EMPLOYMENT TRIBUNALS

Claimant
Ms MM

Respondent
London Fire and Emergency Planning Authority

v

Heard at: Watford

On: 6 – 10 and 13 - 15- March 2017 and 16 March 2017 (in chambers)

Before: Employment Judge Heal
Ms. S. Hamill,
Mr. W. Dykes.

Appearances

For the Claimant: Mr. LL, union representative.
For the Respondent: Ms. N. Joffe, counsel

JUDGMENT

1. The following complaints of sex discrimination and harassment are dismissed upon withdrawal by the claimant:

4(a) insofar as it relates to Mr P
10 and 15(n)
11(b), (c), (d), (e) and (f) (insofar as (e) and (f) relate to Mr Claydon)
15 (p),(q),(r),(s),(t) (insofar as (s) and (t) relate to Mr Claydon)

2. The remainder of the complaints of sex discrimination and harassment are dismissed.

REASONS

1. By a claim form presented on 18 May 2016 the claimant made complaints of direct sex discrimination and harassment.

The evidence.

2. We have had the benefit of an agreed bundle running initially to 441 pages.

3. Page 442 was added at the outset of the hearing at the request of the claimant. The respondent objected initially but acquiesced after discussion in the interests of keeping matters in proportion.

4. Pages 443 to 452 were added by consent at the respondent's request towards the end of the claimant's evidence. We allowed Mr L time to take instructions upon those documents, adjourning to do so, and we released the claimant from her oath for the limited purpose of giving instructions on the documents. We then allowed Mr L an opportunity to examine the claimant in chief upon the documents before Miss Joffe resumed cross examination.

5. Before Mr W was called to give evidence, Miss Joffe disclosed a document which she said he had given to her and which was relevant to the issues. She did not make an application for it to be admitted in evidence and Mr L, having had an opportunity to read the document, also did not make an application for it to be admitted in evidence. Although the document was handed up to us, we did not read it until the parties agreed that we should.

6. On Monday 13 March, day 6 of this hearing, the claimant who was cross-examining Mr Eustice herself, asked us to accept the documents produced by Mr W in evidence. We did so without objection from Miss Joffe and they were added to the bundle at pages 473 to 482.

7. Mr Eustice was called to give evidence on 13 March. He produced new documents to the tribunal which were admitted in evidence by consent and appear at our bundle at pages 460 to 467. Mr L had not had an opportunity to examine these documents and take instructions and so we gave him until 11am to do so.

8. We have heard oral evidence from the following witnesses in this order:

Claimant's case:

Mrs MM, firefighter, the claimant;
Mr N, firefighter (interposed by consent during the claimant's evidence)
Mr P, retired Crew Manager (called by the respondent and interposed out of turn because, being retired he was only available on 8 March 2017)
Mr Q, Crew Manager (also called by the respondent out of turn because he could only give evidence on 9 March 2017)
Mr R, firefighter and fire brigade union area chair;
Mr S, firefighter,
Mr T, firefighter,
Mr U, firefighter;

Respondent's case:

Mr V, Station Manager (called on Thursday 9 March but evidence not completed. Evidence completed on Tuesday 14 March before Mr Johnson's evidence)
Mr Richard Claydon, retired Borough Commander,
Mr W, Station Manager,
Mr Clive Eustice, of Business Process and Systems Information,
Mr Y, Group Manager in the X Borough team,
Mr Dominic Johnson, Head of Human Resource Management,
Miss Purvi (Perry) Shelat, Human Resource Adviser.

9. Each of those witnesses gave evidence in chief by means of a prepared typed witness statement which we read before the witness was called and then the witness was cross examined and re-examined in the usual way. The order in which witnesses were called was dictated in the main by their availability and we are grateful to both parties for their cooperation and flexibility in this matter.

10. With the help of both parties we set a timetable for the hearing of the evidence in this case. We told the parties that we would adhere to that timetable, assuming that witnesses cooperated with the cross-examination process. We told them that if they developed anxieties about the way a witness was answering questions they should raise those anxieties with us as soon as they arose so that we could take appropriate steps to address them. We have had to adjust the original timetable to allow for time lost because of the introduction of new documents and for the hearing of an application for disclosure by the claimant.

11. Before the evidence started, Mr L for the claimant objected to the presence of Mr Y, a witness for the respondent, sitting at the back of the tribunal room. He made an application for Mr Y to be excluded during the claimant's evidence. We heard submissions on that application and then sent the parties out while we considered it. Upon consideration, we refused the application. We did not think it in the interests of justice to exclude Mr Y. Although we understood the claimant's anxieties and the stress of giving evidence, there was nothing before us to suggest that she was particularly vulnerable. Most claimants do give evidence with the respondent's witnesses sitting in the tribunal room. This enables representatives to take instructions and for witnesses to volunteer information which the representatives might not know to ask about. Although this case is of course serious - as are all cases of discrimination and harassment - we have not seen any detail in the evidence we have read which suggests to us that the facts are so sensitive that Mr Y should be excluded.

    The application for disclosure.

12. At the outset of the morning hearing on 10 March 2017 (day 5 of 9), Mr L for the claimant made an application for disclosure. He said that the documents in the bundle which contained the records of the claimant's annual leave being granted were secondary documents into which information had been compiled from primary source. It is the claimant's case that that information has been falsified and so he asked for disclosure of the primary documents. Miss Joffe for the respondent told us that this information had been sought in the past, most recently at a preliminary hearing before Employment Judge Skehan on 16 February 2017. On that occasion Judge Skehan declined to order the respondent to create a document containing the information sought by Mr L. No further application had been made between 16 February and 10 March. The claimant wished to show that when she made an application for leave on 19 January 2014 she was in the same position as concerns remaining leave entitlement as her colleagues Mr S and Mr T. Therefore, she says, she too should have been granted the leave she requested, which shows that she was treated differently to her 2 male colleagues. She says therefore that Mr P was not being truthful when he said that a warning flashed up on his screen preventing her from being given the leave for which she asked. Therefore, she says that his explanation for his difference in treatment of her as compared with her male colleagues should be rejected.

13. This initial sex discrimination, she says, has continued to taint the entire ensuing history about which she complains of sex discrimination.

14. The claimant sought the records for January 20, February 6 and 22, March 15 and 16 of 2014. She sought the equivalent of page 115 in our bundle, if it is the original primary source document for each of those days, in relation to her own leave records showing when her leave was booked for those dates. She says that her case hinges on these leave records.

15. We considered that if we did make the order sought, then a postponement of this hearing, possibly into 2018, would be likely as would an order for wasted costs. We talked through the possible consequences to the litigation with the parties: if we did and did not make the order, so that the parties should understand what was at stake. The claimant had told us that she would be willing to pay the cost of an expert to interpret the results of the disclosure but given that Mr L is not a legal representative it seemed fair to make sure that she understood that the costs of granting the postponement might be very substantial and more than she realised.

16. We also explored with the parties the likely probative value of the documents sought and explored with the claimant the possibility of incurring very substantial costs and delay to secure the necessary documents to show a difference in treatment, although she still also had to prove evidence from which we could properly and fairly conclude that any difference in treatment was because of her sex.

17. The claimant's view however was that these documents are critical to her case and therefore she wished them to be disclosed.

18. The respondent submitted that this application had already been made previously and refused. Miss Joffe said that the litigation was already out of all proportion to the initial incident and reminded us of the need to keep proportionality in mind. Miss Joffe readily accepted that she is not a computer expert and that no one in the tribunal on 10 March knew what Mr Eustice (who has supplied the respondent with a witness statement explaining the working of the computer leave booking system and who prepared the leave documents in the bundle) could actually see on his screen.

19. On consideration of the application and submissions, we considered that the consequences of our accepting or refusing the application were potentially so serious for the case and the parties that we should not make a decision without hearing from Mr Eustice. We did not think it appropriate to make our decision on incomplete information when the source of more expert and complete information was available to the tribunal. Therefore, we continued with the hearing, expecting to hear Mr Eustice on Monday 13 March whereafter we decided that we would determine this application.

20. Mr Eustice gave evidence on 13 March that he had produced and printed off pages 460 to 467 on the Saturday after the first week of our hearing. He had sent these documents to 'legal' but had also put a printed copy into his briefcase and he then went to the 'pub' to watch the rugby. He lives alone so that the documents were not available to anyone else who could have tampered with them. He brought them in his briefcase to the tribunal on Monday 13 March and gave them to Miss Joffe. These documents are not the 'raw data' because that exists only in binary code in the respondent's computer archive. That code can only be produced in readable form in an Excel spreadsheet such as the one before us. The archive may only be accessed by a limited number of named individuals and Mr Eustice is the only person who has in fact accessed these leave records. In order to access them, the tape or disk on which they are contained has to be taken to a separate commercial organisation in Woking.

