EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs D Cockman	**v**	Amanda Griffiths Ltd t/a Money Puzzle Day Nursery

Heard at: Watford **On:** 8, 9, 10, 11 and 12 January 2018

Before: Employment Judge Manley
Mr D Sutton
Mr P Miller

Appearances
For the Claimant: Mr A Rozycki, counsel
For the Respondent: Mrs L Mankau, counsel

JUDGMENT

1. The claimant succeeds in her complaints of automatic unfair dismissal and pregnancy discrimination.

2. The complaints of sex discrimination and victimisation do not succeed and are dismissed.

3. The tribunal has no jurisdiction to hear the complaint of unreasonable refusal to allow the claimant to attend an antenatal appointment and it is dismissed.

4. The case is listed by agreement for remedy to be determined on **Tuesday 5 June 2018** for one day at Watford Employment Tribunal, Radius House, 51 Clarendon Road, Watford, WD17 1HP. Orders for the remedy hearing, which were agreed by the parties, are at the end of this judgment.

REASONS

Introduction and issues

1. The claimant brought various complaints by a claim form with particulars of claim on 6 September. There was a detailed response and, later, a Scott Schedule. The parties had agreed a list of issues. These covered all the complaints brought which arise from what happened at work from the

claimant's announcement of her pregnancy on 24 August 2015 to her dismissal in June 2016. At the commencement of this hearing it was clarified that the indirect sex and part time worker discrimination, unlawful deduction of wages and breach of contract complaints were not being pursued.

2. The employment judge expressed some concern about the number of paragraphs of the particulars of claim referred to in the list of issues but we decided to use it as time was pressing. It is reproduced below (with the removal of those matters no longer pursued). A summary of what the different paragraphs relate to is in the conclusions.

CLAIMANT'S CLAIMS

1 The Claimant brings the following claims:

(a) that the Claimant was automatically unfairly dismissed pursuant to s.99 Employment Rights Act ("ERA") 1996 (the "**Automatic Unfair Dismissal"** claim);

(b) that the Claimant was discriminated against by the Respondent because of her pregnancy and/or because of illness suffered by her as a result of it, contrary to s.18 Equality Act 2010 ("EA 2010") (the **"Pregnancy Discrimination"** claim);

(c) that the Claimant was subjected to direct discrimination by the Respondent because of a protected characteristic, this being sex, contrary to s.13 EA 2010 (the **"Direct Discrimination"** claim);

(d) that the Claimant was subjected to victimisation by the Respondent because the Claimant had done a protected act pursuant to section 27 EA 2010 (the "**Victimisation"** claim);

(e) that the Respondent unreasonably refused to permit the Claimant to take time off for antenatal care, contrary to s.57 ERA (the **"Antenatal Care"** claim);

Automatic Unfair Dismissal

2 Was the reason or principal reason for the Claimant's dismissal connected with her pregnancy?

Pregnancy Discrimination

3 Was the Claimant treated unfavourably because of her pregnancy? The unfavourable treatment relied on by the Claimant is set out at paragraphs 4, 5, 7, 8, 9, 10, 11, 15, 19, 20, 23, 24, 26, 27, 28, 29, 53 and 54 of the Grounds of Claim.

Direct Discrimination

4 The Claimant relies upon the protected characteristic of sex in bringing her claim for direct discrimination.

5 Was the Claimant treated less favourably by the Respondent than it would treat others (the Claimant relies on a hypothetical comparator) because of her sex? In particular, by the Respondent allegedly scheduling a sickness absence meeting outside of the Claimant's normal working hours.

Victimisation

6 Did the Claimant do a protected act? The protected act that the Claimant relies on is that she raised a grievance on or around 21 September 2015 alleging that the Respondent had contravened the EA 2010.

7 Did the Respondent believe that the Claimant had done or may do a protected act?

8 Did the Respondent subject the Claimant to a detriment because of the protected act? The detriment relied on is that the Respondent instigated a disciplinary process.

Antenatal Care

9 Did the Respondent unreasonably refuse to permit the Claimant to take time off for antenatal care in respect of an appointment on 28 August 2015?

JURISDICTION

10 Have any of the Claimant's claims been brought out of time?

11 The Respondent avers that the allegations raised at paragraphs 4, 5, 7, 8, 9, 10, 11, 15, 19, 20, 23, 24, 26, 27, 28 and 29 of the Grounds of Claim do not amount to conduct extending over a period within the meaning of s123(3)(a) EA 2010.

12 The Respondent further avers that the allegations raised at paragraph 15 of the Grounds of Claim is not part of a series of acts within the meaning of s8(2) PTWR.

13 Is it just and equitable to extend the time limit for the Claimant's various Pregnancy Discrimination, Direct Discrimination, Indirect Discrimination and/or Part Time Worker claims?

14 Was it reasonably practical for the Claimant to submit her Antenatal Care and/or Unlawful Deduction claims prior to 6 September 2016?

The hearing

3. During the hearing we heard evidence from the claimant and her mother, Ms Thomas. We also heard from four witnesses for the respondent, Ms Amanda Griffiths, her husband, Mr Martin Griffiths, Ms Varney and Mr Phillips.

4. We also had a bundle of documents running to some 450 pages. We read those pages to which we were referred during the hearing. The bundle included copies of correspondence between the claimant and her employers; notes of meetings and exchange of correspondence between legal advisers at a later stage.

5. The representatives have asked us to make some decisions on credibility in this case. In fact, a significant proportion of the central facts were not in dispute. Where they were, we make it clear here that there were some inconsistencies on both sides and, in some aspects of the case, we have preferred the claimant's evidence. In some other aspects, we have preferred the evidence of the respondent's witnesses. It very much depends on the surrounding circumstances as to whose version we prefer and we hope it will be clear from our findings of fact where that arises.

Facts

6. These are the relevant facts.

7. The claimant commenced employment with the respondent on 27 October 2014 as a senior nursery nurse. The contract provides for a probationary period of six months. In fact, she passed her probation within five months. The document headed "*6 month Probation Review*" which is in the bundle and is dated 26 March 2015 states "*No none at all*" in answer to a question "*Any concerns or worries?"*. The claimant was given a letter confirming successful completion of the six month probation review.

