EMPLOYMENT TRIBUNALS

BETWEEN

Mrs E B Cheney **MS Amlin Corporate Services Ltd**

REASONS FOR THE RESERVED JUDGMENT SENT TO THE PARTIES ON 18 APRIL 2017

Introduction

1 The Respondents, who have a headcount of about 1,300, are the UK subsidiary of an international insurance group which employs over 36,000 people worldwide. The group is the product of the acquisition on 3 May 2016 by Mitsui Sumitomo Insurance Company Ltd ('Sumitomo') of Amlin Plc ('Amlin'). That acquisition and the subsequent integration of the two businesses in the UK, to which we will refer as 'the merger', form part of the relevant background to these proceedings.

2 The Claimant, Mrs Elizabeth Barbara Cheney[1], who was born on 3 October 1953 and is now 63 years of age, was continuously employed by Amlin Corporate Services Ltd, a company within the Amlin group, and, following the merger, the Respondents, from 16 January 2012 until her resignation on 23 September 2016. From 1 November 2013 she held the role of Assistant Company Secretary ('ACS'). Initially she worked full-time, but on 6 April 2015 she moved to part-time working, four days per week. On termination her annual salary stood at about £48,000, based on a full-time equivalent figure of about £60,000.

3 By her claim form presented on 30 August 2016, the Claimant brought complaints of 'automatically' unfair dismissal under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') and the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ('the 2000 Regulations'), 'ordinary' unfair dismissal under the Employment Rights Act 1996 ('the 1996 Act'), direct age discrimination, and failure to elect employee representatives and/or inform and consult under TUPE and/or the Trade Union and Labour Relations (Consolidation) Act 1992 ('TULCRA'), together with a claim for a redundancy payment.

4 In their response form the Respondents resisted all claims.

[1] She uses her second forename.

5 The matter came before Employment Judge Pearl on 21 October 2016 in the form of a Preliminary Hearing (Case Management). He did not identify the issues in the case but remarked that he had seen a draft list of issues prepared on behalf of the Respondents which appeared "comprehensive" and that he had "little doubt" that the parties would soon be able to agree it. It was not explained why the issues could not be agreed there and then. The judge's confidence proved to be misplaced.

6 On the Claimant's application, which the Respondents did not oppose, Employment Judge Pearl on 16 December 2016 permitted the claim form to be amended to add complaints of victimisation under the 2010 Act and detrimental treatment under the 2000 Regulations, reg 7 and claims for monies said to be owing, either under the protection of wages provisions of the 1996 Act or under the Tribunal's contractual jurisdiction.

7 The case came before us for determination of liability only on 15 March this year, with eight sitting days allocated. The Claimant was represented by Mr Richard O'Dair, counsel, and the Respondents by Mr Mohinderpal Sethi, counsel.

8 Because the scope of the dispute had not been ascertained in advance, we were faced with argument at the outset as to what claims we were to be called upon to decide. Two matters in particular required our preliminary adjudication. The first was whether, on the 'pleadings' as they stood, it was open to the Claimant to pursue complaints of indirect age discrimination and, under the 2000 Regulations, reg 5(1), less favourable treatment. We did not find that question difficult. It was very clear to us that the claim form did not contain either claim.

9 The second question was whether the Claimant should be permitted to amend the claim form to add either of the disputed claims. Initial argument in relation to the proposed indirect discrimination complaint resulted in some confusion and we deferred further debate until Mr O'Dair had produced a draft of the proposed claim. That he did on the morning of day three. It read as follows:

> **1. The Respondent regarded as eligible to occupy the role of Senior Assistant Company Secretary (AISE) only those who were (or were applying to become) full-time employees.**
> **2. The Respondent therefore operated a criterion (and thus a PCP) within s19(1) of the Equality Act.**
> **3. The employees wishing to occupy that role at the time of the reorganization were Kathryn Silverwood and the Claimant.**
> **4. However, the Respondent <u>would have applied</u> the criterion to any person who wished to occupy that role, whether current employee or external candidate.**
> **5. The criterion was particularly to the disadvantage of the Claimant as a person aged over 59 because she was working part-time.**
> **6. It would also be to the disadvantage of the over 59s because such persons are more likely to want to work part-time than those under that age.**
> **7. It is for the Respondent to show this criterion was justified.**

10 We reminded ourselves of the terms of the 2010 Act, s19 which, so far as relevant, is in these terms:

> **(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a protected characteristic of B's.**
>
> **(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –**
>
> **(a) A applies, or would apply, it to persons with whom B does not share the characteristic,**
> **(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,**
> **(c) it puts, or would put, B at that disadvantage, and**
> **(d) A cannot show it to be a proportionate means of achieving a legitimate aim.**

11 We refused the application. It seemed to us that the case which Mr O'Dair proposed to pursue was misconceived. It ignored the requirement (applicable to indirect no less than direct discrimination) for the circumstances of any claimant and his or her comparator(s) to be the same or not materially different (see the 2010 Act, s23). It was, in our view, untenable and wrong in principle to seek to base an indirect discrimination claim arising out of an exclusively internal exercise (the reorganisation of the company secretariat function) on a comparison with a group which included persons who were outside the organisation. The 'provision, criterion or practice' (the alleged requirement of full-time working) was said to disadvantage those over 59. But the Act required that the persons with whom the Claimant shared her characteristic of age for the purposes of s19(2)(b) be members of the Respondents' company secretariat who were, or would be, put at the same disadvantage as her. And those with whom her case was to be compared (those who did not share her characteristic of age) were required to be members of the Respondents' company secretariat whose other circumstances were the same or not materially different from hers. "A applies, or would apply" does not mean "A applies or (had he conducted a quite different exercise) would have applied". There was never any question of the Respondents applying a full-time working requirement to external candidates for the role of Senior Assistant Company Secretary ('SACS') because (apart from anything else) there was never any question of seeking to appoint a SACS from outside the organisation. The comparison which Mr O'Dair proposed to pursue, based on a much wider, external 'pool', was inadmissible.

12 Even if we had not held that the proposed claim was misconceived, the application would have failed. We would have taken the view that the amendment could only be contemplated on the footing that, if it were granted at all, the Respondents would be entitled to an adjournment in order to decide how to meet the new claim, plead a response to it and, if so advised, prepare further evidence. That would necessarily involve a costs issue and Mr O'Dair made it clear that he had instructions to abandon the application if any costs risk was involved.

