were assigned by the respondent to work for a client then called 4PX. The assigned employees physically work at 4PX’s sites, not from the respondent’s office, unless 4PX permitted the employee to work for them from home. There is no link beyond a contract to supply staff between 4PX/Caiano and the respondent.
18. The claimant’s employment began with the respondent on 15 August 2022. She was an HR assistant. Her contract of employment provides that “[the respondent] may require [the claimant] to work at any of our other premises or sites as well as the premises and sites of our clients as required by the needs of the business from time to time.”

19. She lived in southern Leicestershire. Initially she worked with 4PX at their Northampton site. It closed. The respondent found her a position at 4PX's Leicester site and transferred her there. She was one of 2 HR assistants that the respondent placed with 4PX in Leicester. She did not work from home. 4PX did not like its workers to work from home.
20. On 18 September 2023, the claimant began her pregnancy and maternity leave.
21. In 2024, 4PX was taken over by Caiano. Caiano has no connection to the respondent either. 4PX/Caiano decided to reassess its staffing needs at Leicester and generally. There was a big reorganisation. There were a lot of redundancies.
22. In about July 2024, 4PX/Caiano decided that it required only 1 HR assistant at its Leicester site. It told the respondent of its decision. It decided to keep the other employee rather than the claimant. There is no explanation why it chose the other assistant and not the claimant. There are no claims against 4PX/Caiano. They are not a party to the claim. Therefore I make no finding of fact about why it chose to retain the other member of staff and not the claimant. Based on the evidence to me from Mr Mohammed and the documents, I find as a fact that 4PX/Caiano made its decision with no involvement of the respondent at all: rather it presented its decision to the respondent as a fait accompli.
23. The respondent was aware in July 2024, the claimant intended to return to work at the end of her maternity leave. She confirmed the same in a series of WhatsApp messages with Ms Balinska. Ms Mohammed twisted and turned to seek to undermine the probity of these messages. Their only reasonable interpretation is the claimant telling Ms Balinska she is returning to work after maternity leave. I disagree with Mr Mohammed that it matters whether she sent them to Ms Balinska's personal or work mobile – Ms Balinska cannot reasonably compartmentalise their knowledge in that way because she was the respondent's employee and a recruitment co-ordinator. While I appreciate they lack a date, and while I cannot date them, I accept the claimant's evidence on when she sent them well before her return.
24. 4PX/Caiano also was aware the claimant intended to return to work for them after her maternity leave ended anyway. On 22 July 2024, the claimant emailed Mr Mostafa Vali at 4PX/Caiano about her return to work. Mr Vali did not reply. Because it was not the claimant's employer, the lack of reply is no surprise. The lack of reply is not the respondent's fault. There is no reason to believe that anyone at 4PX/Caiano forwarded it to the respondent.
25. I accept the claimant's evidence that on 19 August 2024, Mr Mohammed telephoned the claimant. The contents as described by the claimant tally with a later email Mr Mohammed sent. He told her about the takeover and changes at Leicester to the need for HR assistants, and 4PX/Caiano's decision they did not want the claimant to return. He told the claimant her job was therefore at risk for redundancy.

