EMPLOYMENT TRIBUNALS

JUDGMENT

BETWEEN

CLAIMANT	RESPONDENT
MS H NANUCK	**BRITISH TOURIST AUTHORITY (1)** **MR RICHARD JOHNSON (2)**

HELD AT: LONDON CENTRAL **ON: 6-8, 11-14 APRIL & 30 MAY 2022**

EMPLOYMENT JUDGE: MR EMERY
MEMBERS: MS C IHNATOWICZ
MR M REUBY

REPRESENTATION:
For the claimant: In person
For the respondent: Ms M Polimac (Counsel)

JUDGMENT

1. The Tribunal declares that the claimant was automatically unfairly dismissed by the 1st respondent, as her dismissal was connected to the fact she took Ordinary Maternity Leave
2. The claim of a breach of Regulation 18 MPL Regulations succeeds
3. The claims of maternity-related discrimination (s.18 EqA 2020) against the 1st respondent succeed in part
4. The claim of unlawful detriments contrary to s.47C ERA 1996 succeeds in part.
5. The claims of victimisation fail and are dismissed

6. The claim of less favourable treatment under the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 fail and are dismissed
7. The claim of a failure to provide written reasons for dismissal fails and is dismissed.
8. All claims against the 2nd respondent fail and are dismissed.

RESERVED REASONS

The Issues

The claimant was employed as a Contract Manager on fixed-term contracts of one year; during her 2nd contract she went on Ordinary Maternity Leave, her fixed-term contract expiring on the last day of her maternity leave. On her return to work the claimant was informed her role no longer existed, she was offered a new role which she rejected, arguing that she had the right to return to her Contract Manager role. Following a period of dispute the claimant was dismissed on the ground she failed to accept a suitable alternative role. The following is the agreed List of Issues:

Breach of regulation 18 of the Maternity and Parental Leave etc. Regulations 1999 (MPL Regulations)

1. Was the Claimant entitled to return to the same job in which she was employed before her absence (regulation 18(1) of the MPL Regulations)? If so, did the First Respondent's failure to do so amount to a breach of regulation 18 of the MPL Regulations.

Unfair dismissal

2. What was the reason for the Claimant's dismissal?

    2.1 One of the reasons set out in s.99(3) ERA 1996 or regulation 20(3) of the MPL Regulations;
    2.2 Redundancy within the meaning of s.136 and 139 ERA 1996
    2.3 Some other substantial reason within the meaning of s.98(1)(b), namely because her fixed term contract came to an end?

Automatic Unfair Dismissal

3. If 2.1 above is satisfied, the Claimant will be deemed to be automatically unfairly dismissed

Redundancy Situation - Automatically Unfair Dismissal

4. If there was a redundancy situation and the reason for dismissal was because of redundancy, was the dismissal automatically unfair because regulation 10 of the MPL Regulations had not been complied with? In particular:

4.1 Was there a suitable available vacancy
4.2 Was the Claimant offered it before the end of her employment under her existing contract?

5. If there was a redundancy situation, was the dismissal automatically unfair under regulation 20(2) of the MPL Regulations because:

5.1 The circumstances constituting redundancy applied equally to one or more employees in the same undertaking who held positions similar to that held by the Claimant and who have not been dismissed by the Respondent, and
5.2 The reason why the Claimant was selected for dismissal was a reason of a kind specified in reg 20(3) of the MPL Regulations.

Redundancy situation – ordinary unfair dismissal

6. If the reason was redundancy, did the Respondent act reasonably in treating that reason as a sufficient reason for dismissing the employee, thus rendering the dismissal fair within the meaning of s.98 ERA 1996? In particular:

6.1 Was there consultation, including an appeal?

6.2 Did the Respondent take reasonable steps to find the Claimant suitable alternative employment?

6.3 Was the dismissal within the range of reasonable responses?

SOSR Dismissal – ordinary Unfair Dismissal

7. If 2.3 is satisfied, did the Respondent act reasonably in treating that reason as a sufficient reason for dismissing the employee, thus rendering the dismissal fair within the meaning of s.98 ERA 1996?

8. Did the Respondent adopt a fair procedure in dismissing the Claimant?

Failure to provide written reasons for the dismissal

9. Did the First Respondent fail to provide a written statement of reasons for the dismissal to the Claimant contrary to sections 92 and 93 of the ERA 1996?

Pregnancy and maternity discrimination under the Equality Act 2010

Section 18 Equality Act 2010; section 39(4) Equality Act 2010 (GOC paragraph 78)

10. Was the Claimant treated unfavourably as follows:
10.1 the Respondents making her role redundant whilst she was on maternity leave without there being a genuine redundancy situation;

10.2 the Respondents failing to apply a selection criteria and/or applying a selection criteria unfairly or unreasonably;

10.3 the Respondents failing to inform and/or consult her during her maternity leave about a possible redundancy situation before making the decision to make her role redundant;

10.4 the Respondents wilfully waiting for her protected period to end to impose substantial changes to her role;

10.5 the Respondents failing to offer her a suitable and appropriate role with the First Respondent and/or its associated employers on terms and conditions not substantially less favourable than her original contract as soon as, redundancy had genuinely caused her job to be no longer available during her maternity?

11. If so, was this because of her pregnancy and/or maternity leave contrary to section 18 of the Equality Act 2010?

12. Was the Claimant treated unfavourably as follows: (GOC paragraph 80)

12.1 the Second Respondent prevented her from carrying out her duties;

12.2 the Second Respondent unreasonably imposed duties outside contractual obligations despite being fully aware of the on-going dispute with the First Respondent;

12.3 the Second Respondent raised a false allegation of misconduct against her in bad faith which was condoned and/or encouraged by the First Respondent when they issued a disciplinary warning against her in bad faith;

12.4 the First Respondent made unilateral changes to her job title and reporting line manager despite her protests;

12.5 she was ostracised and further not allowed to perform her duties when the First and Second Respondent informed her team of the on-going dispute regarding her employment and advised them not to contact her;

12.6 the First and Second Respondent used bullying and intimidating tactics to coerce her into signing a unilateral contract variation despite her protests and/or submitting her resignation;

12.7 the First and Second Respondent unreasonably refused to provide written reasons for the non-renewal of her contract and clarifications regarding the SRM role;

12.8 the First Respondent dealt with her grievance with unreasonable delays;

12.9 the First Respondent failed to appoint an independent investigator during her grievance and dismissed her concerns of impartiality and conflict of interest raised;

12.10 the First Respondent failed to properly investigate into her grievance and/or failed to give full consideration to all relevant facts;

12.11 the First Respondent deliberately omitted information unfavourable to it inwritten communications to her to support pre-determined and biased decisions; and/or

12.12 the First Respondent provided no right of appeal against her redundancy and/or dismissal?

13. If so, was this because of her pregnancy and/or maternity leave contrary to section 18 of the Equality Act 2010?

Detriments contrary to s.47C ERA 1996

14. Was the Claimant subjected to the following detriments (GOC paragraph 81)

14.1 The First and Second Respondent failed to inform her of and consult her about a threatened redundancy because she was absent on maternity;

14.2 the First and Second Respondent failed to include her role in the redundancy pool existing at the time and therefore prevented her from accessing suitable vacancies available in the First Respondent's and/or its associated employers from the time the decision was made to make her role redundant;

14.3 the First and Second Respondent used her maternity leave to make substantial and unilateral changes to her role to incorporate significant burdens and unreasonable demands that will inevitably exist because she has a baby; and/or

14.4 the First and Second Respondent discriminatively removed the pay rise previously associated with the SRM role in recognition of the higher burdens and demands when offering it to her?

15. If so, was this for reasons related to her pregnancy contrary to section 47C ERA 1996 and regulation 19 of the MPL Regulations?

Victimisation contrary to s.27 EA 2010 (GOC paragraph 79)

16. Protected act:

16.1 Did the Claimant do a protected act in good faith within the meaning of section 27(2) of the EA 2010? The Claimant relies on the protected act(s) set out at paragraphs 48, 52, 61 and 62 of the GOC; or

16.2 Did the Respondents believe that the Claimant had done or may do a protected act?

In the course of the hearing the respondents conceded the claimant had done protected acts and it knew of them.

17. Did the Respondent subject the Claimant to the detriments set out in paragraphs 49-56 and 59-71 of the GOC and in particular, did:

    17.1 the First Respondent further insist that she worked with the Second Respondent despite being made aware of her concerns regarding his discriminatory conducts as early as 12 April 2021;

    17.2 do the matters set out at paragraphs 49-52 of the GOC demonstrate the First and Second Respondent's attempts to get rid of her as soon as she did the first of the protected acts in that:

        17.2.1 the Second Respondent sent a series of provocative emails to elicit a response and/or a course of conduct in an attempt to justify a dismissal;

        17.2.2 the First and Second Respondent calculatingly fabricated issues of misconduct despite her unblemished record with the First Respondent in an attempt to get rid of her and cover up their discriminatory conducts and make their acts of victimisation appear legitimate.

18. If so, was this because of the protected act(s)?

<u>Less favourable treatment contrary to section 3 of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002</u>

19. Did the Respondent treat the Claimant less favourably than it treated a comparable permanent employee by selecting her role for redundancy?
20. If yes,

    20.1 Was the treatment on the grounds that the employee is a fixed term employee, and
    20.2 Was the treatment justified on objective grounds?

<u>Witnesses and Tribunal procedure</u>

21. We heard evidence from the claimant. For the respondent we heard evidence from
    a. Andrew Stokes – Director – Visit England
    b. Richard Johnston – the 2nd respondent and Head of Procurement
    c. Roisin Marsh – HR Business Partner
    d. Trudi Welbelove – Head of People and Talent
    e. Jillian Le Croix – Senior HR Business Partner
    f. Debra Lang – Director of HR and Professional Services

22. A significant issue arose with the evidence of Mr Stokes. The claimant gave evidence for 1.5 days; Mr Stokes was the respondent's first witness and his evidence commenced after lunch on day 3, it was not over by the end of that day. He was then on leave and out of the country on a cruise. Attempts were made to see if he could continue his evidence, subject to the necessary authorisation on giving evidence from abroad.

23. In the end on the final day of evidence the position was that he was still at sea and was going to be unable to give evidence during the allotted time-scale for the hearing. This meant that we were unable to conclude Mr Stokes evidence. The respondents sought an adjournment of the hearing, to enable Mr Stokes to finish his evidence.

24. In declining the application to adjourn, we concluded that it was for the 1st respondent to ensure its witness availability, and this included ensuring its questions of the claimant finished in good time to allow Mr Stokes evidence to conclude prior to his holiday, or to seek to interpose Mr Stokes to ensure his evidence concluded in time. To adjourn would mean a delay of at the very least some weeks and likely months before we could meet again as a tribunal. We concluded that it was not proportionate or reasonable to adjourn for such a period. Also, we concluded that any disadvantage to Mr Stokes was minimal as we had read his statement and the majority of his evidence had been concluded. If there was any disadvantage, it was to the claimant who was opposing the application for an adjournment, but who would not have the opportunity to finish her cross-examination of Mr Stokes.

