EMPLOYMENT TRIBUNALS

Claimant:	Miss E Baxter
First Respondent:	Hotel Van Dyke Ltd
Second Respondent:	M H Snooker Services Ltd (in creditors' voluntary liquidation)
Third Respondent:	Lisa Whittaker
Fourth Respondent:	Michael Joseph Henson

HELD AT:	Sheffield	**ON:**	29 and 30 August 2017 1 September 2017
BEFORE:	Employment Judge Brain Ms B R Hodgkinson Mr K Smith		

REPRESENTATION:

Claimant:	Mrs M Shore, Solicitor
Respondents:	First Respondent: No attendance or representation Second Respondent: No attendance or representation Third Respondent: In person Fourth Respondent: In person

JUDGMENT

The Judgment of the Employment Tribunal is that:-

1. The Claimant's complaints of wrongful dismissal and compensation for holidays accrued but untaken as at the date of termination of her contract of employment as against the Second Respondent succeed. Accordingly, the Second Respondent shall pay to the Claimant:-

   1.1. Damages for wrongful dismissal in the sum of £110.

   1.2. Compensation for holiday pay accrued but untaken in the sum of £500.26.

2. As against the Third Respondent:-

2.1. Save for the cause of action referred to in paragraph 2.2, all of the complaints against her are dismissed. Her statutory defence under section 110(3) of the Equality Act 2010 succeeds.

2.2. The Claimant's complaint that her conduct of the telephone discussions that took place on 1 and 2 February 2017 constituted unlawful harassment related to sex stands dismissed.

3. As against the Fourth Respondent:-

3.1. He shall be hereafter referred to as Michael Joseph Henson.

3.2. Save for those causes of action referred to in paragraph 3.3, the complaints against him stand dismissed.

3.3. His insistence that the Claimant work anti-social shifts was unfavourable treatment (because she sought to exercise her right to additional maternity leave) under section 18 of the Equality Act 2010 and constituted unlawful harassment related to sex under section 26 of the 2010 Act.

3.4. He shall pay to the Claimant compensation for injury to her feelings in the sum of £7,500 together with interest in the sum of £350. The Claimant shall give credit against the total sum awarded of £3,000 being the amount paid or payable to her by the First Respondent pursuant to terms of settlement. The sum of £4,850 shall therefore be paid by him to the Claimant on or before 22 September 2017.

REASONS

1. These reasons are provided at the request of the Fourth Respondent.
2. The Claimant presented her complaint on 23 February 2017. The matter has a somewhat complex procedural history. It is not necessary to set this out here.
3. The case benefited from a Private Preliminary Hearing that came before Employment Judge Little on 1 June 2017. The minutes of that meeting are at pages 31 to 38 of the bundle. Developments since then had led to a further refinement of the issues in the case. At the outset of the hearing Mrs Shore, the Claimant's solicitor, handed to us a list of issues. The matter was then adjourned to enable the Tribunal to undertake its pre-hearing reading during which time the Third and Fourth Respondents were able to consider the list of issues. They confirmed that it was agreed.
4. The Tribunal heard evidence from the Claimant. On her behalf we heard evidence from:-

3.1. Alan Griffiths. He is the father of the Claimant's partner Matthew Griffiths.

3.2. Matthew Griffiths, the Claimant's partner.

3.3. Julie Robinson, a former work colleague.

4. We heard evidence from Mr Henson and Mrs Whittaker. On their behalves we heard witness evidence from:-

4.1. Laura Preece.

4.2. Casey Whittaker.

5. Miss Preece and Miss Whittaker were both former colleagues of the Claimant, Mrs Whittaker and Mr Henson. Miss Whittaker is Mrs Whittaker's daughter.

6. The Claimant worked for M H Snooker Services Limited which is the Second Respondent. Mr Henson is the sole officer of the Second Respondent. It operated a snooker club in Mexborough which is where the Claimant worked. On 27 February 2017 he passed a resolution that the Second Respondent be wound up voluntarily. It is currently in the process of creditors' voluntary liquidation. The winding up process has not yet concluded.