21. This tape or disk then had to be run on a test server so that the information could be produced on an Excel spreadsheet. Unless secured as a PDF document, that spreadsheet could be altered. Mr Eustice acknowledged frankly in cross examination that he had made some mistakes in documents where he had physically transcribed information but he said that the documents at page 460 to 467 were not transcribed documents but had been run directly off the system. The documents he had produced on Saturday were directly produced from the system and there had been no opportunity for any person to tamper with them before he gave them to Miss Joffe. He showed us where in the material respects they tallied exactly with the respondent's leave records already in the bundle.

22. The claimant, who cross-examined Mr Eustice herself, did not put to him that he was wrong, mistaken, not telling the truth or part of any conspiracy to tamper with the documents. Mr Eustice's bona fides were not in question. He said that if the claimant took her own expert to examine the original binary code and ran from it an Excel spreadsheet, she would discover the same

information as he had brought to the tribunal. He had a laptop available in the tribunal on which the information could be accessed because he had asked for the test server to be kept open for 13 March. The claimant declined to examine this for herself.

23. Mr Eustice confirmed that giving the claimant and her expert access to the raw data would be a time-consuming business which could not be quickly achieved during the time scale of this hearing.

24. After Mr Eustice had given evidence, the claimant renewed her application for disclosure of the 'raw data' behind the respondents leave records. After hearing submissions, and deliberating, we refused this application.

25. In doing so, we reminded ourselves of the overriding objective.

26. We noted that the claimant had not suggested that Mr Eustice has himself altered the records or placed them in the hands of anyone else before he gave them to Ms Joffe. The documents he produced confirmed the records previously shown to us by the respondent. There is no basis on which we might consider them unreliable, except for the claimant's insistence that they must be, because they do not confirm her memory.

27. We were now on day 6 of a 9 day hearing, having heard detailed evidence for 5 days already. If we postponed, having granted the order, the delay was likely to be for many months, with consequent damage to our memory of the detailed evidence, increase in legal costs and delay in resolution. We did not think it would be proportionate, or consistent with the overriding objective to make the order sought. We thought it highly unlikely that making the order for disclosure would produce any evidence different from that which we had already seen.

Rule 50.

28. Some of the evidence in this case has been of a sensitive nature. We raised with the parties our concern that matters which, if made public, could have a significant effect on the private lives of Mr Q, his family and the claimant's own family were likely to be set out on the face of a public document. We were particularly concerned about the Convention rights of third parties who had not chosen for facts exposing and with potential for significant impact on their private family life to be made public.

29. At the end of submissions, both parties agreed that it was appropriate to anonymise this judgment to protect those individuals. Upon discussion, we decided with the parties that the claimant, Mr Q, the other firefighters, the other crew manager and the fire station itself would have to be anonymised. We do so by consent and also because, having considered rule 50 the tribunal thinks that it is necessary to protect the Convention rights of Mr Q, his close family, and also the claimant's close family. On reflection, of the tribunal's own motion we also anonymise the names of the immediate managers of the fire station, because those names too could lead to

identification of those whose privacy and family life we aim to protect. The claimant's union representative who represents her is also a firefighter at the same station, so for the same reasons, we anonymise him too.

Issues

30. At a preliminary hearing held on 16 February 2017 Employment Judge Skehan ordered the parties to produce and agree a single document containing a list of issues. This document was produced to us as an agreed list of issues on the first morning of this hearing. We explained to the parties before we began to read and hear evidence, the importance of this list of issues. We explained that the list of issues would help us to decide what was relevant and what was irrelevant evidence. We explained that the 'goalposts would not move' unless there was an application to amend the list of issues so that both parties and the tribunal knew exactly what the case was about. We told them that when we came to make our decision we would use this list of issues to help us ensure that we covered the relevant matters.

31. The claimant withdrew Mr P's name from issue 4(a) at the outset. The remaining matters scored through below were withdrawn by the claimant during submissions.

32. Subject to those amendments, this is the list of issues as agreed by the parties. We have retained the numbering on the original list, to avoid confusion:

Jurisdiction

1. *Have any of the claimant's claims been presented outside the statutory time limits for bringing such a claim?*
2. *In respect of any complaints which are out of time, do they form part of a continuing act, taken together with acts which are in time?*
3. *If the complaints were not submitted in time, would it be just and equitable to extend time?*

Direct Discrimination

For the avoidance of doubt, there are a number of factual disputes between the parties with regard to the allegations made by the claimant. The respondent also disputes that the comparators named by the claimant are genuine comparators.

1. Did the respondent treat the claimant less favourably because of her sex than actual comparators Firefighter S and Firefighter T on 19 January 2014 by:

(a) Crew Manager P telling the claimant that her request to take annual leave on 23 March 2014 could not be entered onto StARs, and giving her a false reason for why leave could not be booked in her name?
(b) Crew Manager P making an offer to the claimant that leave be booked under Crew Manager P's name and then transferred into the claimant's name at a later date?

2. Did the respondent treat the claimant less favourably because of her sex than a hypothetical comparator on 4 February 2014 by:

(a) Crew Manager Q and Crew Manager P, denying that Crew Manager P had entered into an arrangement with the claimant to transfer the leave date of 23 March 2014 into her name on StARs.
(b) Crew Manager P, acting in an aggressive manner and shouting at the claimant after she insisted that the leave date was transferred into her name?

3. Did the respondent treat the claimant less favourably because of her sex than a hypothetical comparator, on 4 February 2014 by:

(a) Crew Manager P asking Crew Manager Q to transfer the leave date into the claimant's name on StARs, against her wishes in order to dissuade her from going to a higher authority about the matter/cover-up that had happened?
(b) Crew Manager P informing the claimant in an aggressive manner that the leave had now been booked in her name and by Crew Manager P saying to the claimant that he hoped she was happy?

4. Did the respondent treat the claimant less favourably because of her sex than a hypothetical comparator, on 5 February 2014 by:

(a) Crew Manager Q and ~~Crew Manager P~~ subjecting the claimant to shouting and by Crew Manager Q saying to her in an aggressive manner that he had done nothing wrong?
(b) Crew Manager Q and Crew Manager P refusing to speak to the claimant when she returned to the Crew Manager's office with her colleague Firefighter T?

5. Did the respondent treat the claimant less favourably because of her sex than a hypothetical comparator by Crew Manager Q and Crew Manager P refusing to apologise to the claimant after she reported the incident to Borough Commander Y?
6. Did the respondent treat the claimant less favourably because of her sex than actual comparators, Crew Manager P and Crew Manager Q on 1 April 2014 by Borough Commander Y shouting at the claimant and accusing her of ruining the reputations of Crew Manager Q and Crew Manager P, and by Borough Commander Y threatening the claimant with disciplinary action?
7. Did the respondent treat the claimant less favourably because of her sex than actual comparators, Crew Manager P and Crew Manager Q on 1

April 2014 by Borough Commander Y blocking Crew Manager Q and Crew Manager P from transferring to another fire station?

8. *Did the respondent treat the claimant less favourably because of her sex than an hypothetical comparator by Station Manager V telling the claimant to, 'stop talking about it'?*
9. *Did the respondent treat the claimant less favourably because of her sex than actual comparators Firefighters S, T, A, U, B, C and D on 23 June 2014 by Crew Manager P roaring at the claimant when she drove safely through a red light?*
10. ~~*Did the respondent treat the claimant less favourably because of her sex than a hypothetical comparator, by Station Manager W refusing to investigate her grievance, and by Station Manager W not holding her grievance, despite there being a wealth of evidence to support the grievance?*~~
11. *Did the respondent treat the claimant less favourably because of her sex than actual comparator, Crew Manager P in relation to the Group Manager Claydon's investigation of the claimant's grievance by:*

    (a) *Station Manager V assisting Group Manager Claydon with the investigation even though he was aware of the background to this case and was now the Station Manager for the area where Crew Manager Q and Crew Manager P worked?*
    (b) ~~*Group Manager Claydon accepting the explanation given by Crew Manager P for not booking the leave under the claimant's name on StARs without any investigation?*~~
    (c) ~~*Group Manager Claydon concluding that Crew Manager Q and Crew Manager P had booked leave in this way for other employees without any investigation?*~~
    (d) ~~*Group Manager Claydon deciding the outcome of the appeal before the date of the claimant's appeal hearing?*~~
    (e) ~~*Group Manager Claydon*~~ ~~*and*~~ *Ms P Shelat colluding to ensure that important information about the claimant's grievance was omitted from the notes of the appeal hearing, and by Group Manager Claydon and/or Ms P Shelat deliberately delaying sending out the notes of the appeal hearing and outcome letter to the claimant?*
    (f) ~~*Group Manager Claydon and/or*~~ *Ms P Shelat refusing the claimant's request that they correct the omissions/inaccuracies in the appeal hearing notes?*

12. *Did the respondent treat the claimant less favourably because of her sex than a hypothetical comparator on 22 December 2015 by refusing to allow a corporate review of the claimant's grievance, when the grievance allegedly contained a complaint about discrimination?*
13. *If the respondent did treat the claimant less favourably than an actual or hypothetical comparator, has the claimant proved facts from which the tribunal could conclude that such treatment was because of the claimant's sex?*
14. *If so, has the respondent proved that it did not discriminate against the claimant?*

