EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss C Nicholson	**v**	(1) Willowbank Holdings Limited; (2) Haresh Rane

Heard at: Cambridge

On: 14, 15 and 16 June 2021 – via CVP
8 October 2021 – via CVP
11, 14 October 2021 – Members discussion in Chambers

Before: Employment Judge Tynan

Members: Ms Susan Elizabeth and Mr Christopher Grant – via CVP

Appearances
For the Claimant: In person
For the Respondent: Mr Mukhtia Singh, Counsel

RESERVED JUDGMENT

1. The Claimant's complaints that she was unlawfully discriminated against contrary to Section 18 of the Equality Act 2010, alternatively, that she was automatically unfairly dismissed contrary to Section 99 of the Employment Rights Act 1996 and subjected to detriment contrary to Section 47C of the Employment Rights Act 1996, are well founded in so far as:

    a. on 9 November 2018 she was invited by Ms Naigaonkar of the First Respondent to attend a return to work meeting on 19 November 2018;

    b. she was informed by Ms Naigaonkar and the Second Respondent on 21 November 2018 that she would be issued with a warning for uninformed absence from work, following absence from work by reason of illness suffered by her as a result of pregnancy in the period 29 October 2018 to 18 November 2019; and

    c. she was dismissed from the First Respondent's employment with effect from 16 January 2019.

2. The Claimant's remaining complaints, namely those identified in paragraphs 10.3.1, 10.3.3, 10.3.5 to 10.3.8 of the List of Issues contained within the Case Management Summary dated 7 August 2020, are not well founded and are dismissed.

3. Pursuant to Section 123 of the Equality Act 2010, the Employment Tribunal determines that it would be just and equitable to extend time to enable the Claimant to bring her complaints under Section 18 of the Equality Act 2010, notwithstanding these were notified to Acas under Early Conciliation outside the primary time limit for notifying, and subsequently bringing, such complaints.

RESERVED REASONS

1. By a claim form presented to the Employment Tribunals on 7 May 2019, following Acas Early Conciliation from 2 May 2019 to 3 May 2019, the Claimant pursues complaints against the Respondent of automatic unfair dismissal (contrary to Section 99 of the Employment Rights Act 1996 ("ERA") – read in conjunction with Regulation 20 of the Maternity and Parental Leave etc. Regulations 1999 ("MAPLE")); unlawful detriment on grounds of pregnancy (contrary to Section 47C ERA 1996); and pregnancy discrimination (contrary to Section 18 of the Equality Act 2010 ("EqA")).

2. The issues which fell to be determined by the Tribunal were identified at a Telephone Case Management Preliminary Hearing on 7 August 2020; they are recorded at paragraph 10 of the Case Management Summary. Having identified potential time limitation issues, Employment Judge George went on to list the matters about which the Claimant makes complaint under nine numbered sub-paragraphs at paragraph 10.3 of the Case Management Summary. Although these are listed under the heading *"EQA, section 18: pregnancy and maternity discrimination"*, it is clear from paragraph 6 of the Case Management Summary that the complaints identified under paragraphs 10.3.1 to 10.3.8 of the Case Management Summary are pursued in the alternative as unlawful detriment claims under s.47C ERA and that the complaint at paragraph 10.3.9 is pursued in the alternative as a claim of automatically unfair dismissal contrary to s.99 ERA; the Tribunal proceeded on that basis.

3. Employment Judge George listed the Final Hearing with a time estimate of three days. This proved insufficient for the Tribunal to hear all of the evidence and the parties' closing submissions, with the result that the Hearing was adjourned part heard until 8 October 2021. Towards the end of the Hearing on 16 June 2021, and again during closing submissions on 8 October 2021, there was discussion as to the interaction between s.18 EqA and Sections 47C and 99 ERA, specifically whether, in so far as the prescribed reasons or circumstances under those sections relate to pregnancy, this has a different, wider meaning than "because of" contained in s.18 EqA. We return to this below.

4. We heard evidence from the Claimant and on her behalf from her cousin, Ms Yatunde Fields. Ms Fields gave evidence as to a telephone call between them on 10 January 2019 when the Claimant allegedly informed her that she had been dismissed from her employment with the First Respondent. Ms Fields additionally acted as the Claimant's companion at a Grievance Hearing chaired by an independent HR consultant, Mr Duncan Elliot in 2019 after the Claimant's employment had ended. The Claimant relied upon a written statement by her partner Mr André Moore. Mr Moore's statement contains hearsay evidence; namely what the Claimant told him about her alleged treatment by the Respondent. Mr Moore was unable to attend the Tribunal and we attach little or no weight to his statement.

5. On behalf of the First Respondent we heard evidence from Ms Pradnya Naigaonkar and Mr Haresh Rane, the latter also having been named as an individual Respondent. Ms Naigaonkar made a second supplementary statement which deals with various supplementary disclosure by the Respondents in response to the Claimant's statement.

6. Mr Rane and Ms Naigaonkar are siblings, as well as being in business together. They are Indian Nationals who, we understand from comments made by Mr Rane during the Hearing, both moved to the UK in adult life. Although they were both able to participate fully in the proceedings without any need for an interpreter, English is not their first language; something we have borne carefully in mind in assessing their evidence and reaching our findings.

7. There was a single agreed Hearing Bundle running to some 853 pages. At the outset of the Hearing, the Tribunal confirmed that it would admit in evidence the additional disclosure referred to in Ms Naigaonkar's second statement. The Claimant was ordered to disclose the records of her interactions with the Citizen's Advice Bureau on 11 and 17 January 2019. We refer to these below.

8. The Claimant, although acting in person with no previous experience of legal proceedings, proved to be a tenacious and effective advocate. Whilst she lacked the polish of a professional representative, her questions of Mr Rane and Ms Naigaonkar were focused and relevant and she tested their case in cross examination. We can understand why the Respondents recognised her potential when deciding to employ her. Whilst we consider that the witnesses were largely endeavouring to be accurate and truthful in their evidence to the Tribunal, there is a fundamental and potentially irreconcilable conflict in the Claimant's and Mr Rane's evidence as to the events of 19 November 2018 and 10 January 2019, namely whether or not Mr Rane dismissed or attempted to dismiss the Claimant on either occasion. Faced with that conflict, we have looked for external evidence that might support or contradict or otherwise shed some light on their respective accounts as to what was said; in that regard we also take note of Mr Singh's submissions at paragraphs 75 and 76 of

his written submissions, which he develops further later in the submissions. However, for the reasons set out in our findings below, we have concluded that Mr Rane has sought to avoid the potential legal consequences of his decision to terminate the Claimant's employment by misrepresenting what happened at a meeting with her on 10 January 2021, incorrectly suggesting that the Claimant resigned her employment on that occasion. We do not accept his account of their meeting nor do we agree with the Respondents' attempts to undermine the Claimant's character and integrity, including Mr Singh's portrayal of her in his written submissions as streetwise, unafraid to shoot from the hip, potentially willing to engage in deliberate fictions and someone who had contrived her claims somewhat to take advantage of her period of pregnancy and its associated rights. We consider such submissions, which are expressed above and elsewhere in somewhat pejorative terms, to be unwarranted. We find particularly unattractive the suggestion that the Claimant has taken advantage of a failed pregnancy to contrive a legal claim. That is not reflective of how the Claimant presented and conducted her case at Tribunal and is not supported by the totality of the evidence or by the Claimant's actions in questioning the provenance of certain documents (particularly in circumstances as we find that Mr Rane has misrepresented what passed between them on 10 January 2019). We have not upheld all of the Claimant's complaints, but we are quite satisfied that they have been brought and pursued by her in good faith.