7. The Claimant worked for the Second Respondent as a member of the bar staff. She started work in that capacity for the First Respondent in October 2015. The undertaking being carried out by the First Respondent transferred to the Second Respondent on or around 3 May 2016. It appears not to be in dispute that the transfer from the First to the Second Respondent at that time was one made pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006. The Claimant's employment therefore transferred from the First to the Second Respondent as did that of all of the other employees working for the First Respondent at that time.

8. The Claimant became pregnant. Her unchallenged account was that she gave to Mrs Whittaker her form MATB1 in which she informed her employer (being at the time the Second Respondent) of her intention to take maternity leave from 1 June 2016. She gave her return date as 1 January 2017. In fact, her actual return date transpired to be 2 February 2017 by which time she was in her period of additional maternity leave.

9. At the time that the Claimant went on maternity leave she worked 16.5 hours per week. Her hours were made up as follows:-

    9.1. Monday – 3 o'clock to 7 o'clock pm.

    9.2. Thursday – 3 o'clock to 7 o'clock pm.

    9.3. Saturday – 7 o'clock to 11.30 pm.

    9.4. Sunday – 12.00 o'clock to 4 o'clock pm.

10. Not long after he had taken over the business Mr Henson decided to change the shift pattern from a four shift day to a two shift day. It is his case that he told staff of this change in August 2016. The Claimant says that she did not know about this change until January 2017 when she got in touch with her employer intending to return to work from her additional maternity leave.

11. We accept the Respondent's case that the Claimant was aware of Mr Henson's change to the shift pattern. We make this finding principally upon the basis of the evidence that we heard from Laura Preece. Miss Preece, who impressed the Tribunal as a very straightforward and honest witness, said that the Claimant called into the club in August 2016 on a social visit. In her evidence the Claimant accepted having visited the club on occasions. However, the Claimant denied having attended a staff meeting at which to discuss the change in shift patterns. The Tribunal accepts that there was no formal staff meeting as such held in August 2016 but we do accept Miss Preece's account that the Claimant called into the club that month. Miss Preece said that when she called in she heard Mrs Whittaker telling the Claimant that Mr Henson had changed the shift pattern. Therefore, we find as a fact that the Claimant was aware of the fact of the change

of shift pattern. However, the Claimant was not aware at this stage how this change would impact upon her. Plainly, in August 2016, the rotas for January 2017 were some way off. It formed no part of Miss Preece's evidence that the Claimant was given any detail as to the shifts that she would be given upon her return to work.

12. It is not in dispute between the parties that there was a staff meeting attended by the Claimant which took place on 12 January 2017. At this point, the Claimant was contemplating returning to work from additional maternity leave on 2 February 2017.

13. It is also not in dispute between the parties that at this meeting Mrs Whittaker told the Claimant that upon her return to work she had been allocated the following shifts:-

    13.1. Tuesday - between 5.00 o'clock and 11.30pm.

    13.2. Thursday - between 7.00 o'clock and 11.30pm.

    13.3. Friday – between 6.00 o'clock and 11.30pm.

    13.4. Saturday – if required between 7.00 o'clock and 12.30pm.

14. The Respondent's witnesses said that the Claimant expressed herself content with this allocation. The Claimant says that she said at the meeting that she would have to check with her mother first to see whether or not her mother could look after her baby and her elder child.

15. We have little doubt that the Respondent's witnesses are telling the truth from their perspective when they told us that the Claimant was not unhappy with her allocation. On the Claimant's own account she does not say that she refused to work those shifts nor does she say that at the meeting she said words to the effect that she was unhappy with the proposal.

16. However, we find very credible the Claimant's account that she would not have unconditionally agreed to those shifts without first checking with her mother about childcare arrangements. Childcare was bound to be a concern for the Claimant. She had had no prior warning about the actual shift patterns to be allocated to her so had not had chance to ask her mother before the meeting of 12 January 2017. Further, the Claimant told us that her mother is a professional childminder with her own commitments and obligations (including mandatory rest between childcare engagements). This renders all the more credible the Claimant's account that she said that she would have to check with her mother first. It is our assessment that, at its highest, on 12 January 2017 the Claimant gave the hours allocated to her conditional approval dependant upon her mother being able to look after her children.