13 The second application, to add a claim under the 2000 Regulations, reg 5(1), was quite different. We were satisfied that it sought only to re-label a pleaded complaint, of failing to take the Claimant's grievance seriously, and that granting it would entail no prejudice to the Respondents. The other *Selkent* factors also seemed to us to lean in favour of the application. Accordingly we granted the amendment. On further reflection, we think that we were wrong to do so because

no actual comparator was identified. It is plain on the statutory language and confirmed in *Carl-v-University of Sheffield* [2009] ICR 1286 EAT that a claim cannot be based on a comparison with an hypothetical comparator. The point was not taken in argument. But in any event, as we will explain, the claim is not made out on the facts and so, fortunately, our error has not caused any prejudice to either party.

14 In the course of the hearing Mr O'Dair withdrew the complaints of victimisation under the 2010 Act and detrimental treatment under the 2000 Regulations, reg 7(2).

15 Further debate on the 'pleadings' featured in the closing submissions, but subject to those points issues were finally agreed in a document to which both counsel put their names dated 16 March 2017. Useful as it was, even this iteration needed to be read with care because (a) it included the proposed indirect discrimination claim which, after the document was handed up, the Claimant was refused permission to add (see above) and (b) it excluded the money claims added by amendment in December 2016, both of which were pursued.

16 Having devoted days one to five to preliminary matters, pre-reading, oral evidence and closing submissions, we reserved judgment in order to save the parties further cost and trouble. Our private deliberations in chambers occupied two further days.

The Rival Cases

17 The central planks of the Claimant's case were these.

(1) The Respondents repudiated her contract by the way in which the merger was put into effect in so far as it related to the company secretariat ('CS') functions of Sumitomo and Amlin. In particular, (a) the new post to which she was appointed in the fused CS department[2] amounted to a 'demotion'; (b) she was wrongfully excluded from, or not considered for, the post in the new structure for which she was best suited, namely SACS; (c) the Respondents gave that post to her younger, full-time comparator, Ms Kathryn Silverwood, and thereby discriminated against her on grounds of age and/or under the 2000 Regulations; (d) they failed to consult with her in relation to the merger and its consequences; (e) they failed to deal adequately or appropriately with her grievance in relation to the above matters.
(2) She accepted the repudiation by resigning and the resultant constructive dismissal was unfair under TUPE, reg 7(1) or the 2000 Regulations, reg 7(1), alternatively under the 1996 Act.
(3) She was directly discriminated against on the ground of her age (she identified her age group as those over 59) in the matters referred to in (1)(a)-(c) above and in comments made to her by Mr Mark Stevens, Company Secretary under the old structure, on 15 April 2016, after the post-merger structure of the CS department had been announced.

[2] Labelled, as before, ACS

(4) The Respondents discriminated against her under the 2000 Regulations, reg 5(1) by failing to take her aforementioned grievance seriously.
(5) The Respondents failed to comply with the election, information and consultation provisions of TULCRA, s188 and/or TUPE, regs 13-15.
(6) The Claimant is entitled to a redundancy payment.
(7) The Respondents made unauthorised deductions from the Claimant's wages and/or breached her contract by failing to make pension contributions and bonus payments in her favour based on her *de facto* full-time working in late 2015 and early 2016.

18 Crudely summarised, the Respondents' reply was to this effect.

(1) There was no breach of contract and no question of constructive dismissal arose.
(2) In any event the unfair dismissal claims should fail because (a) if there was any breach, the Claimant affirmed the contract thereafter; (b) she did not resign in response to any breach; and (c) if there was a constructive dismissal the reason or principal reason for it was neither of those on which she based her complaints of 'automatically' unfair dismissal.
(3) There was no direct age discrimination as alleged or at all.
(4) The Respondents took the grievance seriously and there was no infringement of the 2000 Regulations, reg 5(1).
(5) The Respondents did not operate the collective consultation provisions relied upon by the Claimant, which were not applicable.
(6) The Claimant is not entitled to a redundancy payment because (a) she was not dismissed; and (b) in any event, if she was dismissed the reason or principal reason was not that she was redundant.
(7) Under her contract the Claimant's pension benefits and any bonus award were to be calculated on the basis of her contractual basic pay. No sum is owing to her.

19 At the end of the evidence counsel handed up written submissions, which were supplemented orally. We will refer to the detail of the arguments where necessary.

The Legal Framework

Unfair dismissal

20 The three unfair dismissal claims each rest on an alleged constructive dismissal. This brings into play well-established principles. The first question, whether or not there was a dismissal, turns on the common-law test embodied in the Employment Rights Act 1996 ('the 1996 Act') s95 which, so far as material, states:

> **(1) For the purposes of this Part an employee is dismissed by his employer if**
>
> **…**
>
> **(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he entitled to terminate it without notice by reason of the employer's conduct.**

21 It is trite law that in order to establish a constructive dismissal an employee must demonstrate that his employer has by his conduct repudiated the contract of employment and that, without waiver or affirmation, he (the employee) has accepted the repudiation and resigned in response to it.

22 The claims here rest on the term, implied into every contract of employment, that the parties will not without reasonable cause conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between them (see *Malik-v-BCCI SA* [1997] IRLR 467 HL). Any breach of that term is, intrinsically, a repudiation. In *Amnesty International-v-Ahmed* [2009] IRLR 884 the EAT (Underhill P and members) reminded the profession that the *Malik* test means what it says.[3] The bar is set high. To similar effect, in *Tullet Prebon Plc-v-BGC Brokers LP* [2010] IRLR 648 HC, Jack J remarked:[4]

> **It is in a sense circular to say that the employer's conduct must be serious enough to entitle the employee to leave. However, in considering what gravity of conduct by the employer is required, it is helpful to say that it must be such as so to damage the employee's trust in his employer, that he should not be expected to continue to work for the employer. Conduct which is mildly or moderately objectionable will not do. The conduct must go to the heart of the relationship. To show some damage to the relationship is not enough.**

In *Eminence Property Developments Ltd-v-Heaney* [2010] EWCA Civ 1168 Etherton LJ (as he then was) said:[5]

> **[The legal test] is whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract.**

23 If a constructive dismissal is made out, attention turns to the reason. The 'reason' for a constructive dismissal is the reason for the repudiatory conduct which entitled the employee to resign treating the contract as discharged. It is for the employer to make out the reason (or principal reason) and show that it was a potentially fair reason within the 1996 Act, s98(1) or (2). Failure to discharge this burden entitles the employee without more to a finding of 'ordinary' unfair dismissal. If the Tribunal finds that the true reason (or principal reason) was a relevant transfer within the terms of TUPE, or (inter alia) the fact that the employee has alleged an infringement of the 2000 Regulations, the employee necessarily succeeds in his or her complaint of 'automatically' unfair dismissal (reg 7(1) of each set of Regulations).