25. An issue arose on day 5 of the hearing, the respondents produced additional disclosure of emails relating to a meeting the claimant is said to have attended. The claimant objected to their late disclosure – that this was prejudicial, piecemeal and late disclosure.

26. The respondents position is that one of the emails had been passed to the legal team but was deemed not to be relevant to disclose; another had been missed by Mr Johnson in an initial search for disclosure. The respondents sought to recall the claimant and Mr Johnson to give evidence on them. The issue in the emails is that they evidence whether the claimant did or did not attend a particular meeting.

27. In rejecting the respondents late disclosure, we determined that the emails appeared to have little relevance to the issues surrounding the central issues in the claim; in addition recalling two witnesses to address the emails would mean that the very tight timetable would be thrown and we would be unlikely to finish closing submissions and then finish our deliberations within the allotted time-frame for the case.

28. The Tribunal spent the first day of the hearing reading the witness statements and the documents referred to in the statements. This judgment does not recite all of the evidence we heard, instead it confines its findings to the evidence relevant to the issues in this case, all of which was known to the parties during the investigation and disciplinary process.

29. This judgment does not recite all of the evidence we heard, instead it confines its findings to the evidence relevant to the issues in this case. It incorporates quotes from the Judge's notes of evidence; these are not verbatim quotes but are instead a detailed summary of the answers given to questions

The relevant facts

30. The claimant was employed from 1 April 2019 as a Contract Manager reporting to the respondent's General Counsel and Company Secretary. This was a new role on an initial fixed term one year contract to 31 March 2021.

31. The rationale for the role is set out in the 'authority to recruit' request: the Department for Culture, Media and Sport (DCMS) *"… included a requirement that a Contract Manager is recruited for the duration of the DEF Online Platform and this is included in the DEF services agreement. This role is needed to ensure all contractual obligations are met…"*. The role holder was expected to be in *"regular contact"* with DCMS, who made this role a *"fundamental requirement"* of the funding for the DEF (Deliver England Fund) Online Platform (118-9). Elsewhere the DEF contract is referred to as the 'TXGB' contract, and this is the term we use in this judgment.

32. Ms Balcome confirmed that the requirement for this role was *"… key and is a requirement from DCMS to manage the project spend".* (125).

33. The respondent's position is that the claimant's employment contract requires the claimant to be flexible and not only work on the TXGB contract, *"… to meet the changing requirements of the business"* (129). The claimant accepted that flexibility was required of her, her argument is that any significant change to her terms was to be subject to consultation (133) and that the focus of her role was Contract Manager on the TXGB contract, as set out in her job description (133).

34. The rationale for a fixed-term role was because extensions are *"subject to the online platform delivering planned income relating to DEF funding"* (126). The Tribunal accepted that it was initially envisaged that direct funding for the role was likely to be for two years, with further funding dependent on successful implementation, with funding sustained through booking fees which would mean staffing costs would be paid for from this income.

35. On 6 December 2019 the claimant and other employees on fixed-term contracts were told that their contracted were scheduled to finish on 31 March 2020; *"You are aware that we will be seeking confirmation of the rollover DEF budget as soon as possible… As soon as we have confirmation of next year's budget we will be able to review your contracts."* (141). On 21 January 2020 an Authority to Recruit (ATR) was submitted to extend the claimant's contract for a further year, with the same rationale as on her recruitment (142). Her extension was approved as there was *"sufficient budget"* for this post (151).

36. In February 2020 there were discussions about the claimant taking a new role – that of a Contract Manager & Supplier Relationship Manager (CM&SRM). On

12 February 2020 Peter Mills emailed managers, titled *"Authority to recruit – 50% Contract Manager"* saying, *"… The agreement we have reached with [Mr Stokes] is for [the claimant] to work 50% in the yet to be created central contract management team (in fact she will be it)".* There was at this time no source of funds *"… but to my mind this must be funded and we will have to make savings / cuts from elsewhere"*.

37. On 23 March the claimant was copied into an email from Mr Mills asking *"Grateful if you could advise what has been agreed in terms of me and my team using [the claimant]"* (209). The claimant's first reaction was *"Eeek … not sure what he means by formaising it? I offered help as I had some capacity and given the current crisis… If we agree to formalise – it will most likely be for the short-term…"* (211).

38. The claimant rejected the opportunity to apply for the CM&SRM role, arguing to Peter Mills, Director of Finance and Business Services and others that the salary was not a fair reflection of the role and additional responsibilities, which included leading on reporting on all of the respondent's commercial contracts, that it was a 'Head of Contracts' role and the salary was not in line with market rates (186-192).

39. There was a dispute in the evidence as to the proportion of her time in 2020 the claimant was spending as TXGB Contract Manager vs more general contract management work. At the outset of the Covid-19 pandemic and as a consequence of it, the claimant and other employees were given new objectives. One of the roles she undertook at this time was creating a spreadsheet of 'critical' contracts across the organisation, i.e. contracts which if they failed could have a serious impact on the running of the respondent. Her role was to 'flag' issues raised by the contract managers as part of this process, it was for more senior staff to decide who was responsible for managing the risks which arose. This was, the claimant said and we accepted, a finite project of some weeks, that she had no leadership of management responsibilities on this job.

40. Another significant task the claimant undertook from March 2020 onwards was work on a Contract Management Framework under the management of Mr Johnson in the Procurement Team. The claimant was given this role because she was the only contract management expert. This was not Covid-related, it was considered a necessity to have this Framework in place for the organisation and it was felt that the claimant was best placed to provide input into the specification and requirements for a contract management system.

41. There was an evidential issue about the amount of work required in the TXGB contract after Covid hit. Mr Stokes evidence was that the work continued but that it *"pivoted"* from international to domestic travellers, *"So the work did not go down, but the strategy changed..."*. The claimant's evidence was that in addition to the usual Contract Manager day to day role, she worked on major variations to the TXGB contract, to ensure it was fit for purpose during the pandemic.

42. The respondents' case is that by 6 April 2020 the claimant was working at least 50% of her time on general contract issues within Procurement, as evidenced by

an email from RJ to AS on that date, *"Following on from emails/discussions … regarding the usage of 50% of [the claimant's] time (within procurement…)"*. She was also assisting the Legal Department on contract critical issues (207).

43. The claimant's evidence was that she was not aware of these discussions, that at this time she was spending around 90% of her time on TXGB, and 5-10% on sporadic ad hoc tasks; that by this time she was spending at most 10% of her time on the contract management template. We accepted the claimant's arguments that while she was given new objectives, there was a relatively short period when Covid-related jobs took precedence.

44. The claimant had a positive appraisal in or around April 2020. There was one comment – that the relationship with Rainmaker is a supplier, a client and a joint delivery partner *"… There is a deal of quite challenging nuance around this. Sometimes this could have gone better on both sides."* (213-4). Mr Stokes evidence was that there was an issue with an *"antagonistic, combative approach…"* from the claimant that he and the claimant *"discussed it - and we said let's try a partnership approach … it's about how we solve issues…"*. The claimant accepted that this conversation was had. After this appraisal the claimant continued working in her TXGB Contract Manager role, and this was the main focus of her work.

45. There was a significant dispute as to what work the claimant was undertaking prior to her maternity leave. The respondent's position in the case was that the claimant was undertaking at least 50% of her time working for Mr Johnson in Procurement up to her maternity leave. In his evidence Mr Johnson did not agree with this assessment; he said that after the Contract Management Framework was completed the claimant *"went back to the TXGB role full time; she said she did not have capacity, she would undertake training on the CMF if she could but she had other priorities with TXGB, and I accepted this"*. He said that from July onwards to her maternity leave she undertook no work on the CMF, nor any work generally for the Procurement team.

46. By midsummer 2020 the extent of time being spent on general contract management for the Procurement team can, the Tribunal concluded, be seen in Mr Johnson's message to her on 22 August 2020 – he believed incorrectly that she was leaving the respondent, and he thanked her for *"all your efforts and your support regarding contract management…"* 238.

47. On 27 August 2020 the claimant forwarded her MATB1 form to HR, saying she intended to start her maternity leave on 5 October 2020, to take 25 weeks 3 days maternity leave, her maternity leave ending on 31 March 2021. In response the claimant was told *"…As you are aware Visit Britain cannot guarantee any further employment at the end of the fixed term contract, but may, at its discretion and depending on the availability of a suitable vacancy, elect to offer you a further term of appointment on a fixed term basis…"* (239-40).

48. Because of her accrued leave to this point, the claimant took annual leave from 1 September to 4 October 2020, her maternity leave commencing the next day.

49. By mid-September 2020, a decision had been taken to recruit a Senior Contracts & Supplier Relationship Manager (SC&SRM) on 6 month fixed term contract; this was a new post in the Procurement team under Mr Johnson's line management (243). The respondent's case is that became the maternity cover role for the claimant's period of maternity leave, that this role mirrors what the claimant was doing prior to her maternity leave. It was to be 75% funded by the Transformation Budget and 25% from the DEF Budget (247). The claimant's case is that this role encompassed some of her TXGB role, that other parts of the TXGB role were redistributed to other staff members when she went on maternity leave.

50. There were confused internal discussions about the SC&SRM role and what the claimant would be doing on her return from maternity leave. On 6 October 2020 the position was that the claimant would be returning from maternity leave to work under Mr Stokes – i.e. to her original role – and as such *"we are free to recruit into the SC&SRM role…".* Mr Mills the Director of Finance was not consulted on the extension to her contract *"… and given we were picking up some of her costs we are a bit surprised."* (250).

51. On 8 October 2020 an internal email Ms Wellbelove was referring to *"mass confusion regarding [the claimant]"*. She stated that the claimant's maternity cover role was working in the Business Services team, however the claimant was working for and being charged to the Visit England budget, that Mr Stokes view was that the claimant's contract expires prior to her return; *"Has an extension been approved/submitted?"*

52. Mr Stokes position by 12 October 2020 was that he can only provide a 1.5 day a week role on the TXGB contract for the claimant on her return (249). Mr Johnson's evidence referred to the confusion being *"we were not clear if she is returning, f/t or part-time, and who would be picking up her costs and how these would be divided."*

53. By January 2021 Mr Wilde was acting as Contract Manager on the TXGB contract, and the claimant's maternity cover, Harpreet, was proving 1 day a week support to Mr Wilde. The maternity cover was providing support and contract management oversight on other contracts, for example overseeing audits; essentially the maternity cover was undertaking some of what was to be the new SC&SRM role.

54. The issue of the claimant's role and her return had not been resolved by 17 January 2021. Ms Wellbelove described the issue of where the claimant sat in the budget as *"confusing for us"* and said an ATR was required *"In order to continue her employment"*. Mr Mills said that while Procurement had been *"using"* the claimant, this was not expected to be a permanent arrangement, but that the claimant's pregnancy meant her contract could not be terminated before her return, and the SC&SRM role could not be recruited to until she returned. As a result *"…we have recruited Harpreet as maternity cover with the expectation when [the claimant] returns she will come back to us and fill the contract management role";* that a Contract Manager on TXGB would still be required 1-2 days a week (266).