17. The Claimant checked with her mother. Her mother could not accommodate these hours for the purposes of looking after the Claimant's children. Therefore, the next day, 13 January 2017, the Claimant texted Mrs Whittaker to that effect. This generated the exchange of texts that we see at pages 98 to 101.

18. We shall not recite the texts in these reasons. In summary however the Claimant said that her mother could not accommodate the hours to afford childcare to the Claimant. Mrs Whittaker refused to change the rota and insisted that the hours offered to the Claimant were the only ones available.

19. Mrs Whittaker said (in the text at page 101) that Mr Henson had been told that provided the Claimant was offered 16.5 hours of work (to be undertaken at any time) that was sufficient to fulfil the Second Respondent's obligations towards the Claimant upon her return from additional maternity leave. Mr Henson said that he had been told this by ACAS and passed this information on to Mrs Whittaker.

20. It was clear from what he said before the Tribunal that Mr Henson was pre-occupied with the health of his business by this stage. He was therefore content to leave the issue of the rota with Mrs Whittaker albeit that he reassured her, from his discussions with ACAS, that what was proposed by the Second Respondent for the Claimant was in fulfilment of the Second Respondent's legal obligations to her.

21. On 16 January 2016 the Claimant wrote a letter to Mrs Whittaker. This is at pages 96 to 97. She said that she should have been allowed to attend a meeting to discuss the change of hours and asked for the restoration of her old shifts.

22. Mrs Whittaker and Mr Henson replied. We see a letter dated 23 January 2017 at pages 109 to 110. Although dated 23 January 2017 it appears not to be in dispute that this was not handed to the Claimant until 30 January 2017. It was prepared by a third party who Mrs Whittaker said had knowledge about these matters. The letter was approved by Mr Henson before it was handed to the Claimant. In the letter, the Respondents maintained their position.

23. The Claimant's case is that at some point after the staff meeting and before the letter dated 23 January 2017 was handed to her Mrs Whittaker telephoned around the staff instructing them not to swap shifts with the Claimant. Mrs Robinson gave evidence that this is what Mrs Whittaker did. This Mrs Whittaker denied.

24. Mr Henson denied instructing Mrs Whittaker to telephone staff warning them not to swap shifts with the Claimant. Mrs Whittaker and Mr Henson sought to undermine Mrs Robinson's evidence by pointing out that by January 2017 her income had decreased significantly. This decrease reflected the fact that Mrs Robinson had dropped one of her two bar shifts. During the course of the hearing Mr Henson produced salary documentation to show that Mrs Robinson had (prior to a period of illness in October, November and December 2016) earned £622.80 in September (being the last full month worked by her before January 2017). In contrast in January 2017 this had reduced to £421.20. The Respondent's case therefore was that Mrs Robinson would hardly volunteer to swap with the Claimant if she (Mrs Robinson) only had one shift herself.

25. Mrs Robinson maintained that she had two shifts. Mrs Robinson also undertook cleaning work for the Second Respondent.

26. It was impossible to tell from the documentation produced by Mr Henson how Mrs Robinson's wages for September 2016 and January 2017 had been calculated. We had no information as to what rotas she was working and the make up of her hours between bar work and cleaning work.

27. We prefer the Claimant's case and accept that the Respondents did tell staff not to swap shifts with the Claimant. Firstly, that instruction is consistent with the tenor of the texts at pages 98 to 101 to the effect that the rotas would not

be changed. It is also consistent with the letter handed to the Claimant on 30 January 2017 to the same effect. An injunction in those terms to members of staff not to swap with the Claimant is also consistent with Alan Griffiths' evidence of Mrs Whittaker's demeanour when he accompanied the Claimant to hand in her grievance letter on 16 January 2017 and to attend a further meeting with Mrs Whittaker on 30 January 2017. Upon the latter occasion, Mr Griffiths' unchallenged evidence was that Mrs Whittaker said to him that the Respondents were "in the clear" provided the Claimant was given the same number of hours upon her return from additional maternity leave as she had been working prior to going on maternity leave.