Direct age discrimination

24 The 2010 Act protects employees and applicants for employment from discrimination based on a number of 'protected characteristics'. These include age (ss 4, 5).

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[3] Para 72
[4] Para 81
[5] Para 61

25 Chapter 2 of the 2010 Act lists a number of forms of 'prohibited conduct', including direct discrimination which is defined by s13 in (so far as material) these terms:

> **(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.**

By s23(1) and (2)(a) it is provided that there must be no material difference between the circumstances of the claimant's case and that of his or her comparator and that (for these purposes) the 'circumstances' include the claimant's and comparator's abilities.

26 In *Nagarajan*-v-*London Regional Transport* [1999] IRLR 572 Lord Nicholls construed the phrase 'on racial grounds' in the Race Relations Act 1976, s1(1)(a), in these words:

> **If racial grounds … had a significant influence on the outcome, discrimination is made out.**

In line with *Onu-v-Akwiwu* [2014] EWCA Civ 279, we proceed on the footing that the 'because of' formulation under the 2010 Act (replacing 'on racial grounds', 'on grounds of age' etc in the pre-2010 legislation) effects no material change to the law.

27 Discrimination is prohibited in the employment field by s39 which, so far as relevant, states:

> **(2) An employer (A) must not discriminate against an employee of A's (B) –**
>
> **…**
> **(c) by dismissing B;**
> **(d) by subjecting B to any other detriment.**

A 'detriment' arises in the employment law context where, by reason of the act(s) complained of a reasonable worker would or might take the view that he has been disadvantaged in the workplace. An unjustified sense of grievance cannot amount to a detriment: see eg *Shamoon-v-Chief Constable of the RUC* [2003] IRLR 285 HL.

28 The 2010 Act, by s136, provides:

> **(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.**

29 On the reversal of the burden of proof we have reminded ourselves of the case-law decided under the pre-2010 legislation (from which we do not understand the new Act to depart in any material way), including *Igen Ltd-v-Wong* [2005] IRLR

258 CA, *Villalba-v-Merrill Lynch & Co Inc* [2006] IRLR 437 EAT, *Laing-v-Manchester City Council* [2006] IRLR 748 EAT, *Madarassy-v-Nomura International plc* [2007] IRLR 246 CA and *Hewage-v-Grampian Health Board* [2012] IRLR 870 SC. In the last of these, Lord Hope warned (as other distinguished judges had done before him) that it is possible to exaggerate the importance of the burden of proof provisions. Giving the judgment of the Supreme Court, he said this:

> **32. The points made by the Court of Appeal about the effect of the statute … could not be more clearly expressed, and I see no need for any further guidance. Furthermore, as Underhill J pointed out in *Martin v Devonshires Solicitors* [2011] ICR 352, para 39, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other. That was the position that the tribunal found itself in in this case. It is regrettable that a final resolution of this case has been so long delayed by arguments about onus of proof which, on a fair reading of the judgment of the employment tribunal, were in the end of no real importance.**

This guidance is, we think, too often overlooked by practitioners. In so far as the burden of proof provisions bear upon our analysis, we take as our principal guide the straightforward language of s136. Where there are facts capable, absent any other explanation, of supporting an inference of unlawful discrimination, the onus shifts formally to the employer to disprove discrimination. All relevant material, other than the employer's explanation relied upon at the hearing, must be considered. In this regard we bear in mind the provisions governing codes of practice (see the Equality Act 2006, s15(4)) and questionnaires (the 2010 Act, s138) and the line of authority beginning with *King-v-Great Britain-China Centre* [1992] ICR 516 CA and ending with *Bahl-v-Law Society* [2004] IRLR 799 CA. We remind ourselves that s136 is designed to confront the inherent difficulty of proving discrimination and must be given a purposive interpretation.

Less favourable treatment under the 2000 Regulations

30 Under the 2000 Regulations, reg 5(1) a part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker by (inter alia) being subjected to a detriment in the form of any act or deliberate failure to act. The protection is qualified by reg 5(2), which restricts it to cases where the treatment is on the ground of the worker's part-time status and is not objectively justified.

The election, information and consultation provisions

31 TULCRA, ss188 and188A contain provisions requiring employers to inform and consult elected representatives of employees who are liable to be affected by compulsory redundancies and prescribing procedures for the election of such representatives. The legislation is confined to cases where the employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days (s188(1)).

32 Under TUPE, regs 13-15, duties to inform and consult are imposed upon transferors and transferees and provision is made for the election of employee

representatives. The obligation to inform and consult is confined to 'affected employees', who are defined in reg 13(1) as:

> **… employees of the transferor or the transferee (whether or not assigned to the organised grouping of resources or employees that is the subject of the relevant transfer) who may be affected by the transfer or may be affected by measures taken in connection with it …**

Redundancy payments

33 An employee is entitled to a redundancy payment where he is dismissed by reason of redundancy (the 1996 Act, s135(1)). A dismissal is by reason of redundancy where it is attributable wholly or mainly to the fact that the employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed, or to carry on the business in the place where the employee was employed, or where the requirements of the business for employees to carry out work of a particular kind or to carry out work of a particular kind at the place where the employee was employed, have ceased or diminished or are expected to cease or diminish (s139(1)).

The money claims

34 Under the 1996 Act, Part II, employees and workers are protected from unauthorised deductions from wages. For these purposes, 'wages' include pension contributions and bonuses. The protection extends to wages "properly payable" (s13(3)).

35 Those seeking to recover sums said to be payable under a contract of employment may also invoke the Tribunal's jurisdiction modelled on the contractual jurisdiction of the High Court and the County Court (see the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994).