Findings of Fact

9. The Claimant commenced employment with Gagarani Netsoi Limited on 22 February 2017. The company's name changed to Unitedgrids Ltd in June 2017, shortly after which the property team became known as Willowbank. As the Tribunal understands, the company changed its name again from May 2018 to Willowbank Holdings Limited. The Claimant's job title on commencing employment was Office Administrator. She was employed under two successive fixed term contracts of fairly short duration. The job description at page 76 of the Hearing Bundle evidences a broad ranging role. We accept the Respondents' evidence that, as with other employees, the Claimant was initially recruited on the strength of a fairly generic job description, with the intention that a more clearly defined role would be scoped out if she passed what was in effect a probation period. The Claimant's performance was reviewed after one month in the role at a meeting on 22 March 2017 with Ms Suzana Georgiev at which Ms Georgiev noted that the Claimant had demonstrated great team work over the past month and that she had supported and co-operated with other team members in a very professional manner. She described the Claimant's input as *"very valuable"*. On the strength of this promising start, the Claimant was offered a further six-week fixed term contract until 18 May 2017. The Claimant received a further strong Performance Appraisal at the end of her extended second fixed term. Ms Georgiev noted that she had achieved her goals, shown consistency in her performance and recognised her *"great attitude towards work"*.

10. With effect from 19 May 2017, the Claimant became a permanent employee and her job title changed to 'Property Administrator'. The main purpose and scope of the job and the duties and key responsibilities are set out in a job description annexed to the Claimant's Employment Agreement (page 122 of the Hearing Bundle).

11. Given the performance concerns that subsequently arose, we note that the documented contractual arrangements in relation to the Claimant's hours of work were expressed in flexible terms. She was contracted to work a minimum of 20 hours per week, increasing to up to 30 hours per week depending on the needs of the business. Her contracted days of work were not fixed, instead it was specified that she would work four days per week; as regards the times she would work, the Employment Agreement simply records that the Respondent's business working hours are Monday to Friday 9am to 5:30pm (page 112 of the Hearing Bundle). Monday was therefore not specified as a working day, though it seems to have been agreed in or around September 2017 that Monday would be one day she would work. However, if so, it was not reflected in a formal change to her contractual terms, nor again in 2018 when she seems to have requested not to work Mondays. It is apparent from the documents in the Hearing Bundle and from Ms Naigaonkar's and Mr Rane's evidence to the Tribunal that their expectations of the Claimant were not exactly aligned to the flexible arrangements as set out in the Employment Agreement. We find that they in fact preferred some degree of consistency and predictability in the Claimant's working pattern even if this was not the basis upon which the First Respondent had contracted to employ her. We find that they failed to communicate this to the Claimant and that their failure to do so played a part in the difficulties that subsequently arose, even if a series of unfortunate and unpredictable events in the Claimant's personal life were also a material factor in the difficulties and tensions that arose between the parties.

12. Insofar as Ms Naigaonkar and Mr Rane became frustrated, as we find they did, with the flexible arrangements in the Claimant's Employment Agreement, the Employment Agreement was never amended to provide the Respondents with greater certainty as to the Claimant's days or hours of work. Pursuant to Clause 17 of the Employment Agreement, in the event of sickness or other absence, the Claimant was required to inform her manager of her absence by 9am on the first day of the absence and, in the case of absences of uncertain duration, she was required to keep the Respondent regularly informed of its expected duration (page 114 of the Hearing Bundle). Otherwise, however, there were no provisions in the Claimant's Employment Agreement providing for advance notice of the Claimant's planned working pattern in any given week or month, including if childcare or other personal issues meant that the Claimant might be delayed starting work (as opposed to unable to work).

13. On 29 September 2017, Ms Naigaonkar wrote to the Claimant to inform her that with effect from 1 October 2017, her salary would increase by

£1,000 per annum, reflecting a more than 10% increase in her basic hourly rate of pay. Ms Naigaonkar acknowledged the Claimant's hard work.

14. Subsequently, on 2 December 2017, the Claimant was issued with a Certificate of Appreciation *"for the exceptional performance in work for going above and beyond the expected"*. She received a voucher for afternoon tea as well as an extra day's paid leave.

15. The first indication of any material issues of any concern is an email from Ms Naigaonkar to the Claimant dated 27 February 2018 in which she noted that the Claimant had taken the Property Team phone together with the keys to the Respondent's office. Ms Naigaonkar had seemingly endeavoured to contact the Claimant by telephone but had been unable to reach her. She noted in her email that,

> *"the phone issue have been discussed several times with yourself. And I would like to remind you to please leave the phone in the office at your desk when you leave on Fridays."*

16. There is evidence that Ms Naigaonkar continued to be irritated or at least inconvenienced by this issue when she subsequently met with the Claimant on 5 March 2018 and issued her with a first verbal warning. Whilst the Respondent's records in relation to this warning, which are at page 148 of the Hearing Bundle, do not expressly refer to issues in relation to the phone or keys, they do make general reference to the Claimant's performance having dropped *"lately"* and that the Claimant had been asked to refrain from chatting in the office.

17. At Tribunal the Claimant took issue with the *"Record of Performance, Observations and Warnings"* document at pages 148 – 150 of the Hearing Bundle which details three warnings issued to the Claimant in March 2018. She challenged Ms Naigaonkar and Mr Rane as to whether it was a contemporaneous record of discussions in March 2018, or had been prepared approximately one year later in connection with Mr Elliot's Grievance investigation.

18. As regards the 5 March 2018 warning, the Claimant challenged the documented reference to her having had a week's absence between 24 February 2018 and 2 March 2018. 24 and 25 February 2018 were a weekend. The Claimant's attendance record at page 540 of the Hearing Bundle evidences that she was absent from work on 26 and 27 February, then on annual leave on 28 February and 1 March, and that she took one day's unpaid leave on 2 March 2018. Numbered paragraph 1 of the comments section of the record at page 148 of the Hearing Bundle in relation to the warning issued on 5 March 2018 records that the Claimant was advised that part of the reason for action was that the Claimant had been absent, yet three out of the five days in question appear from the Respondent's own records in relation to the Claimant to have been authorised, paid and unpaid, leave. Furthermore, it is unclear to the Tribunal why the remaining two days that week were both noted as

absences in circumstances where the Claimant was only contracted to work four days per week. Ms Naigaonkar did not provide further clarity on the issue in her evidence to the Tribunal.

