EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Ms P Stranska	**v**	One Life Management Solutions Ltd

Heard at: Cambridge **On:** 29, 30 and 31 January 2018

Before: Employment Judge GP Sigsworth
Members: Ms S Stones and Mr R Eyre

Appearances
For the Claimant: Ms R Hodgkin of Counsel
For the Respondent: Ms L Robinson of Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The Respondent unlawfully discriminated against the Claimant by treating her unfavourably because of her pregnancy, in respect of one allegation only.

2. In respect of all other allegations of unfavourable treatment because of her pregnancy, the Claimant has not made out her claim.

3. The Respondent did not unlawfully discriminate against the Claimant because of her sex.

4. The Claimant was not constructively unfairly dismissed by the Respondent.

5. The Respondent is ordered to pay to the Claimant the sum of £2,500.00 in compensation for injury to feelings.

REASONS

1. The legal claims to be determined at this hearing are as follows:

1.1 Unfavourable treatment because of pregnancy in the protected period, under section 18 of the Equality Act 2010. The protected period is from 14 April 2016 (beginning of the pregnancy) until 2 July 2016 (two weeks after the Claimant's miscarriage).

1.2 Less favourable treatment because of her sex (a hypothetical comparator), under section 13 of the Equality Act 2010.

1.3 Constructive unfair dismissal by reference to the allegations of discrimination. No last straw is relied upon.

1.4 For particulars of the allegations made, we refer to the agreed list of issues, and to our conclusions below.

2. The Tribunal heard oral evidence from the Claimant. The witnesses on behalf of the Respondent were: Mr Tony Mabbott, contracts manager; Mr Chris Phillips, general manager; and Ms Kloe Bennett, duty manager. There was an agreed bundle of documents of some 250 pages. At the end of the evidence, counsel for the parties provided written submissions and also made oral representations to the Tribunal. The Tribunal gave an oral judgment with reasons. Written reasons were requested by the Claimant.

Findings of Fact

3. The Tribunal made the following relevant findings of fact:-

3.1 The Claimant was employed by the Respondent as a receptionist at Stamford leisure centre from 7 July 2014 until the date of her resignation without notice on 15 July 2016. The Respondent is a lifestyle and management solutions company. It manages over 45 local authority venues nationwide – leisure centres, swimming pools, golf courses, theatres, nature parks and a national centre of craft and design. It has some 1,100 employees across the country. The Claimant's original contract was with Leisure Connection Limited, which apparently changed its name to One Life Management Solutions Limited on 29 May 2014. At Stamford leisure centre, there were about 30 employees, with a general manager in charge and three duty managers. The general manager reported to the contracts manager. The premises comprise a leisure pool and gym. The Claimant worked full time, five days per week, from February 2015. On Monday and Tuesday evenings, she worked until late, 7.15 pm on a Monday and 8.00 pm on a Tuesday, with a later start on both days.

3.2 On 9 May 2016, the Claimant found out that she was pregnant (about four weeks). Unfortunately, she began to experience symptoms of cramp, sickness, fatigue and headaches shortly afterwards. She told Ms Bennett (the duty manager) about her pregnancy on 18 May 2016, as she required time off for a midwife appointment and a scan. Ms Bennett congratulated her, and gave

her the time off. On the following day, 19 May, Ms Bennett told the Claimant that she could go home early, because she was upset. There was then a follow up text from Ms Bennett to the Claimant, asking the Claimant if she was OK, and confirming that Ms Bennett had not told colleagues at work about the Claimant's pregnancy, presumably at the Claimant's request. The Claimant, in her cross-examination, conceded that Ms Bennett was supportive and sympathetic at this time. We find that Ms Bennett did not say on 18 May that the Claimant was 'milking it' (as is alleged), as this would have been inconsistent with her general support of the Claimant.