26. He offered her a role as HR Assistant at 4PX's site in Dunstable, Bedfordshire. The role was 5 days per week. The role had no possibility of remote working. The role was otherwise the same as that which the claimant had been doing in Leicester and was on the same terms and conditions. 4PX/Caiano's Dunstable site is just over 1 hour from the claimant's home. Its Leicester site and Northampton site are about 20 minutes. The claimant declined the position in the call. She believed that the journey was too long each way.
27. In the call she asked why the respondent had selected her for redundancy. Mr Mohammed did not provide an explanation, but he said that he would revert.
28. On 2 September 2024, the claimant chased up the lack of reply with both Mr Mohammed and Ms Balinska.
29. Mr Mohammed replied by email that day. He explained the changes at 4PX/Caiano and its decision about HR assistants at Leicester. He implied that 4PX/Caiano had decided to retain the other HR worker. He said that the only vacancy 4PX/Caiano could offer was in Dunstable for the same role. It had been available for a few months. He said he recognised the difficulties because of distance and childcare but asked the claimant to confirm if she believed it suitable. He told the claimant that there may be a short-term position available in Daventry to cover maternity leave. I accept his oral evidence it was for about 2 months only. He said he was seeking to place the claimant within the respondent itself, and if he could get the claimant back into 4PX/Caiano, then he would. He also said he could offer the claimant a redundancy package. I am satisfied from the evidence that this was a genuine offer, and merely part of the context and Mr Mohammed's recognition that the claimant could not return to work for 4PX in Leicester. For the avoidance of doubt no party suggested this was a protected conversation within the **Employment Rights Act 1996 section 111A**, and I see no reason to consider otherwise.
30. I find as a fact that this email represented his genuine state of mind and what he was doing at the time in relation to the claimant's employment. I base this on the contemporaneous email and on his oral evidence, which I accept on this point, and on contents of the phone call on 19 August 2024.
31. The claimant replied by email that day asking for the criteria for her selection. Her email appears to be premised on the basis that the respondent decided that the other HR assistant could continue to work at 4PX/Caiano. However as I found above, it was 4PX/Caiano's decision not to have the claimant back. I accept Mr Mohammed would not have had this information about its thought processes because 4PX/Caiano had acted independently of the respondent. However he did not provide any selection criteria about why the respondent itself had selected the claimant for redundancy.
32. On 5 September 2024 by email the claimant again declined the Dunstable role, citing distance and childcare. She said she could take it only if flexible working were available. As I said earlier, it was not. Mr Mohammed replied confirming he was still trying to find a solution with 4PX/Caiano.

33. The claimant chased matters on 11 September 2025 the claimant repeated her request for selection criteria, an alternative to Dunstable and repeated a request for flexible working. Mr Mohammed replied that day reminding the claimant that the respondent employed the claimant albeit it supplied staff to 4PX/Caiano.
34. The claimant replied that day raising a grievance. For the first time she raised suggestions that there were rumours in the office discouraging her from returning and quoted people saying that people had said they did not want the claimant back.
35. Mr Mohammed replied by return enquiring into the allegations. He confirmed he had not formally offered the claimant the Daventry role because it was maternity cover. I accept that the respondent did not consider it suitable for the claimant because of its time-limited and temporary nature. He confirmed the respondent supplied staff to a company called JD, and was seeing if there were roles there. He invited the claimant in for a meeting.
36. Things then deteriorated. It came to a head at a meeting on 20 September 2024. Mr Mohammed attended with the claimant. It was an attended meeting in Leicester. Mr Mohammed did not agree to a meeting by video link because he believed an attended meeting would be more productive. I find as a fact that the decision was reasonable. While I acknowledge the claimant had childcare, an attended meeting free of home distractions to discuss employment issues seems reasonable. In any event the journey to Leicester is short and the claimant wanted to return to work which would require her to commute.
37. The meeting did not go well. No notes are available. Mr Mohammed told me that she was uncooperative and dismissive. The claimant denies this. On balance I prefer Mr Mohammed's evidence. Firstly nothing in cross-examination undermined his evidence on this point. Secondly the emails which I cite above show Mr Mohammed was making attempts to find employment for the claimant somewhere and looking for solutions to allow the claimant to continue to work. Therefore it seems unlikely he would approach the meeting with anything other than an attempt to get the claimant into work. It is also worth noting that if the claimant is back at work through the respondent, then the respondent makes money.
38. Mr Mohammed wrote an email of the outcome of the meeting. While it is not a transcript, the claimant never emailed the respondent to suggest it was materially wrong. It confirmed that Mr Mohammed said he would ask questions of 4PX/Caiano to understand why they selected the claimant and their criteria, and that he would do his best to find alternative employment, potentially with a new client.
39. The claimant's maternity leave ended on 15 September 2024. Nothing came of Mr Mohammed's enquiries. Her employment ended on 8 October 2024 by email. Mr Cheuk wrote the email and invited the claimant for a meeting to discuss the decision to dismiss already taken for redundancy.
40. There are correspondence and meetings afterwards. They shed no light on the issues before me.