19. On 21 March 2018, the Claimant received a second verbal warning, combined with a one-month work review to assess the issues which had given rise to the verbal warning. The documented reasons for action are at numbered paragraphs 1 – 5 of the comments section of the record at pages 148 and 149 of the Hearing Bundle. The first stated reason is that the Claimant was unable to attend work on 17 and 18 March 2018 following a two day absence without prior approval or any sickness leave. In fact, 17 and 18 March 2018 were a Saturday and Sunday respectively. That error reinforces our sense that, as the Claimant asserts, the *"Record of Performance, Observations and Warnings"* document was prepared after the event. Indeed, even allowing for the fact that English is not Ms Naigaonkar's first language, elements of the document are expressed in the past tense, for example,

> *"note: this was the week when Haresh was not in office."*

20. Whilst we find that the *"Record of Performance, Observations and Warnings"* document is not the contemporaneous, dynamic document suggested by Ms Naigaonkar in her evidence to the Tribunal, unlike the Claimant we do not infer that it was only prepared in 2019. The document history at page 824 of the Hearing Bundle evidences that it was created on 26 March 2018, namely the day after the third of the warnings was issued.

21. The second warning provides the first evidence of concerns in relation to what were referred to throughout the Hearing as '*uninformed absences'*.

22. Just three working days later the Claimant was issued with what Ms Naigaonkar documented as a *"Final Warning and Action"*. The documented reason for action was that the Claimant was observed to be continuously chatting and that she had been asked to sit away *"from her usual work-desk"* so that she could focus on work and not disturb others.

23. None of the March 2018 warnings were issued in accordance with the Respondent's documented policies and procedures in its Employee Handbook. Verbal, written and final written warnings are identified as potential disciplinary penalties at page 761 of the Hearing Bundle and are identified as potential outcomes following a formal disciplinary investigation and disciplinary hearing as part of the disciplinary investigation process (page 759 of the Hearing Bundle). The procedure states that employees can expect to receive a written invitation to an investigation meeting at which they will have the ability to have a colleague or Trade Union Representative present. Where there is a disciplinary case to answer, the procedure envisages that employees will be notified in writing of the alleged conduct, performance, characteristics or other circumstances which have led the Respondent to contemplate taking relevant disciplinary action. Such notification will be given at least seven

working days in advance of any hearing. Employees will also receive copies of all relevant documentation and the right to be accompanied by a colleague or Trade Union Representative. The procedures provide that papers relating to any investigation and hearing will be held on the employee's file.

24. Ms Naigaonkar got herself into something of a muddle at Tribunal when asked at various points whether the March 2018 warnings were intended to be formal or informal warnings. She described them at different points as being formal and informal. We conclude that is partly because she recognised that the First Respondent had failed to follow its own documented procedures. Whilst we consider that the document at pages 148 – 150 of the Hearing Bundle is broadly indicative of the Respondent's concerns and of Ms Naigaonkar's efforts to give expression to the issues of concern that had arisen, the First Respondent's own documented safeguards, including a documented investigation and structured disciplinary hearing, were not adhered to. Similarly, papers relating to the investigation and hearing were not maintained, other than what was effectively Ms Naigaonkar's note to herself. We consider that her discussions with the Claimant did not have the structure that the record suggests. Given that Ms Naigaonkar struggled with whether the warnings were formal or informal and contradicted herself repeatedly on this issue in the course of cross examination, we cannot be confident that the Claimant would have understood at the time that she was being issued with warnings. Nor can we be confident that she had a clear or sufficient understanding at this time as to the nature of the Respondent's concerns or what was expected of her.

25. From April 2018 through to the end of August 2018, the Claimant was affected by a series of events in her personal life. Her son was undergoing medical assessment which resulted in him having surgery to his arm, following which there appears to have been complications or at least some delay in his recovery that extended into May or June 2018. There is some indication at pages 158 and 161 of the Hearing Bundle that the Claimant failed to adequately notify her intended absence from work at this time. For example, having seemingly asked to work from home on 7 and 8 June 2018, the Claimant was not in work on 11 June 2018; Ms Naigaonkar emailed to ask her whether she was intending to work from home that day and went on to note that the Claimant's attendance records on Zoho, the Respondent's HR system, were incomplete. She wrote,

> *"Please note that we have already discussed this in the past and we will be unable to make any adjustments to the attendance if it has not been brought to our attention within a week.*
>
> *We will also need to discuss about these absences and they will need to be reflected against your annual leaves available."*

26. Ms Naigaonkar's comments confirm that there had been at least some discussion around uninformed absence in March 2018, even if, as noted

above, those conversations were not as structured as the Respondents suggest. In an email to Ms Naigaonkar dated 12 June 2018 (page 266 of the Hearing Bundle) the Claimant took issue with the suggestion that she had failed to keep the Respondent fully informed and made reference to a conversation she had had with Mr Rane. Equally, however, she seemed to acknowledge that her text or email messages may not have not been received by the Respondents. She also referred to having left her telephone charger at home with a family member. We note that the Claimant acknowledged that she had been issued with a one-month review *"well over a month ago"*, but said that nothing had been mentioned since. She went on to say,

> *"Also, I have never been given any warnings."*

27. Her comments reinforce our conclusions above as to the Claimant's lack of understanding rather than indifference or, as Mr Singh summarises it in his closing submissions, taking advantage of the Respondents' indulgent approach.

28. Ms Naigaonkar's frustrations are evident in an email to the Claimant timed at 18:46 on 12 June 2018. Her communication style was much more direct than in previous emails and we find that the Claimant would have understood Ms Naigaonkar to be unhappy with her recent performance, not least because she referred to the Claimant as being in breach of her employment contract. In response to the Claimant's suggestion that she had not been issued with any warnings, Ms Naigaonkar wrote,

> *"I remember mentioning to you that we will not accept such behaviour going forward and that this would be a final warning to which you also agreed. …"*

29. She went on to say,

> *"The rate at which you are away from work is costing highly towards the smooth running of the business activity."*

30. She suggested that the Claimant had only attended work for approximately 70% of her contracted days. The Claimant challenged this at Tribunal. Ultimately, neither party brought clarity or certainty to this aspect; the 70% calculation certainly was not validated by Ms Naigaonkar when the Tribunal endeavoured to work through it with her. The Claimant and Ms Naigaonkar met on 18 June 2018 and Ms Naigaonkar issued a follow up email on 27 June 2018 in which she identified three specific concerns:

- Frequent and uninformed absence from work;
- Lack of work handover before going on planned holidays / leave; and
- Only 70% availability for work since the beginning of the year.

31. Ms Naigaonkar noted that the Claimant had already been given verbal warnings regarding the same issues and her email to the Claimant concluded,

> *"This is a formal and final notice given to you in writing. If we continue to observe the above issues, you will be dismissed from work with immediate effect with no further warning given."*

32. Once again, that warning, which we find was a formal final written warning, was issued in circumstances where the First Respondent had not followed its own documented procedures. Whilst the Claimant did not appeal against the warning, neither did Ms Naigaonkar inform the Claimant in her email that the Claimant had any right to appeal against the warning if she was dissatisfied with the decision.