28. On 31 January 2017 Mr Henson wrote a letter on behalf of the Second Respondent addressed to the First Respondent. The First Respondent was the landlord of the premises from which the Second Respondent operated. Mr Henson told the First Respondent that he had appointed an insolvency practitioner "to handle the winding up of M H Snooker Services." The First Respondent was informed by Mr Henson that he was going to hand over the keys at midnight that evening.

29. The First Respondent moved quickly and decided to continue to operate the club.

30. On 1 February 2017 Mrs Whittaker told the Claimant that "Mike's gone into liquidation". We refer to page 173. By this she meant of course that the Second Respondent was going to pass a resolution to enter into creditors' voluntary liquidation.

31. On 2 February 2017 there were further discussions between the Claimant and Mrs Whittaker. The transcript of the first telephone discussion of that day is at pages 174 and 175. The transcript of the second conversation is at pages 176 to 182.

32. In the first discussion Mrs Whittaker told the Claimant that she would have to look to "the government" to pay her holiday pay. In the second conversation Mrs Whittaker told the Claimant that she had been told by Bryan Lodge of the First Respondent that the First Respondent was going to re-open the business on 3 February 2017. Mrs Whittaker told the Claimant that Mr Lodge had informed her that "as of tomorrow everybody is self employed". Mrs Whittaker said that she (Mrs Whittaker) had been made redundant. She also told the Claimant that Mr Lodge was happy with the rota that had been devised by the Second Respondent and was not prepared to change it.

33. There were some further texts between the Claimant and Mrs Whittaker (pages 103 and 104). On 6 February 2017 the Claimant was told that the First Respondent was not prepared to deal with a sick pay issue upon the basis that the Claimant was now self employed.

34. The Tribunal was offered the opportunity to listen to the transcripts, it being part of the Claimant's case that Mrs Whittaker's manner and tone directed at the Claimant constituted unlawful harassment. Mrs Whittaker fairly accepted that she was abrupt and aggressive with the Claimant in these conversations. In the light of that concession the Tribunal did not consider it necessary to listen to the telephone recordings.

35. The Claimant interpreted what she had been told by Mrs Whittaker on 2 February 2017 as a dismissal. She did not go to see Bryan Lodge of the

First Respondent although she knew of him as she had worked for the First Respondent before the transfer to the Second Respondent in May 2016. The Claimant said that there is little purpose in doing so, Mrs Whittaker having told her that Mr Lodge was not prepared to reconsider the rotas.

36. Mrs Whittaker told us that she worked for the First Respondent between 3 February and 18 March 2017. Although the First Respondent told her that she was self employed she told us (and we see no reason to disbelieve her) that she had been informed by the First Respondent that if she did not turn up to work then she would not be paid. There was a clear expectation upon her to work the hours allocated to her by the First Respondent.

37. By Regulation 18 of the Maternity and Parental Leave etc Regulations 1999 a woman is entitled to return to her old job from additional maternity leave on terms and conditions that are not less favourable than she would have enjoyed had she not been absent. However, if it is not reasonably practicable (for a reason other than redundancy) for the employer to permit her to return to that job, the employer must permit her to return to another job which is both suitable for her and appropriate for her to do in the circumstances. That job must itself be on terms and conditions not less favourable than those which would have applied had she not been absent.

38. The statutory scheme provided by the Equality Act 2010 makes unlawful certain prohibited conduct because of certain protected characteristics. That prohibited conduct with which we are concerned is unfavourable treatment because of the exercise by the Claimant of her right to additional maternity leave, harassment related to sex and victimisation. Such prohibited conduct is made unlawful in the workplace pursuant to the provisions of Part 5 of the 2010 Act in relation to which it is provided that discrimination against an employee extends to detriment and dismissal.

39. By section 18 of the 2010 Act a person discriminates against a woman if he 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. As the prohibited conduct of which the Claimant complains against Mrs Whittaker and Mrs Henson ended prior to the end of her additional maternity leave we need not concern ourselves with the Claimant's complaint of discrimination by reason of the protected characteristic of sex.

40. In addition to unfavourable treatment of the Claimant by reason of her exercising or seeking to exercise her right to additional maternity leave, the other elements of prohibited conduct with which we are concerned are harassment and victimisation.