8. The respondent is a business owned by Ms Griffiths. It has two children's nurseries: one where the claimant was based with around 20 employees, and another nursery with around 30 employees. At the time Ms Varney was the deputy manager. Mr Griffiths, the claimant's husband, also works for the company on the administration and strategy side but he does, on occasion, help out in the nursery if there is a need. Ms Griffiths told us that in the seven years she has been running the nursery she has had about 23 staff pregnancies and has not had any problems before with making the necessary arrangements for time off and maternity leave.

9. The claimant had some sickness absence. It appears she had around two periods of two days before the probation meeting. It was not mentioned in that meeting but there was a little more sickness absence later so that by early June 2015, that absence was referred to in a return to work meeting. It is recorded that Ms Griffiths "*discussed with Danielle that her sickness, although genuine, is very high*" and there was further discussion about it with the comment "*If these sickness levels continue it could lead to disciplinary action"*.

10. On 24 August 2015, the claimant told Ms Griffiths and the then deputy manager, Ms Varney, that she was pregnant. The claimant was, at this point, 19 years of age and this was her first pregnancy. She told Ms Varney that she had an antenatal appointment on Friday 28 August and was told at that point that Ms Varney would need to check whether there was cover. The respondent needs to ensure sufficient staff for the correct ratio of staff to children.

11. Fairly shortly afterwards, on the same day, Ms Varney told the claimant that she could not be granted time off to attend the antenatal appointment. In her witness statement Ms Varney said she had looked through the diary and saw that two people were booked to be on leave. The claimant disputes that two people were on leave but we have insufficient evidence to make any finding as to whether or not that was the case. In any event, the claimant replied that she would definitely go to the appointment and she made a phone call to her mother who then spoke to Ms Varney. The claimant's mother said to Ms Varney that the appointment was important as it was the first appointment and she mentioned that the claimant was feeling stressed. The respondent says that there was some sort of threat by the mother which was repeated later by the claimant about going on stress-related sickness. The tribunal does not find that it was meant as a threat but that rather, being refused permission to attend the antenatal appointment would, and was, in fact, causing stress.

12. Over the course of cross examination in the hearing, Ms Varney gave evidence that, not only had she looked at the diary, but she had also taken other steps to determine whether the claimant could go to the appointment. She said that she had contacted agencies and the other nursery. That information had not been referred to in any documents before us or in her witness statement. We do not accept that Ms Varney took those extra steps on this day or we are sure she would have mentioned it to Ms Griffiths, to the claimant or her mother, at some point before it came out in the course of this hearing. However, we did hear from both Ms Griffiths and Ms Varney that, when there was a need for cover, there were other steps which they did sometimes take, including contacting the other nursery, agencies. Mr and Mrs Griffiths and Ms Varney could also provide cover as they are not included in the numbers for the ratio of staff to children so that they can occasionally provide urgent cover when needed.

13. In any event, the claimant was called into a meeting with Ms Griffiths after the telephone conversation between Ms Varney and the claimant's mother. That meeting was audio-recorded. The claimant was asked to change her antenatal appointment. The claimant told us that she felt under pressure and she said that the appointment could not be changed.

14. Ms Griffiths decided to ring the claimant's GP surgery having seen its contact details on an appointment card the claimant had. She either rang them that day or perhaps early the next morning. She did not mention the claimant or that it was a first appointment but was told that, in general terms, antenatal appointments could be changed. When the claimant heard that Ms Griffiths has taken this step, she believed that this was suggesting that she was being called a liar. In fact, the claimant said that Ms Griffiths called her a liar and said something to the effect of "*be careful what you leave lying around*". Ms Griffiths denied calling the claimant a liar. The tribunal finds that she did not directly call the claimant a liar but we understand why the claimant felt that she was not being believed, partly because of matters which happened a little later.

15. By letter of 24 August Ms Griffiths wrote to the claimant. In that letter, Ms Griffiths stated that it was "*not possible for us to accommodate your request at that particular time of the afternoon on Friday bearing in mind our minimum staffing levels do not permit this*". She stated that the respondent was "*very happy to accommodate an appointment earlier that day or at another time during this week or next week*". The letter went on to express disappointment about the phone call with the claimant's mother and concluded:-

"I feel it is highly inappropriate for you to pre-empt your absence from work for stress-related reasons before you have seen your doctor. As a consequence I must reserve the company's rights in their entirety if you refuse to follow our reasonable instructions in connection with your medical appointment on Friday".

16. The claimant replied the same day. She stated again that this was the first appointment and wrote:-

"I do fully appreciate the impact of absence on the team, but have been advised that this appointment could not otherwise be rearranged prior to my 12 week scan…….

Please confirm that, as a pregnant employee, I shall be permitted reasonable time off to attend this ante-natal appointment.

At what should be a happy time for me personally, I did find today very upsetting and stressful and made to feel that I was letting the team down. This, despite the many times that I have worked additional hours and switched shifts to accommodate people.

Whilst I will provide as much notice as possible, I remain concerned that any further antenatal care will be just as difficult. Please reassure me that this will not be the case"

17. Another meeting was called by Ms Griffiths on 25 August based on her understanding about what the surgery had said, that in general terms, a midwifery appointment could be changed. The claimant still did not want to change the appointment and this led to Ms Griffiths writing another letter. This set out what Ms Griffiths remembers of that meeting. She explained to the claimant that she had phoned the doctor and found out that she believed appointments could be changed. The final paragraph reads as follows:

> *"I am concerned that your letter to me from yesterday states that no other appointment can be made before your 12th week pregnancy, which is clearly not the case. As I tried to explain, I am requesting that you change the appointment to next Wednesday afternoon. If you refuse to do so, please note that I will have to reserve the company's rights in relation to disciplinary proceedings based on*

> *your refusal to obey a reasonable management instruction and the fact that you have misled me in relation to your ability to rearrange the appointment."*

18. That letter led to a response from the claimant dated the next day. She took issue with the information that Ms Griffiths had from the surgery and went on:

> *"In light of your comments regarding disciplinary proceedings if I choose to attend any antenatal appointments and in view of the distress this has already caused me, I have cancelled this appointment.*
>
> *I earlier confirmed that whilst I will provide as much notice as possible, I remain concerned that any further antenatal care will be just as difficult. Please reassure me that this will not be the case."*

19. Ms Griffiths replied to that letter by a letter which is wrongly dated 24 August. She said this:

> *"I am writing to thank you for coming to that decision. I feel it shows both maturity and commitment and I am pleased that the matter has been resolved in such a professional way."*

20. Ms Griffiths did not give the reassurance the claimant had requested. It appears to the tribunal that this may well have been the point at which the difficulties between the claimant and the respondent really began to deteriorate further. In many ways it is symptomatic of the respondent failing to pay attention to the claimant's express concerns about her pregnancy and work situation.