Harassment

15. *Did the respondent engage in unwanted conduct by:*

(a) *Crew Manager P telling the claimant on 19 January 2014 that her request to take annual leave on 23 March 2014 could not be entered onto StARs, and by giving a false reason for why the leave could not be booked in her name?*
(b) *Crew Manager P making an offer to the claimant on 19 January 2014 that leave be booked under Crew Manager P's name and then transferred into the claimant's name at a later date?*
(c) *Crew Manager Q and Crew Manager P denying on 4 February 2014 that Crew Manager P entered into an arrangement with the claimant to transfer the leave date of 23 March 2014 into her name on StARs?*
(d) *Crew Manager P acting in an aggressive manner and shouting at the claimant after she insisted that the leave date was transferred into her name?*
(e) *Crew Manager P asking Crew Manager Q to transfer the leave date into the claimant's name on StARs, against her wishes in order to dissuade her from going to a higher authority about the matter/cover-up that had happened?*
(f) *Crew Manager P informing the claimant in an aggressive manner that the leave had now been booked in her name and by Crew Manager P saying to her that he hoped she was happy?*
(g) *Crew Manager Q ~~and Crew Manager P~~ subjecting the claimant to shouting and by Crew Manager Q saying in an aggressive manner to the claimant that he had done nothing wrong?*
(h) *Crew Manager Q and Crew Manager P refusing to speak to the claimant when she returned to the Crew Manager's office with her colleague Firefighter T?*
(i) *Crew Manager Q and Crew Manager P refusing to apologise to the claimant after she reported the incident to Borough Commander Y?*
(j) *Borough Commander Y shouting at the claimant and accusing her of ruining the reputations of Crew Manager Q and Crew Manager P, and by Borough Commander Y threatening the claimant with disciplinary action?*
(k) *Borough Commander Y blocking Crew Manager Q and Crew Manager P from transferring to another fire station?*
(l) *Station Manager V telling the claimant to 'stop talking about it'?*
(m) *Crew Manager P, 'roaring' at the claimant when she drove safely through a red light?*
(n) *~~Station Manager W refusing to investigate her grievance, and by Station Manager W not upholding her grievance, despite there being a wealth of evidence to support the grievance?~~*
(o) *Station Manager V assisting Group Manager Claydon with the investigation even though he was aware of the background to this case and was now the Station Manager for the area where Crew Manager Q and Crew Manager P worked?*

~~(p) Group Manager Claydon accepting the explanation given by Crew Manager P for not booking the leave under the claimant's name on StARs without any investigation?~~

~~(q) Group Manager Claydon concluding that Crew Manager Q and Crew Manager P and booked leave in this way for other employees without any investigation?~~

~~(r) Group Manager Claydon deciding the outcome of the appeal before the date of the claimant's appeal hearing?~~

(s) ~~Group Manager Claydon and~~ Ms P. Shelat colluding to ensure that important information about the claimant's grievance was omitted from the notes of the appeal and by Group Manager Claydon and/or Ms P. Shelat deliberately delaying sending out the notes of the appeal hearing and outcome letter to the claimant?

(t) ~~Group Manager Clayton and/or~~ Ms P Shelat refusing the claimant's request that they correct the omissions/inaccuracies in the appeal hearing notes?

(u) The respondent refusing to allow a corporate review of the claimant's grievance, when the grievance allegedly contained a complaint about discrimination?

16. If so, was this treatment such as to fall within section 26 of the Equality Act 2010?

17. If so was such treatment related to her sex?

18. If so, did this have the purpose or effect of violating her dignity, and/or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

19. If any of the claimant's complaints are made out, what award should be made for injury to feelings?

Concise statement of the law

Harassment related to sex

33. This not a complaint of sexual harassment. The law makes a distinction between unwelcome acts of sexual harassment in the narrow sense, and unwelcome acts related to the sex of the victim or another person. Liability for harassment arising under section 26 of the Equality Act 2010 requires an investigation either into the alleged perpetrator's state of mind or into the form their conduct takes. The conduct must be unwanted and have the same defined consequences for the victim, but in neither case is it an essential requirement that the perpetrator purposes these consequences to come about (although s/he may have that purpose). It is enough if the 'effect' of the conduct is to bring about these results.

34. Where the harasser is motivated by his or her victim's sex or that of another person—in the sense that their action is 'related to her sex or that of another person'—the form the conduct takes is irrelevant. It need not be of a 'sexual nature'. Indeed the behaviour

may be wholly unexceptionable in itself, provided it is unwanted and has the required negative consequences.

35. While there is no requirement for the complainant to put forward a comparator (hypothetical or real), conduct which is found by the tribunal as *not* related to the victim's sex (or, on the ground that the victim has rejected or submitted to the perpetrator's unwanted conduct) that has violated the victim's dignity or produced an intimidating, hostile, degrading, humiliating or offensive environment will still not fall within the definition.

Direct discrimination

36. We have reminded ourselves of the principles set out in the annex to the Court of Appeal's judgment in Igen Ltd v Wong [2005] EWCA Civ 142, [2005] IRLR 258.

37. It is the claimant who must establish her case to an initial level. Once she does so, the burden transfers to the respondent to prove, on the balance of probabilities, *no discrimination whatsoever*. The shifting in the burden of proof simply recognises the fact that there are problems of proof facing a claimant which it would be very difficult to overcome if she had at all stages to satisfy the tribunal on the balance of probabilities that certain treatment had been by reason of her sex. What then, is that initial level that the claimant must prove?

38. In answering that we remind ourselves that it is unusual to find direct evidence of unlawful discrimination. Few employers will be prepared to admit such discrimination even to themselves.

39. We have to make findings of primary fact on the balance of probability on the basis of the evidence we have heard. From those findings, the focus of our analysis must at all times be the question whether we can *properly and fairly* infer sex discrimination.

40. In deciding whether there is enough to shift the burden of proof to the respondent, it will always be necessary to have regard to the choice of comparator, actual or hypothetical, and to ensure that he has relevant circumstances which are the *'same, or not materially different'* as those of the claimant.

41. Facts adduced by way of explanations do not come into whether the first stage is met. The claimant, however, must prove the facts on which she places reliance for the drawing of the inference of discrimination, actually happened. This means, for example, that if the complainant's case is based on particular words or conduct by the respondent employer, she must prove (on the balance of probabilities) that such words were uttered or that the conduct did actually take place, not just that this might have been so. Simply showing that conduct is unreasonable or unfair would not, by itself, be enough to trigger the transfer of the burden of proof.

42. If unreasonable conduct therefore occurs alongside other indications (such as under-representation of women in the workplace, or failure on the part of the respondent to comply with internal rules or procedures designed to ensure non-discriminatory conduct) that there is or might be discrimination on a prohibited ground, then a tribunal should find that enough has been done to shift the burden onto the respondent to show that its treatment of the claimant had nothing to do with the prohibited ground. However, if there is no rational reason proffered for the unreasonable treatment of the claimant, that may be sufficient to give rise to an inference of discrimination.

43. It was pointed out by Lord Nicholls in *Shamoon v Chief Constable of the RUC* [2003] IRLR 285, [2003] ICR 337 (at paragraphs 7–12) that sometimes it will not be possible to decide whether there is less favourable treatment without deciding *'the reason why'*. This is particularly likely to be so where a hypothetical comparator is being used. It will only be possible to decide that a hypothetical comparator would have been treated differently once it is known what the reason for the treatment of the complainant was. If the complainant was treated as she was because of the relevant protected characteristic, then it is likely that a hypothetical comparator without that protected characteristic would have been treated differently. That conclusion can only be reached however once the basis for the treatment of the claimant has been established.

44. Some cases arise (See Martin v Devonshire's Solicitors [2011] ICR 352 EAT paragraphs 38 - 39) in which there is no room for doubt as to the employer's motivation: if we are in a position to make positive findings on the evidence one way or the other, the burden of proof does not come into play.

Act extending over a period

45. An act of discrimination which 'extends over a period' shall be treated as done at the end of that period. (Equality Act 2010, section 123(3)). There is a distinction between a 'continuing act' (which allows a claim apparently out of time to be heard) and a decision which determines conditions of employment (a 'one-off' —which does not).

46. This distinction can be vital in determining whether a claim is in time and therefore whether the tribunal has jurisdiction to hear it. The leading case now to consider in asking whether a particular situation gives rise to an act extending over a period is the decision of the Court of Appeal in *Hendricks v Metropolitan Police Commissioner* [2003] IRLR 96, [2003] ICR 530. This states that the question is not whether there is something which can be characterised as a policy, rule, scheme, regime or practice, but rather whether there was an ongoing situation or continuing state of affairs in which the group discriminated against (including the claimant) was treated less favourably. In that case, the claimant was entitled to pursue her claim on the basis that the burden was on her to prove, either by direct evidence or inference, that the numerous alleged incidents of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs covered by the concept of 'an act extending over a period'.'