3.3 On 20 May 2016, the Claimant told Mr Phillips about her pregnancy. At this point, there is no reference in the GP notes to her pregnancy being "high risk", because the Claimant would not have known this until she had had her scan on 23 May. Thus, we find that the discussion was around the Claimant wanting to change her hours, because she was feeling tired. We also find that Mr Phillips asked the Claimant for written proof of pregnancy, so that a risk assessment could be conducted and the approval of Mr Mabbott obtained for any changes in hours and shifts.

3.4 On 23 May, the Claimant had a day off for her scan, which revealed serious complications. There is a dispute between the parties over whether Mr White, the Claimant's fiancé, rang Mr Phillips. We note that Mr White did not give evidence about this, and the telephone call is denied by Mr Phillips in his evidence. Further, no call record indicating that a call was made from the Claimant's or Mr White's phone to Mr Phillips on that day has been produced. If the phone call was made, it was unlikely that Mr White would have gone into any detail; he would have probably said that the result of the scan was not good and the Claimant could not go to work for the rest of the day, and needed the following day off to visit the midwife. That day off on 24 May was given to the Claimant and she was paid for it. We find that it was unlikely that Mr White would have gone into any detailed medical issues at this point.

3.5 On 25 May, the Claimant had the scan result and we find that she did tell Mr Phillips about it, although not in the level of detail as claimed. In the Claimant's witness statement, she seems to have cut and pasted into the relevant paragraph the hospital documentation. However, whatever he was told, Mr Phillips is not medically qualified and the Claimant did not give him a copy of the scan result which is in the bundle, even though he had asked for proof of the pregnancy. The medical advice to the Claimant at this time was that she needed to be lying down in a horizontal position as much as possible. We therefore wonder why she wished to continue to work and not be signed off sick, and also wonder how it was that she was able to fly off on a holiday to Cyprus, and endure that stressful, uncomfortable, long flight, etc.

3.6 The Claimant indeed went on holiday from 27 May to 3 June to Cyprus. She was due back to work on 6 June, but she had a scan on that day so did not attend work. The pregnancy was not ectopic, but still high risk. The Claimant was advised, therefore, to get plenty of rest, and avoid stress and over-exertion. The Claimant had not yet provided written proof of pregnancy to the Respondent. Mr Phillips says that he asked for it on her return to work, and the Claimant said that she did not need to provide it. Whatever the actual conversation was, the fact is that the Claimant did not provide it to the Respondent at this point, even though she must have had the medical evidence from the hospital.

3.7 The maternity, etc procedure of the Respondent, dated 8 April 2015, is an important document. It states that the objectives of the company are to ensure that all employees are aware and understand their entitlements under the policy, and to ensure that the policy and procedures are applied to full time and part time employees. That, in our view, means that the Respondent was obliged to tell the employee that she must comply with her responsibilities which are set out in the policy. One of these responsibilities is to provide evidence of an appointment card for antenatal care, which presumably would allow the employee to be paid for time off for antenatal care and also to notify formally the employer of the pregnancy. The manager's responsibilities include carrying out a risk assessment of the employee, and to eliminate or reduce considerably any potential risks to the employee. The risk assessment process is set out in Appendix 1. The note at the top of that process states that:

> "Risk assessment for new or expectant mothers is required to protect them due to their specific condition and to identify any different and/or additional measures which may be required."

Under a heading: "Assessment of risk", the policy states that: the employer should take into account the actual risks associated with the work activities and whether the risks are increased due to any particular problems experienced by a new or expectant mother during her pregnancy or post-natal period. Thus, there was a duty on the Respondent under their procedure to ensure that the Claimant was aware she must provide written proof of pregnancy, and also to carry out a risk assessment – whatever the Management of Health and Safety at Work Regulations 1999 might say about the requirement for a risk assessment only being triggered by written notification of pregnancy. Mr Phillips did not advise the Claimant of the maternity policy, or send her a copy, or tell her where to find it (on the intranet), or tell her that she should look at it. Indeed, it would appear that he did not look at it himself. Nevertheless, he appears to have taken many of the steps required by the policy, including asking the Claimant to provide written proof

of the pregnancy by way of antenatal appointment cards or otherwise, and also by authorising a risk assessment.