21. The claimant became unwell. She was first diagnosed with viral gastroenteritis. She was ill and sent home from work on 28 August and we understand the rest of her shift was covered by Ms Varney.

22. The claimant returned to work on 10 September but she was sent home again as she was unwell. On the same day, Ms Griffiths wrote a note, which we understand was not seen at the time by the claimant. The note was prepared by Ms Griffiths before the meeting but it is not entirely clear that she said all that was in it. Ms Griffiths wrote:-

> *"I was going to have a meeting with you today with regards to your attendance over the last year as I am concerned about your attendance levels. – what I'm going to do is send you a letter which will outline what we will discuss in the meeting and, in the meeting we will set out the ground rules moving forward".*

23. On 11 September, the claimant attended her doctor. She rang Ms Griffiths from the surgery to tell her that she had a sick note for seven days between 11 and 18 September. There was some discussion about the

length of this sick absence as 11 to 18 September inclusive is eight days. The claimant's mother was there with her and, when matters became heated, she suggested the claimant hang up the phone. Both the claimant and her mother gave evidence that Ms Griffiths said something to the effect of *"tell whoever that is, to shut up*". Ms Griffiths agrees that she said something to the effect of "*tell that person to be quiet*" as the other person (who she did not know was the claimant's mother) was shouting. She denied that she was rude. She said that she asked the claimant for permission, which was given, to clarify with the doctor the extent of the sick leave which was being suggested. The claimant was upset that Ms Griffiths needed to clarify this as she said that she felt she was again being called a liar.

24. In any event, the claimant was off for that period and indeed remained off for some time with an initial diagnosis of viral gastroenteritis**.** She was later diagnosed with Hyperemesis on 29 September which is, of course, a condition related to pregnancy.

25. On 14 September, the claimant received a letter inviting her to a sickness absence meeting and she was warned that a formal warning might be the outcome. The claimant immediately complained that this might be linked to her pregnancy. Ms Griffiths responded saying that it was not linked to her pregnancy but that it was to discuss absences and the impact on the business. The claimant asked for a schedule of absences.

26. By email of 17 September the claimant wrote:

> *"Dear Amanda*
>
> *I was further reviewed by my GP today who remains worried by blood test results, persistent inflammation and vomiting. Whilst this states a further review before return to work, I anticipate returning on 24 September but will advise you accordingly…"*

She goes on:

> *"Please be assured that I fully recognise the impact of staff absence on the business but must ensure that my health and that of my baby are my primary concern. Please understand how worrying this time is for me."*

27. Ms Griffiths replied by email of the same day, 17 September. She did not make any comment about what the claimant said about the worrying time but she thanked her for the certificate and reminded her of the sickness policy. She also included a list of the sickness absence which the claimant was alleged to have had. This document calculated absence in hours and totalled a little over 300 hours within a year. It includes the period 16 September to 15 October for which the claimant was later diagnosed with Hyperemesis but Ms Griffiths would not have been aware of that when she wrote this letter with the list of sickness absences.

28. The claimant sent a grievance on 21 September complaining about this treatment. However, she did not send it to the respondent but to the franchisor believing that was what she should do because she was complaining about Ms Griffiths. That was not correct; the respondent is a separate organisation and no one at the respondent was made aware of the grievance at this point, either by the claimant or by the franchisor.

29. The claimant remained on sick leave until December and she informed Ms Griffiths on Friday 11 December that she would be returning the following Monday. Ms Griffiths sent an email informing her of a "*Return to work/sickness absence meeting*" to take place at 10.00 am on the day she was due to return.

30. The claimant immediately replied stating that the doctor had stipulated a four-hour working period. The appointment time for the meeting was immediately changed to 2.30 which would be within the claimant's working time. The claimant in that email did refer to the formal grievance that she had taken against Ms Griffiths. Ms Griffiths did not fully understand the implications of that and asked no further about it. We find she was unaware that there was a written grievance and did not know the contents of it at this point.

31. On 14 December the claimant returned from her sickness absence and was called to the meeting. That meeting concentrated on the return to work aspects. The four hours shifts were agreed and it was agreed that that would continue until the start of maternity leave. A risk assessment was carried out. We do find that the claimant had not asked for a risk assessment before that point. It was reasonable to carry it out when she returned from sick leave.

32. There is some disagreement what happened at the end of this meeting. There is a document in the bundle which is a note the respondent took of it. The claimant says it is not all correct but she signed those notes because she believed the meeting was being recorded. It seems that the respondent might have tried to record it but that did not take place. The main disagreement is that the claimant says that she was forced to remain in the room after the meeting whilst documents were prepared for her to sign. It is true that she did stay while she waited for documents. She signed the notes of the meeting and a new contract was given to her. The date of the signing of the contract was the next day, so it seems unlikely that the claimant was forced to stay. In any event, she did stay and we take it no further than that. The return to work documentation which was completed on that day shows the claimant had been suffering from Hyperemesis and morning sickness in the period before she returned.

33. There was then what was expected to be a sickness absence meeting with the claimant on 21 December although it is headed "Review Meeting". The claimant had no written invitation to that meeting but she was asked to attend. That meeting appeared to discuss both the sickness absence point

but also questions were also raised about the claimant's performance. The note records "*This review meeting is due to concerns regarding your performance*". These were not matters which had been raised before. The evidence we heard is that other staff had raised questions with management, while the claimant was on sick leave, about the paperwork she had completed regarding the children before she was absent. Ms Griffiths' evidence was that this paperwork was checked all the time by managers. It was unfortunate that it was not raised with the claimant before this return from sick leave, some of which was pregnancy related. In any event, she was told in that meeting of concerns about paperwork, her appearance and absence. The written note of the meeting signed by the claimant and Ms Griffiths records:

"The situation is that your absence is still continuing with you having a further two days in your first week back, and although it may be genuine sickness that is causing concerns.

All of the above is causing a problem with the running of the business".