41. By section 26 of the 2010 Act a person harasses another if he engages in unwanted conduct related to a relevant protected characteristic (in this case the Claimant's sex) and the conduct has the purpose or effect of violating the other person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

42. A person victimises another if he or she treats the other to a detriment because the other has done a protected act. A protected act includes doing something for the purposes of or in connection with the 2010 Act. The relevant protected act in this case is the Claimant's grievance letter of 16 January 2017 in which she complains of an infringement of her rights of

additional maternity leave. Plainly, that letter is a protected act for the purposes of the 2010 Act.

43. Although section 18 does not require the Claimant to show that she has been unfavourably treated by reference to the treatment that would have been afforded to a male comparator or a non-pregnant female comparator, the Equalities and Human Rights Commission's Employment Code suggests that evidence of the treatment afforded to others may be useful to help determine if the treatment is in fact related to pregnancy or maternity leave.

44. Section 110 of the 2010 Act says that an employee who commits an act of discrimination that would be treated as having been done by the employee's employer is personally liable. However, there is a statutory defence available to the employee if he or she relies on a statement by the employer that the act in question does not contravene the 2010 Act and it is reasonable for the employee to rely upon that statement. The statutory defence is provided for in section 110(3) of the 2010 Act.

45. It is upon the basis of this statutory defence that we hold Mrs Whittaker to have no liability for any of the issues raised against her save for that arising out of the manner and tone that she adopted towards the Claimant during the telephone conversations of 1 and 2 February 2017. Mrs Whittaker was managing the club on Mr Henson's behalf. She was in our judgment entitled to take at face value his assurances (given in his capacity as the sole officer of the employer) that he had spoken to ACAS and had satisfied himself that provided the Claimant was offered the same number of hours as she was working before she went on additional maternity leave that was sufficient to discharge the Second Respondent's obligations. We consider that Mrs Whittaker placed reasonable reliance upon Mr Henson's assurances.

46. We take a different view of Mr Henson. He was the sole officer of the Claimant's employer. He effectively was the guiding hand of it. It would be unjust in those circumstances to allow Mr Henson the benefit of the statutory defence as the Second Respondent was entirely under his control acting pursuant to his direction. The Claimant did not pursue before us her claims of discrimination against the Second Respondent. Had she done so, it would have been liable to the same extent as Mr Henson who thus has a personal liability for them pursuant to section 110 of the 2010 Act.

47. We need only therefore consider, in relation to Mrs Whittaker, the harassment complaint in relation to the telephone calls of 1 and 2 February 2017. We accept the Claimant's case that Mrs Whittaker engaged in unwanted conduct. Not only was the message being relayed unwelcome but Mrs Whittaker of her own admission adopted an aggressive attitude towards the Claimant. This aggression was unwarranted. The Claimant simply wanted to know her position.

48. We accept that Mrs Whittaker did not speak to the Claimant in this way with the purpose of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. However, we do accept that the Claimant can reasonably have perceived Mrs Whittaker's conduct to have that effect. The key question therefore is whether Mrs Whittaker committed that act of unwanted conduct and which had that effect for a reason related to the Claimant's sex.

49. We find that Mrs Whittaker did not so conduct herself for that reason. Mrs Whittaker was informing the Claimant of the change of the shift pattern which had been undertaken by reason of business need. Mrs Whittaker adopted an aggressive approach to the Claimant not by reason of or related to her sex but rather because of the pressure that Mrs Whittaker herself was under. After all, she had been told that she had been made redundant. She was simply implementing the instructions that she had received from Mr Henson. That was the reason why she spoke to the Claimant as she did. It is true that but for the fact that the Claimant is female and had gone on maternity leave Mrs Whittaker would not have been speaking to her about the change of shift pattern which was unwelcome news to the Claimant. However, a "but for" analysis is inappropriate and the key question for the Tribunal is the reason why Mrs Whittaker spoke to the Claimant as she did in those telephone conversations. As we say, the reason why was the implementation of the instructions from Mr Henson and Mrs Whittaker's own subjective sense of pressure at that time.