Oral Evidence and Documents

36 We heard oral evidence from the Claimant and, on behalf of the Respondents, Miss Elaine Mahoney, Head of HR, UK and International, Mr David Johnston, Group Chief Compliance Officer, Ms Vanessa Parsons, Senior HR Manager and Mr Toby Vero, Head of Company Secretariat. All witnesses produced witness statements.

37 Besides witness evidence we read the documents to which we were referred in the single-volume trial bundle, and a slim further bundle of documents relating to the dispute as to the scope of the litigation.[6]

38 We also had the benefit of certain documents prepared by the representatives. In addition to the draft pleading of the proposed indirect discrimination claim (see above), Mr O'Dair produced a document entitled "Slimming Down of the Issues" and written closing submissions. Mr Sethi handed

[6] A third bundle contained documents relating to the proposed indirect discrimination claim and in view of our ruling on the amendment application its contents were not referred to.

up a cast list and chronology, a proposed hearing timetable, a document headed "Executive Summary of Issues in Dispute" and written closing submissions.

The Facts

39 It is convenient to start with a general narrative. After that, we will add certain findings on points specific to some of the individual claims.

The main events

40 It was common ground that, from 1 November 2013 onwards, the Claimant's relationship with the Respondents (and their predecessors) was governed by terms signed by her on 21 October 2013. Under "Job titles and duties", they included the following:

> **Your Job Title (as set out in your offer letter), the person to whom you report and your precise duties and job description may, from time to time, be amended by the Company at its discretion, provided that any such change is reasonably consistent with your status. In addition to the duties set out in your job description, you may from time to time be required to undertake reasonable additional or other duties as necessary to meet the needs of the Company's business. You shall without further remuneration accept and carry out such duties as may be assigned to you from time to time. Such duties may relate to the business of the Company or the business of any Group Company.**

The same document provided for a two-month notice period, subject to the statutory minimum if greater.

41 A job description for the position of ACS, dated September 2013, declared the purpose of the role to be:

> **The provision of professional and administrative support to the Joint Deputy Secretary Amlin plc and Company Secretary Amlin Underwriting Limited and to apply professional skills assisting in carrying out the Department's duties.**

'Key Result Areas' were specified as follows:

- **To provide company secretarial support to designated boards and committees**
- **To ensure the maintenance of corporate records**
- **To maintain and provide accurate and timely information as required to the Department and its clients**
- **To carry out general administration in support of the Department's duties and objectives**

Under each, a list of tasks was set out. A significant proportion described the role as to "assist" with particular administrative functions. Three job-specific 'Key Competencies' were listed:

- **Some knowledge of Company Secretarial procedures desirable**
- **Familiarity with Blueprint or similar software package**
- **Some experience in taking minutes desirable**

The ACS had no line management responsibilities.

42 It was the Claimant's choice to move to part-time working in April 2015. By then she was finding a five-day week tiring. She made no secret of the fact that she anticipated retiring in the next few years.

43 In her evidence, the Claimant told us without challenge that the scope and balance of her duties changed in and after late 2015. She became increasingly involved in work related to the reorganisation of corporate structures within the Amlin group and in particular the creation of a new group company, Amlin Insurance SE ('AISE'), which was intended to become the vehicle for the merged group's European business activities. This work involved a lot of interaction with the Board of the new company. She was appointed its Company Secretary. We accept that this work was important and that it may well have been seen by many within the organisation as prestigious. This shift in her responsibilities was not marked by any change in her job description or remuneration.

44 In May 2015 Ms Kathryn Silverwood, then aged 48 or 49, was appointed on a contract basis to the position of Senior Assistant Company Secretary ('SACS'), to replace Ms Julie McLeod, a permanent employee in that role. Shortly afterwards, the post was advertised internally and externally as a vacancy and a competition held. 22 candidates applied, including Ms Silverwood. She was one of two who were interviewed and she was successful. Her permanent appointment took effect in or around late August 2015. The Claimant did not apply.

45 A SACS job description dated April 2015 set out the purpose of the role in these terms:

> **To work under the direction of the Company Secretary in relation to duties covering Amlin plc and the provision of Committee Secretary services to the Amlin plc Audit Committee or such other Committee as to be agreed. In conjunction with this the role consists of three main elements: act as Secretary to certain Group companies, take primary responsibility for certain designated Group/plc duties; provide oversight and management of the Company Secretarial Assistant and Trainee Company Secretary.**

The 'Key Result Areas' were listed as follows:

- **Secretary to the Amlin plc Audit Committee or such other Committee as to be agreed**
- **Oversight and management of the Employee Share schemes portal …**
- **Secretary to various executive Committees and subsidiary boards as and when required**
- **To assist with the development of the department structure, objectives and responsibilities in conjunction with the Group Company Secretary and Deputy Company Secretary**
- **Oversight of the statutory registers and Blueprint**
- **Oversight of the Insiders policy and Insider track**
- **Oversight of the emoluments process**
- **Assist all responsibility of any ad-hoc projects**

Job-specific 'Key Competencies' were specified in these terms:

- **ACIS or FCIS qualified**

- **Financial services or Insurance background would be desirable**
- **Able to work unsupervised**
- **International knowledge**
- **Share schemes (International) experience**
- **Plc experience essential**
- **Management experience**
- **Previous project management experience**

The SACS had line management responsibility for two members of staff.

46 The Claimant contended that she and Ms Silverwood were employed at the same level prior to the reorganisation. We are satisfied that she is mistaken in that view. It is true that there was a degree of overlap between the duties which they performed but that does not warrant the conclusion that they were peers occupying equal or equivalent positions. In her evidence she was taken through a series of points which demonstrate that there was a clear difference between the responsibilities of the SACS and ACS grades (before and after the reorganisation) and the terms, conditions and status attaching to each. The most important of those points are the following.