34. The claimant was told that several things were expected "*from now on*". These included writing the children's "WOW moments" five times a day; that her appearance should be smart and she was reminded to follow nursery polices, in particular, the sickness policy. The meeting concluded "*Amanda explained that not following policy procedure may lead to disciplinary procedure*".

35. The claimant in the meantime was chasing the franchisor about the grievance. She learned a little later that they were not dealing with it and they had not told the respondent about it. The claimant told the respondent that she was going to take maternity leave starting on 10 February. A little before she went on maternity leave, there were some incidents in early February.

36. On 1 February, the claimant attended a hospital appointment about her pregnancy. She had not been asked by the respondent for proof of that appointment. Her mother went with her. The claimant was told by someone at the hospital that she needed to come back the next day for further checks. She therefore rang Ms Griffiths and told her that she needed to go back to the hospital the next day and that she would need to leave work at 2pm which is an hour earlier than her shift would normally end at 3pm.

37. Ms Griffiths responded to that phone call by saying to the claimant that she would need to check the position with Ms Varney as it was late in the day. The claimant offered to start her shift early but Ms Griffiths said that was not necessary; that she could still come in at 11.00 am. In an email the claimant wrote to Ms Griffiths that evening she said "*further to my scan today, I am required to attend a further antenatal appointment tomorrow*".

38. When the claimant attended work the next day, 2 February at 11.00 am, Ms Griffiths asked to see her. Ms Griffiths asked the claimant if she could return to work after the hospital appointment and the claimant replied that she could not do that as she did not know how long she would be at the appointment. It is possible that she might have mentioned being monitored. The tribunal accepts that the claimant might not have been entirely clear in this discussion about what the hospital appointment was for but it is also quite possible that she herself was not entirely sure what it was for. It should have been clear to the respondent that, in any event, it was an out the ordinary, and therefore potentially worrying, appointment as the claimant had already attended hospital on 1 February.

39. There was another meeting in the office. Ms Griffiths expressed concern about the lack of notice and went on to say to the claimant that she required proof of the appointment. There was a note of this meeting. That records that the claimant said that she was going to go to the appointment and she said that she did not have proof of it. Matters became heated; the claimant was visibly upset. She may have been confused because the respondent was in fact allowing her permission to attend the appointment but it seems as though the claimant may have thought that it was not. In any event, the permission to attend appeared to be conditional upon her providing proof which the claimant had already said she was unable to get. Ms Griffiths tried to make it clear that the proof could be after the appointment but it is not clear whether the claimant understood that. As the claimant became upset, she indicated that she wanted to go home. Ms Griffiths did not instruct the claimant to go home but did allow her to. On the way out, Mr Griffiths, who was busy with children in the nursery, said goodbye to her. We do not think there is anything untoward in that exchange. We do accept that the claimant was under considerable pressure at this point, not just because of the questions being raised about the need for her to return to the hospital but almost certainly because she was worried about what that appointment was for.

40. In any event, the claimant left on that day. She did not attend the appointment on 2 February and she did not tell the respondent that she had not attended that for some time. This may have been an error of hers but the tribunal understands that she felt unable to attend because of the upsetting turn of events at work.

41. Ms Griffiths sent a letter to the claimant on that same day, 2 February, setting down her recollection of what had been said. In that letter, she said that the claimant had said she was attending for a scan and said this:

> *"I explained to you that notwithstanding this, I would agree to you attending the appointment but you should provide some evidence of the appointment tomorrow - e.g. a print out from the scan or monitoring, letter, something from the hospital etc. It is usual for appointment cards to be provided or a scan or monitoring print out to be given (or your maternity notes updated) and it is not unreasonable for me to request these in the circumstances."*

42. Ms Griffiths then set out what she recollected the claimant did which was walking out of the nursery commenting on *"companies not usually being so pathetic*" and "*give me a disciplinary then*". The tribunal finds it is likely that the claimant made those or similar comments but it was because she was upset at the respondent's attitude and worried about her pregnancy.

43. Ms Griffiths goes on:

> *"I am very disappointed that you walked out and I would like to hold a meeting with you tomorrow to discuss this. Please bring evidence of the appointment today with you. Following the meeting I will need to decide what to do and whether it would be appropriate to convene a disciplinary meeting"*

44. The claimant did attend work on the next day, 3 February. There is some dispute about who asked her to wait in the office. We do not think that is particularly important. She became unwell very shortly after arriving, was assisted by Ms Varney and other members of staff including Ms Griffiths and an ambulance was called. The tribunal's view is that there is nothing unusual in how those at the nursey reacted on 3 February. We accept that the respondent was not aware where the ambulance had taken the claimant so they were not able to tell the claimant's mother when she rang. Both parties refer to things having been said or not said involving the ambulance service and there is a degree of confusion over that. We do not think that that is particularly unusual given the stressful circumstances of somebody needing an ambulance to be called. In any event, the claimant did not then return to work. She was off sick (with sick certificates) and was getting very close to the time that she was to go on maternity leave.

45. Ms Griffiths sent the claimant an email on 9 February which set out what she believed the claimant was going to be entitled to for statutory maternity pay when she started her maternity leave. She set out the sums she believed the claimant would be paid.

46. On 29 February, whilst the claimant was on maternity leave, a letter was sent to the claimant inviting her to a disciplinary meeting. That letter set out what was said to be alleged misconduct and/or gross misconduct for three matters, all relating to the 2 February appointment. They were as follows:

> *"1 That you failed to notify Monkey Puzzle Day Nursery in advance and only mentioned it at 5.00pm the day before the appointment. This is an allegation of misconduct.*
>
> *2 The explanation that you gave behind the appointment appeared inconsistent. You explained that the appointment was for a scan and then you said it was for monitoring as the baby was in a "funny position" but when asked by the paramedics the following day why the hospital was scanning you explained that it was for "some numbers that weren't right". This is an allegation of misconduct.*

3 You failed to give any written confirmation of the appointment in spite of repeated requests, which gives rise to the possibility that he misled Monkey Puzzle as to whether there actually was an antenatal appointment that lasted all day. This is an allegation of gross misconduct"

47. At this point, the claimant forwarded her grievance of 21 September to Ms Griffiths and added some aspects relating to the matters around early February. In that document, which is dated 2 March, the claimant sets out her recollection of 1 February and in relation to the lack of written evidence for the appointment, she said:

> *"No appointment card was provided due to the continuation of this appointment. Whilst I had made every effort to accommodate the needs of the business, clearly my main concern at this time is health of my baby rather than gathering evidence of this appointment."*

48. She then dealt with other matters about the ambulance being called and so on.

49. Ms Griffiths took the decision that she should step aside from matters given that the grievance was mostly concerning her. The disciplinary matter was passed to Ms Varney and the grievance to Ms Colgate who was manager at the other nursery.