33. The Claimant continued to experience personal issues in her life in the weeks after she was issued with the final written warning. On 4 and 5 July 2018, the Claimant was sick with a tummy upset. She received a supportive response from Ms Naigaonkar, consistent with the Respondent's contention in these proceedings that its concerns were not in relation to the Claimant's absences, rather her failure to inform them of her absences.

34. On 18 July 2018, the Claimant saw her GP and subsequently reported to Ms Naigaonkar that she had experienced a *"melt down".* She later disclosed that her Aunt had died in or around June 2018 but that she had not attended the funeral because she was subject to a final written warning. She also reported that she had childcare issues, was generally stressed and that her work laptop was broken. Ms Naigaonkar's email of 19 July 2018 evidences that she was flexible and understanding. She wrote,

> *"Taking time off is not issue, but who is covering the work is what we have always talked about."*

35. The Claimant was certified unfit for work by her GP until 27 July 2018. She updated Ms Naigaonkar on her situation on 27 July 2018, including about childcare issues she was experiencing ahead of the imminent school summer holidays. She asked to condense her contracted hours into three days. Ms Naigaonkar confirmed that they would discuss the matter at a return to work meeting. The record of their subsequent meeting and discussion on 30 July 2018 is at pages 196 – 198 of the Hearing Bundle. The text in the bottom left hand corner of the document indicates that the version then in use was created on 24 October 2017 and was its third iteration. We note that a similar record was not completed after the Claimant returned to work following her miscarriage in November 2018. We return to this. Page 198 of the Hearing Bundle confirms that the Claimant's request to condense her hours into three days was agreed to at the meeting.

36. Towards the end of the school holidays, the Claimant did not go into work after her son was sick in the car. Ms Naigaonkar wrote,

> *"Ok* [no worries]*. Hope he feels better."*

37. Ms Naigaonkar was likewise supportive and understanding when the Claimant was delayed getting to work on 6 September 2018 as a result of an accident. She messaged,

> *"Don't worry. Take your time."*

38. The Claimant became pregnant in the second or third week of August 2018. The Claimant alleges that she notified Ms Naigaonkar verbally of her pregnancy on 11 September 2018. At 18:15 on 11 September 2018, the Claimant emailed Ms Naigaonkar as follows,

> *"Hello,*
>
> *I was at the hospital until around 4pm. I have to go to my GP for a follow up tomorrow.*
>
> *I should be fine to return to work on Thursday for the property inspections. I hope this is ok."*

39. Ms Naigaonkar responded at 15:22 on 12 September 2018. She wrote,

> *"Hi Chantelle, sorry that I never got a chance to reply to your email.*
>
> *I hope things are fine with you and that you are in good health.*
>
> *Please carry out the property inspections only if your health is good.*
>
> *Take care."*

40. Whilst the Claimant did not state explicitly in her email of 11 September 2018 that she was pregnant, we find that was because she had already spoken with Ms Naigaonkar earlier in the day to let her know that she was pregnant and that she needed to attend hospital because she had concerns in relation to the pregnancy. Indeed, it would have been odd, as well as out of character given her 'chatty' personality, for the Claimant to have written as she did and to have omitted any mention of the reason for her hospital appointment unless, as we find, she had already informed Ms Naigaonkar of her pregnancy. We find that Ms Naigaonkar responded as she did, and in particular that she did not congratulate the Claimant on the news of her pregnancy, because she was mindful that the Claimant was potentially experiencing complications or at least was worried about the pregnancy. She focused therefore on the Claimant's welfare and wellbeing, telling her to only undertook the property inspections if she was well enough to do so.

41. A few days later, the Claimant's property flooded. She was unable to come into work on Monday 24 September 2018 as her Landlord was attending the property to sort out the power supply. She had apparently been without power for a week and a half.

42. On 1 October 2018, the Claimant wrote an email to Ms Naigaonkar at 08:10. She wrote,

> *"Morning Pradnya, I have made a Doctor's appointment for 10 this morning, I am having really bad morning sickness and need to see if the Doctor can help. I will come to the office straight after my appointment. I hope this is ok."*

43. Both Ms Naigaonkar and Mr Rane's evidence to the Tribunal was that they did not understand the term *"morning sickness"* as relating to specifically to pregnancy. Whilst Mr Rane has children, it is not necessary that we make any specific finding in the matter. The Claimant's email was not copied to Mr Rane and both he and Ms Naigaonkar gave evidence to the Tribunal that she would have dealt with any personal issues affecting the Claimant as a woman. We have already found that the Claimant informed Ms Naigaonkar on 11 September 2018 that she was pregnant and we further find that whether or not Ms Naigaonkar was familiar with the term *"morning sickness"*, that she would have understood the medical appointment on 1 October 2018 to relate to the Claimant's pregnancy. In our view, the fact that the Claimant did not refer in that email to being pregnant or that this was the reason why she had a medical appointment provides further confirmation that the Claimant had already disclosed to Ms Naigaonkar that she was pregnant.

44. The Claimant updated Ms Naigaonkar following the appointment with her GP. She said she had been prescribed medication to help with her morning sickness, stated that the medication could make her drowsy so that she would be unable to drive to work the following day, and asked instead whether she should work from home. We find that the Claimant's failure to attend work on 1 October 2018 was as a result of illness relating to her pregnancy. Ms Naigaonkar was evidently understanding of her situation; in an email to the Claimant a few minutes later she wrote,

> *"Hope you feel better soon. Please only travel to work if you feel all well with your health."*

45. The Claimant worked from home on 5 October 2018 as her bath was being repaired following the flood at the property some weeks earlier.

46. On 29 October 2018, the Claimant went to hospital as she was bleeding. In a text message to Ms Naigaonkar she asked her to let her know that she had received her message. We find that was because she was concerned that she was the subject of a live final written warning and that an issue had arisen earlier in the year as to whether messages had been received. A few hours later, the Claimant sent a text message to Ms

Naigaonkar to inform her that following a scan, her baby's heartbeat could not be found. She said,

> *"Not really sure what happens now. I will let you know but I am guessing I will need to have a couple of days off. Sorry, Chantelle."*

47. Ms Naigaonkar responded by text,

> *"Sorry to know this. I would recommend you to put down as sick leave for a few weeks til things get better with your health. Please take care of yourself. Good luck."*

48. The Claimant responded to say that she was waiting for her partner to come home and wrote,

> *"… I will keep you posted."*

49. On 1 November 2018 the Claimant's pregnancy ended in miscarriage.

50. The next communication between the Claimant and Ms Naigaonkar was on 9 November 2018. This was after the date, all other things being equal, when the Claimant might otherwise have notified ongoing sickness absence by way of the provision of a fit note. Equally, however, we note Ms Naigaonkar had not been in contact with the Claimant to enquire how she was. That accords with the Claimant's understanding of Ms Naigaonkar's message, namely, that the Claimant should take time to recover her health and that there was no fixed timescale within which she expected to hear back from the Claimant. It is common ground between the parties that a fit note would have been required by 6 November 2018. The Claimant underwent surgery on 1 November 2018 and had a follow up appointment with her GP on 8 November 2018 when she was signed off work until 16 November 2018. The Claimant confirmed this in an email to Ms Naigaonkar on 9 November 2018 in which she asked if Ms Naigaonkar might let colleagues in the office know what had happened so that it would not be difficult for her when she returned to work.