55. On 19 January 21 Mr Mills view was that his team had *"inadvertently inherited"* the claimant, that the understanding in October 2020 had been the claimant would be retaining to work on TXGB under Mr Stokes. Mr Stokes view was that the new role was a Visit Britain role with a contribution from Visit England; there were discussions about how the SC&SRM would be funded (271-2).

56. By 19 February Mr Stokes was told that it was *"imperative"* to reach a decision about the claimant's contract prior to her return to work in April 2021.

57. Contrary to the evidence we heard, there was no discussion with the claimant prior to her return to work about the implications of these internal discussions. The Tribunal concluded that the claimant was led to believe she would be returning to her TXGB role on her return to work.

58. On 2 March 2021 the claimant emailed HR saying *"can you please confirm the end date of my maternity leave… Please let can you let me know whether there is an intention to extend the contract further – totally appreciate this subject to funding etc…"* (286)

59. On 11 March 2020 HR sent an email saying *"…we urgently need to establish a way forward with regards to the [claimant's] contract…"*, that a meeting with the claimant was required to *"get clarity on the plans going forward"*.

60. An ATR was submitted 19 March for the SC&SRM role – a permanent role reporting to Mr Johnson as Head of Procurement. The role was to focus on providing support to Contract Managers and owners within the Visit Britain and Visit England teams, together with leading on the rollout of training associated with the Contract Management Framework policy (300). There was further discussion as to whose budgets would pick up the costs for this role.

61. On 23 March the claimant confirmed that she would return to work full time. She had been told by Mr Stokes that the only change to her role was a change of line-manager to Mr Johnson *"please can you confirm this is the only change i.e. there will be no change to my role"*. (310). In response Mr Johnson asked was it possible to send the claimant the job description for the SC&SRM role, that there needed to be a meeting with her *"…to discuss her return to work"*. This was not done at this time, because it was concluded that the discussion was dependent on the SC&SRM role being approved (311). Mr Johnson accepted in his evidence that the claimant's position in calls on 31 March and 12 April 2021 was that she believed she would be returning to the TXGB contract manager role.

62. On 31 March 2021 the claimant was sent a letter saying that her role *"will be changed into [SC&SRM]"* on a permanent basis (321).

63. The claimant returned to work on 6 April 2021. She responded to the 31 March letter on the same day, saying that the role appeared to be *"at first glance … the same position offered to me in February 2020 minus the pay rise…."*. She said that this was a change from Contracts Manager for one Visit Britain contract to Senior Contracts Manager for all VB contracts, a *"… significant increase in responsibilities but again no actual pay rise".* She said that *"Until my return I was*

led to believe there be no change other than the day-to-day management, this is not the case." She said that she would accept the role on the basis that the notice period was reduced from 8 to 4 weeks.

64. The claimant's evidence is that the new role was unmanageable, that this role required her to be responsible for 100 contracts, in comparison with the one TXGB contract, and with a baby it was not feasible role for her to undertake. Even overseeing a maximum of 30 at any one time (the respondent's position) was *"… unfeasible, knowing the amount of effort managing one contract…."*. She compared the work she had handed over on her maternity leave (236-7), that for example there were significant issues with the TXGB contract which were not resolved on her return to work, that the TXGB Contract Manager function remained a full time role.

65. The claimant argued that much of the TXGB contract work had been taken over by other staff members when she went on maternity leave, in fact she had allocated this work to staff members as set out in her maternity handover spreadsheet (236-7).

66. This was also the position of the respondent. In questions to the claimant, the respondent's position was that *"some aspects of the role was redistributed"* to other team members, with Harpreet picking up the balance, approximately 1.5 to 2 days per week. The claimant says, and we accepted, that on her return she was told her role no longer existed and the job functions redistributed to other TXGB team members.

67. The respondent's case is that the TXGB role had evolved. Mr Stokes evidence was that *"… a lot of the project had been done".* There was a need for work on this contract but that after the claimant had handed over there had been *"some redistribution - an evolution and evaluation of role to respond to business needs'*, that as a consequence some of the TXGB contract manager role had been given to other staff members.

68. Mr Stokes evidence was that when the claimant went on maternity leave the *"monitoring of the KPIs"* was one part of the TXGB Contract Manager role which was redistributed to other team members, a "time consuming element of the role.."

69. The respondent's position was that there was no funding for the TXGB Contract Manager role; the claimant's position was that several roles on TXGB had been converted from fixed-term to permanent while she was on returning from maternity leave, including that some of her role was given to the TXGB Senior Programme manager (694-5), Mr Wilde's post. For example the *"TXGB strategy and KPIs"* appeared in the JD for this role, which became a permanent position on the day after the claimant's maternity leave ended, 1 April 2021.

70. The respondent's case is that no ATR for the TXGB Contract Manager role could be made as the work on the contract was *"winding down"* from February 2020. The claimant's case was that while payments had been made on milestones achieved, the contract was meant to be self-funding from year 3, that the work

was still required *"it was full on all the time … once milestone payments made, there was a need for a phase to make the role self-funding".*

71. In further internal discussions about the claimant and Harpreet, it was agreed that Harpreet should remain working on TXGB, while the claimant was brought up to speed on the other procurement projects, with the claimant working for one day a week to assist on TXGB contract/supplier management (329).

72. In a meeting on 12 April 2021 with HR and Mr Johnson, the claimant was told *"…your role does not exist anymore as your duties were absorbed by other team members in your absence"* (351); on her querying why there was still 1.5 days per week work for her, she was told that the rest of her duties had been *"redistributed to other TXGB team members and therefore it was decided that a full time post was no longer required and duties were so few that these can be managed 1-2 days a week…"* (352).

73. The respondent relies on the fact that a comparison exercise was undertaken by HR, 'benchmarking', looking at the JDs for the Contract Manager TXGB and SC&SRM roles; the conclusions were while the SC&SRM role involved oversight of the 1st respondent's contracts, the roles were comparable, with the same kind and level of duties, responsibilities, and reporting line.

74. The claimant believed the new role would involve having oversight over 100 contracts, that part of the role involved signing-off on the contract audits which would require a detailed knowledge of each of the contracts and how they operated, that this was an impossible task in her hours of work. She argued that there was no proper analysis whether this was in fact a suitable alternative role. The respondents position is that oversight of the TXGB *contract "one of the bigger ones"* would be 1.5 days a week, the rest of the week would be overseeing the remainder contracts, of which about 30 would require work at any one time.

75. There was a significant dispute about the TXGB contract requirement for a dedicated contract manager. Mr Stokes evidence was that there was no need for one person to be the contract manager, that this clause was included because the respondent had historically failed contract management audits, and that at the time this contract was agreed the 1st respondent employed no contract managers, that the TXGB Contract Manager was required as a contractual condition to ensure that this expectation was met. His view was that once the contact had passed build and delivery payment *gateways "it became more of a monitoring and advisory role"*, that there was no need for a full-time resource beyond the build phase.

76. The claimant's request for the notice period for the SC&SRM role to be reduced to 4 weeks was rejected. She responded on 7 April 2021 saying that the role entailed a *"… significant increase in responsibilities… It would simply be illogical for me to accept the increased responsibilities upon my return from maternity leave on less favourable terms…".* She said that given the failure to reduce notice period the *"… I would have to turn down the promotion and stay in my current role."* (330).

77. Mr Mills view was that the claimant was not being reasonable as this was not a promotion "… *indeed I had understood she is simply returning to pick up the same duties immediately prior to going on maternity leave. To my mind the issue is that her old role longer exists which if she insists presumably makes her surplus to requirements."* (334).

78. A catch up meeting was organised, the issues to be discussed were her return to work and well-being, also *"… there seems to be some confusion over the SC&SRM role and a return to the Contracts Manager role."* (346).

79. On 12 April 2021 the claimant was asked not to contact Rainmaker without the express permission of Mr Johnson "… *since we are in the middle of contract negotiations and it seems she has upset the Director in the past… you both had a tricky chat with her…".* (348).

80. The claimant's view was that there were issues on her return from maternity leave, for example reports shared in her absence had not been properly documented, *"…which in the event of an audit would be viewed as poor contract management"*. She asked for permission to discuss this with Rainmaker, and was told that she could not. Mr Mills stated he had just heard about *"your views"* on the claimant, and her relations with Rainmaker; *"I must admit to being a bit surprised she was retained but…"* (354).

81. The claimant's view was that her *"performance was always praised"* and that *"as soon as I raised concerns of discrimination I was taken off...".* The claimant's view was that she had been asked to return to TXGB contract work, albeit 1-2 days a week, and now she was stopped from doing so.

82. In her return to work meeting on 12 April 2021 the claimant describes *"feeling ambushed"* since she returned to work. She asked *"what has happened to my role"*, she said she had been told by Mr Johnson she would be coming back to the same post, with a change of line management. She was told *"your role has simply ceased to exist as I mentioned to you previously"*. Ms Marsh stated *"your old role does not exist anymore as your duties were absorbed by other team members in your absence".*

83. The claimant was told that there was no redundancy process as *"you are a fixed time employee clear expiry date"* and, notwithstanding being employed for exactly 2 years at the expiry of her maternity leave, she was told she did not have the qualifying period of service for a redundancy payment. The claimant pointed out that if the role had ceased to exist she should be told this during her maternity leave *"but it feels like you waited for my maternity leave to end on purpose".*

84. It was reiterated that her role did not exist anymore, that she has been offered a suitable alternative role and if she refused to sign the contract respondent will *"consider you have resigned".*

85. The claimant said that the new role was unsuitable for her, it was unattainable with the level of responsibilities that she was being "overloaded" with responsibilities *"and you are using the fact that I went on maternity as leverage*

to force me to accept or resign". She said that she been offered the same role at a higher rate of pay prior to her maternity leave and she had refused this role.

86. The claimant asked why she was expected to work in the TXGB role 1-2 days a week if the role does not exist anymore; she was told again that her duties were *"… redistributed to the other TXGB team members and therefore it was decided that a full-time post was no longer required and duties are so few that those can be managed 1 to 2 days a week."*

87. The claimant stated that her concern was that the role was changing from managing one contract to being asked to lead on over 100 contracts; Mr Johnson responded *"I am surprised you are asking to know the difference as you drafted the policy … You are a Contract Manager and so in my view best placed to answer these questions yourself. The expectation is not for you to lead but to support other contract managers".*

88. She referred to the 'strategic contracts, that TXGB required a dedicated contract manager; she was told that these duties had been passed to other staff members who *"… have been undertaking these duties in your absence and it has been decided they will continue to do so. You will simply be supporting them"* (351-3).