41. The respondent provided no evidence of consultation about why the claimant was in a pool of one at risk of redundancy. Having considered the oral evidence and documents I find as a fact the respondent did not apply its mind to who should be at risk of redundancy. Rather I find as a fact that the respondent resulted to the default position that because 4PX/Caiano did not want the claimant back, she was to be at risk of redundancy. That does not explain why though there was no reason to e.g. put others in the pool, allowing relocation of the claimant, and making another member of staff redundant. There is no evidence that this was impossible or was canvassed with 4PX/Caiano if necessary.
42. There were at no time from July 2024 any other available vacancies through the respondent except for that in Daventry.

Law

43. As I mentioned above, no party seeks to distinguish between whether the relevant characteristic is pregnancy, maternity leave or some variation thereof. There is no dispute she satisfies at least one of those headings. I am therefore not going to concern myself with the distinction.
44. No party has suggested there be contributory fault. I see nothing to cause me to think there might be.

Employment Rights Act 1996 section 99 and MAPLE

45. The **Employment Rights Act 1996 section 99**, read with the **Maternity and Parental Leave etc. Regulations 1999** (“**MAPLE**”) make a dismissal automatically unfair if the reason (or more than one the principal reason) for the dismissal is the claimant’s pregnancy or maternity leave.
46. The approach in this case to the burden of proof is as follows (**Kuzel v Roche Products Ltd 2008 ICR 799, CA**).
 - 46.1. The employee must produce some evidence to suggest (but does not need to prove) that his or her dismissal was for the principal reason that he or she had made a protected disclosure, rather than the potentially fair reason advanced by the employer.
 - 46.2. Having heard the evidence of both sides, the Tribunal makes findings of fact in the usual way.
 - 46.3. The tribunal must decide what was the reason or principal reason for the dismissal on the basis that it was for the employer to show what the reason was.
 - 46.4. If the employer does not show to the tribunal’s satisfaction that it was its asserted reason, then it is open to the tribunal to find that the reason was as asserted by the claimant.
 - 46.5. Tribunal is not bound to accept the claimant’s reason either. That may often be the outcome in practice, but it is not necessarily so.
47. Where there is a suitable available vacancy and the respondent is dismissing the claimant for redundancy, the respondent must offer it to the claimant in preference to anyone else before employment ceases: **MAPLE regulation 10**. “Available” has its ordinary meaning: **Community Task**

Force v Rimmer [1986] IRLR 203 EAT. “Suitable alternative” is for the employer to decide, not the employee, though the decision must be reasonable. It is suitable if it is suitable in terms of both job content and equivalence or parity of terms including place of work: **Simpson v Endsleigh Insurance Services Ltd 2011 ICR 75 EAT.** If the employer fails to offer it before dismissal, the dismissal is automatically unfair if the reason or principal reason for dismissal is redundancy.

Ordinary unfair dismissal

48. Redundancy is a potentially fair reason for dismissal. The **Employment Rights Act 1996 section 98** places the onus on an employee with sufficient employment (like the claimant) to provide it honestly believed the claimant was redundant.
49. **Section 139** provides (so far as relevant)
“(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—
“ ...
“(b) the fact that the requirements of that business—
“(i) for employees to carry out work of a particular kind, or
“(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,
“have ceased or diminished or are expected to cease or diminish.”
50. I have considered **Murray v Foyle Meats Ltd [1999] IRLR 562 UKHL; Johnson v Nottinghamshire Combined Police Authority (1973) 8 ITR 411, NIRC; Williams v Compair Maxam Ltd [1982] IRLR 83 EAT; Capita Hartshead Ltd v Byard 2012 ICR 1256 EAT; Mugford v Midland Bank [1997] IRLR 208 EAT.** I understand the approach as follows.
 - 50.1. Whether there was a redundancy under limb (b) is as follows (**Murray**)
 - 50.1.1. The first is whether one or other of various states of economic affairs exists.
 - 50.1.2. The second question is whether the dismissal is attributable, wholly or mainly, to that state of affairs. This is a question of causation.
 - 50.2. It is a factual question about what amounts to work of a particular kind: **Murray**.
 - 50.3. The focus is on the tasks to be performed rather than on the nature of the job itself: **Johnson**.
 - 50.4. I cannot substitute my own decision. The focus is on whether a the respondent’s actions are within the range of actions that a reasonable employer might have done: **Williams**;