3.8 Thus, we accept Ms Bennett's evidence that, at some point before 14 June, she did conduct a risk assessment, and we have seen a copy of it. This was mainly carried out by reference to the Claimant's job description and place of work, but the Claimant must have been consulted, however informally, because on the form there is a reference to: 'Hours to be discussed with CM and GM once written confirmation has been received with the guidance Petra has been given from medical personnel'. The matters identified by the risk assessment were that the Claimant required regular breaks and duty managers would be told this, and that she needed to be able to sit down at the reception desk. It is clear from the documentation that Mr Phillips did discuss the Claimant's hours of work with her. In addition to the Claimant's reference to this in her witness statement, she says that she was comforted when Mr Phillips assured her that her hours would be sorted out and that they would look to change at least her Tuesday hours by the following week once Ms Bennett had completed the risk assessment, and there is a text message from the Claimant to her fiancé of that date, saying that the Respondent 'was going to change her hours for Tuesday hopefully from next week'. Thus, the plan would appear to be that, on the Claimant's return to work on 7 June after her holiday, Mr Phillips would look to change her hours, at least on the Tuesday. Tuesday was the important day because the Claimant had to go into work at her normal time on the following morning, Wednesday, and therefore had less time to recover from her shift.

3.9 On 14 June, there was a meeting attended by the Claimant, Mr Phillips and Ms Bennett. As with all such meetings, it was not minuted, and was not regarded as a formal meeting by the Respondent. There is some confusion as to who was there and what was said. However, all witnesses agree that the Claimant was told that the hours would not be changed, because there was at that point, in the Respondent's opinion, no need to do so. Extra breaks and better seating had been offered. Frustrated by the lack of progress, as she saw it, the Claimant showed to Ms Bennett, and presumably Mr Phillips, guidance from the Government website as to her rights. We find that at this point, Ms Bennett said to the Claimant: "Now you're really milking it". It may be that Ms Bennett went through the risk assessment with the Claimant, although she did not give her a copy. We find that the Claimant was told that any decision to change her hours had to be made by Mr Mabbott, who would be coming in on Friday if the Claimant wanted to discuss it with him. In the event, Mr Mabbott did not come in, because he was called away elsewhere. However, we also find that the Claimant would have had access to Mr Mabbott's contact details, if she had looked for them. It was open to her at any time to discuss the matter

with Mr Mabbott, who was aware of the situation. He was aware because Mr Phillips rang him the following day, 15 June. See below.

3.10 On 15 June, the Claimant provided a fit note to Mr Phillips. There is no reference in that document to this being a high risk pregnancy. However, there was a reference to working 9 to 5 being recommended by the Claimant's GP. The Claimant told us that she had been asked to bring proof of the days she went to medical appointments, presumably so that she could be paid for the time off. Otherwise, she was only entitled to statutory sick pay. There is a dispute between the parties as to whether Mr Phillips was given the fit note by the Claimant. We find that he was, as the Claimant had specifically obtained it from her GP to give to her employer, as she felt that it would assist her case on getting the hours change that she wanted. Even if the Claimant did not give Mr Phillips the fit note, he certainly knew what was in it, as he accepted in his evidence. Then, Mr Phillips rang Kroner, as instructed to do so by Mr Mabbott when he spoke to him on the telephone, and was advised by Kroner to get proof of pregnancy and consider altering the times of the shifts on Mondays and Tuesdays, in accordance with the doctor's fit note. Mr Phillips told us that if he had known that it was a high risk pregnancy, he would have contacted Kroner at the outset. Mr Mabbott did not attend Stamford leisure centre on 17 June, as he had been expected to, and therefore did not have a conversation with the Claimant about changing her shifts. We find that no formal meeting with him had ever been fixed.