89. On 13 April 2021 the claimant was given some work on a "quick guide" for the CMF; the claimant responded saying *"Happy to look into this once contractual issues are resolved. …It would be best for the Senior Contracts & Supplier Relationship Manager to do this".* (356). HR position in response was that this was a *"reasonable managers request"* given her role had changed.

90. On 14 April Ms Marsh emailed the claimant saying that this was a reasonable management request, that the claimant's behavior *"cannot be advocated and could be considered an act of misconduct… this behavior could be considered unreasonable and influence the trust and confidence in our working relationship going forward".*

91. The claimant's evidence was that the issue of possible misconduct was *"fabricated"* after she had raised issues of discrimination.

92. The emails that followed reiterated the respondent's position that her role was a fixed term role was an agreed end date of 31st March, and that she was offered a suitable alternative role.

93. On 15 April 2021 the claimant went off sick, saying that the *"recent events and the constant series of ambush … has had a considerable toll on both my physical and mental health…"* (369). She was signed off work until 7 May 2021.

94. On 30 April Mr Johnson emailed the claimant saying he wanted to support her return to work. The claimant responded saying that he was not her line manager that she had not accepted the SC&SRM role as it is *"not suitable and less favourable, given the significant increased responsibilities without fair consideration"*. She considered that Mr Stokes remained her line manager.

95. On 7 May 2021 Peter Mills asked what had been said or put in writing to the claimant before she went on maternity leave, as she was working in Procurement for Mr Johnson *"… on what was originally seen as a temporary basis … you explained that she had to transfer to my team and I reluctantly accepted - I am not sure that this was ever relayed to [the claimant]."* (378).

96. In a meeting with Ms Wellbelove the claimant was told that there was no need to give the claimant notice of expiry of a fixed term contract, also that was not a redundancy situation. The claimant said that her CM role was managing one strategic contract and the new job description is "*asking me to manage all contracts for the organisation".* She argued that the *"Skillset"* is different, that it's *"physically impossible"* to manage 100 contracts, that the TXGB contract was 1-2 days a week, with 30 other strategic contracts *"… how can those … be fitted in a five day week , its physically impossible…".* She argued that a like for like role would be to change one strategic contract for another.

97. Ms Wellbelove's position was that the new role was different, it was an overview role, ensuring the contracts were being properly managed by contract managers. "… *You're just overseeing that we are compliant … You'll be leading on the compliance and governance of these contracts so it is not about doing what was in the old role…".* She was told that the TXGB contract will be managed by a Contract Manager within Visit England, that her contract in this role was fixed-term and had ended, notwithstanding that the Contract Manager role *"still exists"*. She was told that she had been working on implied times for the previous six weeks, that if she decided not to accept the role she'd be given eight weeks' notice. The claimant said she did not believe she had the *"right skill set"* to undertake the new role, but nobody had answered her queries.

98. The claimant submitted a grievance on 11 May 2021, arguing she was entitled to return to the same job she had been employed in before her on maternity leave and that no justification had been provided for why her duties had been absorbed and her fixed term in this role ended. She argued that this was unfavourable treatment because of maternity leave and less favourable treatment compared to her permanent colleagues. She referred to being told that her role was redundant and then told it was not redundant. She referred to the *"significant increased responsibilities"* in the new role. She said that she had been discriminated against and victimised when she asserted her rights, including being *"ambushed"* in meetings, and *"a constant unwillingness and serious inability"* to provide relevant information to her. She argued she was under *"implied terms"* in her *"current role"* of Contract Manager. She said that there was a *"dedicated"* role as the TXGB contract manager, which was *"still required"*. (398-9).

99. Ms Wellbelove responded to issues arising from the 11 May meeting on 12 May. She said that because it had not been clearly communicated that the TXGB Contract Manager role ended on 31 March 2021, this contract continued to date. The email said they would have to *"agree to disagree"* on what the SC&SRM role entailed. She argued that maternity cover was covering the new role successfully and that the role was to lead rather than manage on the contracts, providing guidance and oversight to Contract Managers.

100. Ms Wellbelove's evidence was that there was no obligation to renew the claimant's contract or offer her employment at the end of her maternity leave, because she had been told her contract was ending on 31 March 2021. But, she argued, that there was a suitable vacancy which was ringfenced for the claimant.

101. The claimant was offered a four week trial in the new role before her to better understand the role and how it had been delivered over the past seven months; alternatively she could resign. (400-4)

102. On 12 May the claimant emailed the TXGB team saying *"I am the contract Manager for TXGB"* and suggesting a catch-up. The team was told not to respond to this message (405 & 411).

103. On 14 May 2021 the claimant reiterated by email that her Contract Manager role had not been made redundant and was required, *"It is therefore reasonably practical for me to continue working in the same post";* she said that she was not resigning.

104. The claimant was sent a notice of intention is to terminate employment on 17th of May 2021. The reason for notice was *"refusal to continue and formally accept recent changes to the role of contract manager"*. She was told that she had previously accepted without protest that the requirement for a solely TXGB contract Manager role had ceased on 31 March 2021. She was told that she had been discussing changes to her role since February 2020 due to the reduced volume of work, that prior to her maternity leave she was working only 1 - 1 ½ days covering TXGB contract, the remainder of her time she had been working with Procurement *"which is what has been offered to you…".* She was put on garden leave for her eight weeks' notice and was told not to attend work or undertake any work on behalf of the respondent. Her last day of employment was 16th of July 2021 (420-23).

105. The claimant was invited to a grievance hearing on 9 June 2021. She argued that the TXGB role was part of a 5 year contract, that the role required a *"dedicated contract manager";* she said that the SC&SRM role was not suitable for her. Mr Johnson was interviewed and said he understood that the Contract Manager role was no longer required as a full-time role. He said that the difference in the roles was that the post-holder would be required to have an overview of all contracts within the organisation instead of being responsible for only one contract, it was a *"consultative"* role, rather than holding contract management responsibilities.

106. Mr Stokes was interviewed and said that the requirement was not for a dedicated Contract Manager for TXGB, instead that the contract required a contract manager and there were none employed by the respondent at the outset of the contract, hence the requirement to recruit. He said that Visit England did not have funding to employ a full-time Contract Manager, that the requirement was to have a person in role carrying out the responsibilities of a Contract Manager and that training had been given to staff to undertake this role. He said the claimant was never told she would be dedicated to TXGB. He said that the

claimant had told him that she would not return to work if she was only to undertake the TXGB Contract Manager role (483-5).

107. The grievance outcome was that she did not have a right to return to her old role as her fixed term contract had ended on 31 March 2021. She was told that she was aware of this as there had been discussions with her both prior to and during her maternity leave. There was no less favourable treatment following maternity leave or because she was on a fixed term contract. She was told that the finances were no longer available for her role and there was only work for 1.5 days a week. The letter also said that her role was not redundant.

108. The conclusions said that part of her allegation was *"vexatious"* - why would she believe she had a contract beyond 31 March, and concluded that the claimant had responded *"with some hostility".* She was told that some of her behavior was *"insubordinate"* and may amount to *"misconduct"*. She was given the right of appeal and she exercised this right on 16 July 2021. The appeal was rejected on the basis her contract had automatically terminated on 31 March 2021, that steps had been taken to find her an alternative role because she had been on maternity leave (546).

109. Respondent witnesses were asked about whether the TXGB role was redundant if, as the respondent was arguing, its activities were reducing. We were told no, the issue was the funding had ended, she had been doing ad hoc work before her maternity leave, and that the respondent was *"keen to retain her services"*. Ms Wellbelove argued that there was no loss of headcount, that the role was "never a permanent proposition, there was finite funding … When the claimant went on maternity leave … it became apparent that we could end the claimant's fixed-term contract". She argued that there was no redundancy as there was now a requirement for a role which oversaw all the contracts, "…the duties are the same".

110. Ms Marsh's evidence was that had the claimant not gone on maternity leave, there would have been *"more communication … this is the nature of not wanting to disturb someone with a baby..."*. She argued that the SC&SRM role would not have been ringfenced for the claimant if she had not gone on maternity leave, as others were at risk of redundancy and the post wold have been ringfenced to them.

Closing arguments

111. Ms Polimac provided a comprehensive written submission. In addition she argued:

    a. that Regulation 18(1) of MAPLE does not apply, because the claimant took annual leave before commencing her OML; this means that the claimant had not taken an isolated period of leave, and this means that the claimant has no right to return to the same role.

b. there is no redundancy situation, the work of Contract Manager TXGB is still required; the focus is not on who is doing the role, it's whether the work is still required and there was no reduction in the requirement of the business to undertake this role.

c. Instead the requirements of the 1st respondent had changed, and there was no need for a dedicated contract manager on TXGB. Conversely there was a need for a SC&SRM.

d. in any event it was not reasonably practicable for her to return to the same role as her fixed term contract had expired and there was no funding for her role, and the SC&SRM role was a suitable alternative role.

e. she had undertaken at least some elements of the SC&SRM role before going on maternity leave, this was in essence her role and she was returning to the same role.

f. C accepted the role on her return from maternity leave, only to reject it on an issue with length of notice

g. C was capable of doing this role as the 1st respondent's contract management expert.

h. Accordingly there is no breach of Regulation 18(1) or 18(2).

i. If regulation 10 applies, she was offered a suitable alternative role taking effect immediately following the end of her fixed-term contract as the work was suitable and were no less favourable than her previous contract

j. The reason for the claimant's dismissal is 'some other substantial reason', not by reason of her maternity leave, and not redundancy.

k. The reason it is SOSR – there was no funding, the claimant was offered a suitable role which was created to reflect the changing needs of the business; C refused to accept this role despite it being suitable, and she was dismissed as a consequence. the 1st respondent acted reasonably in dismissing for this reason because she was refusing to accept the alternative role and there was no other role for her.

l. The chronology shows that a reasonable process was undertaken with plenty of dialogue with the claimant throughout.

m. The reason it is not redundancy – the 1st respondent had not ceased the Contract Manager function or reduce the number of employees required to do this role, instead it was subsumed into the SC&SRM role, it was a restructure rather than a redundancy situation

n. To show breach of Reg 20(2) the principal reason is that the claimant's role is redundant, and the same applied equally to others, and the principal reason for selection is the claimant's maternity leave

o. On the maternity discrimination claim (S.18 EA and s.39(4) EA 2010, and detriments claim (s.47C ERA) a causal link us required between the unfavourable treatment and C's pregnancy or maternity. There is no unfavourable treatment and there is no causal link between the alleged detriments and C's maternity leave. There was no consultation because there was no redundancy situation; her role was ending on expiry of a fixed-term contract not because she was on maternity leave.

p. The Victimisation claim: while the closing argues there is a question as to whether the claimant made a protected act, this was conceded in the proceedings. But there is no causal link between the detriment and the protected act.

q. The fixed-term worker claim: there is no comparable permanent employee; in any event the claimant's role was not redundant.

r. In that regard, even if there was differential treatment here, which is denied, R has an objective justification for just treatment and therefore there is no breach of regulation 3. The reason why R treated C the way they did in terms of selecting her role for redundancy was because there was no more funding for a standalone CM role and therefore her contract could not be extended.