(1) The job titles are different.
(2) The Respondents' job evaluation panel assessed the SACS and ACS roles according to Hay criteria at Hay Global Grades 18 and 17 respectively. According to Hay methodology the dividing line separating managerial and non-managerial roles is located between these two grades. Miss Mahoney told us without challenge that under the Hay system the two positions are treated as 15% apart.[7]
(3) Under the Respondents' grading system (before and after the reorganisation) the SACS and ACS positions sat at levels 3 and 4 respectively.
(4) As we have mentioned, the Claimants salary on leaving was about £60,000. At the time of her transfer to the new structure, Ms Silverwood's salary stood at about £81,000. The reorganisation did not mark any variation in her remuneration. The external recruit to the one SACS vacancy created by the reorganisation was, as we will explain, appointed at a substantially higher salary. The third SACS was transferred from Sumitomo under TUPE, retaining her existing terms and conditions.
(5) The difference between levels 3 and 4 was also reflected in terms governing notice rights, car allowances and bonuses.
(6) The SACS job descriptions included line management; those applicable to an ACS did not. Ms Silverwood duly undertook such responsibilities; the Claimant did not.
(7) Ms Silverwood undertook certain high-level, technical tasks, such as winding-up international share schemes; such responsibilities did not fall within the Claimant's range of duties.[8]

[7] This may mean that the values of the two roles, represented numerically, are 85/100 or 100/115. Either way, the gap is appreciable.
[8] She rightly pointed out that she undertook some important duties (for example in relation to the preparation of AGMs) which Ms Silverwood did not. The difference, however, was that she did not suggest that such duties fell outside the scope of tasks which Ms Silverwood *could* have undertaken.

(8) As the Claimant acknowledged in evidence, the duties of the SACS were "higher and wider" than those of the ACS. The former had strategic and managerial elements; the latter did not. These differences were reflected in the job descriptions, which emphasised the responsibility and accountability attaching to the former and the latter's function of providing operational assistance.

47 In early September 2015 the acquisition by Sumitomo of Amlin was announced. That transaction was completed in February 2016. An important feature was the fact that, as Amlin was being consumed by a much larger organisation, it was seen as unnecessary for it to remain a public limited company listed on the stock exchange. This had implications for the requirements of the CS function of the merged organisation.

48 The Respondents decided to create a new CS department to serve the merged organisation. Because of the de-listing of Amlin, it was judged appropriate to dispense with the Company Secretary position and the two Deputy Company Secretary posts. Leadership of the department was conferred upon the new position of Head of Company Secretariat, below which sat three SACSs, each responsible for one of the three relevant companies within the new corporate structure. Those companies were MS Amlin Underwriting Ltd ('AUL'), AISE and MS Amlin AG ('AAG'). At the next level down were three ACSs, each assigned to one of the companies, and below them some secretarial and administrative or miscellaneous staff. The new structure reflected the diminished need for CS work consequent upon the de-listing of Amlin. The bundle included charts in which the CS structures pre- and post-reorganisation were helpfully represented.

49 Although Sumitomo worldwide was very substantially larger than Amlin, Amlin's presence in the UK was much greater than Sumitomo's. Accordingly, it was agreed that the merger would take the form of a transfer of Sumitomo's business to Amlin corporate entities. It was also agreed on all sides that that transaction amounted to a relevant transfer the purposes of TUPE.

50 In or about February 2016 work began on the integration of the two businesses and workforces. The Respondents had an established consultation forum, called the Amlin Consultation Forum ('ACF'). Training was given to employee representatives on the consultation requirements applicable (in so far as they were applicable) under TUPE and TULCRA. It appears that consultation meetings were held quarterly from December 2015 onwards. The ACF representative for the Company Secretariat team was Mr Peter Bolster. Neither he nor any individual within the team raised any issue or concern relating to the consultation exercise or its subject matter.

51 The transfer entailed one addition to the fused company secretariat team: Ms Frances Moule was transferred in from Sumitomo. Her job title with Sumitomo was ACS. She worked four days per week. We were not told her salary at the moment of transfer. It appeared to be undisputed that ACS in the Sumitomo structure was a position of higher standing than ACS in Amlin, but we are unable to make any more specific finding. On transfer, Ms Moule was appointed to SACS

with responsibility for AUL. Apart from the new title, her terms and conditions were unchanged.

52 Ms Silverwood's SACS position was 'mapped' to the new role of SACS with responsibility for AISE.

53 The third SACS post, responsible for AAG, remained, for the time being, vacant. Some time later, Mr Nick Hornsey, an external candidate aged 59, was appointed to it on a salary of over £93,000 p.a. Like Ms Silverwood, he also received an annual car allowance of £6,500. At ACS level, no such allowance was payable.

54 The Claimant's ACS post was 'mapped' to the ACS role beneath Ms Moule. The Claimant had experience in AUL. Ms Parsons told us that Mr Stevens who, as Company Secretary, was the guiding hand behind the reorganisation, told her that he believed that her experience was required in order to provide support for Ms Moule, who was coming into a role within an organisation with which she was unfamiliar.

55 It appears that at the moment when the new structure took effect, the ACS position beneath Ms Silverwood and that supporting AGG were unfilled.

56 It was common ground that all persons who moved to roles in the new structure did so without experiencing any change to their terms and conditions.

57 The most obvious casualty of the structural changes which we have summarised was Mr Stevens, whose position ceased to exist. One of the two Deputy Company Secretaries, Mr Vero, was appointed to the new leadership role of Head of Company Secretariat. The other Deputy Company Secretary, Ms Jeanette Mansell left the CS team and we understand that she is no longer employed by the organisation.

58 The Claimant did not take issue with the Respondents' contention that the role of (Amlin) ACS prior to the reorganisation was similar to that of ACS in the merged company. Her complaint was that her role and that of Ms Silverwood were equivalent prior to the reorganisation and that the reorganisation resulted in the SACS post being "beefed up". We have already dealt with the question of equivalence. As for "beefing up", we find that in one sense the roles of SACS and ACS were probably both elevated somewhat by the reorganisation: the managerial tiers above SACS were reduced from two to one and a consequence was that those at SACS level would be expected to take on some responsibilities which, hitherto, had been vested in the Deputy Company Secretaries. And that change would have been likely to have similar implications for those at ACS level.[9] In general terms it seems to us that, to put it colloquially, holders of SACS and ACS positions became somewhat larger fish, although it would also be fair to say that their pond was somewhat diminished. A more concrete change was that each new SACS was expected to become Company Secretary of the company for which he or she was responsible. So an unavoidable consequence of the reorganisation

[9] Although the change in the status of the ACS's line manager, from Deputy Company Secretary to SACS, arguably involved a small reduction in status

was that, whether she moved sideways or not, the Claimant could not retain her position as AISE Company Secretary or be Company Secretary of any other group company.