50. The respondent told the tribunal that it has an insurance policy or a retainer with a firm of employment solicitors for advice and so on. This includes a requirement that they should check with the helpline when they need to send formal letters of this kind. As we understand it, the respondent sought help from the helpline at a very early stage of these proceedings, maybe as early as August 2015.

51. The claimant was expecting a payment from the respondent on 22 March. She saw that it had not arrived in her bank account. She therefore sent an email asking about that which crossed with a letter that Mr Griffiths had sent on 21 March. Mr Griffiths was the person responsible for liaising with payroll. He had discovered the week before that the claimant was not entitled to statutory maternity pay because she was under the lower earnings limit. He was then waiting for the correct form to send to the claimant. In the letter Mr Griffiths told her that she was not entitled to statutory maternity pay and included the form that she needed to fill in for maternity allowance. He made no reference to the earlier letter which had told her that she would get statutory maternity pay, nor indeed was there any expression of regret for the information given to the claimant.

52. There was a decision to hold the disciplinary matters in abeyance until after the baby was born which was in April. There was then a further disciplinary invitation letter but by now the claimant had engaged solicitors

and there are several letters between solicitors. The baby was born in April 2016.

53. The claimant heard by letter of 27 May that there was to be a disciplinary hearing on 6 June. She did not receive that letter until 3 June. By email of 4 June, her solicitors asked, on her behalf, for a postponement of that hearing. They pointed out the short time frame from receiving the invitation letter and the hearing. They also said that the claimant was unwell and her GP had told her that she was not well enough to attend. That email was not answered immediately but, after the meeting which did proceed on 6 June, by email of 8 June, the claimant's solicitors were told that the meeting had proceeded in her absence.

54. What had happened was that Ms Varney had both investigated and decided the matter in relation to the disciplinary questions. She told the tribunal that she had looked at several of letters, made notes and read a statement made by Ms Griffiths. She had then made notes of the meeting on 6 June where Ms Colgate was also present. That note appeared in the bundle. There are some redactions to that document which we do not entirely understand but as the claimant was not present, it may not make very much difference.

55. Ms Varney took the decision to dismiss the claimant. In a detailed letter she sent on 8 June to the claimant, she gave her reasons. The allegations were worded slightly differently. The first allegation is:

> "*failed to provide sufficient notice to the Monkey Puzzle Day Nursery of your appointment on 2 February 2016."*

Her conclusion on that allegation was

> "*It is my view therefore that this allegation should be upheld. However, as Mrs Amanda Griffiths has authorised the time off for the appointment and notwithstanding the lateness of the request, I do not recommend that any further action be taken in this regard."*

56. With respect to the second allegation which was:

> *"Failed to adhere to a reasonable management instruction that you did not provide any written confirmation of the appointment in spite of repeat requests."*

Ms Varney came to the conclusion that this was an act of

> *"extremely severe insubordination."*

57. With respect to the third allegation:

"appear to have misled management as to whether there actually was an antenatal appointment on 2 February 2016"

58. Ms Varney came to the conclusion that the claimant had misled management. This was, she said, an act of dishonesty which she considered to be gross misconduct. She concluded it "*undermines the trust and confidence within the employment relationship and as such I must recommend dismissal".*

59. The claimant appealed that outcome. Her grievance was still outstanding and she presented her claim form to the employment tribunal on 6 September. Mr Phillips, who was an external HR consultant, dealt with the appeal from the dismissal and the grievance. The claimant agreed that the appeals should be without a hearing and answered a number of questions put to her by Mr Philips. The claimant later received an outcome from the grievance which did not uphold it. Her appeal against dismissal was also unsuccessful. The tribunal does not find anything untoward in matters taken forward by Mr Phillips. He appears to have carried out a relatively through exercise albeit without the benefit of discussing matters with the claimant.

The law

60. The complaints of pregnancy, sex discrimination and victimisation arise from provisions of Equality Act 2010 (EQA) as set out in the list of the complaints above at paragraph 2. The relevant sections are as follows:

13 Direct discrimination

(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.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

18 Pregnancy and maternity: work cases

(1) –

(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

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

123 Time limits

(1) Proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2) -

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

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 court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(a) an employment tribunal;

61. The complaints of automatic unfair dismissal and the refusal to permit the claimant time off to attend an antenatal appointment arise from sections of Employment Rights Act 1996 (ERA) and Maternity and Paternity Leave etc Regulations 1999 (MAPLE). The relevant parts of the sections of the legislation are as follows:

99 ERA Leave for family reasons

(1) An employee is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if-

a) the reason or principal reason for the dismissal is of a prescribed kind, or

b) the dismissal takes place in prescribed circumstances

(2) In this section “prescribed” means prescribed by regulations made by the Secretary of State

(3) A reason or set of circumstances prescribed under this section must relate to-

a) pregnancy, childbirth or maternity

Regulation 20 MAPLE

(1) An employee who is dismissed is entitled under s99 of the 1996 Act to be regarded for the purposes of Part X of that Act as unfairly dismissed if-

a) the reason or principal reason for the dismissal is of a kind specified in paragraph (3)

(2) –

(3) The kinds of reasons referred to in paragraph (1) and (2) are reasons connected with –

a) the pregnancy of the employee

55 RA Right to time off for ante-natal care

(1) An employee who-

a) is pregnant, and

b) has, on the advice of a registered medical practitioner, registered midwife or registered nurse, made an appointment to attend at any place for the purposes of receiving ante-natal care is entitled to be permitted by her employer to take time off during the employee's working hours in order to enable her to keep the appointment.