51. We can understand why the Claimant was upset to receive the following email from Ms Naigaonkar on 9 November 2018 at 14:31,

> *"Thank you for your email and attached screen shot. We are very sorry for the recent health issue and losses at personal level you have experienced. I would like to note that you have been absent from work since 29 October 2018 without any notification of your absence. Today is the first communication we have received from you with regards to absence til 16 November. This is having adverse impact on the business.*
>
> *We look forward to you returning to work on 18 November 2018. It makes sense that we have a meeting on 18 November at 10am to discuss your personal situation and its impact on your work."*

52. In his evidence to the Tribunal, Mr Rane described the email as *"harsh".*

53. The Claimant criticises the email, firstly on the basis that it suggests she had not offered the Respondent any explanation for her absence. In his written submissions, Mr Singh acknowledges that interpretation, though we think the more natural interpretation, and that intended by Ms Naigaonkar, was that they had not heard from the Claimant since the exchange of text messages on 29 October 2018. In that respect, the email is factually correct; the Claimant's email of 9 November 2018 was the first communication which the Respondent had received from the Claimant since 29 October 2018.

54. We find that the Claimant's reasons for not being in contact with the Respondent were two-fold. Firstly, she understood Ms Naigaonkar to have effectively told her to take such time off as she needed to recover from her miscarriage. Secondly, the Claimant was unwell as a result of the miscarriage, including as a result of surgery on 1 November 2018. We accept her evidence, which in any event was not challenged, that when she saw her GP on 8 November 2018, apart from the surgery, this was the first time she had left home since 29 October 2018, that she was in some pain and also dealing with the understandable emotional effects of the miscarriage. The Claimant explained all of this in a follow up email to Ms Naigaonkar at 16:42 on 9 November 2018. She explained that her two children had stayed with their maternal grandmother that week.

55. At paragraph 19 of his statement, Mr Rane refers to the Claimant's work during this absence, and possibly earlier absences, being covered by another employee, Charlotte Hamilton-Hastings. He refers to this being necessitated by the Claimant's,

> *"unpredictable attendance and uninformed absences."*

It is revealing that he should equate absence as a result of a miscarriage with unpredictable attendance. In any event, Ms Hamilton-Hastings was covering an informed pregnancy related absence, albeit where the fit note certifying that absence was submitted three days after its due date for submission.

56. The Claimant complains that she was invited to attend a disciplinary meeting on 19 November 2018. Whilst Ms Naigaonkar's email of 9 November 2018 undoubtedly conveyed that the Respondent had concerns, the meeting was not specifically identified as a disciplinary meeting. On the other hand, we also bear in mind that the March 2018 meetings, which resulted in disciplinary warnings, were not notified in advance as disciplinary meetings.

57. As we shall come back to, the meeting scheduled for 19 November 2018 eventually took place on 21 November 2018. Ms Naigaonkar summarised the outcome of the meeting in an email to the Claimant dated 28

November 2018 (page 247 of the Hearing Bundle). Her email is entitled *"21.11.2018 Return to Work Meeting Summary"* and the documented reason for the meeting was given as *"Return to Work meeting following uninformed absence"*.

58. In the collective experience of this Tribunal, a return to work meeting following a period of sickness absence will ordinarily be a supportive discussion during which an employer seeks to understand any sickness issues affecting the employee, including whether they are fully recovered or have ongoing health issues, and how they might be supported in maintaining their return to work. We find that Ms Naigaonkar's email of 9 November 2018 was not a supportive communication or indicative of a supportive discussion to come. The Respondent's Return to Work interview record form was not used as the structure for the discussions that eventually took place. We think that is also significant.

59. We find that the Claimant reasonably came to the view that Ms Naigaonkar's email of 9 November 2018 was not supportive, but instead to her detriment, in that it communicated to her that she was potentially in trouble in circumstances where she had just lost her unborn child and, at Ms Naigaonkar's suggestion taken time away from work.

60. It is not in dispute between the parties that the Claimant met with Mr Rane, rather than Ms Naigaonkar, on 19 November 2018. The Claimant alleges that Mr Rane communicated an intention to dismiss her on 19 November 2018, but when she challenged him he suspended her instead for two days on full pay. The Claimant consulted Hendon Citizen's Advice Bureau (CAB) on 20 November 2018. The notes of that consultation are at pages 244 and 245 of the Hearing Bundle. Notwithstanding Mr Rane's view of the situation referred to at paragraph 55 above, the notes tend to support Mr Rane's account that the Claimant became distressed in the discussion to the point that he suggested she take a couple of days off until she felt able to return, to which the Claimant agreed.

61. We note that in the Claimant's email to Ms Naigaonkar dated 12 November 2018, the Claimant had expressed some concern that her absence should not have affected her position because,

> *"…that would seem unfair to me".*

Ms Naigaonkar's proposal of a meeting was not a supportive act on her part or on the part of Mr Rane. Whilst it is entirely understandable that the Claimant would have been apprehensive about the meeting, we find it explains why the Claimant came to perceive the discussion on 19 November 2018 as she has. She did not report to Hendon Citizen's Advice Bureau on 20 November 2018 that she had been dismissed the previous day, rather that she *"was asked to leave".* The CAB notes also record the following,

> *"Told she was told not to return to work until she was better".*

"CL. feels she may be unfairly dismissed".

62. That is not to say that we consider Mr Rane to have been friendly or supportive on 19 November 2018, however the notes do not corroborate that Mr Rane had communicated, in terms, an intention to dismiss her and had only been dissuaded from this course when challenged by the Claimant. The Claimant was in a state of some distress on 19 November 2018 and in the days leading up to the meeting she had been worrying that she would not have a job to return to. We have already found that it was playing on her mind that she was subject to a current final written warning. In circumstances where she believed that her employment was at risk, we find that she genuinely came to believe that Mr Rane had threatened her with dismissal on 19 November 2018. Mr Rane viewed her absence in November as a continuation of a pattern of unpredictable attendance and, for reasons we shall come to, whilst we conclude that he was by then minded to terminate her employment, whatever he said to her on 19 November 2018, and regardless of the fact he viewed her absence in the terms we have noted, he did not terminate her employment or state a firm intention to do so.