112. The claimant provided a written submissions, and made arguments:

a. The TXGB Contract manager role continued to exist

b. She was working on this full time prior to her maternity leave and handed it over to colleagues

c. The work required un this role was the same on her return from maternity leave

d. There was a requirement for a full time Contract Manager role

e. The 1.5 days requirement for the role was "invented" when she went on maternity leave

f. She was led to believe she was returning to the same role

g. The new role was formulated in February 2020, and she turned it down, but she did assist with the role when she had some capacity

h. During maternity leave, because they wanted her in the new role they redistributed her TXGB duties, meaning she had "no option" but to accept the new role

i. This was not communicated to her despite the decision being made shortly after she went on maternity leave

j. It is a “sham redundancy”, her role did not disappear; the budget issues only became an issue when she requested a return to the TXGB role. There was funding for the role, alternatively it could and should have been sought

k. There was a budget because Mr Wilde’s contract was renewed but her role disappeared *“Why did he get to keep his role and take on parts of my role? Where is the budget coming from to keep him on?”*

l. The SC&SRM role was not suitable, the level of responsibilities and duties were par with a senior role.

The Law

113. Equality Act 2010

s.18 Pregnancy and maternity discrimination: work cases

(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.

(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.

(3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

(5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).

(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—

(a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;

(b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.

s.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—

…

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

s.39 Employees and applicants

(1) An employer (A) must not discriminate against a person (B)—

(a) in the arrangements A makes for deciding to whom to offer employment;

(b) as to the terms on which A offers B employment;

…

(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 affords 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;

by subjecting B to any other detriment.

s.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.

114. Employment Rights Act 1996 - part V – right not to suffer detriments in employment

s.47C Leave for family and domestic reasons.

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.

(2) A prescribed reason is one which is prescribed by regulations made by the Secretary of State and which relates to—

(a) pregnancy, childbirth or maternity,

(b) ordinary, compulsory or additional maternity leave,

115. Employment Rights Act 1996 – Pt X Dismissal

s.92 Right to written statement of reasons for dismissal.

(1) An employee is entitled to be provided by his employer with a written statement giving particulars of the reasons for the employee's dismissal—

(a) if the employee is given by the employer notice of termination of his contract of employment

…

(c) if the employee is employed under a limited-term contract and the contract terminates by virtue of the limiting event without being renewed under the same contract.

(2) Subject to subsections (4) and (4A), an employee is entitled to a written statement under this section only if he makes a request for one; and a statement shall be provided within fourteen days of such a request.

(4) An employee is entitled to a written statement under this section without having to request it and irrespective of whether she has been continuously employed for any period if she is dismissed—

(a) at any time while she is pregnant, or

(b) after childbirth in circumstances in which her ordinary or additional maternity leave period ends by reason of the dismissal.

s.98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) …
(b) …
(c) is that the employee was redundant…

(3) …

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the issue

s.99 Leave for family reasons:

(1) An employee who 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,
(b) ordinary, compulsory or additional maternity leave,
…

and it may also relate to redundancy or other factors.

s.136 Circumstances in which an employee is dismissed.

(1) Subject to the provisions of this section and sections 137 and 138, for the purposes of this Part an employee is dismissed by his employer if (and only if)—

(a) the contract under which he is employed by the employer is terminated by the employer (whether with or without notice),

s.139 Redundancy.

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—
(i) to carry on the business for the purposes of which the employee was employed by him, or
(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—
(i) for employees to carry out work of a particular kind, or
(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

116. Maternity and Parental leave Regulations 1999

Reg 10 - Redundancy during maternity leave

(1) This regulation applies where, during an employee's ordinary or additional maternity leave period, it is not practicable by reason of redundancy for her employer to continue to employ her under her existing contract of employment.

(2) Where there is a suitable available vacancy, the employee is entitled to be offered (before the end of her employment under her existing contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3) (and takes effect immediately on the ending of her employment under the previous contract).

(3) The new contract of employment must be such that—

(a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and

(b) its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her

employment, are not substantially less favourable to her than if she had continued to be employed under the previous contract.

Reg 18 - Right to return after additional maternity leave or parental leave

(1) An employee who takes parental leave for a period of four weeks or less, other than immediately after taking additional maternity leave, is entitled to return from leave to the job in which she was employed before her absence.

(2) An employee who takes additional maternity leave, or parental leave for a period of more than four weeks, is entitled to return from leave to the job in which she was employed before her absence, or, if it is not reasonably practicable for the employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in the circumstances.

(3) An employee who takes parental leave for a period of four weeks or less immediately after additional maternity leave is entitled to return from leave to the job in which she was employed before her absence unless—

(a) it would not have been reasonably practicable for her to return to that job if she had returned at the end of her additional maternity leave period, and

(b) it is not reasonably practicable for the employer to permit her to return to that job at the end of her period of parental leave;

otherwise, she is entitled to return to another job which is both suitable for her and appropriate for her to do in the circumstances.

(4) Paragraphs (2) and (3) do not apply where regulation 10 applies.

(5) An employee's right to return under paragraph (1), (2) or (3) is to return—

(a) on terms and conditions as to remuneration not less favourable than those which would have been applicable to her had she not been absent from work at any time since—

(i) in the case of an employee returning from additional maternity leave (or parental leave taken immediately after additional maternity leave), the commencement of the ordinary maternity leave period which preceded her additional maternity leave period, or

(ii) in the case of an employee returning from parental leave (other than parental leave taken immediately after additional maternity leave), the commencement of the period of parental leave;

(b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to her additional maternity leave period, or (as the case may be) her period of parental leave, were continuous with her employment

following her return to work (but subject, in the case of an employee returning from additional maternity leave, to the requirements of paragraph 5 of Schedule 5 to the Social Security Act 1989(**1**) (equal treatment under pension schemes: maternity)), and

(c) otherwise on terms and conditions not less favourable than those which would have been applicable to her had she not been absent from work after the end of her ordinary maternity leave period or (as the case may be) during her period of parental leave.

Reg 20 - Unfair dismissal

(1) An employee who is dismissed is entitled under section 99 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), or

(b) the reason or principal reason for the dismissal is that the employee is redundant, and regulation 10 has not been complied with.

(2) An employee who is dismissed shall also be regarded for the purposes of Part X of the 1996 Act as unfairly dismissed if—

(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and

(c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The kinds of reason referred to in paragraphs (1) and (2) are reasons connected with—

(a) the pregnancy of the employee;

(b) the fact that the employee has given birth to a child;

(c) the application of a relevant requirement, or a relevant recommendation, as defined by section 66(2) of the 1996 Act;

(d) the fact that she took, sought to take or availed herself of the benefits of, ordinary maternity leave;

(e) the fact that she took or sought to take—

(i) additional maternity leave;

(ii) parental leave, or

(iii) time off under section 57A of the 1996 Act;

(4) Paragraphs (1)(b) and (3)(b) only apply where the dismissal ends the employee's ordinary or additional maternity leave period.

(5) Paragraph (3) of regulation 19 applies for the purposes of paragraph (3)(d) as it applies for the purpose of paragraph (2)(d) of that regulation.

117. Fixed Term Employee (Prevention of Less Favourable Treatment) Regs 2002

Reg 3 Less favourable treatment of fixed-term employees

(1) A fixed-term employee has the right not to be treated by his employer less favourably than the employer treats a comparable permanent employee—

(a) as regards the terms of his contract; or

(b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.

(2) Subject to paragraphs (3) and (4), the right conferred by paragraph (1) includes in particular the right of the fixed-term employee in question not to be treated less favourably than the employer treats a comparable permanent employee in relation to—

(a) any period of service qualification relating to any particular condition of service,

(b) the opportunity to receive training, or

(c) the opportunity to secure any permanent position in the establishment.

(3) The right conferred by paragraph (1) applies only if—

(a) the treatment is on the ground that the employee is a fixed-term employee, and

(b) the treatment is not justified on objective grounds.

(4) Paragraph (3)(b) is subject to regulation 4.

(5) In determining whether a fixed-term employee has been treated less favourably than a comparable permanent employee, the pro rata principle shall be applied unless it is inappropriate.

(6) In order to ensure that an employee is able to exercise the right conferred by paragraph (1) as described in paragraph (2)(c) the employee has the right to be informed by his employer of available vacancies in the establishment.

(7) For the purposes of paragraph (6) an employee is "informed by his employer" only if the vacancy is contained in an advertisement which

the employee has a reasonable opportunity of reading in the course of his employment or the employee is given reasonable notification of the vacancy in some other way.

Reg 4.— Objective justification

(1) Where a fixed-term employee is treated by his employer less favourably than the employer treats a comparable permanent employee as regards any term of his contract, the treatment in question shall be regarded for the purposes of regulation 3(3)(b) as justified on objective grounds if the terms of the fixed-term employee's contract of employment, taken as a whole, are at least as favourable as the terms of the comparable permanent employee's contract of employment.

(2) Paragraph (1) is without prejudice to the generality of regulation 3(3)(b)."

Relevant case law

118. We considered the general case-law principles set out below, along with cases referred to by the parties in their closing submissions.

119. Maternity discrimination

a. *Sefton Borough Council v Wainwright [2015] IRLR90*: there is a difference in how the protections are afforded under s 18 EqA, on the one hand, and under reg 10 MAPL Regs, on the other. The former provides that, if possessing the protected characteristic, a woman has to demonstrate unfavourable treatment because of pregnancy or maternity leave. Regulation 10 provides that during the relevant period a woman is entitled to special protection and (by virtue of reg 20) will be treated as unfairly dismissed unfairly dismissed if this is denied. If Reg 10 is breached, this does not mean there is inherent discrimination for s 18 purposes. That went beyond the language of the statute and was not the assumption made in other authorities on reg 10 (or earlier provisions to the same effect). Here, the unfavourable treatment of the Claimant (her own position being made redundant and the failure to offer her a suitable alternative vacancy) certainly coincided with her being on maternity leave but that did not inevitably mean that it was *because* of it. The Employment Tribunal was required to ask what was *the reason why* the Claimant had been treated the way she was. The failure to do so was an error of law and this ground of appeal would therefore be allowed.

b. *Paquay v Societe d'Architectes Hoet + Minne SPRL*: *C-460/06*, *[2008] ICR 420 ECJ:* EqA 2010 s 18, the dismissal/detriment after the protected period has ended is also

treated as discrimination if either it is because of her pregnancy or a resulting illness and is in implementation of a decision taken during the protected period (s 18(5), or it is because she exercised or sought to exercise a right to maternity leave (s 18(4), which applies irrespective of when the dismissal is implemented or was decided on. The ECJ also held that dismissal on the grounds of pregnancy or childbirth is in breach of the Equal Treatment Directive (76/207, regardless of when the decision to dismiss is taken, or when it is communicated.

c. S G Petch Ltd v English-Stewart UKEAT/0213/12, (31 October 2012, unreported): was the claimant dismissed for a reason connected with the fact she took maternity leave, when the redundancy situation has come about because the employer found it could cope without the employee's services during her absence on maternity leave? The selection of the employee could be within the reach of reg 20 if the reason she, rather than a colleague performing similar work, had been selected was the fact that it was her absence on maternity leave that had caused the existence of the redundancy situation to be appreciated by the employer.

d. Atkins v Coyle Personnel plc [2008] IRLR 420, EAT: 'connected with' requires a 'causal connection' but a wide and purposive interpretation of the legislation was required, with a common sense and pragmatic approach towards causation. cf Clayton v Vigers [1990] IRLR 177, EAT – a causal connection was not required.

e. Brown v Stockton-on-Tees Borough Council [1988] 2 All ER 129: a tribunal should consider the necessary causal connection particularly carefully if it is alleged that pregnancy or maternity, or a reason related thereto or connected therewith, was the real reason for dismissal.