47. In deciding whether a particular situation gives rise to an act extending over a period, it will also be appropriate to have regard to (a) the nature and conduct of the discriminatory conduct of which complaint is made, and (b) the status or position of the person responsible for it. Discriminatory acts by a person in a position of authority may be more likely to create a regime of discrimination than similar conduct by a person of lower authority within an organisation. A single person being responsible for discriminatory acts is a relevant, but not conclusive factor in deciding whether an act has extended over a period.

Extension of time

48. Section 33 of the Limitation Act 1980 provides that, in considering whether to allow a claim which has been presented outside the primary limitation period to proceed, a civil court must consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action (see *British Coal Corporation v Keeble [1997] IRLR 336, at para 8*). When, in the employment tribunal, we apply the 'just and equitable' formula, although these factors will serve as a useful checklist and guide, there is no requirement that we go through the list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion.'

49. Where an application to an employment tribunal is delayed and presented out of time after an employee has followed an internal appeal procedure, that may be a factor to consider in deciding whether to extend time. The EAT, in *Aniagwu v London Borough of Hackney and Owens [1999] IRLR 303,* held that this justified an out-of-time application. It was significant in *Aniagwu* that the claimant had taken a conscious decision to delay starting legal proceedings to allow internal processes to be completed, and that the employer had been made aware of that decision. There is no rule that a delay caused by internal procedures will always provide an excuse for being out of time. This is one factor for us to consider.

Facts

50. We have made the following findings of fact on the balance of probability. What that means is that we do not possess a fool proof method of discovering absolute truth. We read and listen to the evidence placed before us by the parties and, on that evidence, we decide what is more likely to have happened than not.

Credibility

51. We have heard many disputes of fact. We have found the respondent's witnesses to be reliable. Mr Eustice struck us as a witness interested in his own computer systems and not at all with the outcome of the case. He was ready to admit mistakes. Mr P too was ready to admit that real life in the fire station did not always follow correct procedure: so, he admitted for example that a tick on a sheet did not necessarily mean that someone had received training. Witnesses who are ready to admit matters that do not show them in the best light tend to demonstrate reliability. We found too that Mr P and Mr Q were ready to admit their mistake on 4 February. Furthermore, the respondent's witnesses gave evidence that made sense and was consistent.

52. Although the claimant plainly believes with total conviction that Mr P attempted to 'steal' her leave on 19 January and 4 February, we think that she has made a mistake. A mistaken witness can be very convincing, and so the claimant appears. However, her conviction is not supported by the documentary evidence. We note too that her account has changed as it has developed through the different drafts of her grievance. It has changed in her favour, which makes it more difficult for us to rely on her evidence. There were occasions when she appeared to evade a question, saying, for example, 'I don't know how to answer that'. We formed the impression that she wished to avoid giving answers that would damage her case. She has shown some tendency to exaggerate. So, we do not think that the claimant has been as scrupulous as the respondent's witnesses in giving evidence. We have tended to prefer her own, more frank, first version of events in her first draft of her grievance, to her later accounts, and generally we have preferred the evidence of the respondent's witnesses to the claimant's.

The leave system

53. The respondent has a system for recording all staff attendance (for example work location) and absences, including sickness, training and annual leave. This system is entitled StARS which stands for staff attendance recording system. The accuracy of the system is imperative because it includes a rollcall board showing which fire appliances staff are detailed to ride, a standby module to work out where staff shortages are and from where they can be met, and a Human Resources module for the management of sickness.

54. Operational staff are entitled to Scale A and Scale B leave. At the relevant time in 2014 Scale A leave was booked in blocks of 1 or 2 weeks and Scale B leave was booked as single days.

55. Where an employee had not yet booked all his or her Scale A leave, it would not be possible to book Scale B leave at the date of the request if there were more than 42 days between the request and the leave date. In 2014, Scale A leave consisted of 21 days Annual Leave and 4 days ACAS leave. Scale B leave consisted of 3 days Longer Service Leave, 5 days Extra Annual Leave and up to 8 days Public Holiday.

56. Firefighters are not permitted to enter leave into the system for themselves or for other firefighters. The leave is entered by crew managers but they are not permitted to enter their own leave into the system.

57. It was not permitted for more than 3 members of the claimant's watch to be absent on leave at any one time.

58. If a crew manager wished to book leave for more than 3 members of the watch on any one day, he might book leave 'over the top', if he has first telephoned the Resource Management Centre ('RMC') for permission. Permission is considerably more likely to be forthcoming if the request relates to a firefighter rather than to a crew manager.

59. A widespread practice had arisen amongst crew managers in order to circumvent the difficulty in getting over the top leave for a crew manager. In the event that 3 firefighters had already booked leave for a particular day and the crew manager wished to secure leave for himself on that day, then, when he telephoned RMC he requested over the top leave for a firefighter and told RMC that 2 firefighters and a crew manager had already booked leave for that particular day. If this was done, RMC were more likely to give permission for over the top leave.

60. We have had a great deal of evidence about whether the respondent's computerised records of when leave was booked are accurate. We have found Mr Eustice a reliable witness. We were impressed that he was able to admit to mistakes that he had made transcribing information as soon as they were pointed out to him. He explained to us however that those mistakes had come about in documents that he had transcribed under pressure and edited to remove irrelevant information. He explained that those documents were different in kind to the crucial documents which show when leave was booked on the key dates set out in the chronology below. We accept his explanation that those documents are Excel spreadsheets printed directly from the original computer records and although it would be possible to edit the spreadsheets, it is not possible to alter the information produced directly from the system onto the original spreadsheet. We accepted his evidence (indeed it was not challenged by the claimant) that he had printed out a 2nd set of those documents during the weekend in the middle of this hearing, had kept them intact and untouched by anyone else and had handed them directly in that state to Miss Joffe, counsel for the respondent. We accept therefore that it is not possible for anyone to have tampered with those documents and we see that they are identical in the material respects to the documents already in our bundle showing when leave was booked on the key dates. Therefore, we do accept that the respondent's computer records are accurate and reliable.

Chronology

61. The claimant has been employed by the respondent since December 2000 and has been based at the X Fire Station for over 11 years. She is a full-time firefighter and is qualified to drive emergency appliances for the respondent.

There is no dispute that she is a very experienced, diligent and conscientious firefighter. She remains employed by the respondent.

62. During 2012 Crew Manager Q and the claimant became friends and their friendship developed into an 'affair'. That relationship lasted from November 2012 until June 2013. It ended because the claimant's husband asked Mr Q to end the relationship and Mr Q did so by ceasing to communicate with the claimant by text and turning the relationship into one of professional courtesy. The claimant thought that the way Mr Q terminated their relationship was lacking in courage. At this point their colleagues were unaware of the existence of the relationship. They continued to work together on a professional basis only.

63. On 2 November 2013 claimant injured her leg while at work. She was signed off work and her first day back was expected to be 23 November 2013. In the meantime, she flew to Australia, together with Firefighter S, to attend a wedding. Crew Manager P realised that he would like leave himself on 23 November, however 3 members of the watch, including the claimant and Mr S had already booked leave for 23 November.

64. Therefore, Mr P contacted the claimant in Australia to ask whether she would be fit for her 'next tour'. If she was still off sick, it would be possible for him to book leave himself on 23 November. He did not tell the claimant that he wanted the day's leave for himself. On being told that the claimant had recovered and would therefore be taking 23 November as annual leave, without telling her or asking her permission, Mr P contacted RMC and requested leave 'over the top'. To facilitate this, he listed his own name as one of the 3 with pre-booked leave and asked for over the top leave for the claimant, a firefighter. He was duly given permission so that both he and the claimant were able to take leave on 23 November.

65. As at 19 January 2014 the claimant had booked all her Scale A and Scale B leave for the leave year 2014. This included a 'PH' (public holiday) booked for 6 February. This means that she had booked to take a day's leave on 6 February using the allocation to which she was entitled because she had accrued a day's leave arising out of a public holiday.

66. The claimant wished to take leave on 23 March 2014 because she intended to take part in a cycling event on that day, together with her 2 colleagues Mr S and Mr T. On 19 January, she suggested to those 2 colleagues that she go and book leave for all 3 for 23 March. They agreed, and accordingly the claimant went to the crew manager's office and spoke to Mr P. Mr Q was present.

67. Although the claimant is in her own mind wholly convinced that she had booked leave for 15 and 16 March back in December 2013, the records show these dates being booked for her by Mr P on 19 January. It is not possible at this distance in time to decipher how this part of the history came about - indeed there may be explanations that no-one now remembers - but we

accept the respondent's records and therefore accept that these dates were booked by Mr P on 19 January.

68. Turning back to the booking of leave for 23 March, there was no difficulty booking leave for Mr T. Although Mr P does not now remember, we find that a warning did 'pop-up' on the screen when Mr P attempted to book leave for Mr S. This is because, on the records, Mr S would not have been able to book leave for 23 March because he had not yet booked all his scale A leave and there were more than 42 days between 19 January and 23 March. It is possible to override the pop-up warning and we find that Mr P did so.