57 ERA Complaints to Employment Tribunals

(1) An employee may present a complaint to an employment tribunal that her employer-

a) has unreasonably refused to permit her to take time off as required by section 55, or

b) -

(2) An employment tribunal shall not consider a complaint under this section unless it is presented –

a) before the end of the period of three months beginning with the date of the appointment concerned, or

b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

62. There is no dispute that these legislative provisions are those to be applied in this matter. As far as the complaints brought under EQA are concerned, the tribunal must make findings of fact and then apply the correct tests. For the direct sex discrimination complaint, namely less favourable treatment contrary to section 13 EQA, the tribunal is mindful that it is unusual for there to be clear, overt evidence of direct discrimination and that it should consider matters in accordance with section 136 EQA. The tribunal accepts the guidance of the Court of Appeal in Igen V Wong [2005] IRLR 258 which confirms that given by the EAT in Barton v Investec Henderson Crosthwaite Securities Ltd [2003] IRLR 332, concerning when and how the burden of proof may shift to the respondent, as modified and clarified in other recent cases. The test is: are we satisfied, on the balance of probabilities and with the burden of proof resting on the claimant, that this respondent treated this claimant less favourably than they treated or would have treated a male employee. We are guided by the decision of Madarassy v Nomura International plc 2007 IRLR 246 reminding us that

unfair treatment and a difference in sex does not, on its own, necessarily show discriminatory treatment. If there are such facts, we look to the employer for a credible, non-discriminatory explanation or reason for such less favourable treatment as has been proved. In the absence of such an explanation, proved to the tribunal's satisfaction on the balance of probabilities, the tribunal will conclude that the less favourable treatment occurred on the grounds of the claimant's sex.

63. As far as section 18 EQA is concerned for the pregnancy discrimination complaint, we still apply the burden of proof provisions at section 136 EQA but the test here is whether the claimant has shown unfavourable treatment because of pregnancy or illness suffered as a result of pregnancy. The recent case of Pnaiser v NHS England [2016] IRLR 170 reminds the tribunal that the claimant need only show a "prima facie" case for the burden to shift. There is no need for a comparator but the tribunal does have to be satisfied, on the facts as found, that there was unfavourable treatment *and* that it was because of pregnancy (Johal v Commission for Equality and Human Rights [2010] All ER 23).

64. The victimisation complaint under section 27 EQA also requires the claimant to prove the primary facts. In this case, the respondent accepts there was a protected act under section 27 (1) b). It is still for the claimant to show facts which show a causal connection between the protected act and the less favourable treatment.

65. For the complaints under EQA, the time limit provisions of section 123 apply. Simply put, the complaints should be presented within three months of the acts complained of or, where they have been presented out of time, within a period the tribunal considers just and equitable. The question which arises here is whether the claimant can show acts which are sufficiently connected to amount to "conduct extending over a period under section 123 (3) a) EQA.

66. The complaints brought under ERA and MAPLE are automatic unfair dismissal and unreasonable refusal to allow time off for antenatal care. Again, in these matters, the tribunal must make its findings of fact and apply the legal tests to them. The central question for the unfair dismissal complaint is whether the facts show a connection between the dismissal and the claimant's pregnancy. We were referred to the case of Atkins v Coyle Personnel Plc [2008] IRLR 420 for guidance on the interpretation of "*connected with*" in Regulation 20 (3). Although that case dealt with Regulation 29 Paternity and Adoption Leave Regulations 2002, it was submitted by the respondent that the tests are identical. It was said there, and the tribunal accepts this guidance:-

"'Connected with' in reg 29 means causally connected with rather than some vaguer, less stringent connection. The legislation must be given a wide purposive interpretation and the application of the test must, as on any causation issue, be approached in a pragmatic commonsense fashion on the facts of the individual case"

67. We were also referred to the case of Clayton v Vigers [1990] IRLR 177 by the claimant's representative. This case, which considered the automatically unfair dismissal provisions of the predecessor legislation (Employment Protection (Consolidation) Act 1978), points to a need for the words "*'connected with' to be read widely so as to give full effect to the mischief at which the statute was aimed*".

68. For the antenatal care complaint, the tribunal must decide whether the refusal was unreasonable. The time limits for presenting these ERA complaints is three months unless the tribunal finds that it was not reasonably practicable to bring the complaints within that time.

Submissions

69. Both representatives handed in written submissions and added to them orally. We have mentioned above some of the cases that we were referred to during submissions. This was all very useful to us in our deliberations and we do our best to summarise the submissions now.

70. On behalf of the respondent, it is submitted that the claimant cannot show sufficient connection between her pregnancy and the dismissal for the automatic unfair dismissal complaint. Similarly, for the pregnancy discrimination case, it is submitted, the claimant has failed to show a prima facie case for many of the allegations and, where she has shown such a prima facie case, the respondent has provided a non-discriminatory reason for the treatment. In any event, says the respondent, most of those allegations have been presented out of time. It is submitted that the complaints of direct sex discrimination and victimisation complaints are bound to fail on the facts. The respondent submits that the refusal to allow time off for the antenatal appointment in August 2015 was not unreasonable and has been, in any event, presented out of time.

71. The claimant submits that the burden rests on the respondent to show that the dismissal was not for a pregnancy related reason and that it has failed to discharge that burden. It is also submitted that it must also be sex discrimination if it is found to be pregnancy related. It is submitted that the respondent took the steps it did in the disciplinary matters and dismissal because of the claimant's pregnancy. It is also submitted that, as far as the pregnancy discrimination complaint is concerned, there was conduct extending over a period so as to bring all matters in time.

Conclusions.

72. We are going to give our conclusions in a slightly different order than they appear in the list of issues above because it makes sense to decide the pregnancy discrimination matters first.

Pregnancy discrimination

73. We consider issue **3** and the unfavourable treatment alleged in paragraphs **4, 7, 8, 9 and 10** of the claim form together as these all relate to matters between 24 and 28 August, mostly 24 and 25 August. Paragraph 4 states that the respondent was informed that she was suffering from stress; paragraph 7 complains that the claimant was unreasonably refused time off for the first ante-natal appointment; paragraphs 8 and 9 complain about Ms Griffiths contacting the surgery and what was then said to the claimant. Paragraph 10 complains about the threat of disciplinary action.

74. We must consider the matters applying the burden of proof. We consider whether the claimant has shown facts from which we could conclude that the treatment as found by us in our findings of fact related to her pregnancy. We do find that there was unfavourable treatment connected to pregnancy and we do not find the respondent's explanations to be credible or which indicates an absence of discrimination.