> "[Section 99] must be seen as part of social legislation passed for the specific protection of women and to put them on an equal footing with men. I have no doubt that it is often a considerable inconvenience to an employer to have to make the necessary arrangements to keep a woman's job open for her whilst she is absent from work in order to have a baby, but this is a price that has to be paid as a part of the social and legal recognition of the equal status of women in the workplace. If an employer dismisses a woman because she is pregnant and he is not prepared to make the arrangements to cover her temporary absence from work he

> is deemed to have dismissed her unfairly. I can see no reason why the same principle should not apply if in a redundancy situation an employer selects the pregnant woman as the victim of redundancy in order to avoid the inconvenience of covering her absence from work in the new employment he is able to offer others who are threatened with redundancy. It surely cannot have been intended that an employer should be entitled to take advantage of a redundancy situation to weed out his pregnant employees."

f. Caledonia Bureau Investment and Property v Caffrey [1998] IRLR 110, [1998] ICR 603, EAT: C was unable to return to work after her maternity leave because of post-natal depression which had first arisen during her maternity leave. Her subsequent dismissal was automatically unfair under ERA 1996 s 99. This provision on its proper construction applied to a dismissal occurring after the expiry of maternity leave, in circumstances where (a) the contract of employment had been expressly extended, so that the notification to the employee that she had no job was a true dismissal, (b) the illness had arisen during the period of maternity leave, and (c) the illness was the direct cause of the dismissal.

g. Tele Danmark A/S v Handels-Og Kontorfunktionaerernes Forbund i Danmark (HK): C-109/00, [2001] IRLR 853, ECJ: A woman, hired for a temporary job lasting six months, was dismissed when she told her employers she was pregnant and was due to give birth before the end of her contract.

> ''Since the dismissal of a worker on account of pregnancy constitutes direct discrimination on grounds of sex, whatever the nature and extent of the economic loss incurred by the employer as a result of her absence because of pregnancy, whether the contract of employment was concluded for a fixed or an indefinite period has no bearing on the discriminatory character of the dismissal. In either case the employee's inability to perform her contract of employment is due to pregnancy.''

h. Clayton v Vigers [1990] IRLR 177, [1989] ICR 713, that a dismissal was automatically unfair where the reason was that the employer was unable to obtain a temporary replacement for a woman on maternity leave. The EAT refused to accept that the relevant wording required a direct causal connection; it was sufficient that the dismissal was 'associated with' the pregnancy

i. 'George v Beecham Group Ltd [1977] IRLR 43, IT: G had a poor attendance record due to her poor health. She received verbal and written warnings and, just prior to her entering hospital for a minor operation the employers issued her with a final written warning. They informed her that her forthcoming visit to hospital would not affect her position but that they expected regular attendance thereafter. G attended regularly for a month before she informed her employers that she was pregnant but intended to continue to work until nearer the birth. Two weeks later G suffered a miscarriage and was absent from work. The employers dismissed G and, in defence of their actions, stated that G had been dismissed as a result of her poor attendance record. The Exeter tribunal pointed to the fact that the employers would not have dismissed her if she had not been absent on that last occasion and that they knew that she was absent as a result of suffering a miscarriage, and held that this was some `other reason connected with her pregnancy' and that, in the circumstances, this meant that the dismissal was automatically unfair [under the predecessor of ERA 1996 s 99].'

120. Unfair dismissal

a. *Barot v Brent* 0539/11 EAT: does the restructure entail a reduction in the number of employees required to do the role, or is it a redistribution amongst the same number pf employees whose work is the same?

b. *Excel Technical Mouldings Ltd v Shaw EAT* 0267/02 there was no redundancy when the claimant was dismissed and his job functions were reabsorbed by the managerial team because there had been no overall reduction in the number of managerial employees.

c. *Corus and Regal Hotels plc v Wilkinson* EAT 0102/03: there was no redundancy where a restructure resulted in the substitution of one post with another - the business requirements for employees to carry out the role had not ceased or diminished even though the identity of the persons carrying out his work had changed.

Conclusions on the law and the evidence

121. Contrary to the respondent's arguments, we concluded that the claimant's annual leave prior to her taking ordinary maternity leave did not lose her the right of return to the same role. We rejected the argument that taking annual leave means the claimant's maternity absence does not constitute an isolated period of leave. The Tribunal was not pointed to any case law which agreed with this analysis. This argument would mean that an employee who had (say) one day's leave on the day prior to the commencement of her ordinary maternity leave would lose the protection of Reg 18(1).

122. This would we considered produce inconsistent and extraordinary outcomes; for example an employee whose baby was born early when on a day off work would, on this analysis, lose their Reg18 rights. There is no suggestion in the legislation or case law that employees would lose their Reg 18 rights in such a circumstance, it would produce a lottery on employees' Reg 18 rights.

123. The claimant took 3 days under her entitlement to Ordinary Maternity Leave. This gives the claimant the right to return to the same role she was undertaking prior to her going on leave.

124. The next issue we considered was – what work was the claimant undertaking prior to her going on leave? The respondent's evidence was confused – and we concluded that there was no real understanding of the work the claimant was undertaking during this period. The claimant was the contract management expert, and she was in the main left to get on with her role with minimal supervision. Some managers clearly believed that the claimant was spending some of her time working for Mr Johnson up to the date of her annual leave which immediately preceded her maternity leave. Mr Johnson and the claimant said that this was not the case.

125. The Tribunal concluded that as the claimant was the contract management 'expert' in the organisation, there was not necessarily an understanding of all she was doing on a day to day basis. However we were clear that the handover notes at 236 show that significant work was being handed over to 3-4 members of staff, much of it was high priority work. All have 'ongoing' obligations. We were clear therefore that the predominant work the claimant was undertaking immediately prior to her leave was as the TXGB Contract Manager. She therefore had the right to return to this role.

126. We next considered what happened to the claimant's role while she was on maternity leave. On the respondent's own evidence some of it was reallocated to other employees. There was still a need for a contract management function on the TXGB contract.

127. We accepted that the contract management funding was changing, but we also accepted that the original plan was for the post-holder to remain in post undertaking a contract management function, to be paid for out of the commercial income the TXGB contract was set-up to provide from year 3.

128. We noted that the internal discussions from November 2020 onwards showed internal confusion about the claimant's intentions to return to work, the nature of the work she had been doing, and out of which budget she would be funded if she returned. We concluded that a decision was taken that the staff to whom she had allocated TXGB work would retain that work if/when she returned. The claimant was not told this; her understanding was that as long as funding was in place, this would be the role she returned to.

129. We also concluded that on her return to work in April 2021, substantive elements of her role remained being undertaken by other employees. This included the 'delicate budget negotiations' that the claimant was told she could not participate

in. We concluded that the fact of these negotiations showed that a core part of the TXGB Contract manager role was continuing.

130. When the decisions were being had internally in November 2020 onwards, we concluded that because a decision had been made to reallocate the claimant's work, a decision was taken by 21 October 2020 that there was less of a need for a dedicated Contract Manager on the TXGB contract, that at best on the claimant's return this remaining element would take 1 – 1.5 days' work a week. This was not communicated to the claimant until the final day of her maternity leave; until 31 March 2021 the claimant's view was that she would be returning to the TXGB contract manager role she had been undertaking prior to her maternity leave.

131. This then fed into the decision to draw up the role of SC&SRM, which included some of the remainder of the claimant's core role, and a decision was taken that the claimant's maternity leave cover would be appointed to this role (260-264). This was the same as the role which the respondent was aware the claimant was not prepared to undertake from its discussions with her earlier in 2020, in her view at the time because the salary was too low for the level of responsibilities in the role.

132. After the decision was taken to reorganise the role of TXGB Contract Manager and reallocate some of its duties to other members of staff at least one of these staff members was then appointed to a permanent role undertaking these duties.

133. We also concluded that there was significant work undergoing on the TXGB contract when she returned to work. this is evidenced by the fact that there were unresolved issues, and a major variation to the contract being undertaken with Rainmaker at the time of her return to work.

134. There was no consultation with the claimant at all about these proposals during her maternity leave. This meant that the work the claimant handed over was being kept by these other members of staff, the intention was not to hand this work back to the claimant on her return to work.

135. What of the end of the funding arrangements? We noted that at least one member of staff was made permanent (Mr Wilde) via an ATR. A decision was made to submit an ATR for SC&SRM role late in the process, the ostensible reason why none of this was told to the claimant notwithstanding decisions taken in October and November 2020 about her role. The respondent accepted that the contract was a success; three members of staff were undertaking the work required on the TXGB contract.

136. The tribunal concluded that because the decision had been taken for the TXGB work to remain with other staff members, no thought was given to giving back this work to the claimant on her return to work from OML. This meant that no thought was given to how to allocate funding to a dedicated TXGB Contract Manager role.

137. We did not accept that there was no funding available for the TXGB Contract Manager role, as the role was being undertaken, albeit by different members of staff; this meant that there was funding for the role which could have been diverted back to the claimant's salary.

138. We concluded that there was a failure to consult with the claimant during her maternity leave about these proposals. The claimant was given to understand that she would be returning to the TXGB Contract Manager role on her return to work. The claimant was not told that a significant part of her role had been permanently reallocated to other staff members. We accepted the claimant's evidence, that in her calls with Mr Stokes prior to her return she discussed the TXGB contract, and she was not told her role had been reallocated to other employees, and she was not told that she would be required to undertake the SC&SRM role. Had this conversation occurred, she would have immediately challenged this.

139. Because a decision had been taken to offer the claimant the SC&SRM role we concluded that in essence the respondent believed the claimant's role no longer existed as a stand-alone role. This was, we concluded a potential redundancy situation. We did not accept that the SC&SRM role was the same or similar role – it was a supervisory role over lots of contracts, rather than managing one contract. It was a new role in the organisation.

140. The respondent did not consider this was a redundancy situation. We concluded that it was a *potential* redundancy situation, because the claimant's role had been subsumed into other employees work, a new role had been created, which suggested that there was a reduction in the number of employees required to undertake the contract management function; the stand-alone role had disappeared.