50. We now turn to the allegations against Mr Henson. We start with the compliant under section 18. We find that he did refuse to allow the Claimant to return to her old shift pattern. However, while that was an act of unfavourable treatment as far as the Claimant was concerned, the reason why he refused to allow her to work her old shift pattern is because he had, for good business reasons, abandoned it in favour of a new pattern. Mr Henson told us that this had produced significant savings to the business of in the region of £5,000. We are reinforced in this conclusion by the fact that all employees were affected by the change in the shift pattern. Although not a comparator exercise, the EHRC guidance does encourage Tribunals to assess unfavourable treatment by reference to how others were treated. All employees (male and female) were treated the same. Therefore, although we can accept from the Claimant's perspective that not being able to return to her old shift pattern was unfavourable treatment we find that the reason why she was so treated was because Mr Henson had for good business reason implemented a change to the shift pattern which affected all employees.

51. We find that Mr Henson's insistence that the Claimant returned to work doing anti-social shifts was unfavourable treatment. On any view, to be given anti-social shifts which markedly differed from those that she was doing before she went on maternity leave is unfavourable treatment. This is all the more so where the evidence was that the Claimant could have worked similar shift patterns on Saturday and Sunday to that which she was doing before she went on maternity leave and that other employees (including new starters) had been given more sociable hours (including day shifts).

52. We find that the reason why Mr Henson insisted that the Claimant work different and anti-social shifts was because she was exercising or seeking to exercise the right to return from additional maternity leave. Again, a comparator exercise is useful in determining the reason for the Claimant's treatment.

53. Male employees and female employees who were not pregnant and not returning from maternity leave were more favourably treated. The shifts had effectively been allocated by the time that the Claimant returned to work on 12 January 2017. Effectively, the Claimant was presented with a *fait accompli.* The best shifts had been given to others who were not absent on

maternity leave. By the time the Claimant realised what had been allocated to her and sought to protest, Mr Henson and Mrs Whittaker took the view that the rotas could not be changed. It follows therefore that the reason for the Claimant's unfavourable treatment was because she was on maternity leave and was seeking to exercise her right to return from it.

54. We now turn to the harassment claim against Mr Henson. We find that the refusal to allow the Claimant to work her normal working hours upon her return was unwanted conduct from the Claimant's point of view. We accept that Mr Henson did not do this with the purpose of violating the Claimant's dignity etc. We do however accept that that refusal may reasonably be considered to have had that effect upon her.

55. However, the reason why the Claimant was unable to return to her normal working hours was because Mr Henson had changed the shift pattern. He did so for good business reasons. It was not practicable for the Claimant to return to work under the old shift pattern. Therefore, the reason why the Claimant was subjected to unwanted conduct which had the effect of violating her dignity etc was not related to her sex but rather related to Mr Henson's business needs.

56. Similarly, we find that the insistence that the Claimant return to work on different anti-social shifts was unwanted conduct. On any view, this was unwelcome news as far as the Claimant was concerned. We accept that Mr Henson did not do this with the purpose of violating the Claimant's dignity etc. However, we accept that the Claimant reasonably considered it to have that effect. After all, she was being given amongst the worst shift pattern amongst all of the members of staff.

57. We accept that this unwanted conduct was related to the Claimant's sex. Had she not been on maternity leave she would have been present in the workplace to fight her corner and call for a better shift pattern. Only women can be on maternity leave and it follows therefore that Mr Henson's insistence that she work different and anti-social shifts (which we find to be unwanted conduct having the effect of violating the Claimant's dignity etc) was related to the Claimant's sex. The harassment complaint therefore succeeds.

58. We now turn to the victimisation complaint. We find that the Claimant was subjected to being dismissed and the detriment of having her sick note rejected. However, the dismissal of her was effected by the First Respondent. Similarly, the rejection of the sick note was by reason of the First Respondent only being prepared to re-engage the former employees upon the basis that they be considered self employed.

59. Informing an employee that with immediate effect he or she is to be self-employed is in our judgment an act of dismissal and can reasonably have been understood by the Claimant as such. However, as Mr Henson did not dismiss the Claimant or reject her sickness benefit claim he can have no liability for that. There was no causal link therefore between the protected act of 16 January 2017 on the one hand and the dismissal of the Claimant and the rejection of her sick note on the other. Those acts were undertaken by a third party over whom Mr Henson had no control and were unconnected with the protected act. We agree with Mrs Shore that there was a transfer of the undertaking back to the First Respondent which took place on or around 1

February 2017. Mr Henson and the Second Respondent no longer had any involvement in the matter after 31 January 2017.