69. When Mr P came to enter 23 March as leave for the claimant, a different pop-up warning showed on the screen to say that she had no leave available. We find that the warning would not have been a '42 day warning' because all her Scale A leave had been allocated and therefore the 42 day rule would not have applied to her. At this distance in time the witnesses' memories of what they saw and why they did what they did has become obscure. We have had to work on the computer records available to us which they would not have had available to them in the meantime.

70. We find that there was a difference between the warning in relation to Mr S and the warning in relation to the claimant. We think it much more likely that a manager would be prepared to override a 42 day warning than he would to override a warning that an employee had no more leave available.

71. Seeing the warning in relation to the claimant, Mr P suggested to her that he would book 23 March as leave in his name. This would protect the leave allocation so that it could not be claimed by someone else. He suggested that he would be able to transfer the leave into the claimant's name later.

72. Mr Q then entered a day's leave in Mr P's name for 23 March at Mr P's request.

73. Looking at the computer records, we see that on 20 January 2014, 6 February 2014 was deleted from the claimant's booked leave by Mr P. This would have the effect of releasing a day so that the claimant had an additional day's leave available to her and she would be able to have leave booked for 23 March.

74. We find as a fact that Mr P's motivation in offering to book the leave in his name was that he wanted to help the claimant and to make sure that she was able to take leave on the day she wanted.

75. On 23 January Mr P sent an email to himself as a reminder of dates that he wanted to book off for himself. These were either 1 March or 22 February and also 23 March. He wanted 23 March to accommodate a visit from his father. He had forgotten the date that he had booked in his name for the claimant.

76. It is extremely difficult to decide precisely what happened on 4 February 2014 because on the face of it the accounts given by the claimant, Mr Q and Mr P do not fit. Allowing for the distance of time and different perspectives we find

that there were 3 separate incidents on 4 February and the witnesses have remembered different aspects of those events.

77. On 4 February, the claimant, knowing that Mr P was going to be absent for a period of time, went to see him to finalise the swap that they had agreed for 23 March. By this time, Mr P had forgotten about the day he had booked in his name for the claimant. Mr Q was present in the office when the claimant arrived. The claimant asked Mr P to swap 23 March from his name into hers.

78. Mr P was confused because he could not remember the days that he had agreed to hold for the claimant. She told him that the date was 23 March and while he was checking the date, she asked Mr Q to confirm the date of the leave, however he could not remember the date either.

79. Mr P showed the claimant the email that he had sent to himself reminding himself to book leave on 23 March. He told her that he had needed this day because his father was coming to visit him. The claimant had already become angry and as she refused to back down Mr P himself began to become angry and frustrated. We think it is likely that he raised his voice but do not find he shouted. We find that the reason for his anger and frustration and for raising his voice was because at this stage he believed that the leave booked for 23 March was his and because the claimant's anger had already raised the temperature of the discussion. The claimant asked Mr P to check StARS to find out when leave had been booked for Mr S and Mr T. He did so and saw that they had booked leave for 23 March.

80. However, the claimant was angry and she left the room, still not aware whether she would be given the leave. Mr Q was present in the room throughout this incident.

81. Mr P checked the computer system and realised that the claimant had requested the leave on the date she had suggested. He therefore accepted that 23 March was indeed the day he had agreed to hold for her. We accept that his confusion was the result of a loss of memory and that it was a mistake.

82. Having realised his mistake, he asked Mr Q to cancel the leave in his name and to book it instead for 23 March under the claimant's name. Mr Q did this. Mr P also asked Mr Q to send for the claimant over the tannoy system. We find that the claimant returned to the office. As soon as Mr Q had sent the message over the tannoy he left the office. We think that he did this because he anticipated further confrontation and so he removed himself from the situation.

83. We find as a fact that he did say to her that he had put the leave in for her and added, 'are you happy now?' or words to that effect. Insofar as those words were said with irritation or even anger we consider that the reason for that was that Mr P was annoyed at the need to change his leave and the claimant's own anger and frustration. The claimant responded, 'don't make

out you're doing me a favour, we had an agreement and now you're trying to take the leave. I'll sort this out myself.' She then left the room.

84. We find that there was a third incident on 4th February in which Mr P approached the claimant and told her that he had made a mistake with the date on the email and that the leave was hers. We think that this is the incident which he remembers as being in the appliance room. The claimant was angry and by this time deeply suspicious of all he said. She interpreted his actions as motivated by her statement that she would take the matter further to get it sorted out. She was further angry with Mr Q because he had removed himself from the situation instead of helping her. In these respects, we find that she misinterpreted both Mr P and Mr Q.

85. On 5 February, the claimant returned for duty on the night shift. She went to the office to speak to Mr P and Mr Q. She expressed her unhappiness about the events of the previous day. She asked Mr Q why he walked out of the office. We find that he did throw up his arms and raise his voice as he said that the situation had nothing to do with him. We find that he did not shout. We find that the reason why he behaved as he did was because he found the claimant's behaviour frustrating and because he did not wish to become involved in any conflict involving her. We think that Mr Q's cautious response and desire to keep a distance from the situation arises out of his previous relationship with the claimant.

86. As the discussion continued, the claimant told Mr P and Mr Q that she could not trust either of them. She remained convinced that they had not made a genuine mistake and she could not understand how they had forgotten the conversation on 19 January.

87. On 6 February, in the morning of the same shift, the claimant spoke to Mr Q alone. She referred to their relationship and told him that he had been cowardly in the way he ended it but, 'he wasn't going to screw me over at work.' She told him that he would have to leave if he was going to stand by Mr P. We think that Mr Q did apologise for the mistake and that he did say with some emphasis however that he had done nothing wrong. We think he said that because he believed that he had done nothing wrong. We do not find that he was aggressive. Insofar as he spoke firmly and with emphasis we think that the reason was because he disagreed with the claimant's point of view.

88. Later, on 6 February the claimant, together with Firefighter T went to the office where Mr P and Mr Q were working. She began by saying that she was sorry about what had happened and Mr Q interpreted this as an apology. When he said 'thank you' however, it became clear that she meant that she was disappointed in the crew managers. They listened to her and paid attention to her but they did not say much further to her. She said what she had to say and then she and Firefighter T left the office. Mr T and Mr Q did not ignore the claimant and they did not refuse to speak to her, however we think by this time they had become cautious about engaging with the claimant on the subject of her leave and this explains their restrained approach to this encounter.

89. The claimant met with Mr Y in his office on 10 February. Pausing there, there was at this point no station manager and therefore Mr Y, though more senior than a Station Manager, was an appropriate person for her to approach.

90. She explained the dispute about her leave for 23 March. She explained that she was unhappy with Mr P because she believed he had reneged on his agreement about the leave. She said that she was unhappy with Mr Q because she felt that he should have intervened and reminded Mr P of the agreement. Mr Y asked the claimant what outcome she was looking for and she said that she wanted an apology from both crew managers and that she wanted them both moved away from the X fire station. Mr Y explained to her that he could not transfer the crew managers away without a formal investigation into the complaints and a finding that they had done something wrong. He asked the claimant whether she wanted to make a formal complaint and she replied that she did not. Mr Y told her that he would speak to the crew managers to see whether they would be prepared to offer an apology.

91. Mr Y did speak to Mr Q and Mr P on 12 and 19 February respectively. They gave him their perspective of the dispute. He did not in fact ask either of them to apologise. Mr Y formed the view that there had been a misunderstanding. His analysis of the situation was that the claimant had now been given her leave and that was an end to the matter. This has remained his view all the way through the events that followed up to and including this hearing.

92. Mr Y suggested to Mr P and Mr Q but they talk to the claimant in order to clear the air. They agreed to do this. He advised the crew managers that Mr P's method of blocking leave for a firefighter was against the respondent's policy and it should not be done again in the future. At this point Mr Y thought that the matter was concluded.

93. Mr P did approach the claimant at some point to explain that he had made a genuine mistake. However, the claimant did not accept this as an adequate apology because he had not apologised for deliberately reneging on the agreement. It appears that Mr. Q at this stage did not approach claimant.

94. The new Station Manager Mr Z arranged a mediation between the claimant, Mr P and Mr Q on 28 February. Mr P and Mr Q explained that there had been a misunderstanding, however the claimant took the view that their accounts were changing and she became angry. She accused them both of lying and being bullies. She walked out of the conference room.

95. Mr Z went to see her and told her that he was taking the matter seriously and he would deal with it. He asked her what outcome she wanted. She told him that she was not happy to work with Mr P and Mr Q as things had just got to out of hand and she could not trust them.