3.11 Unfortunately, on Saturday 18 June, the Claimant suffered a miscarriage. She was signed off sick and did not return to work before her resignation on 15 July. In her resignation letter, she resigned with immediate effect, and said that she had been left with no choice in the light of her recent experiences regarding fundamental breaches of contract and loss of trust and confidence. She said that this specifically related to total mismanagement in the workplace relating to her recent pregnancy, harassment and discrimination related to the pregnancy, risk assessment failures, and exposure to extreme stress and subsequent loss of her pregnancy. At the same time, the Claimant indicated that she was lodging a formal grievance. Efforts were made by the Respondent to deal with that grievance, but in the end it was not pursued by the Claimant as she was not medically fit to attend meetings arranged by the Respondent.

3.12 Respondent's counsel drew to our attention the fact that the Claimant had only worked some 15 days between informing the Respondent of her pregnancy and her miscarriage. She had six days off for holiday, three days off for pregnancy-related appointments, which were all paid, half a day off sick and she left early on another day. The point made by the Respondent is that the Claimant was not at work very often during the relevant period, and

only a few of those days worked would have been Mondays and Tuesdays.

3.13 Following her miscarriage, the Claimant asked the Respondent to send her contract of employment, and she was sent her original contract, and the variation to her terms and conditions that had been made in February 2015, by Mr Phillips. She was also sent the sickness policy, but not the maternity or grievance policies. Mr Phillips said that the policies he had were not current, and new ones were on the intranet. However, he did not explain why he did not point the Claimant in that direction. On the other hand, the Claimant did not ask specifically for any particular policy.

3.14 The Claimant gives extensive evidence in her witness statement to support her injury to feelings claim generally, but nothing specific in respect of individual allegations. However, as pointed out by Claimant's counsel, she was in a vulnerable position, and she was not shown the maternity policy by the Respondent. Thus, she resorted to obtaining the Government website information, which she should not have needed to do if Mr Phillips had referred her to their policy. When she showed Ms Bennett the Government website material, she was told that she was 'milking it'. That was upsetting for her.

The Law

4. The following provisions of the Equality Act 2010 are relevant:

Section 18(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."

Section 18(6)

> "The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends –
> (a) …
> (b) If she does not have that right, at the end of the period of two weeks beginning with the end of the pregnancy."

Section 18(7)

> "Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman insofar as –
> (a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), …"

Section 13(1)

> "A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

Section 23(1)

> "On a comparison of cases for the purposes of section 13 … there must be no material difference between the circumstances relating to each case."

Section 4 provides that both sex and pregnancy/maternity are protected characteristics.

Section 39(2)

> "An employer (A) must not discriminate against an employee of A's (B) –
> (a) as to B's terms of employment;
> (b) in the way A afford B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
> (c) by dismissing B;
> (d) by subjecting B to any other detriment.

Section 124(2) (Remedies)

> "The tribunal may –
> (a) make a declaration as to the rights of the complainant and respondent in relation to the matters to which the proceedings relate;
> (b) order the respondent to pay compensation to the complainant;
> (c) make an appropriate recommendation.

Section 124(6)

> "The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court … under section 119."

Section 119(4)

> "An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis)."

Section 136: Burden of proof

> "(1) This section applies to any proceedings relating to a contravention of this Act.
> (2) If there are facts from which the (tribunal) could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the (tribunal) must hold that the contravention occurred."
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision."

5. We refer as far as is necessary to the well-known cases of Igen v Wong [2005] IRLR 258, CA; and Madarassy v Nomura International PLC [2007] IRLR 246, CA, for guidance on how to apply the burden of proof. The Claimant must first establish a first base or prima facie case of direct discrimination or pregnancy discrimination by reference to the facts made out. If she does so, the burden of proof shifts to the Respondent at the second stage to prove that they did not commit those unlawful acts. If the second stage is reached and the Respondent's explanation is inadequate, it would not merely be legitimate but also necessary for the Tribunal to conclude that the complaint should be upheld.