60. It being the First Respondent who dismissed the Claimant, it follows that the Claimant remained an employee of the Second Respondent and then the First Respondent until 2 February 2017. The obligation not to treat the Claimant unfavourably by reason of the protected characteristic of maternity and not to harass or victimise her therefore passed from Mr Henson and the Second Respondent to the First Respondent at that time. It was the First Respondent's decision to dismiss the Claimant. In our judgment therefore that must be an intervening course that brings to an end the chain of causation arising from the acts of Mr Henson and the Second Respondent.

61. It follows therefore that in our judgment the Claimant should be entitled to no monetary compensation for loss of earnings as against Mr Henson and the Second Respondent from 2 February 2017. The object of compensation for discriminatory conduct is to put the Claimant into the position that she would have been in had the discrimination not occurred. Had Mr Henson's discrimination not occurred the Claimant would have been working a more appropriate and suitable shift. Nonetheless, the fact remains that the First Respondent dismissed all employees and would only re-engage them upon what they claimed to be a self employed basis.

62. We can understand why the Claimant considered that she was in no position to approach Mr Lodge having been told by Mrs Whittaker in no uncertain terms that he was not prepared to look again at the rota. The Claimant would not have been in that position but for Mr Henson's discriminatory conduct. Nevertheless, the fact remains that even had the discrimination not occurred the Claimant would have found herself dismissed on 2 February 2017 anyway.

63. Any claim for loss of earnings after that date must rest with the First Respondent. The Claimant has settled all of her complaints with the First Respondent in the sum of £3,000. Mrs Shore accepted that the Claimant would need to give credit for that against any award the Tribunal makes against Mr Henson.

64. Although otiose in the light of our findings that the chain of causation was broken by the transfer of the undertaking back to the First Respondent, we find that the Claimant has made commendable and considerable effort to mitigate her loss following her dismissal. There was no evidence from Mr Henson to the contrary.

65. The remaining remedy issue is an award for injury to the Claimant's feelings. Such an award is to compensate the Claimant for the feelings of disappointment, upset, stress and anxiety and emotions of that kind. The discriminatory conduct perpetuated by Mr Henson was for a period of 20 days between 12 January and 31 January 2017. Thereafter, in our judgment, the conduct of the matter was for the First Respondent.

66. We have little doubt that the Claimant was gravely upset by the conduct of the Second Respondent and Mr Henson concerning her maternity leave. This legislation is there to promote the welfare of mothers who have newborn infants in order to enable them to return to work with as little inconvenience as possible. Mr Henson appeared to adopt a somewhat cavalier attitude towards

the Claimant taking the view that it was sufficient to replace her hours, however unsuitable the replacement hours may be. That said we do accept that Mr Henson did not behave maliciously towards the Claimant and had sought the advice of ACAS.

67. We also accept that the Claimant would have experienced distress and anxiety anyway as even had the discriminatory conduct not occurred she would have found herself dismissed on 2 February 2017 in any event. Some of the anxiety and distress experienced by the Claimant after 12 January 2017 attributable to the loss of her employment would therefore have suffered anyway.

68. We accept this to be a case in the middle of the *Vento* bands. This cannot be said to be a less serious case involving a one off act or occurrence. As far as Mr Henson was concerned this conduct lasted almost three weeks and affected an important statutory protection for new mothers. The case therefore falls squarely within the middle band.

69. Taking into account all of these features the judgment of the Tribunal is that Mr Henson shall pay to the Claimant an award for injury to feelings in the sum of £7,500. In addition, interest is payable upon that sum from 1 February 2017 at the rate of 8% per annum. This is a period of 213 days and equates to £350. Against a total award of £7,850 the Claimant will give credit for the £3,000 payable or paid to her by the First Respondent.

70. Mr Henson shall pay this sum to the Claimant on or before 22 September 2017.

Employment Judge Brain

Date: 22 September 2017