63. The meeting scheduled for 19 November 2018 resumed on Wednesday 21 November 2018, this time with both Mr Rane and Ms Naigaonkar in attendance. As noted already, the documented reason for the meeting was a *"Return to Work meeting following uninformed absence".* By then, of course, they would have had an opportunity to review Ms Naigaonkar's text messages with the Claimant on 29 October 2018. Even then, they were unwilling to accept, as we find they should have done, either that Ms Naigaonkar effectively dispensed with any requirement for the Claimant to submit a fit note or at the very least that there had been miscommunication between them on the issue for which the Claimant was not to blame. We find there was no reasonable or proper basis for the Respondent to conclude that there had been an uninformed absence. Whilst the Respondent decided to treat the Claimant's failure to submit a fit note within the requisite qualifying period as an exception, its stated meeting conclusion was that,

> *"Chantelle should treat this as a warning towards any further uninformed absence from work".*

64. The status and duration of the warning was unclear and the Claimant was not offered any formal right of appeal. Ms Naigaonkar's email did conclude,

> *"If there are any disagreements in the above email, please let me know."*

65. We deal briefly with the allegations at paragraphs 10.3.5 to 10.3.8 of the List of Issues in the Case Management Summary. The Claimant alleges that the Respondent embarked upon a campaign to make her working life

difficult. She has failed to discharge the burden of proof upon her in this regard. She alleges that twice in September 2018, and again in January 2019, her laptop was changed. In fact her laptop was sent for repair in September 2018 as it was damaged whilst in her possession. The circumstances are in dispute; however, we find the most likely explanation is that a fizzy drink was spilled on the laptop, necessitating repairs to it. It is correct that the laptop was changed again in January 2019 as part of a company wide upgrade to laptops. The Claimant further alleges that in October 2018 her desk was moved. The Respondent operates a hot desking policy, albeit we accept it was convenient for the Claimant to work from the same desk for a variety of reasons. The alleged desk move is referred to very briefly at paragraph 385 of the Claimant's witness statement; no further details were provided at Tribunal. Ms Naigaonkar had no recollection of the matter at all. There is insufficient evidence available to the Tribunal from which it might properly make specific findings on the matter. Finally, the Claimant alleges that following her return to work on 21 November 2018 she was refused permission to change her chair for a more comfortable one. It seems to be suggested that on her return to the office, the Claimant was, perhaps understandably, creating some noise or minor disturbance. We find that Ms Naigaonkar became a little frustrated with her and asked the Claimant to sit down, telling her to remain seated when the Claimant indicated she wished to swap her chair. However, we do not consider that is to be equated with the Claimant being refused permission to change her chair that day. There is no evidence to suggest that other ergonomic chairs in the office were in use that day or that the Claimant was prevented from changing her chair once the situation at work had settled and any fleeting irritation had abated. As described, it does not support that there was a campaign to make the Claimant's working life difficult.

66. The Claimant was on annual leave from 21 December 2018 to 8 January 2019. She and Mr Rane met on 10 January 2019. It was not a planned meeting and, accordingly, there are no contemporaneous documents such as a calendar entry or meeting invite to indicate the nature or purpose of the meeting. The Claimant alleges that Mr Rane dismissed her without warning on the stated grounds there was insufficient work for her to do. That is disputed by Mr Rane who claims that the Claimant resigned her employment. He alleges that in the course of a casual catch up meeting with the Claimant, about five minutes into the meeting, the Claimant got up and stormed out of the meeting room. Mr Rane's evidence is that he thought the Claimant would return in perhaps an hour or so after whatever had made her upset had settled.

67. We are faced with a direct conflict in the parties' evidence. Only the Claimant and Mr Rane were privy to what passed between them that day.

68. In coming to a conclusion as to what was said, we have weighed in the balance that in the aftermath of their discussion on 19 November 2018 the Claimant came to the believe that Mr Rane had moved to dismiss her. We have given careful consideration to whether the Claimant is also mistaken

as to what was said on 10 January 2019. However, we also weigh in the balance that when the Claimant emerged from the meeting she immediately informed Ms Hamilton-Hastings that she had been dismissed. Of course, if the Claimant misunderstood what Mr Rane was saying to her, any comments to Ms Hamilton-Hastings would amount to no more than a reiteration of her misunderstanding. Nevertheless, the Claimant has been consistent in her account as to what happened during that meeting. She sent WhatsApp messages to family and / or friends as she left the Respondent's offices informing them that she had been dismissed. She also spoke to Mr Moore and Ms Fields and recounted that she had been dismissed. We reject any suggestion by the Respondents that these actions were part of a deliberate fiction on the Claimant's part. The following day she spoke to Hendon CAB when she provided a consistent account of having been dismissed.

69. On 11 January 2019, the Claimant emailed Ms Naigaonkar and Mr Rane as follows,

> *"Following yesterday's unannounced meeting, you have informed that my employment with you has been terminated due to the fact that there is no longer any work for me to do."*

70. Mr Rane delayed responding to the Claimant's email of 11 January 2019 until Monday 14 January 2019. In his email he does not dispute that the Claimant had been dismissed or the stated reason given by her for her dismissal. He wrote,

> *"I would like to confirm that your employment with Willowbank* ***has been terminated*** *with effect from 10 January 2019"*

(our emphasis).

71. He went on to acknowledge the Claimant's right to one week's notice and that her final leaving date would be 16 January 2019. If he believed that the Claimant had simply stormed out of the Respondent's offices and resigned her employment he might have said so in this email, particularly having delayed until 14 January 2019 to send it. He sought to suggest at Tribunal that the Claimant was laying a trap for him, in which case he might have put the record straight. We think it relevant that he acknowledged the Claimant was entitled to one week's notice in circumstances where it is alleged that she had stormed off. Having had Friday 11 January 2019 and the weekend to reflect on that matter, we find that Mr Rane's email of 14 January 2019 amounted to an acknowledgement that the First Respondent had terminated the Claimant's employment in circumstances where he recognised that it did not have grounds to do so without notice or payment in lieu of notice.

72. When the matter was subsequently investigated by Mr Elliot, Mr Rane told him that the Respondent,

> *"…had a similar experience with her in the past and she would usually come back to work a day later."*

That was not his evidence at Tribunal. There is no evidence before us to support any such history of behaviour on the part of the Claimant. We conclude that Mr Rane was attempting to shore up the First Respondent's position. We draw further support for our findings as to what transpired on 10 January 2019 from Mr Rane's failure to respond to two emails from the Claimant on 17 January 2019 in which she specifically asked what reason for leaving she should give to a prospective employer (page 344 of the Hearing Bundle).

73. We further note that the First Respondent took steps to disable the Claimant's password access to its IT systems. We find, on the balance of probabilities, that this was done on 10 January 2019 and that this does not sit with Mr Rane's comments to Mr Elliot above that he thought the Claimant had simply stormed off and might return to the office in due course, rather that having dismissed her the First Respondent was taking immediate action to disable her access to its IT systems.

74. In conclusion and for these reasons therefore, we find that the Claimant did not resign her employment on 10 January 2019 as alleged by the Respondent, but that she was dismissed by Mr Rane with immediate effect and with no expectation that she should return to the office during her notice period. The Respondent had no cause to dismiss the Claimant on 10 January 2019.

Law and Conclusions

75. It follows from our findings at paragraphs 53, 62, and 65 above that the Claimant's complaints identified at paragraphs 10.3.1, 10.3.3 and 10.3.5 to 10.3.8 of the List of Issues fail as the Claimant has failed to establish the primary facts upon which she relies in support of those complaints.

Section 18 of the Equality Act 2010

76. S.18(2) EqA provides as follows:

> "(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably–
>
> (a) because of the pregnancy, or
> (b) because of illness suffered by her as a result of it."