96. After this meeting Mr P and Mr Q made offers to move away from X station. The claimant was aware of these offers.

97. On 8 March 2014 Mr Z went on sick leave so that there was again no station manager present.

98. On 10 March the claimant spoke to her union representative, Mr L who approached Mr Y on her behalf.

99. Mr L told Mr Y that the claimant was still upset and she did not accept Mr P's explanation about the leave dates. Mr Y said that he had no evidence that Mr P had deliberately reneged on the agreement. Mr Y said that this was a relatively minor issue that could be resolved by the parties talking to one another. Mr Y undertook to see if he could offer some informal mediation from station manager Murray who knew all 3 parties. In fact Mr Murray did not offer a mediation because it seemed more sensible that the expected new watch manager should deal with the situation.

100. On discovering that there would not be a mediation, the claimant telephoned Mr Y and asked to see him. He did see her although he should have been devoting considerable time that day to a prearranged community event. The claimant told Mr Y that nothing had been resolved and she told him about the offers made by Mr P and Mr Q to transfer away from X station. Mr Y replied that he could not allow both crew managers to transfer away from station. This was because of the need for officer cover and the operational availability of fire appliances.

101. The claimant then said that because of what had happened she did not trust Mr P and Mr Q on the fireground. This was, and Mr Y saw that it was, a serious allegation because it implied for example that she could not trust the crew managers to draw her attention to life-threatening hazards on the fire ground.

102. Mr Y asked her whether there had been any further incidents to support this allegation and she said that there had not been. Mr Y was becoming a little frustrated but he agreed to speak again to the 2 crew managers.

103. On 24 March Mr Y spoke to Mr P and Mr Q. Mr Y was beginning to develop a sense that there was something in the situation which he did not understand. He could not understand why something that appeared to him to be a simple mistake was so difficult to resolve. He told Mr P and Mr Q that he would release them to transfer if they were able to arrange suitable swaps and he then told the claimant that he would not block the 2 crew managers transfers after all. Despite this, the claimant still gave him the impression that the issues were unresolved.

104. The claimant told Mr Y that an investigation of the StARS system would show evidence that Mr P was lying. Mr Y took the view that this investigation was unnecessary because there had been a simple misunderstanding and because the claimant had been given the leave that she wanted. Therefore, he took this matter no further.

105. By 31 March, Mr P and Mr Q had arranged transfers away from X station. The claimant at this stage regarded this as a resolution.

106. However, she remained disappointed because in her opinion management had not dealt properly with the situation. Therefore, she sent Mr Y an email dated 31 March. This began,

'Now we have finally reached a resolution to a matter that I came to see you about on Monday 11th Feb, I wanted to write you to say how disappointed I am in the how this was dealt with from start to finish. This could and should have been resolved within a couple of weeks at the most given that CM P had a week's leave from 12 Feb.'

The claimant then goes on to set out a timeline of events from her perspective.

The email concludes,

'*As you can see from the timescale above this took a long time to reach a resolution and I believe that if I hadn't come to see you on 27th Feb. or ask L to go and see you on 10th March I would still be waiting for this matter to be resolved. Not once did you come back to me to ask if resolution had been reached.*

M.'

107. Mr Y thought it was appropriate to call the claimant to a further meeting to discuss the matters she had raised in this email. He was upset by the email. He held the meeting in the conference room which is opposite his office. This was an appropriate place for such a meeting because it was neutral ground, it was not intimidating and it was not in one of the busy areas of the fire station. He did not choose to have the meeting in a remote place so that he could shout at the claimant.

108. Mr V was present at that meeting because he was the new station manager and Mr Y thought it appropriate as an introduction to a situation which he would have to manage. Mr V was present as an observer only so he was listening and did not take part in the conversation. We have accepted his account of the events.

109. Mr Y asked the claimant if her complaint had been resolved. However, the claimant repeatedly did not directly answer this question. Mr Y began to become frustrated. Mr Y explained to the claimant that if she was saying that the matter had not been resolved then she would need to submit a formal complaint. Mr Y said that the allegation she had made that she could not trust crew managers on the fire ground was serious and could ruin their reputations. Therefore, a full investigation was probably appropriate. Mr Y told the claimant that a formal investigation would examine the wider issues of the crew managers acting in breach of the policy about booking leave. This might include her own involvement. The conversation became heated and both Mr Y

and the claimant were speaking with raised voices. Mr Y did not lose control and did not become aggressive. He did not threaten the claimant with disciplinary action.

110. Mr Y did not tell the claimant that he was 'blocking the crew managers' transfers'. He told her that the decision about whether the crew managers would transfer away from X station was not hers.

111. The meeting ended because Mr Y asked the claimant to leave the office. He did so because the meeting did not appear to be progressing.

112. The claimant telephoned Mr P after that meeting seeming to be aware that Mr Y was not pleased with her and appearing to Mr Y to be asking him for advice.

113. Immediately after the meeting on 1 April, Mr Y and Mr V went to see Ms Shelat of Human Resources to take advice. Ms Shelat advised Mr Y to try to resolve the claimant's complaints informally at local level. She advised Mr Y that because there had been no formal complaint and no other reasons which would satisfy the respondent's transfer policy, the claimant could not dictate that the crew managers should transfer. She said that if they volunteered to transfer that would be acceptable. Mr Y told Ms Shelat that because there was limited management cover at the X station, the transfers would have a significant impact.

114. On 2 April, the claimant had a discussion with Mr Q. Mr Q does not appear to remember this discussion but the claimant recorded it in the first draft of what became a grievance. There she wrote that the matter was probably going to go formal. She says she told Mr Q that a big part of the problem was their previous relationship and that she was going to have to be open about it because she thought that,

'*it's the reason he reacted the way he did when I called him up on not standing up and saying that I had an agreement with CM P over that day's leave'*

115. On 2 April Mr Q telephoned Mr V and explained that he had had a long talk with the claimant and they were now 'okay' with each other. Mr V therefore attended the X station and spoke with Mr Q and the claimant together. Both appeared now to be happy with each other and Mr V asked them to confirm this by email. Both did so and the claimant's email dated 3 April reads,

'*Guv,*

As per our conversation last night, this is confirmation that we have now reached a resolution to the ongoing situation and I can say that I'm happy to draw a line under it and move on.

Hopefully this matter can now be forgotten and all working relationships can be worked on to get the XX watch back to where we were previous to this situation.

Thanks for taking the time to come and see both myself and Cm Q last night, much appreciated.

Regards,
M'

116. We find that the claimant sent this email of her own free will.

117. On 11 April Mr Q transferred to another fire station.

118. On 25 April the claimant went to see Ms Shelat of Human Resources. She explained the background of these matters to Ms Shelat and became emotional, starting to cry. The claimant asked Miss Shelat for advice about what she should do. Ms Shelat suggested that because she had had the leave, no longer worked with one of the crew managers and had had an apology from the other, it was perhaps time to move on; particularly as she had sent an email to Mr V saying that the issue had been resolved. The claimant did not suggest to Miss Shelat that she had been pressured or 'conditioned' into writing that email.

119. The claimant cheered up as she spoke to Ms Shelat and appeared to agree with her so that Ms Shelat was left with the impression, which she then reported back to the claimant's managers, that the matter appeared to be resolved.

120. On the claimant's return to the station Mr V spoke to her. He asked her why she had been to see human resources when she could have come to see him. She explained that she was upset because other people were talking about the dispute over her leave. He suggested to her that if she stopped talking about it perhaps other people would stop talking about. The reason he made this suggestion was to give her helpful guidance because she was upset.

121. On 23 June, the claimant was the driver of a fire appliance driving in the early hours of the morning to an incident. Mr P was sitting beside her. He bent down to check the screen which gave him the details of the incident. As he looked up he saw that the appliance was driving across the junction and he saw only a red light. Had he not been looking down, he would have seen that when the claimant entered the junction the lights were at amber. Not having been conscious of any attempt to slow the appliance down, he thought that the claimant was crossing a red traffic light without slowing down. Therefore, he shouted, 'slow down.' Given what he saw and believed, this was appropriate. Had he seen that the claimant had entered the junction when the lights were on amber he would not have reacted as he did. He would have reacted as he did to any driver, male or female, on the facts as he believed them to be.

122. On 28 June 2014 Mr P applied for a transfer and accordingly on 26 July he transferred elsewhere.

123. On 1 October 2014, the claimant contacted Mr R, Borough Union Representative to ask what to do about the situation. After some subsequent discussions, the new Station Manager suggested that the claimant approached the respondent's mediation team. As a result, on 14 January 2015 Anthony Buchanan contacted the claimant on behalf of the respondent's in-house mediators. The claimant sent the mediators several documents which included a lengthy narrative giving her perspective of events.

124. By email dated 20 March 2015 Mr Buchanan wrote to the claimant saying that he was not sure that mediation was the way forward.

125. By email dated 28 April claimant sent a draft of her grievance to Mr Buchanan for advice but he declined to advise her and suggested that she submitted it to her Station Manager. This she did on 6 May 2015.

126. Mr W was appointed to conduct the investigation into the grievance. On 22 June 2015, he went to see the claimant for a meeting about her grievance which was not a 'grievance meeting'. He went to see her because he was concerned that her grievance had been presented more than 3 months after the event about which she was complaining. According to the respondent's procedure a grievance could not be heard after that period without the fire brigade's agreement. He suggested to her that she raise her concerns as a bullying and harassment complaint because the time limits were more lenient.