   The basic question in a direct discrimination case is what are the grounds/reasons for the treatment complained of – see Amnesty International v Ahmed [2009] IRLR 884, EAT. In some cases, the grounds/reason for the treatment complained of is inherent in the act itself. In other cases, the act complained of is not discriminatory but is rendered so by discriminatory motivation, i.e. by the mental processes (whether conscious or unconscious) which led the alleged discriminator to act in the way he/she did. We should draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance, where necessary, of the burden of proof provisions) – see Anya v University of Oxford [2001] IRLR 377, CA.

   In Glasgow City Council v Zafar [1998] IRLR 36, HL, it was held that it is not enough for the employee to point to unreasonable behaviour. She must show less favourable treatment, one of whose effective causes was the protected characteristic relied on.

   So far as compensation for injury to feelings is concerned, then Presidential Guidance on Tribunal Awards was issued in September 2017, following the decision of DeSouza v Vinci Construction (UK) Limited [2017] EWCA Civ 879. The Simmons v Castle uplift applies to tribunal awards for injury to feelings and psychiatric damage. Thus, the well-known Vento bands are updated to £800 to £8,400.00 for the lower band, £8,400 to £25,200 for the middle band, and £25,200 to £42,000 for the upper band.

   In Armitage, Marsden and HM Prison Service v Johnson [1997] IRLR 162, EAT, the relevant principles for assessing awards for injury to feelings for unlawful discrimination were set out:

> "1. Injury to feelings awards are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor.
>
> 2. The award should not be too low as that would diminish respect for the policy of the anti-discrimination legislation. On the other hand, the award should be restrained as excessive awards could be seen as the way to untaxed riches.
>
> 3. Awards should bear some broad similarity to awards in personal injury cases.

> 4. In exercising their discretion when assessing a sum, the tribunal should remind themselves of the value in everyday life of the sum that they have in mind. This may be done by reference to purchasing power or by reference to earnings.
>
> 5. The tribunal should bear in mind the need for public respect for the level of awards made."

In the case of The Trustees of Swansea University Pensions and Assurance Scheme and Swansea University v Williams [2015] IRLR 855, the EAT considered the meaning of the word "unfavourably" in section 18 of Equality Act. It is not to be equated with the concept of "detriment" used elsewhere in the Act. Further, it is unnecessary to have a comparator, as what is unfavourable is to be measured against an objective sense of that which is adverse as compared with that which is beneficial. It is for the tribunal to recognise when an individual has been treated unfavourably. A broad view is to be taken and judged by broad experience of life. Persons may be said to have been treated unfavourably if they are not in a position as good as others generally would be.

6. By section 94(1) of Employment Rights Act 1996, an employee has the right not to be unfairly dismissed by his employer.

By section 95(1)(c), an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. This is so called constructive dismissal.

By section 39(7)(b) of Equality Act, a discriminatory dismissal can be a discriminatory constructive dismissal.

An employee has the right to treat himself as discharged from his contractual obligations only where his employer is guilty of conduct which goes to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more central terms of the contract – see Western Excavating (EEC) v Sharp [1978] IRLR 27, CA. Thus, the employer's conduct must constitute a repudiatory breach of the contract. There is implied into every contract of employment a term that the employer will not, without reason or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation which necessarily goes to the root of the contract – see Woods v WM Car Services (Peterborough) Limited [1982] IRLR 414, CA; and Malik v BCCI SA [1997] IRLR 462, HL. Conduct which breaches the term of trust and respect is automatically serious enough to be a repudiatory breach, permitting the employee to leave and claim constructive dismissal – see Morrow v Safeway Stores [2002] IRLR 9, EAT. In Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445, CA, it was held that the range of reasonable responses test is not appropriate to establishing whether an employer has committed a

repudiatory breach of contract entitling an employee to leave and claim constructive dismissal. The Malik test is the correct test.