77. S.18(5) EqA goes on to provide:

> "(5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the

> treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).

78. The operative causal test under s.18(2) EqA is *"because"*.

79. In Nagarajan v London Regional Transport [2000], Lord Nicholls when giving Judgment in an appeal in a race discrimination case under the Race Relations Act 1976, said,

> "*Thus, in every case it is necessary to enquire why the complainant received less favourable treatment. This is the crucial question. Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job? Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator."*

80. Nagarajan was referred to by the Supreme Court in R(E) v Governing Body of JFS(SC)(E) [2010]. In that case Baroness Hale observed,

> *"The distinction between the two types of "why" question is plain enough: one is what has caused the treatment in question and one is its motive or purpose. The former is important and the latter is not."*

81. The legal position is explored in further helpful detail at paragraph 80 onwards of Mr Singh's written submissions.

82. S.18 EqA is distinct from s.13 EqA in that a complainant under s.18 need only establish that they have experienced unfavourable treatment on the prohibited ground as opposed to less favourable treatment. It is not a comparative exercise that requires the identification of actual, hypothetical or evidential comparators. It seems to us that Mr Elliot potentially fell into error when dealing with the Claimant's Grievance in so far as he seems to have been influenced in his conclusions by the fact, he said, that the Claimant had not been treated less favourably than the Respondent would have treated a man in her situation (page 449 of the Hearing Bundle). Be that as it may, as set out above, this Tribunal is concerned with the reasons why, if she was treated unfavourably, the Claimant was treated as she was. That requires some consideration of the Respondents' mental processes; the Claimant's claims do not succeed simply because she was pregnant/suffered illness as a result of pregnancy and experienced unfavourable treatment. Nor do they succeed simply because but for being pregnant/suffering illness as a result of pregnancy she would not have experienced unfavourable treatment. These are points Mr Singh understandably makes in his written submissions.

83. We have given careful thought to whether the Claimant has established primary facts from which we might properly conclude that she was discriminated against such that the burden shifts to the Respondents to

prove that her pregnancy or illness suffered as a result of the pregnancy played no part whatever in her treatment. In our judgement, for the reasons below, the Claimant has discharged the primary burden upon her in relation to Issues 10.3.2, 10.3.4 and 10.3.9.

84. As to whether the Claimant was treated unfavourably, she may not, on 9 November 2018, have been invited to a disciplinary meeting, but she was invited to attend a meeting which was intended and reasonably understood by her to be a meeting to discuss concerns. In our judgment, that was unfavourable treatment. It was not a supportive communication or a supportive return to work meeting. The 'harsh' email of 9 November 2018 was not a communication we would expect a fair and reasonable employer to send to an employee who had recently suffered a miscarriage, let alone in circumstances where Ms Naigaonkar had suggested that she should take time away from work. If, as the Respondents suggest, they were solely concerned that this was a further uninformed absence, they might have contacted the Claimant at any time before she contacted them on 9 November 2018 to enquire as to the reasons for her continued absence. The only logical explanation for the Respondent's failure to contact the Claimant in the intervening period is that Ms Naigaonkar, at least, understood that the Claimant was recovering following a miscarriage and that she was not expecting to hear from her. We infer from the change in position, including the harsh tone of the 9 November 2018 email, that the Claimant's absence, which was as a result of her pregnancy and illness suffered by reason of it, was becoming an inconvenience. Mr Rane's stated view in these proceedings is that Ms Hamilton-Hastings was having to cover the Claimant's work due to her, *"unpredictable attendance and uninformed absences."* We particularly note, in her email of 9 November 2018, that Ms Naigaonkar's identified that the planned return to work meeting would be to "*discuss your personal situation and its impact on your work."* In our judgment, those comments take the matter beyond simply how absences were being notified. The Claimant's 'personal situation' at that point in time was that she was absent from work with illness connected to a failed pregnancy that could not have been predicted, and which does not justify Mr Rane grouping it with what he considered to be other unpredictable attendance on her part. In our judgment her pregnancy and miscarriage proved a tipping point in the relationship and we conclude that Mr Rane had resolved by no later than 9 November 2018 that the First Respondent should part company with the Claimant, albeit he recognised that legally (and perhaps morally) it could not do so immediately and certainly not during her protected period.

85. On the one hand the Respondent seeks to rely upon the 'exception' made following the meeting on 21 November 2019 as evidence of its continued understanding, but the fact that the First Respondent proceeded to issue a formal warning to the Claimant contradicts that a genuine exception was being made and evidences instead that a line had not been drawn under any misunderstanding, certainly not in Mr Rane's mind. Moreover, if as the Respondents claim, an exception was being made in relation to this latest alleged uninformed absence it begs the question what the warning

was in relation to. We are firmly of the view that Mr Rane had reached the end of the road in relation to the Claimant. The warning was plainly unfavourable treatment. In our judgment the fact it was unwarranted and was issued following an unsupportive return to work meeting focused on the Claimant's 'personal situation' and that the usual documented approach to return to work meetings was dispensed with are primary facts from which we can properly infer, in the absence of a non-discriminatory explanation from the Respondent, that she was treated unfavourably because of pregnancy and/or illness suffered as a result of it. The explanation put forward by the Respondent is that the sole reason for the meeting and warning was uninformed absence on the part of the Claimant. However, given the text messages of 29 October 2018, the Claimant's absence was not uninformed. There is no evidence of other uninformed absences after the Claimant had been issued with the final written warning in June 2018, even if there were occasions when personal issues affecting the Claimant meant she could not attend work or needed to flex her hours in accordance with her documented flexible contractual working arrangement. The Respondent has failed to satisfy the Tribunal that the 'personal situation' referred to by Ms Naigaonkar on 9 November 2018, namely her pregnancy and ensuring ill health and miscarriage, were not a reason for the unfavourable treatment complained of.

86. The Respondents' case in these proceedings is that the Claimant resigned her employment on 10 January 2019. In fact she was dismissed. Unlike 19 November 2018, there was no room for misunderstanding. Mr Rane intended to and did dismiss her. The absence of any explanation from the Respondents for the Claimant's dismissal provides sufficient grounds in itself for an adverse inference to be drawn or for the Tribunal to conclude that the reason why the Claimant was dismissed because she had been pregnant and / or suffered illness as a result of pregnancy, and that it was in implementation of a decision taken in the protected period. However, in our judgement, Mr Rane's perception of the impact of the Claimant's absence (referred to above), the unwarranted warning of 21 November 2018 (confirmed on 28 November 2018), Mr Rane's failure to contradict the Claimant on 14 January 2019 when she said she had been dismissed, his failure to respond to her emails of 17 January 2019 asking for confirmation of the reasons for her dismissal, and above all, his efforts to suggest that the Claimant had resigned her employment (including that the Respondent had previous experience of her storming out) all support an adverse inference being drawn.