127. Mr W came away from the meeting believing that the claimant had agreed to this, however by email dated 23 June she told him that they had got the 'wires crossed'. She said that she believed the issue was still current and she asked for her grievance to be investigated as requested, especially the issue about her leave.

128. On 24 and 29 June Mr W reiterated to the claimant that her grievance had been presented out of time and that therefore it would not be dealt with as a grievance. On 30 June, he told her that she had a right of appeal against this decision and she did appeal by email dated 1 July 2015.

129. The claimant has withdrawn her allegation of sex discrimination against Mr W and therefore we do not consider it necessary to analyse his decision.

130. Mr Claydon was appointed to hear the claimant's appeal against Mr W's decision and on 7 July a meeting date to hear the appeal was set for 10 August.

131. By email dated 11 July the claimant confirmed to Mr Claydon that she had decided that she would not change her grievance to a case of harassment.

132. As part of the investigation, Mr Claydon asked Mr V to send him relevant information in his possession. Mr V therefore forwarded to Mr Claydon emails in his possession sent to him by Mr Q and the claimant dating

back to April 2014. He sent to Mr Claydon a copy of the notes which Mr Q had taken of his conversation with the claimant on 1 April 2014. This was simply a forwarding of information and was not active participation in the investigation process.

133. Thereafter Mr V acted as notetaker for Mr Claydon in the interviews which Mr Claydon carried out. This again was a mechanical task and did not amount to active participation in the investigation process.

134. The claimant has now withdrawn the remaining allegations relating to Mr Claydon relating to this appeal and therefore we do not analyse his decisions.

135. After the meeting of 10 August the claimant was sent a copy of the notes. By subsequent email dated 31 December she drew to Ms Shelat's attention to her concern that two matters had been omitted from those notes. Those matters were questions she asked of Mr Claydon about why Mr Q had refused to enter her leave when requested for 23 March. On 8 January 2016 Ms Shelat replied saying that she would put the claimant's email with the notes of the hearing dated 10 August. At our hearing it was not put to Ms Shelat that those matters had been omitted from the notes on purpose or because the claimant was a woman or for any reason related to her sex. Doing the best we can in those circumstances we consider that any omissions from the notes are more likely than not to have been because notetaking is an imperfect process and such notes are rarely verbatim. Ms Shelat did not refuse to correct the notes. On the contrary, she kept a record of the claimant's correction.

136. Mr Claydon confirmed his decision to refuse the claimant's appeal by letter dated 11 August. He told her that that decision was final.

137. However, by email dated 25 August the claimant asked for a corporate level review of her grievance.

138. Paragraph 8 to appendix 1 of the respondent's grievance procedure says as follows:

'… *Serious cases such as allegations of bullying, harassment, racism or other unlawful discrimination which suggest major problems, for example of culture or management style, will (where the matter remains unresolved) require a further hearing to be conducted by the corporate level of the employing authority which is appropriate to the issue*.'

139. By letter dated 9 September 2015 Mr Claydon wrote to the claimant refusing a corporate level review. Having quoted paragraph 8 of the procedure, he said that he did not consider the issues she had raised constituted a serious case and as such they did not qualify for review at corporate level.

140. Having heard the appeal, Mr Claydon had no evidence to support any of the claimant's allegations. By that, he meant that although he had the claimant's evidence, he had no evidence to corroborate what she said. He had no evidence of any conspiracy or any wilful act by Mr P. He consulted with human resources and decided that there was no evidence to refer to a corporate review. He did not think that the claimant should be offered a corporate review just because she was unhappy with the result. He took the view that she should only be offered one if the issue satisfied the criteria in paragraph 8.

141. By email dated 18 September 2015 to Jane Philpott and Dominic Johnson the claimant reiterated that she would like the issues she had raised dealt with and asked whether she had now exhausted all internal avenues.

142. By letter dated 22 December 2015 Mr Johnson wrote to the claimant giving her his decision that there would not be a corporate level review. Mr Johnson's decision letter runs to 11 pages in which he conducts a detailed review of the claimant's assertions. He concluded that Mr Claydon was entitled to reach the decisions he did that this case did not meet the criteria for a corporate level review. Mr Johnson believed that all should draw a line under the issue. He said that the respondent had taken action in respect of the breaches of the leave policy in 2014. He did not believe that the case suggested endemic bad management culture in the respondent and he did not believe that the claimant had furnished any compelling evidence to support the statement that it did.

143. We are satisfied that Mr Claydon and Mr Johnson each decided not to permit a corporate level review because they did not consider that the claimant's case satisfied the respondent's criteria for such a review.

Analysis

144. We have conducted our analysis using the framework given to us by the list of issues which we set out below.

Did the respondent treat the claimant less favourably because of her sex than actual comparators Firefighter S and Firefighter T on 19 January 2014 by:

Crew Manager P telling the claimant that her request to take annual leave on 23 March 2014 could not be entered onto StARs, and giving her a false reason for why believe could not be booked in her name?

145. The claimant has not established the primary facts of this allegation. Mr P, on our findings, did not give the claimant a false reason for not booking leave in her name. The computer system gave him a warning that she had no leave available and he was responding to that warning.

146. Mr S therefore is not a good comparator because the warning in his case was a different warning, that is that he was outside the 42 day period. In any event that difference explains to us the difference in treatment between

the claimant and Mr S: it was a more serious matter to override the warning that the claimant had no more leave available than to override the warning that Mr S was outside the 42 day period. That is the explanation for the difference in treatment.

Crew Manager P making an offer to the claimant that the leave be booked under Crew Manager P's name and then transferred into the claimant's name at a later date?

147. Mr P did make this offer to the claimant. We have accepted the 'reason why' he made this offer: he did so because he was trying to help her.

Did the respondent treat the claimant less favourably because of her sex than a hypothetical comparator, 4 February 2014 by:

Crew Manager Q and Crew Manager P, denying that Crew Manager P had entered into an arrangement with the claimant to transfer the leave date of 23 March 2014 into her name on StARs.

148. On our findings of fact, we have accepted the reason why Mr Q and Mr P initially denied the arrangement. They had forgotten it.

Crew Manager P, acting in an aggressive manner and shouting at the claimant after she insisted that the leave date was transferred into her name?

149. We have not found that Mr P was aggressive or shouted. Insofar as he showed irritation or frustration and raised his voice, this was because he was frustrated, not because she was a woman.

Did the respondent treat the claimant less favourably because of her sex than a hypothetical comparator, on 4 February 2014 by:

Crew Manager P asking Crew Manager Q to transfer the leave date into the claimant's name on StARs, against her wishes in order to dissuade her from going to a higher authority about the matter/cover-up that had happened?

150. The reason why Mr P and Mr Q transferred the leave into the claimant's name was because they realised that they had made a mistake and that in fairness the leave belonged to the claimant.

Crew Manager P informing the claimant in an aggressive manner that the leave had now been booked in her name and by Crew Manager P saying to the claimant that he hoped she was happy?

151. We have not found that Mr P was aggressive. He did say words to the effect that he hoped she was happy. Insofar as he said this and he was irritated, we have found that the reason why is that he was frustrated by the situation and by the claimant's anger.

Did the respondent treat the claimant less favourably because of her sex than a hypothetical comparator, on 5 February 2014 by:

Crew Manager Q and ~~Crew Manager P~~ subjecting the claimant to shouting and by Crew Manager Q saying to her in an aggressive manner that he had done nothing wrong?

152. Mr Q did not shout at the claimant. His reaction to the claimant on 5 February was because he did not believe that he had done anything wrong and he found her reaction frustrating.

Crew Manager Q and Crew Manager P refusing to speak to the claimant when she returned to the Crew Manager's office with her colleague Firefighter T?

153. The Crew Managers did not refuse to speak to the claimant. They paid attention to her and listened to her, they did not ignore her but we have found by this stage they were becoming cautious. This is the 'reason why' that explains their restrained behaviour to her.

Did the respondent treat the claimant less favourably because of her sex than a hypothetical comparator by Crew Manager Q and Crew Manager P refusing to apologise to the claimant after she reported the incident to Borough Commander Y?

154. Mr Q and Mr P did not refuse to apologise to the claimant. Mr Y did not ask them to do so. In any event they each did apologise to the claimant for their mistake, but the reason why they at all times refused to apologise for deliberately reneging on the agreement about leave is that they did not believe that they had done anything wrong and they could not with integrity apologise in the way the claimant wanted.

Did the respondent treat the claimant less favourably because of her sex than actual comparators, Crew Manager P and Crew Manager Q on 1 April 2014 by Borough Commander Y shouting at the claimant and accusing her of ruining the reputations of Crew Manager Q and Crew Manager P, and by Borough Commander Y threatening the claimant with disciplinary action?