59 In cross-examination, the Claimant accepted that CS duties within AUL were, if anything, more complex and challenging than those which she had performed for AISE.

60 In his closing submissions, Mr O'Dair relied on what he termed a "paraphrase" of evidence given by Ms Parsons to the effect that the company "didn't use mapping to populate roles unless the employee was integrating from [Sumitomo]". Our note of the evidence was that she explained that "detailed" mapping did not take place in the cases of employees whose roles were not seen as being liable to change on the reorganisation. She put the Claimant and Ms Silverwood into that category. We accept that evidence. She did not say, as Mr O'Dair suggested in his closing submissions, that persons such as the Claimant and Ms Silverwood were translated to the new structure by some mechanism or process operating outside, and independently of, the mapping procedure.

61 The new structure of the CS department was announced on 22 March 2016. The Claimant was away on annual leave at the time and was made aware of the changes on her return on 29 March.

62 In a conversation on or about 1 April 2016 Ms Parsons pointed out to the Claimant that it was open to her to apply for the vacant AAG SACS post. She did not do so.

63 In the claim form, para 14, this pleading appears:

> **The Claimant complained about what had occurred but was told that she was not eligible to apply for her former role as it was a full-time role and she was a part-time worker.**

This is a reference to a meeting between the Claimant and Mr Stevens on 15 April 2016. We find that her note of that meeting is broadly accurate. She expressed her dissatisfaction about the reorganisation and in particular her loss of the chance to continue working with AISE. In relation to the new position to which Ms Silverwood had been appointed, Mr Stevens made a remark to the effect that her role was full-time and accordingly the Claimant would not have been eligible to fill it.

Grievance

64 On 5 May 2016 the Claimant submitted a grievance complaining that, in implementing the reorganisation, the Respondents had discriminated against her on the ground of her age and her part-time status. The matter was entrusted to Ms Katie Everett, Senior HR Adviser. She conducted an investigation, interviewing the Claimant and other relevant individuals, and, on 27 May, wrote to the Claimant setting out detailed grounds for rejecting her grievance. She also advised her of her right to appeal. The Claimant exercised that right, and the appeal was assigned to Mr David Johnston (a witness before us). He investigated the matter

and, on 21 June 2016, held a grievance appeal meeting, which the Claimant attended. By a letter of 28 June he advised her that the appeal had failed. Like Ms Everett, he set out detailed grounds for his conclusions.

65 It was common ground before us that the grievance process was defective in one respect. The procedure, which is not contractual, envisages, after the initial investigation, a grievance hearing in which the complainant is permitted to participate. Ms Everett held no such hearing.

Resignation

66 By a letter of 1 July 2016 the Claimant resigned on 12 weeks' notice. She rehearsed the history, dismissed the grievance as a "whitewash" and asserted that the way in which the reorganisation had been implemented, involving (on her case) a "flawed" mapping process, left her with no option but to terminate her employment.

Miscellaneous matters

67 The Respondents accept that they did not arrange for the election of employee representatives and/or inform or consult in accordance with TUPE regs 13-15 or TULCRA s188.

68 Miss Mahoney gave evidence that, throughout the period of the reorganisation, the number of proposed redundancies (or those "at risk") fluctuated but never exceeded 20. We accept that evidence.

69 The money claims rested on the undisputed fact that, over a period of months spanning the financial years 2015/16 and 2016/17, the Claimant worked hours in excess of her contractual four-day week but those hours were not counted for the purpose of calculating her annual bonus entitlements or the Respondents' contributions towards her pension. In cross-examination she stated that she believed that it would have been fair for her to enjoy the benefit of such credits but candidly accepted that she could not point to any contractual term entitling her to them.

70 The Claimant pursued a grievance in relation to the money claims, at first instance and on appeal, but was unsuccessful. In the course of the process she explicitly acknowledged that the Respondents had acted in accordance with their contractual obligations in respect of both bonus and pension. It was common ground before us that those obligations are defined by reference to basic pay and that her basic pay remained unchanged at all material times.

Secondary Findings and Conclusions

Constructive dismissal

71 The alleged constructive dismissal is said to rest on the following matters, which we take from the agreed list of issues, para 3.1(3):

(a) that the ACS post-integration role was a demotion;

(b) that the Claimant was prevented from applying for an existing role (and/or the role most similar to her previous role) due to her part-time status and age; alternatively that she was told that she was not eligible to apply for her former role as it was a full-time role and she was a part-time worker;

(c) that a younger, no more experienced, full-time colleague that had recently joined the Respondents was given the Claimant's role and/or promoted ahead of her; alternatively that her role was given to Ms Silverwood;

(d) that there was a failure adequately to consult with her; alternatively, a failure to consult collectively;

(e) that in the first grievance, the Respondents failed to conduct a proper process or to arrive at a proper outcome.

We will consider these allegations individually and collectively.

72 As to (a), we remind ourselves that the central question for us is not whether the move to the new structure entailed a demotion for the Claimant but whether (by itself or coupled with other considerations) it amounted to a repudiation of her contract. The contract, as we have noted, reserved to the Respondents the right to make changes to her duties from time to time provided that any such change was reasonably consistent with her status. A change within that freedom, even if seen by the Claimant as a demotion, could not constitute a breach, much less a repudiation, of the contract of employment. We have noted the effect of the structural changes. These may be seen, overall, as enhancing the status of an ACS in the sense that the job holder post-reorganisation, sat one tier closer to the head of the Secretariat. On the other hand, the immediate superior prior to the reorganisation held a higher status than the line manager post-reorganisation. That factor might be seen as tending in the opposite direction. We are not at all sure that these considerations weighed with the Claimant at all. What did matter to her was that the reorganisation entailed separating her from AISE and from her position as Company Secretary of that company. We readily accept that she took rightful pride in the hard work which she had put into the launch of AISE and greatly valued her happy professional relationship with its Board. But we cannot accept that depriving her of the understandable satisfaction of working with AISE entailed any breach of her contract of employment. The broad latitude allowed to the company to change her responsibilities amply extended to their disappointing decision to move her to AUL. As we have noted, that company offered the prospect of diverse and challenging work and contact with its Board. And the structural changes made it entirely appropriate for the SACS to hold the position of Company Secretary, rather than the ACS. Again, that distribution of duties could not be seen as entailing any breach of the Claimant's contract. To put it another way, she had no lasting entitlement to be Company Secretary of AISE or of any other group company. Weighing the matter up, we are satisfied that the Claimant here establishes no breach of contract. For what it is worth, we also find that the reorganisation entailed no demotion, although her perception was otherwise.