87. The Tribunal has kept in mind throughout its discussions that it is concerned with the reasons why the Respondent treated the Claimant unfavourably, including why it dismissed her. In our judgment it was not because of uninformed absence or other performance issues. Previous uninformed absences provide context in this case but do not supply the reason for the Claimant's treatment in November 2018 and January 2019 As regards her dismissal, there is no evidence before the Tribunal that there was any reduction in work load at the First Respondent to justify her dismissal. In circumstances where the Respondents' position is that the

Claimant resigned her employment, it has provided no explanation for dismissing her, let alone a non-discriminatory explanation. We can identify no other reason for her dismissal other than that Mr Rane had resolved by no later than 9 November 2018 to bring her employment with the First Respondent to an end because her pregnancy and subsequent pregnancy related absence were an inconvenience and that he acted on this when he met with the Claimant on 10 January 2019.

88. Finally, in coming to our judgment, we have also looked to the period immediately prior to when the Respondent learned of the Claimant's pregnancy and subsequent miscarriage. There is no indication in that period that the First Respondent had lost trust and confidence in her which might explain her subsequent treatment and dismissal. Notwithstanding a final written warning had been issued in June 2018 the parties had evidently moved beyond that warning as the Claimant was appropriately notifying issues as they arose and for the Respondent's part it agreed to her condensing her contracted hours over the school summer holidays into three days. The relationship was working even if there had been various frustrations and bumps in the road and there was a live warning. The only material development in autumn 2018 was that the Claimant became pregnant and then suffered a miscarriage.

89. For all these reasons we uphold the complaints identified at paragraphs 10.3.2, 10.3.4 and 10.3.9 of the List of Issues, in so far as those complaints are pursued under s.18 EqA.

90. The complaints are all out of time. We consider that insofar as the Claimant's dismissal was in implementation of a decision taken by Mr Rane in the protected period, that it is part of a continuing act which commenced with Ms Naigaonkar's invitation to the Claimant on 9 November 2018 to attend a meeting on her return to work to discuss their concerns.

91. The primary time limit under s.123(1)(a) EqA within which proceedings must be brought (or at least notified to Acas under the Early Conciliation Scheme) is three months starting with the date of the act (or the last of a continuation of acts) to which the complaint relates, though the Tribunal retains the discretion to allow a claim to be brought within such other period that it thinks just and equitable. The primary time limit in this case for the Claimant to notify her potential claims to Acas was 15 April 2019. The Claimant was advised by Hendon CAB in September 2018 and again on 11 January 2019 that she must bring a claim within three months. However, on 17 January 2019, she was given details of Early Conciliation albeit told "not to go into it yet". Furthermore, the Claimant's unchallenged evidence (paragraph 478 of her witness statement) was that she was signed off with stress and depression in January 2019 and continued to be signed off until her son was born in October 2019. She had also raised her Grievance on 6 February 2019 and did not receive the outcome to that Grievance until the afternoon of 30 April 2019 which was after the primary time limit had passed. Until she received that outcome she would not

have known what explanation was being provided by the Respondents in relation to her various concerns, specifically in relation to the complaints we have upheld, and whether therefore the Respondent was willing to offer any acknowledgement or apology or redress in respect of them.

92. We conclude that these three factors in combination led the Claimant to hold off notifying her claims to Acas, but that she moved very swiftly to notify her claims to Acas by contacting it under the Early Conciliation Scheme on 2 May 2019, namely within two days of receiving the Grievance outcome. The Early Conciliation Certificate was issued on 3 May 2019 and her claim was presented to the Employment Tribunals on 7 May 2019. The Claimant therefore delayed 18 days in notifying her potential claims to Acas under the Early Conciliation Scheme. Had she notified them on 15 April 2019 she would have had until at least 15 May 2019 to present a Claim to the Tribunals.

93. In deciding whether it would be just and equitable to extend time to permit the claim to be pursued out of time, we have regard to the initial advice given by Hendon CAB that any claim needed to be notified within three months from the date of any disciplinary hearing and, further, that the primary time limit is not something to be casually disregarded by a party or the Tribunal. However, there are also public policy considerations to weigh in the balance, namely society's interest in protecting the rights of pregnant women who are recognised to be particularly vulnerable and deserving of protection. The Claimant did not have access to legal advice, even if she had been advised by the CAB, and she was suffering depression as well as the emotional effects of believing, correctly, that she had been dismissed because of her pregnancy and miscarriage. By February 2019 she was likely pregnant again. There is no obvious prejudice to the Respondent in extending time, other than the inevitable prejudice of now being liable to provide a remedy to the Claimant in respect of its discriminatory treatment of her. To deny the Claimant an effective remedy beyond the findings and conclusion in this Judgment would represent a significant injustice to her. The short delay has not had any impact upon the evidence in this case, or the Tribunal's ability to conduct a fair Hearing (DPP v Marshal [1998] IRLR 494). There is no presumption in favour of extending time; however, the Claimant has persuaded us that as an exception to the rule it would be just and equitable to extend time in her case.

Unfair Dismissal

94. Subject to any qualifying period of employment, an employee has the right not to be unfairly dismissed by her employer (s.94(1) of ERA). The right not to be unfairly dismissed is ordinarily subject to a requirement that the employee has been continuously employed for two years by the effective date of termination of employment. In certain circumstances an employee's dismissal is automatically unfair. S.99 of ERA provides that a dismissal is automatically unfair if the reason, or principal reason for the dismissal is of a prescribed kind and relates, amongst other things, to

pregnancy. S.99 is to be read in conjunction with Regulation 20 of MAPLE. The two-year qualifying service requirement does not apply in such cases.

95. Employees additionally enjoy protection under s47C of ERA against detrimental treatment for the same reason.

96. There is seemingly no Appellant Case Law that directly considers the test for causation under s.99 and s.47C of ERA, an observation made by Employment Judge Tynan sitting with a differently constituted Tribunal in the case of Rigney v Larchmont Limited t/a Cunningham Estate Agents Case Number: 3400386/2017, in which that Tribunal noted the decision of the Employment Appeal Tribunal in Intelligent Applications Limited v Wilson EAT 412/92 and concluded that s.99 and s.47C of ERA import a broader test of causation than under s.18 of EqA. We are grateful to Mr Singh for addressing the issue at our invitation at paragraphs 83 to 87 of his written submissions. In the event, we are not troubled by any potential distinction in this case. If, as Mr Singh contends, the causal test under ERA is essentially the same as under s.18 EqA and the Tribunal is applying the 'reasons why' test identified in Nagarajan, namely examining the mental processes of the alleged discriminator, for all the reasons above, the claims under ERA are equally well founded. For the avoidance of doubt, in our judgment the matters identified as unfavourable treatment above (Issues 10.3.2 and 10.3.4) also meet the test of detriment set out in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11. Given that the s.18 EqA complaint succeeds, we have not felt it necessary to come to any judgement as to whether or not the Claimant should be permitted to pursue her ERA complaints out of time.

97. The case will be listed for a Remedy Hearing. Notice of that Hearing, together with any Case Management Orders, will follow separately.

1 November 2021

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Employment Judge **Tynan**

Sent to the parties on: ...10.11.2021.....

.....GDJ.....

For the Tribunal Office