- 50.5. The question is whether it was reasonable to dismiss this particular employee for redundancy. It is not enough to show an employee had to be dismissed for redundancy: **Williams**.
- 50.6. As to guidance, the key principle is that an employer will do all reasonably possible to mitigate the impact on the work force and to satisfy them that the selection has been made fairly and not on the basis of personal whim.”: **Williams**.
- 50.7. While not relevant to every case, the examples of what might be done should (see **Williams**):
 - 50.7.1. seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.
 - 50.7.2. There should be consultation on the process (with union or staff likely to be affected)
 - 50.7.3. The criteria shall be objective so far as reasonable without turning on subjective opinion.
 - 50.7.4. The employer will apply them fairly
 - 50.7.5. The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.”
- 50.8. Where there is a lack of consultation, the dismissal is likely to be unfair unless a reasonable employer would have concluded it was utterly futile: **Mugford**.
- 50.9. Whether a pool is reasonable is to be assessed by reference to the reasonable responses approach above: **Byard**
51. The employer must plead all the potentially fair reasons it relies on. If it does not plead a reason, then it cannot rely on it even if a response relying on that reason would have succeeded: **Murphy v Epsom College [1983] IRLR 395 EAT confirmed [1984] IRLR 271 CA; Robinson v Combat Stress UKEAT/0310/14 EAT**.
52. Despite the code of practice and guidelines in the cases, ultimately each case must turn on its own facts and be broadly assessed in accordance with the equity and substantial merits: **Jefferson (Commercial) LLP v Westgate UKEAT/0128/12 EAT; Bailey v BP Oil Kent Refinery [1980] ICR 642 CA**.
53. Any alternative employment offered must be a suitable alternative. The issue is whether the job is suitable for the claimant and, if so, whether her rejection was reasonable. Suitability usually relates to the job on offer and reasonableness relates to the employee’s personal circumstances, though they often overlap: **Spencer and anor v Gloucestershire County Council 1985 IRLR 393, CA** and indeed should not be considered in isolation:

Commission for Healthcare Audit and Inspection v Ward EAT 0579/07. When assessing location changes, I should focus on factually where the claimant actually worked, and not simply approach the matter as one of contractual interpretation: see **High Table Ltd v Horst [1998] ICR 409 CA.**

Polkey v AE Dayton Ltd [1988] ICR 142 UKHL

54. If the dismissal were unfair, the case of **Polkey v AE Dayton Ltd [1988] ICR 142 UKHL** directs Tribunal to consider whether the respondent would have been dismissed fairly in any event for this or another reason. This is a predicative assessment on the information before me: **Polkey**; explained in **Software 2000 Ltd v Andrews [2007] IRLR 568 EAT**, **Hill v Governing Body of Great Tey Primary School [2013] ICR 691 EAT**.

Pregnancy discrimination

55. The effect of the **Equality Act 2010 section 18** makes it unlawful to subject a woman to unfavourable treatment because she is pregnant or on maternity leave. There is no requirement for a comparator.
56. I note the following points:
- 56.1. A failure to consult a woman on maternity leave about changes to her job does not mean that there is necessarily a breach of the **Equality Act 2010 section 18 (Smith-Twigger v Abbey Protection Group Ltd EAT 0391/13)**.
 - 56.2. The protected characteristic need not be only reason for the unfavourable treatment, but it must have a “significant influence on the outcome”: see **Nagarajan v London Regional Transport [1999] ICR 877 UKHL**, the Code at [3.11].
 - 56.3. Motive is irrelevant: The code [3.14] and **R(E) v Governing Body of JFS aors [2010] 2 AC 728 UKSC**.
 - 56.4. Where the reason is not apparent, I can look at conscious as well as sub-conscious motives: **R(E)**.
 - 56.5. I have taken into account the guidance that discriminators tend not to advertise the fact (**Glasgow City Council v Zafar [1998] IRLR 36 UKHL**), people may be unwilling to admit to themselves they are discriminatory (**Nagarajan**) and that discrimination can be based on innocent or well-intentioned motives even (**King v Great Britain-China Centre [1991] IRLR 513 CA**; **Amnesty International v Ahmed [2009] ICR 1450 EAT**).
57. The **Equality Act 2010 section 136** sets out the way that the burden of proof operates. It was explained in **Efobi v Royal Mail Group Ltd [2019] 2 All ER 917 CA**; **[2021] 1 WLR 3863 UKSC** which reviewed and endorsed a significant number of earlier authorities. The Tribunal takes from it the following principles:
- 57.1. Determine if the claimant has proven on balance of probabilities, facts from which the Tribunal could properly conclude the respondent discriminated against the claimant. The Tribunal can consider all the evidence (including that from the respondent) to decide ultimately if the claimant has discharged that burden. The

Tribunal must ignore however any explanation for proven treatment at this stage.