73 Turning to (b), we are satisfied that the proper formulation of this complaint is that contended for by Mr Sethi. It was not, and cannot now be, the Claimant's case that she was prevented from applying for the SACS role with AISE or any SACS role. On her own case the remarks by Mr Stevens to the effect that she had not been "eligible" to take on the AISE SACS position and that moving to AUL was judged more in keeping with her retirement plans were made after the announcement of the reorganisation which, as she herself complained, was

presented as a *fait accompli*. In other words, they were made in an attempt to justify a decision already taken. If the reorganisation was tainted by unlawful discrimination, that may bear upon the question now under consideration, namely whether the Respondents breached the Claimant's contract of employment. We will return to that question. What cannot be a breach of the Claimant's contract is for Mr Stevens to respond in a frank and truthful manner (as she says he did) to her grievance about the reorganisation.

74 Allegation (c) is not made out. The Claimant's role was not given to Ms Silverwood, who was employed at a higher level. Nor was Ms Silverwood promoted.

75 The complaint of failure to consult cannot be sustained as an allegation of breach of contract. The Respondents were under no contractual obligation to consult the Claimant in relation to the reorganisation and it was open to them as a matter of contract to "map" her to a comparable role without consultation. Their freedom (already discussed) to make changes to her duties was not circumscribed by any obligation to consult. It follows that allegation (d) discloses no breach of contract.

76 As to allegation (e) we have noted one flaw in the grievance procedure at first instance. We have also recorded that the grievance procedure is not contractual. Accordingly, the error cannot constitute a breach of the Claimant's contract of employment. Case-law establishes an implied right of any employee to access to a means of redress for workplace complaints (see *W A Gould Pearmak Ltd-v-McConnell* [1995] IRLR 516 and *Hamilton-v-Tandberg Television Ltd* UKEAT 65/02/1212), but it was rightly not suggested on her behalf that the Claimant was denied that right. There is no possible breach under this head.

77 Having examined the separate elements of the constructive dismissal claim, we have asked ourselves whether, even if no individual breach is established, their collective effect is that a breach is made out. We are satisfied that that question must be answered in the negative. Seen as the sum of its parts, the Claimant's case still falls well short of demonstrating conduct on the part of the Respondents capable of satisfying the demanding standards of the *Malik* test.

78 The reasoning so far results in the conclusion that, subject to the question whether the reorganisation was materially tainted by unlawful discrimination[10], the Claimant fails to make out any breach (and certainly any repudiation) of her contract of employment. As we will explain, we find no unlawful discrimination in this case.

79 In case we are wrong and a repudiation is established, we will complete the analysis. Mr Sethi somewhat tentatively suggested that the complaints of constructive dismissal should fail in any event on the ground that the Claimant should be treated as having affirmed the contract following any breach. In our view there is nothing in this submission. The Claimant consistently challenged the decision to move her to AUL, and when that challenge failed she raised a formal

[10] Which might (or might not) amount to a breach of the implied duty to preserve mutual trust and confidence

grievance. Promptly on completion of the appeal phase of the grievance procedure, she resigned. There is no question of her affirming the contract.

80 If there was a repudiation, did the Claimant resign in response to it? Since we have found no repudiation, we are in no position to answer that question. But we can and do record that, in our judgment, the Claimant resigned because she felt that the reorganisation had involved treatment of her which was both unfair and discriminatory on the ground of her age.

Age discrimination

81 The case on age discrimination rests on four allegations as follows.

(a) The ACS post-integration role was a demotion.
(b) The Claimant was prevented on the grounds of age from applying for a role with AISE.
(c) The role in the new structure most similar to the Claimant's pre-integration role was unlawfully given to Ms Silverwood.
(d) The comments of Mr Stevens on 15 April 2016 were themselves acts of unlawful age discrimination in that they stereotyped the Claimant.

We will take these in turn.

82 Allegation (a) has already been dealt with. We have found that transfer of the Claimant to the position of ACS within AUL would not have amounted to a demotion. We accept, however, Mr O'Dair's submission that the Tribunal should avoid an over-technical approach. Moreover, we remind ourselves that the legal question for us first and foremost is whether the Claimant can establish a 'detriment'. It seems to us that it is certainly arguable that the reorganisation did entail a detriment for her in that by it she stood to lose the satisfaction of working within AISE and, in particular, performing the function of Company Secretary of that company. We will return to this complaint in due course.

83 As to allegation (b), our reasoning above disposes of this part of the Claimant's case. She was not prevented on grounds of age from applying for any role with AISE. No question of "applying" arose. The mapping exercise was conducted without reference to affected employees. The question whether, in this case, mapping decisions affecting the Claimant or Ms Silverwood (or both) were materially influenced by considerations of age will be considered below.

84 We do not uphold allegation (c). We find that the mapping exercise was conducted in accordance with the scheme explained to us by witnesses on behalf of the Respondents. The Claimant's pre-integration ACS role in AISE was mapped to a position in the new structure which was genuinely and reasonably judged to be equivalent. Ms Silverwood's SACS position was mapped to a SACS post in the new structure which was genuinely and reasonably judged to be equivalent to her existing position.

85 As to (d), we find no detriment. It cannot be an unlawful detriment for a manager invited to explain himself when challenged by an employee in a private

meeting or in a grievance process to give a candid account. If that account betrays discrimination in some form, no doubt the individual affected may rely upon it as evidential support for any claim that he or she might choose to bring. But the manager cannot be held liable (nor the organisation through him) for an unlawful act of discrimination in simply stating honestly what motivated the decision under challenge. That is all that the Claimant accuses him of doing. We reject Mr O'Dair's ambitious attempt to conjure up a case of something akin to harassment (not a claim before us) in the allegedly offensive stereotyping which was said to underlie Mr Stevens's remark. The alleged age-related assumption which Mr O'Dair attacked was that the AUL ACS position would be a "good pre-retirement job" for the Claimant (closing submissions, para 32.1). But, as we have recorded, the Claimant had chosen to move to part-time working in 2015 and had let it be known that she was planning to retire in the next few years. In these circumstances, the reference to her retirement plans entailed no assumption (stereotypical or otherwise) and was entirely unobjectionable.