141. This meant, we concluded, that the respondent should have instigated a redundancy consultation process. It did not do so because it did not believe the claimant was entitled to claim redundancy, the respondent believed that the expiry of her fixed-term contract brought her employment to an end. The respondent also believed that it needed to offer her a role if one was available, and so it offered her the SC&SRM role.

142. This was, we concluded a misconception of the law: the claimant had maternity-related rights, she also had two years' continuous employment on 31 March 2021, the date of expiry of her fixed-term contract. If the respondent believed her role no longer existed, it was obliged to consult with the claimant.

143. To sum up -
    - Significant parts of the claimant's role were allocated to other team members when she went on maternity leave
    - By 22 October 2020 a decision had been taken that these staff members would retain these elements of her role
    - Maternity leave cover was gained for the new SC&SRM role, which incorporated other elements of the claimant's role

- At no time was the claimant consulted about these potential changes
- On her return to work, significant elements of her role remained, being undertaken by other team members
- There was therefore a reorganisation of the work being undertaken.
- This was also potentially a redundancy situation, as there was a lesser need for a dedicated TXGB Contract Manager but the 1st respondent wrongly believed that it had no obligation to consult with the claimant.
- In fact, there was no actual redundancy, because her role was continuing, being undertaken by other team members

Pregnancy and maternity discrimination under the Equality Act 2010 *Section 18 Equality Act 2010; section 39(4) Equality Act 2010 (GOC paragraph 78 & 80)*

144. Was the Claimant treated unfavourably, if so was this because of her pregnancy and/or maternity leave contrary to section 18 of the Equality Act 2010?

The Respondents making her role redundant whilst she was on maternity leave without there being a genuine redundancy situation;

145. We concluded that the claimant was treated unfavourably by the respondent determining that she was no longer required in the role of TXGB Contract Manager. The 1st respondent misinterpreted the legal position on her fixed-term contract, believing that its expiry trumped the legal requirements to offer her the same role if it existed on her return to work; hence it rejected the idea that it needed to inform and consult with her.

146. There was, we concluded, a *potential* redundancy situation when the respondent determined it would not give her this function back. The reason: the 1st respondent's witnesses were clear that much of the role had finished when contract milestones were reached. Hence there was no longer a requirement for an employee working full time in this role. The respondents believed that this was no longer a full-time function, it could be done by several members of staff as a small part of their role.

147. We therefore concluded that at the time the decisions were being made, there was a view that the role was no longer full time; there was therefore a lesser need for employees to undertake this role. This is therefore a potential redundancy situation, and the respondent was under an obligation to consult with the claimant.

148. We also concluded that the claimant's role was not in fact redundant. The reason: there was in fact no reduction in the requirement for this role to be undertaken, the job functions of the role remained the equivalent of a full-time post, that had been reorganised amongst other employees. This was a reorganisation involving the TXGB team while she was on maternity leave.

149. But the fact remains that there was no clarity at the time, and the respondents believed that there was there was a lesser requirement for employees to

undertake this role, that there was no funding for the role. This amounts to a potential redundancy situation.

150. The reason why there was a failure to consult with the claimant about what was a potential redundancy is because she was on maternity leave. The respondents believed the claimant was no longer required in role and the reason why it believed this is because she was on maternity leave. The reason why there was this reorganisation and the reason why her work was being undertaken by other team members was because she was on maternity leave.

151. The reason why the respondent concluded that it did not need to give her the same role on her return was because her duties had been reallocated, and the respondent concluded that there was no requirement for her to undertake these parts of her role on her return to work.

152. The reason for the respondent's belief was inextricably linked to the fact she was on maternity leave – this is why she had handed over this work. We agreed therefore that the respondents believed the claimant's role was redundant, and the reason for this is because she was on maternity leave, and not because there was in fact an actual redundancy.

153. This amounts to unlawful discrimination, it was because of her maternity leave, contrary to s.18 Equality Act 2010.

the Respondents failing to apply a selection criteria and/or applying a selection criteria unfairly or unreasonably

154. We concluded that in what it considered was a potential redundancy situation, there was a failure to apply a selection criteria. Again, we concluded that this was because she was on maternity leave. Her role had been handed over to others because she was on maternity leave, and the respondent concluded that there was no need to undertake a redundancy process with the claimant because she was on maternity leave and because her fixed-term role was ending. The respondent's evidence was that it did not want to bother the claimant while on maternity leave.

155. This constitutes unlawful discrimination – there was a failure to apply a redundancy selection criteria, and the reason was because of her maternity leave contrary to section 18 of the Equality Act 2010.

the Respondents failing to inform and/or consult her during her maternity leave about a possible redundancy situation before making the decision to make her role redundant

156. We concluded that the respondent failed to inform or consult with the claimant during her maternity leave in what was a potential redundancy situation. The respondent argues that her role was fixed-term, there was no obligation to renew and no obligation to consult with her as she had been informed of this on her going on maternity leave. We disagreed that there was no requirement to consult

with her. There was an actual reorganisation and a potential redundancy – legally the respondent was obliged to consult.

157. The failure to consult was because of her maternity leave and constitutes unlawful discrimination.

the Respondents wilfully waiting for her protected period to end to impose substantial changes to her role

158. We concluded that the respondent's failure to consult with the claimant during this period were not properly explained. The belief that there was no need to consult with her as her fixed-term contract was ending was misconceived; the view that the ATR etc. needed to be confirmed before informing her was again was not we felt an accurate position.

159. Instead, we accepted that the respondent waited to the last day of her protected period before it informed her that (in their view) her role no longer existed. The reason why it waited too long was because she was on maternity leave, it simply put off the decision to inform her.

160. This amounts to unlawful discrimination, contrary to s.18 Equality Act 2010.

Rs failed to offer her a suitable and appropriate role with R1 and/or its associated employers on terms and conditions not substantially less favourable than her original contract as soon as, redundancy had genuinely caused her job to be no longer available during her maternity?

161. We concluded that while there was a potential redundancy situation, that during any consultation period it would have been determined that other staff members were continuing to carry out the claimant's TXGB role; that in fact this role was not redundant. Accordingly, there would have been no requirement to offer the claimant a suitable alternative role as the definition of redundancy was not met.

162. Therefore, the failure to offer her a suitable and appropriate role does not amount to an act of discrimination, as her role continued to exist, hence there was no actual redundancy situation.

163. This claim therefore fails.

R2 prevented her from carrying out her duties

164. Did the 2nd respondent prevent the claimant carrying out her duties? We concluded that the claimant was prevented from undertaking her role as TXGB Contract Manager, that this function still existed and had been given to other staff members during her maternity leave.

165. However, this was a collective decision of the 1st respondent's SMT, including on advice from HR to prevent the claimant from undertaking the role of TXGB contract manager. It was not the 2nd respondent preventing the claimant from undertaking her duties, albeit he was a party to this decision.

166. This claim therefore fails.

R2 unreasonably imposed duties outside contractual obligations despite being fully aware of the on-going dispute with the R1

167. We concluded that the 1st respondent attempted to impose a role on the claimant which was a new role which included many new duties: the claimant was no longer a contract manager, the new role contained new duties which were not part of her original job description, and it was a role which she had not been undertaking immediately prior to her maternity leave.

168. We concluded however that this was not the doing of the 2nd respondent; it was a collective decision taken by the 1st respondent's SMT.

169. This claim therefore fails.

R2 raised a false allegation of misconduct against her in bad faith which was condoned and/or encouraged by R1 when they issued a disciplinary warning against her in bad faith

170. We concluded that it was not the 2nd respondent who raised an allegation against the claimant, it was the respondent's SMT on the advice of HR, and this element of the claim fails on its facts.

171. Also, we concluded that there was no disciplinary sanction, there was a warning to the claimant that she may have been acting contrary to a reasonable line management instruction.

172. Notwithstanding that the claimant was in dispute with the respondent at this time she was still being paid by the respondent, and the respondent was entitled to ask her to undertake some work. The work she was asked to undertake was on the Contract Management framework, which she had worked on prior to her maternity leave.

173. This was not an unreasonable position for the 1st respondent to adopt, and one which was permitted under her contract of employment. The claimant's position she was not prepared to undertake any work outside of her Contract Manager JD; while the Tribunal accepted that the claimant genuinely believed she should not undertake any work, as this may undermine her position in the dispute, the Tribunal disagreed. This was a discrete task the claimant was asked to undertake, and one which was within her capabilities. She could have carried this out and still maintained her position that her role existed and she should be undertaking this.

174. We concluded that this claim fails.

R1 made unilateral changes to her job title and reporting line manager despite her protests;

175. We concluded that the reason why the claimant's role was changed was because she had handed over functions of her role at the start of her maternity leave and it was decided that these functions should remain with these employees. The reason why this was done was because she was on maternity leave.

176. While there was an unresolved funding issue, the principal reason why her role as changed, without any consultation with her, was because she had organised the changes by allocating her work to others, and this was because she was on maternity leave.

177. This amounts to unlawful discrimination, contrary to s.18 Equality Act 2010.

she was ostracised and further not allowed to perform her duties when Rs1&2 informed her team of the on-going dispute regarding her employment and advised them not to contact her

178. We concluded that the claimant was effectively ostracised by her team. The reason was not because she had taken maternity leave, it was because at this time she was in dispute with her employer and she was refusing to undertake the SC&SRM role. The reason why was therefore not connected to her maternity leave, the reason was the dispute.

179. This element of this allegation – being ostracised - therefore fails.

180. The claimant was not allowed to preform her Contract Manager duties when she asked to do so – she was barred from taking part in the contract renegotiation, and she was not allowed to contact Rainmaker at all.

181. This was a decision taken because the claimant failed to agree to her change of role and was in dispute with her employer. In reaching this conclusion we noted that the aim was for the claimant to work on the TXGB contract – this remained part of her role in the SC&SRM job.

182. This was not for any reason connected to her maternity leave. This claim therefore fails.

Rs 1&2 used bullying and intimidating tactics to coerce her into signing a unilateral contract variation despite her protests and/or submitting her resignation;

183. The claimant was put under pressure to sign the new contract, being told if she failed to do so she would be deemed to have resigned. The reason why this treatment occurred was not because she had been on maternity leave, it was because she was at this point in dispute with her employer about the nature of the SC&SRM role – whether it was a suitable alternative role for her to undertake.

184. This dispute was not related to her maternity leave, it was because she decided that she was not prepared to undertake the SC&SRM role. This claim therefore fails.

Rs 1&2 unreasonably refused to provide written reasons for the non-renewal of her contract and clarifications regarding the SRM role

185. We concluded that the respondent did provide reasons in writing regarding the non-renewal of her contract; it also provided its clarifications on the SC&SRM role – for example it provided the details of the benchmarking which led it to conclude this was a suitable alternative role.

186. Accordingly, this claim fails on its facts.

R1 dealt with her grievance with unreasonable delays

187. We did not consider that there were unreasonable delays in dealing with the grievance. The claimant raised complex issues which the 1st respondent If there were unreasonable delays this was not because of the claimant's maternity leave. This claim fails.