75. We find that there was an unreasonable refusal to allow the claimant to attend the antenatal appointment on 28 August. We are not satisfied that adequate efforts were made by the respondent to accommodate this appointment. There was sufficient time to look further for cover as we heard has indicated that steps had been taken in the past, especially, bearing in mind this was the claimant's first child and first ante-natal appointment. We also find that ringing the surgery without permission was certainly suggestive of distrust or dishonesty and that amounts to unfavourable treatment. As it related to an antenatal appointment, it clearly relates to pregnancy. We also find the letter threatening disciplinary action was unfavourable treatment relating to pregnancy. It relates entirely to the claimant's first antenatal appointment.

76. We then consider paragraphs **5** and **11** which relate to events on 11 September (paragraph 5 mentions 10 September but the correct date is 11 September). As our findings of fact make clear, we do not find that what was said by Ms Griffiths amounted to "abuse". During the phone call on 11 September Ms Griffiths accepted that she said something about asking someone to be quiet but that does not amount to verbal abuse. It is possible that Ms Griffiths raised her voice in that phone call but it is not any unfavourable treatment because of pregnancy and the burden of proof does not shift with respect to that matter.

77. However, paragraph 11 is about questioning the sick note and we do find that contacting the surgery about the length of the sick note is unfavourable treatment connected to pregnancy. It is part of a pattern of mistrust which started shortly after the announcement of the claimant's pregnancy. The burden of proof shifts to the respondent to explain this treatment and it has failed to do so. Ms Griffiths should not have asked to contact the surgery and should not have done so. We do not accept that that act was without pregnancy related discrimination.

78. We then consider paragraphs **15** and **19** which relate to events of 14 December. The claimant has not satisfied us that there was unfavourable

treatment in the return to work meeting. That meeting was not exceptional but is what would be expected on return after a period of sick leave. We had some concerns that it was suggested it would be combined with a sickness absence meeting but otherwise, the matters which were discussed were quite proper. Those included questions about why the claimant had been ill and carrying out a risk assessment and so on.

79. As far as paragraph **20** is concerned, this is about risk assessment and as indicated, we are not satisfied that the claimant asked any earlier for this to be done. The burden of proof does not shift to the respondent and, if it did, we are satisfied by the respondent's explanation that that was a reasonable time to carry out that risk assessment.

80. Turning then to paragraphs **23, 24** and **26**, this relates to matters on 1, 2 and 3 February. As far as paragraphs 23 and 24 are concerned, this relates, in part, to the requirement to provide proof of the appointment on 2 February before the claimant would be given permission to attend. Those paragraphs also set out the claimant's case that the conduct was bullying and concerns about Mr Griffiths behaviour. As is clear from our findings of fact, the claimant has demonstrated that the requirement for proof of the appointment was an unreasonable request in the circumstances and it is one which is unfavourable treatment linked directly to pregnancy. What the respondent has failed to do is take account that this was a last minute appointment for somebody who was pregnant with her first baby and who had already attended a pre-arranged appointment. Clearly it raised what was, at the very least, a potential health issue. The respondent has failed to show that treatment was without discrimination. It was unreasonable for the respondent to press the claimant for proof of that appointment and suggests yet again a lack of trust for the claimant. Our findings of fact make it clear that we do not accept there was any unfavourable treatment by Mr Griffiths.

81. Paragraph **26** is long and rather confusing because it includes reference to both the letter threatening disciplinary action in relation to the failure to provide that proof of appointment and what happened on 3 February. The claimant has shown that the letter which threatened disciplinary action was unfavourable treatment linked to pregnancy. We are not satisfied by the respondent's explanation that was unconnected to pregnancy. It was about the problems that arose because she was told to return to hospital the next day for further tests of some sort.

82. Our findings of fact make it clear that we find no unfavourable treatment in relation to other matters raised there and what happened on 3 February.

83. Paragraphs **27** relates, in part, to the claimant being told that she would be entitled to statutory maternity pay entitlement as she was about the start maternity leave. We do not think that can amount to unfavourable treatment as it was a mistake by Ms Griffiths. That paragraph also relates back to the requirement to produce proof of the 2 February appointment which we have already determined.

84. Paragraph **28** relates to the time after the claimant started maternity leave, some apparent confusion about her return date, being removed from the staff profile and being excluded from staff events. The claimant does not succeed in these aspects, because we have had insufficient evidence to show either that it happened or that is was of any consequence to her. It does not, on the evidence before us, amount to unfavourable treatment.

85. Paragraph **29** relates to the grievance. This was not unfavourable treatment because, as our findings of fact make clear, the respondent did not know about the grievance until the claimant told them sometime later.

86. We turn then to paragraph **53** which is the complaint about Mr Griffiths telling the claimant that she was not entitled to statutory maternity pay. This is a difficult issue given that, as a matter of fact, the claimant was not so entitled under the rules. However, on a balance of probabilities, we have found that the claimant has shown that this did amount to unfavourable treatment given its close relationship to pregnancy. We look to the respondent for an explanation of that treatment. Whilst we accept that Mr Griffiths felt he was just providing the claimant with factual information, we fail to understand why he did not either tell her a little bit earlier when it first came to his attention, giving her adequate warning that it would not be paid in her bank account. Also, when he did pass on that information, he did so without any acknowledgement or apology for the fact that the claimant had been given different information by the respondent at an earlier stage. On balance, therefore we find that that does amount to unfavourable treatment connected to pregnancy.

87. Finally, in the pregnancy discrimination complaint, we consider paragraph **54.** This relates to the appeal and whilst we can understand that there were delays in relation to the appeal, we do not accept that the claimant has shown that amounted to unfavourable treatment connected to pregnancy. The claimant has not managed to shift the burden of proof to the respondent with respect to that paragraph.

88. What this means is that the claimant succeeds in some but not all of her complaints of pregnancy discrimination. She has succeeded in showing unfavourable treatment related to pregnancy in the following matters which have not been properly explained by the respondent as being without discrimination. (1) the refusal on 24 August to allow time off for the antenatal appointment on 28 August; (2) Ms Griffiths ringing the surgery on 24 or 25 August; (3) the letter of 25 August threatening disciplinary action; (4) Ms Griffiths ringing the surgery again on 11 September; (5) the requirement to provide proof for the urgent appointment on 2 February; (6) the letter of 2 February with a threat of disciplinary action and (7) the letter of 21 March 2016 written by Mr Griffiths.