86 Our reasoning so far leaves the Claimant with arguable grounds for saying that the reorganisation subjected her to a detriment by separating her from the AISE work, which had brought her considerable satisfaction. Is there any evidence of age discrimination in that treatment of her? She compares herself with Ms Silverwood. In our judgment the comparison is invalid because the two were not employed in comparable roles. The requirement for a 'like for like' comparison is not satisfied. It is very clear to us that the difference in treatment is explained by the fact that Ms Silverwood's role was mapped to a SACS position in the new structure and the Claimant's to an ACS position in the new structure. Those events were consistent with the mapping scheme and not suggestive of any unlawful discrimination. There is no evidence of age discrimination and there was no less favourable treatment. We readily accept that Mr Stevens's remarks on 15 April 2016 may be read as suggesting that the Claimant's part-time status was seen as material to the decision as to where to place her in the new structure. But, to state the obvious, part-time working cannot be equated with age. And in any event, that evidence does not lend any support to her key complaint that there was unlawful discrimination in the alleged "failure" to appoint her to the AISE SACS post. We are satisfied that she was never considered for that position and that Mr Stevens meant only that, even had she been regarded as apt for 'mapping' to a SACS role, her part-time status would have excluded her – at least from the AISE SACS position. But it would have been entirely inconsistent with the mapping scheme to consider her for appointment to *any* SACS post. We accept the evidence on behalf of the Respondents that that the scheme was not designed to produce promotions.

87 Mr O'Dair submitted that if we did not accept the comparison with Ms Silverwood, we should consider the alternative of an hypothetical comparator. Mr Sethi objected that this was not the case which he had come to meet. In our judgment it is permissible even at trial to invite the Tribunal to consider an hypothetical comparator. But the argument does not avail the Claimant. The complaint remains that she was unlawfully deprived of the appointment bestowed on Ms Silverwood. For the reasons already given she has no ground for complaining on that score or for suggesting that an imaginary 'like-for-like'

comparator (a younger ACS immediately before the reorganisation) would have been more favourably treated by being elevated to SACS.

88 For these reasons, even if the Claimant did suffer any potentially actionable detriment, the complaint of age discrimination must be rejected. The burden of proof is not shifted and in any event, even if it were, we would find that the Respondents have demonstrated that the treatment complained of was not materially influenced by considerations of age (that of the Claimant, her comparator or anyone else).

The 2000 Regulations, reg 5(1) claim

89 As we have mentioned, the complaint here was that the Respondents failed to take the Claimant's grievance seriously because she was a part-time worker. No comparator was identified and accordingly this claim is not legally sustainable. In any event, the grievance was taken seriously and the complaints examined with care. Moreover, there is no evidence on which we could find that any deficiency was attributable to, or linked with, the Claimant's status as a part-time worker.

The failure to elect representatives, inform and consult claims

90 Under this head, the TULCRA claim fails because of our finding that the number of individuals whom the Respondents proposed to dismiss for redundancy, or even potentially "at risk" of redundancy, did not at any material point exceed 20.

91 The challenge to the TUPE claim rests on the issue as to whether the Claimant was affected by the (admitted) TUPE transfer. The argument on this part of the case was exceedingly brief on both sides. No authority was cited to us. We have reminded ourselves that, within the Company Secretariat area, the merger envisaged only one individual transferring, Ms Moule. The only evidence we have is that, despite her job title of ACS, her role was correctly mapped to the SACS level in the new structure. We accept that evidence, having seen nothing to gainsay it. As we have also noted, the reorganisation was not treated as an opportunity to make promotions. In other words, the transfer, so far as relevant for present purposes, was liable to entail the introduction of one individual at a higher level than the Claimant's. The Claimant did not apply for the AGG SACS vacancy and did not suggest in evidence that she envisaged applying for *any* SACS post and we find that she did not have that ambition (she envisaged continuing in "her job" within the new structure, but that is quite another matter). We have considered the case of *Unison-v-Somerset County Council* [2010] ICR 498 EAT. There the EAT held (on facts quite different from those before us) that "affected employees" within the meaning of TUPE, reg 13(1) included employees who would be transferred, those whose jobs were put in jeopardy by the transfer and those who had job applications within the transferring entity pending at the time of transfer. But it rejected the submission that "affected employees" included all members of the transferor's workforce who might at any point in the future apply for a vacancy within the transferred part. On the strength of this authority, which seeks to put sensible limits of the regs 13-15 duties, it seems to us that the exceedingly remote possibility of the Claimant being affected by the TUPE transfer

of Ms Moule was insufficient to generate consultation obligations. She was not an "affected" employee. Accordingly, we dismiss this part of the claim.

Redundancy payment

92 The claim for a redundancy payment is not tenable because the Claimant was not dismissed and, in any event, she was not redundant. The Respondents' requirements for employees to perform ACS work did not cease or diminish.

The 'overtime'-related claims

93 The claims for unauthorised deductions from wages or breach of contract in respect of pension and bonus entitlements fail because, as the Claimant acknowledged in evidence, there was no firm contractual foundation for them. That is the inevitable result of our primary findings above.

94 The Claimant also pursued a claim under the 2000 Regulations, reg 7 in respect of the second grievance, in which her complaints about pay were explored and rejected. In our judgment the adjudication on that grievance was correct and there is no question of it having been influenced by the fact that she had complained of adverse treatment based on her part-time worker status.

95 Accordingly, these claims also fail.

Outcome

96 For the reasons which we have given, we dismiss all claims. We would add, however, that we are not at all persuaded by the suggestion on behalf the Respondents that, in bringing the proceedings or any part of them, the Claimant has acted otherwise than sincerely and in good faith. She impressed us as a notably frank and straightforward witness. Moreover, Mr Stevens's remarks of 15 April 2016 could, we think, reasonably be seen as lending significant support to her case. Although, on very careful examination, we have not upheld her claims, we think that it would be unfortunate if any further criticism were directed at her for bringing them.

Employment Judge Snelson
18 April 2017