- 57.2. If the claimant succeeds at the first stage, then the burden moves to the respondent to show on balance of probabilities the reason for the treatment was not one prohibited by **Equality Act 2010**.
- 57.3. These provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal can make positive findings on the evidence one way or the other.
- 57.4. 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 the respondent had committed an unlawful act of discrimination.

Conclusions

Why was the claimant dismissed?

- 58. At the heart of this case is this simple key issue. I conclude that I can determine positively that the claimant was dismissed because the respondent honestly believed that she was redundant, and in fact she was redundant. This is supported by several facts set out above.
 - 58.1. She was assigned to work at 4PX/Caiano's Leicester site. It reorganised its business. It did not require 2 HR persons. It decided not to have the claimant back.
 - 58.2. She was therefore within the respondent surplus to requirements. Applying **section 139** the need for employees to carry out work as an HR assistant at the client's Leicester site had ceased because of 4PX/Caiano's decision. The respondent did not have any more roles from 4PX/Caiano to offer her there.
 - 58.3. This is supported by the various emails and by Mr Mohammed's oral evidence.
 - 58.4. The respondent did not decide to remove her from that role. It was the client's decision. It had to deal with the consequences.
 - 58.5. As the facts show, Mr Mohammed sought to find her alternative roles with 4PX/Caiano and with other clients. I conclude that this is inconsistent with any suggestion that pregnancy or maternity leave play any role in her dismissal – they are only a part of the background. The evidence does not permit a conclusion they had a conscious or unconscious effect on the respondent's actions.
 - 58.6. Therefore it follows that the fact she had been pregnant and taken maternity leave was not in any way causative of her dismissal by the respondent.

Automatic unfair dismissal because of pregnancy or maternity, discrimination because of pregnancy and maternity

59. It follows that I can conclude positively that her pregnancy and maternity leave were not the reason or principal reason for dismissal.
60. I conclude that the respondent's dismissal of her was clearly a detriment (it was not argued otherwise) but can positively conclude it was not because of her pregnancy or maternity leave.

Automatic unfair dismissal for failure to offer suitable available employment

61. The respondent has shown the claimant was redundant. I repeat what I said above. The facts show that 4PX/Caiano required 1 fewer HR assistant at Leicester. The need for anyone to do work of that kind for the respondent at that particular place had reduced. It was not practicable for her to return to her role at the Leicester site.
62. From the evidence I conclude that at the relevant times only 2 roles were available. Both were for HR assistant. One was permanent on site working in Dunstable and the other was a limited-term working in Daventry to cover maternity leave.
63. There is no evidence other suitable roles were available at any time material to this claim. I conclude therefore that there were none.
64. The respondent considered only the Dunstable role suitable. It is reasonable for the employer to conclude that this role was suitable for the claimant. It was for the same job and the same terms and conditions. While the claimant might consider a commute of just over 1 hour to be unacceptable, it is the sort of commute that could be considered reasonable, and there was no reason for the respondent to conclude or presume that it would not be appropriate for the claimant.
65. It did not consider the Daventry role suitable. That conclusion was reasonable because, while it was more local to the claimant and the same role she had done in Leicester, it was only for a short-fixed term to cover maternity leave.
66. The facts show it was available and that the Dunstable role was offered to the claimant before her employment ended.
67. The facts also show that the respondent offered the Dunstable role to the claimant before dismissal. I infer it was offered to her in preference to others who were not absent on maternity leave, because there is no evidence anyone else was offered the role in preference.
68. The claimant declined it but that does not vitiate the respondent's compliance with **MAPLE regulation 10**
69. It follows this claim for automatic unfair dismissal under **regulation 10** fails too.

Ordinary unfair dismissal

70. I set out above my conclusion that the respondent honestly believed that the claimant was redundant. I refer to that reasoning in full.