The employee must leave in response to the breach of contract. In Nottinghamshire County Council v Meikle [2004] IRLR 703, CA, it was held that once a repudiation of a contract has been established, the proper approach is to ask whether the employee has accepted that repudiation by treating the contract of employment as at an end. It must be in response to the repudiation, but the fact that the employee also objected to other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the acceptance or the repudiation. It is enough that the employee resigned in response, at least in part, to fundamental breaches by the employer.

An innocent party must at some stage elect between whether to affirm the contract or accept the repudiation, which latter course brings the contract to an end. Delay in deciding what to do in itself does not constitute affirmation of the contract, but if it is prolonged, it may be evidence of an implied affirmation – see WE Cox Toner (International) Limited v Crook [1981] IRLR 443, EAT. Whether there has been a breach of trust and confidence in any given case is an objective test for the tribunal to determine. The fact that the employer's conduct must either be calculated or likely to destroy or seriously damage the employment relationship is arguably a high threshold.

Conclusions

7. Having regard to our findings of relevant fact, applying the appropriate law, and taking into account the submissions of the parties, we have reached the following conclusions:-

7.1 We find it convenient to set out our conclusions by reference to the agreed list of issues. We follow the numbering in that list of issues.

2a. There was in fact no "refusal" to review the Claimant's hours. A refusal implies a definite and clear decision refusing a request. That was not the case here. The Respondent was waiting until they had received proof of pregnancy, and had done a risk assessment, before deciding whether or not to review the Claimant's hours.

2b. The Respondent's maternity policy did not give any specific date by which a risk assessment had to be carried out. Given that the Claimant had been absent on holiday, and otherwise had not been at work for periods of time, we conclude that there was no undue delay here.

2c. The review of hours was essentially work in progress, and continued to be until the Claimant's miscarriage. A risk assessment was carried out. The Claimant did not provide the Respondent with

written evidence of her 'high risk' pregnancy, when she could have done.

2d(i). There was no refusal to adjust the Claimant's hours of work. The matter was in Mr Mabbott's hands, or would have been, after the advice from Kroner. We conclude that if the Claimant had not unfortunately suffered a miscarriage, and had returned to work on 20 June, Mr Phillips would have discussed the matter with her and arrangements for a change to the Claimant's hours would in all likelihood have been made. We particularly note that Mr Phillips was amenable to changing her hours, and had said as much on 7 June. However, he did not have the power to do that, as it had to be authorised by Mr Mabbott.

2d(ii). As the Claimant has conceded, this is not correct as the Claimant was given paid time off for her antenatal appointments, on each occasion. This time off was therefore not treated as sickness absence, as if it had been the Claimant would not have been paid (save for SSP).

2d(iii). This is not correct, as the Claimant was paid. Even if this was said, the Respondent was entitled to see proof of antenatal appointments before allowing the Claimant time off. Even in the absence of proof, they allowed that time off.

2d(iv). Even if Mr Phillips said that at present they were not changing hours for financial reasons, among other reasons, this was no absolute refusal, because the matter was still being considered, and no doubt awaited the Claimant's GP's confirmation of the desirability of the change of hours.

2d(v). The Claimant was not refused access to the contracts manager. She would have been able to talk to Mr Mabbott if he had come to Stamford on 17 June. In any event, she could have rung him up. We do not accept that she did not have access to his telephone number. She could have found it if she had looked for it.

2e. We accept that, at the meeting on 14 June, Ms Bennett said: 'now you are really milking it'. However, it was said in the context identified in our findings of fact. The Claimant showed Ms Bennett the Government website, when in fact she was already receiving paid time off, and when she had not provided proof of pregnancy or antenatal appointments.

2f. There was no refusal to implement the recommendations of the doctor's fit note. Put simply, events overtook it. As we have said above, if Mr Phillips had met with the Claimant on Monday 20 June, no doubt this is a matter that would have been discussed with her.