R1 failed to appoint an independent investigator during her grievance and dismissed her concerns of impartiality and conflict of interest raised

188. We did not agree that the grievance investigator was not impartial, i.e. biased against the claimant from the outset. We concluded that the grievance report reached wrong conclusions on the legal position, which meant that the outcome was, legally incorrect. But this was not because of the claimant's maternity leave.

189. If the investigator was not independent, there was no evidence that the investigator was appointed because the claimant had been on maternity leave. This claim fails.

R1 failed to properly investigate into her grievance and/or failed to give full consideration to all relevant facts

190. There was a failure to properly investigate the grievance, and there was a failure to consider all relevant facts – for example that the claimant had the right to return to the same role after her OML, that there was at least a potential redundancy situation following a reorganisation on which the claimant should have had the right of consultation.

191. However, the failure to investigate properly had nothing to do with the fact she had been on maternity leave, it was because there was a misconception on the legal position. This claim therefore fails.

R1 deliberately omitted information unfavourable to it inwritten communications to her to support pre-determined and biased decisions

192. We accept that the grievance decision was essentially predetermined, because it was based on an incorrect assessment of the legal position. The claimant was entitled to be consulted with during her OML about the reorganisation and potential redundancy; for the reasons set out in this judgment this does amount to a breach of the claimant's maternity-related rights.

193. But the reason for the grievance decision was not because the claimant had taken maternity leave, it was because the respondent was mistaken on the law and the implications of the claimant handing over her role to go on OML.

194. This claim therefore fails.

R1 provided no right of appeal against her redundancy and/or dismissal

195. The 1st respondent provided no right of appeal against her redundancy and/or dismissal: the respondent's letter of dismissal dated 17 May 2021 does not contain a right of appeal against dismissal. this clearly affects the fairness of the dismissal, for reasons set out below; and there is no good reason not to include the right of appeal.

196. However we concluded that the reason why this was the case had nothing to do with the claimant's maternity leave. It was instead because the respondent was of the view that it had acted correctly, and the claimant's actions were unreasonable, that the claimant had effectively dismissed herself. This claim therefore fails.

<u>Did the claimant suffer the detriments set out below, and if so was this for reasons related to her pregnancy contrary to section 47C ERA 1996 and regulation 19 of the MPL Regulations?</u>

Rs 1&2 failed to inform her of and consult her about a threatened redundancy because she was absent on maternity

197. The tribunal concluded that the 1st respondent failed to inform her about a possible redundancy situation, and the reason that it failed to do so was because she was on maternity leave. The respondents witnesses said as much (eg Ms Marsh's evidence).

198. The discussion about the claimant's role potentially ceasing as a stand-alone role took place from October 2020 onwards. There was no good reason not to consult with her at this time. We did not accept that the sole reason for doing so was because of a belief the end of her fixed-term contract would end her employment fairly; there was clear reference in emails at the time to the claimant having the right to return to 'a' role if one existed, and that the SC&SRM role was essentially ring-fenced for her.

199. The reason why the claimant was not consulted with was because she was on maternity leave. The claim against the 1st respondent therefore succeeds.

200. We did not consider that the 2nd respondent was responsible for this failure to consult, it was instead a collective failure by the senior management team and HR, and we did not consider that the 2nd respondent was responsible; Mr Johnson had no understanding of the legal issues, and who should have been able to rely on receiving correct advice on these issues. We concluded that the responsibility lay solely with the 1st respondent, and The claim against the 2nd respondent therefore fails.

Rs 1 & 2 failed to include her role in the redundancy pool existing at the time and therefore prevented her from accessing suitable vacancies available in R1 and/or its associated employers from the time the decision was made to make her role redundant

201. The 1st respondent did fail to include the claimant in the redundancy pool. However, for the reasons set out below in the analysis on 'redundancy' we did not consider that there was an actual redundancy situation.

202. We therefore concluded that the claimant would not, had she been consulted with and made representations, have been included in the redundancy pool because of her right to return to her same job. Accordingly this claim fails, as at an early stage of the redundancy consultation process it would have been clear she should not be placed at risk and should not be placed in the redundancy pool.

203. If we are wrong, and the claimant should have been placed in the redundancy pool, the failure to do so was for reasons relating to her pregnancy – the fact she was on maternity leave was the principle reason she was not consulted with at and placed in the pool this time.

Rs 1&2 used her maternity leave to make substantial and unilateral changes to her role to incorporate significant burdens and unreasonable demands that will inevitably exist because she has a baby

204. We accepted that the respondent decided to change the claimant's role, and the reason for this was because she had handed over her work to colleague and a decision was taken those colleagues should retain this work. There was then the failure to consult when deciding to make these changes.

205. Both of these factor – the contractual change and the failure to consult - were because the claimant was no maternity leave. This is the reason why the change in personnel on the contract was made and it was therefore for a reason related to her maternity leave. This claim succeeds against the 1st respondent.

206. It does not succeed against the 2nd respondent for the same reasons as above; the 2nd respondent was one of several decision makers, he was reliant on advice and we did not consider he was responsible for the acts of the 1st respondent.

Rs1 &2 discriminatively removed the pay rise previously associated with the SRM role in recognition of the higher burdens and demands when offering it to her?

207. We did not conclude that this decision was for a reason related to the claimant's pregnancy. The reason was that there was a loss of income to the respondent as a consequence of the pandemic, and an assessment had been undertaken which considered that he two roles were the same level of responsibility and seniority.

208. This was not connected to the claimant's pregnancy, it was because the respondent disagreed with the claimant's assessment as to the role's seniority. This claim therefore fails.

Unfair dismissal

What was the reason for the claimant's dismissal?

209. There are three suggested reasons in the list of issues. We were mindful of the fact that we could find another reason for dismissal, we were not limited to the suggested reasons.

210. We noted that the test is – are the reasons for the claimant's dismissal 'connected with' the fact the claimant took OML? We noted there was a dispute in the case law about the causal connection required: we concluded that a causal connection was required, but that a wide and purposive approach was required. We concluded that there was a causal connection between her dismissal and the fact that the claimant had taken maternity leave.

211. It was because the claimant had taken OML that her duties were reallocated. It was because she had taken OML that her duties were not given back to her. It was because her duties were not given back to her that she entered into dispute with the respondent, she failed to agree to undertake the SC&SRM role and it was for that reason that she was dismissed.

212. We concluded therefore that the reason for her dismissal was connected to the fact the claimant took OML.

Automatic unfair dismissal

213. The claim of automatic unfair dismissal therefore succeeds, as her dismissal was connected to the fact the claimant took OML.

Redundancy

214. We did not consider the reason for dismissal to be one of redundancy, for the following reason: the claimant had the right to return to the same role at the end of her OML, and this role still existed, as the claimant had handed over most of it to 3 or 4 existing employees, and the maternity cover was undertaking the remainder.

215. Whilst there was at the outset a potential redundancy situation, at the end of the process, it was clear that there was no reduction in the number of employees undertaking the claimant's role – it had been split between existing employees and a maternity cover, the latter also undertaking the SC&SRM functions in part.

216. Therefore, we did not conclude on these facts that there was a redundancy situation.

217. However, we accepted that this was unclear at the time, and that in October 2020 there was at least the potential for the claimant's role being lost in a reorganisation, and this may have led to a reduction in the number of employees undertaking this role, i.e. there was a potential redundancy situation, and the claimant should have been consulted with at this time.

Failure to provide written reasons for the dismissal

Did the First Respondent fail to provide a written statement of reasons for the dismissal to the Claimant contrary to sections 92 and 93 of the ERA 1996?

218. The claimant was provided with written reason for dismissal, in the letter dated 17 May 2021. This letter contains factual inaccuracies, and its conclusion on the law are incorrect – the there is no reference whatsoever to the claimant's right to be consulted with during her maternity leave, or to the claimant's right to challenge the imposition of a new role with no consultation with her.

219. To be clear, we did not consider that these were deliberate inaccuracies by the writer, it was based on a lack of understanding of the Contract Manager role the claimant had been undertaking prior to her maternity leave, and a lack of understanding on the law. This claim therefore fails.

Victimisation contrary to s.27 EA 2010 (GOC paragraph 79)

220. Protected act: in the course of the proceedings Ms Polimac confirmed that the respondents accept the claimant had done protected acts as set out in the Grounds of claim, and that it believed this to be the case. We did not consider this element of the test further.

221. Did the Respondent subject the Claimant to the detriments set out in paragraphs 49-56 and 59-71 of the GOC and in particular, did:

R1 insist she work with R2 despite being made aware of her concerns regarding his discriminatory conducts as early as 12 April 2021;

222. The 1st respondent did insist that the claimant work with the 2nd respondent. However we did not accept that this in was in any way connected with the fact that the claimant had made a protected act. It was because the 1st respondent considered that the claimant was acting unreasonably in not working with the 2nd respondent, and this was based on an incorrect assessment of the legal position, and not because she had done a protected act. This claim therefore fails.

R2 sent a series of provocative emails to elicit a response and/or a course of conduct in an attempt to justify a dismissal;

223. The reason why the emails were sent were because the respondents believed that the claimant was not acting appropriately in refusing to accept the SC&SRM role. This was based on a misconception of the law, rather than because the claimant had done a protected act. This claim therefore fails.

Rs 1&2 calculatingly fabricated issues of misconduct despite her unblemished record with R1 in an attempt to get rid of her and cover up their discriminatory conducts and make their acts of victimisation appear legitimate.

224. The claimant was not disciplined because she refused to undertake a specific task, she was told that the actions may amount to a disciplinary issue. We accepted that this was a 'warning' to her (not a disciplinary warning formal or informal), that this amounts to a detriment. However, we concluded that the respondents were not fabricating this as an issue; we concluded that the respondent genuinely believed this to be an act of misconduct. We set out above our reasoning as to why the claimant did not act reasonably in refusing to undertake this task; she had no work on and this was a reasonable request, albeit in the context of a wholly unreasonable situation for the claimant. We did not consider that the respondents acts were in any way connected to the claimant's protected act.

Less favourable treatment contrary to section 3 of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002

Did the Respondent treat the Claimant less favourably than it treated a comparable permanent employee by selecting her role for redundancy? If yes was the treatment on the grounds that the employee is a fixed term employee, and was the treatment justified on objective grounds?

225. We concluded that there was no employee that the claimant could properly compare herself with under the 2002 regulations. There was no comparable employee undertaking the role of TXGB Contract Manager prior to her maternity leave, and during her leave the role was divided between various employees. This claim therefore cannot succeed.

Remedy hearing

226. Accordingly the claims succeed in part. A remedy hearing was provisionally listed for 26 October 2022, and this date remains the listed date.

EMPLOYMENT JUDGE EMERY

Dated: 19 July 2022

Judgment sent to the parties
On: 19/07/2022

For the staff of the Tribunal office