71. I conclude that the facts show that the respondent sought to find alternative employment for the claimant. That can be seen in the various communications where Mr Mohammed is setting out what steps he is taking and which I found honestly reflect his desire to find the claimant alternative work.
72. Nonetheless I conclude the dismissal was unfair for these reasons.
- 72.1. The consultation was not within the range of reasonable responses to the situation. There was particularly no consultation about other alternatives to redundancy or, most significantly, about the pool of potential employees. As I noted above, there is nothing to show the respondent applied its mind to who should be in the pool for it to dismiss and did not consult on it. It just followed it as a default because of 4PX/Caiano's decision. Things a reasonable employer might have considered, for example, was "bumping" or redeployment of its staff – even if it is clear they can be dismissed quickly on consideration. The point is a reasonable employer would have applied its mind to it and consulted if only briefly. I conclude it cannot be said that consultation was utterly futile. There is no evidence to support that conclusion.
- 72.2. The dismissal for redundancy happened before a meeting to discuss it. The meeting therefore is pointless. It negates any opportunity for the employer or employee to consider any last-minute ideas to avoid redundancy. The reasonable employer would only finalise its decision at the end of the meeting.
- 72.3. While I accept that there was some consultation, albeit not in a structured way (e.g. emails about the Dunstable position and the claimant's view on it), these do not overcome the above issues.
- 72.4. I accept the respondent is a small employer and in effect a middleman because its employees work for a third-party client. However the guidance on a sound redundancy process is well-established and the respondent is an employment agency. Therefore I consider a reasonable employer in that situation would have sufficient knowledge to know to consult at all stages, and would do so, or at least apply its mind to it.
- 72.5. I conclude that the Dunstable role was not suitable alternative employment. I accept the role is suitable in that it is the same job for the same employer carrying out the same role as before. However the travel distance and time make it reasonable for the claimant to reject it as unsuitable. The fact is she worked in Leicester. The journey to Dunstable is quite different. It is reasonable to reject when one also reflects that flexible working was not available and she now had childcare commitments. The contractual argument does not overcome this.
- 72.6. The time-limited nature of the Daventry role made it unsuitable.
73. Therefore the dismissal was unfair.

I now consider the chance she would have been dismissed for this reason fairly or for some other reason. I conclude the dismissal would have still happened on the same date. My reasons are as follows.

- 73.1. The fact is that she was in a redundancy situation. 4PX/Caiano did not want her to return. The respondent had only one other option for full-time work. It was not a suitable alternative vacancy, but she rejected it anyway. I conclude that she always would have rejected the Dunstable role because the evidence shows her position was clear on this: She was not going to go to work in Dunstable.
 - 73.2. The time taken to find those roles is a reasonable period within which a fair procedure would have taken place, I conclude.
 - 73.3. While it is correct that there was no consultation over the pool, the claimant has not set out any basis to believe that there was any real possibility the pool could be anyone other than her. There is nothing in her evidence and she did not in cross-examination expose anything to suggest that others might have been in the pool.
 - 73.4. The respondent could not reasonably have done more to find her an alternative job before dismissing her.
 - 73.5. Therefore the reality is that on the facts and evidence available, she would always have been the sole member of the pool and dismissed for redundancy because there was no other suitable alternative role for her despite Mr Mohammed's efforts to find one.
74. I therefore conclude that the respondent unfairly dismissed the claimant. I will direct another hearing to decide the amount of the basic award (unless the parties can agree it). I will make no order for a compensatory award because I conclude that she would have been dismissed on 8 October 2024 in any event.

Approved by:

Employment Judge Adkinson

Dated: 04 August 2026

Sent to the parties on

...07 September 2026.....

For the Employment Tribunal

...Elliot Barker.....

Notes

Full written reasons are set out above.

Public access to employment tribunal decisions

All judgments (apart from withdrawal judgments) and written reasons for the judgments (if provided) are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the parties in a case.

Appeals

You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: <https://www.gov.uk/appeal-employment-appeal-tribunal>.

Recordings

If a Tribunal hearing has been recorded, you may request a transcript of the recording upon payment of any fee due. 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. You can access the Direction and the accompanying Guidance here: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>.