2g. There was no agreed meeting with Mr Mabbott on 17 June. As with all meetings, it would seem, with the Respondent, it would have been an informal meeting if he had come to Stamford, which he normally did on a Friday. If the Claimant had not had a miscarriage on 18 June, then no doubt she could have spoken to Mr Mabbott on 24 June when he would have next been at Stamford.

7.2 Thus, just one incident of unfavourable treatment has been made out, in the context identified. The comment by Ms Bennett was obviously unfavourable treatment, having regard to the legal provisions, and it was because of pregnancy. The main thrust of the Claimant's case before us is that she wanted to change her hours. Oddly, given the medical advice, it was not that she wanted not to work at all so that she could remain lying down for as long as possible. In that context, we have considered whether the failing on the part of the Respondent in not reading and following its maternity policy, or ensuring that the Claimant did so, would have made any difference to the actions of the parties. We conclude that it would not. Providing proof of pregnancy and antenatal appointments was not necessary for the Claimant to receive her paid time off because the Respondent gave that to her anyway. The risk assessment that was conducted would have been reviewed and, no doubt, if the Claimant had given the Respondent the document she had obtained from the hospital, setting out the difficulties with her pregnancy, which is in the bundle, or GP reports/fit notes saying that this was a high risk pregnancy, the review would have included a recommendation for changes to shifts/hours in accordance with medical advice. The fact is, we have found that Mr Phillips did ask for medical evidence and that it was not provided by the Claimant until 15 June and, even then, there was no reference to the pregnancy being high risk. It would seem that the purpose of the Claimant in providing the medical evidence was not to inform the Respondent that her pregnancy was high risk, but rather to ensure that she got her hours and shifts changed.

7.3 The sex discrimination case is not made out on the facts. The Claimant was provided with her terms and conditions of employment. What she did not get were the various policies. However, that had nothing to do with her sex. If a man had asked Mr Phillips for various policies in addition to his contract of employment, we very much doubt that Mr Phillips would have sent them to him, particularly if they were out of date.

7.4 We turn to make our conclusions on the constructive dismissal (either unfair or discriminatory) case. This is not a final straw situation. The Claimant told us in her evidence that she felt let down badly at every step along the way by the Respondent, and she could not imagine how she could ever trust them again and put herself in situations like that in the future, especially if she got pregnant again. She could not face the thought of having to work

with Mr Phillips and Ms Bennett, and therefore had no option but to resign, she said. We have found just one incident of unfavourable treatment, arising from the meeting of 14 June and a one-off comment by Ms Bennett. This was not what in isolation caused the Claimant to resign. In her own mind, what caused her to resign were all the matters complained of in these proceedings, which we have concluded were not (with that one exception) unlawful treatment of her under the Equality Act. In particular, from our reading of the resignation letter and what the Claimant told us, she appears to blame the Respondent for her miscarriage, and that may have been at the root of her decision to resign. There is of course no medical evidence in support of any such causal link. We conclude that there was no treatment of the Claimant or behaviour by the Respondent that could amount to a breach of the implied term in all the circumstances.

7.5 If we are wrong about this, and there was a breach of the implied term by reference to that one incident of unfavourable treatment, then the Claimant did not resign in response to it – see above. Further, arguably the Claimant waited too long before resigning. We are dealing with a very short timescale here, from 18 May onwards only. Yet, the Claimant delayed her resignation by four weeks after her miscarriage, almost half that total period. She delayed it until just before she was due to return to work, when there had been no continuous adverse conduct by the Respondent, and no last straw and no trigger.

7.6 We have listened carefully to the submissions of the parties' counsel on the issue of the appropriate level of award for injury to feelings for the one incident made out. We think that the appropriate award in the circumstances is the lower band of the revised Vento bands, and we fix it at £2,500, inclusive of any interest that it might be necessary to add. This represents for the Claimant some 2.5 months' gross pay, and equates to low end psychiatric damage or minor physical injury.

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Employment Judge Sigsworth

Date: 21 February 2018

Judgment and Reasons

Sent to the parties on: .....

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For the Tribunal Office