89. We must now consider whether there is jurisdiction to hear the pregnancy discrimination complaint because it may have been presented out of time. As our findings and the summary above makes clear, the last act of

pregnancy discrimination was 21 March 2016. The claim is therefore out of time with respect to that unless there is conduct extending over a period or we find that it is just and equitable to extend time to allow that to proceed. There are some difficulties over this because, for reasons which we have not fully understood, the dismissal was not included in the list of pregnancy discrimination matters. However, as our findings will make clear, we have found that this was a dismissal connected to pregnancy. Given the very clear history of unfavourable treatment from the first refusal to allow the claimant to attend an antenatal appointment, the threats of disciplinary action and the reason for dismissal being related to an antenatal appointment, it seems to us it therefore must, on any plain common sense assessment of the facts, amount to conduct extending over a period, bringing the claimant in time.

90. However, we appreciate that we could be wrong in that conclusion. We therefore have gone on to consider whether it is just and equitable to extend time to allow the complaints of pregnancy discrimination to be determined if that conclusion is wrong. We have decided that it is just and equitable to extend time in the circumstances. It is a relatively short period of time; all matters are intricately connected having begun at the first mention of pregnancy, continuing through sick and maternity leave and up to the date of dismissal. The claimant was very close to having her baby as the disciplinary proceedings continued. She was the subject of disciplinary proceedings and indeed had presented a grievance which was still outstanding and she was trying to pursue it. We have heard sufficient evidence and are more than satisfied that it is just and equitable to extend time in these circumstances. We have jurisdiction to determine the pregnancy discrimination complaint and it succeeds as set out above.

Automatic unfair dismissal

91. We turn to the complaint of automatic unfair dismissal which is issue **2**. We have found that the reason that the claimant was dismissed was connected to her pregnancy. It is difficult for the respondent to argue that it was not. The whole of the investigation, the allegations and the central reason that the respondent called the claimant to a disciplinary hearing was about the antenatal appointment on 2 February. This is immediately suggestive of a connection between disciplinary action and indeed the dismissal and the steps taken. The respondent's case is that the dismissal concerned the failure to obey a reasonable management instruction with respect to asking for written proof of the appointment. As we have already made it clear in our findings of fact, and indeed our conclusions for the pregnancy dismissal, we do not find that that was a reasonable management instruction in the circumstances. The circumstances are that the claimant had already told them that she could not get proof as it was a follow on appointment from the day before. The claimant's situation was that she was between six and seven months pregnant and had been told to return to the hospital the next day. This was something which, on any account, would be likely to cause her to be concerned. No reasonable employer in those circumstances would insist upon written evidence. We

therefore cannot agree with Ms Varney that that was unconnected to pregnancy.

92. Ms Varney also concluded that the claimant had misled the respondent. We again find that that is an unreasonable view for Ms Varney to have arrived at. We do accept that the claimant was not as open as she might have been about the fact that she did not, in the end, go to the appointment on 2 February. We are not sure why she failed to tell the respondent that earlier but the fact of the matter is that the respondent was aware that she was upset and distressed when she left that day. As indicated, we cannot see how a reasonable employer in those circumstances would consider the claimant had misled the respondent. We have found that she had been asked to go to the hospital the next day and that is what she told the respondent. She was clearly anxious about the health of her baby and possibly even about her own health.

93. The respondent has failed to satisfy us that the dismissal was not connected to pregnancy. There is a clear causal connection. Given the history, including the previous tendencies to disbelieve the claimant, we do not accept the respondent's reasons for dismissal. It was connected to her pregnancy and is therefore automatically unfair.

Direct sex discrimination

94. As far as issues **4** and **5** are concerned, these relate to the respondent initially making the appointment for the sickness absence meeting in December 2015 at 10.00 am. The claimant cannot succeed in this. There was no unfavourable treatment with respect to that, particularly as the appointment time was changed quickly when she raised it.

Victimisation

95. As far as the victimisation complaint between issues **6** and **8** is concerned, our conclusions are as follows. We find that, of course, there was a protected act contained within the grievance. However, the respondent did not know about it at the time and did not know until 2 March 2016. Therefore, the instigation of the disciplinary process on 29 February 2016 cannot relate to that protected act. She cannot succeed in the victimisation complaint.

Unreasonable refusal to allow the claimant to attend an ante-natal appointment

96. As far as the antenatal appointment is concerned, or the refusal under section 57 Employment Rights Act 1996, this item is issue **9.** We do find that there was an unreasonable refusal to allow the claimant to take time off. However, as is explained later, that matter is out of time. We do not have jurisdiction to hear determine that complaint.

Is the claim in time?

97. The jurisdiction issues **10** to **14** do not arise for the automatic unfair dismissal. The claim is in time for that complaint. As indicated above, the time limit issue does arise for the refusal to allow time off complaint under section 57 ERA. The refusal was on 24 and 25 August 2015 and is therefore many months out of time. We cannot find that it was not reasonably practicable to present the claim in time, especially as the claimant appeared well aware of those rights. The tribunal has no jurisdiction to hear that claim.

98. We have found that we have jurisdiction to determine the pregnancy discrimination complaint as set out above at paragraphs 89 and 90.

Summary of our conclusions

99. The tribunal has jurisdiction to hear the pregnancy discrimination complaint. The claimant has succeeded in some, but not all, of her allegations of pregnancy discrimination. The claimant was automatically unfairly dismissed for a reason connected to her pregnancy.

100. The claimant does not succeed in her complaints of direct sex discrimination or victimisation. The tribunal does not have jurisdiction to hear her complaint of unreasonable refusal to allow her to attend an antenatal appointment.

101. The parties agreed that remedy should be determined on one day on 5 June 2018 and orders for that hearing, which were agreed, appear below.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The claimant will send an updated schedule of loss to the respondent and the tribunal by **30 April 2018.**

2. Witness statements with evidence relevant to remedy will be exchanged by **14 May 2018**.

3. The parties will discuss and agree a written document which sets out wat is agreed and what is in dispute on issues relating to remedy and send it to the tribunal by **4 June 2018**.

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.

2. The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.

3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

_____
Employment Judge Manley

Date: …3 April 2018

Judgment and Reasons

Sent to the parties on: .16 April 2018.....

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For the Tribunal Office