155. Mr Y did not shout at the claimant. He did raise his voice and he did so because she would not give him straightforward answers so that he became frustrated. He did not accuse her of ruining the crew managers' reputations but he did say that if she alleged that she could not trust them on the fire ground, that would damage their reputations. He said this because she had made that allegation. He did not threaten the claimant with disciplinary action, but he did, trying to be fair to her, explained to her that if there was a full investigation of the leave issue, that might involve an investigation of her conduct as well. The reason why he did this was because he thought it fair to make her aware of what such an investigation might involve.

Did the respondent treat the claimant less favourably because of her sex than actual comparators, Crew Manager P and Crew Manager Q on 1 April 2014 by Borough

Commander Y blocking Crew Manager Q and Crew Manager P from transferring to another fire station?

156. The reason why Mr Y was initially reluctant to allow Mr P and Mr Q to transfer was because he was worried about leaving the station without management resource. Thereafter, although he did tell the claimant that the transfer was not her decision, the transfers were not blocked.

Did the respondent treat the claimant less favourably because of her sex than an hypothetical comparator by Station Manager V telling the claimant to, 'stop talking about it'?

157. Mr V told the claimant to stop talking about the leave issue because he thought that, if she did so, other people might stop talking about it.

Did the respondent treat the claimant less favourably because of her sex than actual comparators Firefighters S, T, A, U, B, C and D on 23 June 2014 by Crew Manager P roaring at the claimant when she drew safely through a red light?

158. We consider that Mr P shouted at the claimant because from his perspective she was driving through a red light without slowing down. That perception was mistaken.

~~*Did the respondent treat the claimant less favourably because of her sex than a hypothetical comparator, by Station Manager W refusing to investigate her grievance, and by Station Manager W not holding her grievance, despite there being a wealth of evidence to support the grievance?*~~

Did the respondent treat the claimant less favourably because of her sex than actual comparator, Crew Manager P in relation to the Group Manager Claydon's investigation of the claimant's grievance by:

Station Manager V assisting Group Manager Claydon with the investigation even though he was aware of the background to this case and was now the Station Manager for the area where Crew Manager Q and Crew Manager P worked?

159. Mr V sent Mr Claydon documents that were relevant to the investigation and were in his possession. He took notes for Mr Claydon. He did not share Mr Claydon's thinking or analysis and gave mechanical assistance only because he was asked to do so.

~~*Group Manager Claydon accepting the explanation given by Crew Manager P for not booking the leave under the claimant's name on StARs without any investigation?*~~
~~*Group Manager Claydon concluding that Crew Manager Q and Crew Manager P had booked leave in this way for other employees without any investigation?*~~
~~*Group Manager Claydon deciding the outcome of the appeal before the date of the claimant's appeal hearing?*~~

~~Group Manager Claydon~~ ~~and~~ Ms P Shelat colluding to ensure that important information about the claimant's grievance was omitted from the notes of the appeal hearing, and by Group Manager Claydon and/or Ms P Shelat deliberately delaying sending out the notes of the appeal hearing and outcome letter to the claimant?

~~Group Manager Claydon and/or~~ Ms P Shelat refusing the claimant's request that they correct the omissions/inaccuracies in the appeal hearing notes?

160. We take these last 2 issues together. Ms Shelat ensured that the claimant's additions to the notes were filed together with the notes. The information supplied by the claimant was not omitted.

161. Nothing was put to Mr Claydon about the delay in sending out the notes. Ms Shelat took some non-verbatim notes and sent those on to Mr Claydon to approve. He overlooked sending them on to the claimant until after the claimant chased Ms Shelat. It has not in fact been suggested to the respondent's witnesses that this delay would not have taken place at the claimant been a man or that it was related to the claimant's sex. In any event, we are satisfied that these matters simply reflect the reality that notes of hearings will not record events with word for word accuracy and that the delay was administrative delay.

Did the respondent treat the claimant less favourably because of her sex than a hypothetical comparator on 22 December 2015 by refusing to allow a corporate review of the claimant's grievance, when the grievance allegedly contained a complaint about discrimination?

162. The claimant's grievance did not contain a complaint about discrimination. The claimant did not allege sex discrimination to the respondent until March 2016. It was put repeatedly to Mr Johnson that he was attempting to cover up sex discrimination but we have accepted that it did not cross his mind that this was a case of sex discrimination. It was not put to Mr Johnson that he would have allowed a corporate review had the claimant been a man. It was not put to Mr Johnson that he refused the corporate review for any reason related to the claimant's sex.

163. Mr Johnson refused the review, as did Mr Claydon, because it did not meet the criteria for such a review. He would have refused it for a man in circumstances not materially different.

If the respondent did treat the claimant less favourably than an actual or hypothetical comparator, has the claimant proved facts from which the tribunal could conclude that such treatment was because of the claimant's sex?

164. Our findings of primary fact show, either that the claimant has failed to prove factual allegations, or that we have found the 'reason why', that is the explanation why the respondent has acted as it did and that that reason is not discriminatory. In any event, there has been no evidence placed before us from which we could properly and fairly conclude that any of the respondent's treatment was on grounds of the claimant's sex. She has relied upon Mr P's

treatment of her leave in November 2013 but we have found that this treatment was not gender related. Mr P contacted RMC and asked for leave for the claimant over the top although she had already booked her leave because this was a widespread practice and because he wanted leave for himself. There was no risk that the claimant would not have leave on the day she had booked so it could have caused her no detriment.

If so, has the respondent proved that it did not discriminate against the claimant?

165. Insofar as the claimant has proved the factual allegations raised, we have accepted the respondent's explanations and accordingly if the burden of proof had passed to the respondent, it would have proved that it did not discriminate against her.

Harassment

Did the respondent engage in unwanted conduct by:

(a)Crew Manager P telling the claimant on 19 January 2014 that her request to take annual leave on 23 March 2014 could not be entered onto StARs, and by giving a false reason for why the leave could not be booked in her name?
(b)Crew Manager P making an offer to the claimant on 19 January 2014 that believed be booked under Crew Manager P's name and then transferred into the claimant's name at a later date?
(c)Crew Manager Q and Crew Manager P denying on 4 February 2014 that Crew Manager P entered into an arrangement with the claimant to transfer the leave date of 23 March 2014 into her name on StARs?
(d)Crew Manager P acting in an aggressive manner and shouting at the claimant after she insisted that the leave date was transferred into her name?
(e)Crew Manager P asking Crew Manager Q to transfer the leave date into the claimant's name on StARs, against her wishes in order to dissuade her from going to a higher authority about the matter/cover-up that had happened?
(f)Crew Manager P informing the claimant in an aggressive manner that the leave had now been booked in her name and by Crew Manager P saying to her that he hoped she was happy?
(g)Crew Manager Q ~~and Crew Manager P~~ subjecting the claimant to shouting and by Crew Manager Q saying in an aggressive manner to the claimant that he had done nothing wrong?
(h)Crew Manager Q and Crew Manager P refusing to speak to the claimant when she returned to the Crew Manager's office with her colleague Firefighter T?
(i)Crew Manager Q and Crew Manager P refusing to apologise to the claimant after she reported the incident to Borough Commander Y?

(j)Borough Commander Y shouting at the claimant and accusing her of ruining the reputations of Crew Manager Q and Crew Manager P, and by Borough Commander Y threatening the claimant with disciplinary action?
(k)Borough Commander Y blocking Crew Manager Q and Crew Manager P from transferring to another fire station?
(i)Station Manager V telling the claimant to 'stop talking about it'?
(m)Crew Manager P, 'roaring' at the claimant when she drove safely through a red light?
~~(n)Station Manager W refusing to investigate her grievance, and by Station Manager W not upholding her grievance, despite there being a wealth of evidence to support the grievance?~~
(o)Station Manager V assisting Group Manager Claydon with the investigation even though he was aware of the background to this case and was now the Station Manager for the area where Crew Manager Q and Crew Manager P worked?
~~(p)Group Manager Claydon accepting the explanation given by Crew Manager P for not booking the leave under the claimant's name on StARs without any investigation?~~
~~(q)Group Manager Claydon concluding that Crew Manager Q and Crew Manager P and booked leave in this way for other employees without any investigation?~~
~~(r)Group Manager Claydon deciding the outcome of the appeal before the date of the claimant's appeal hearing?~~
~~(s)Group Manager Claydon and~~ Ms P. Shelat colluding to ensure that important information about the claimant's grievance was omitted from the and by Group Manager Claydon and/or Ms P. Shelat deliberately delaying sending out the notes of the appeal hearing and outcome letter to the claimant?
~~(t)Group Manager Clayton and/or~~ Ms P Shelat refusing the claimant's request that they correct the omissions/inaccuracies in the appeal hearing notes?
(u)The respondent refusing to allow a corporate review of the claimant's grievance, when the grievance allegedly contained a complaint about discrimination?

If so, was this treatment such as to fall within section 26 of the Equality Act 2010?

If so was such treatment related to her sex?

166. The claimant has produced no evidence that any treatment proved was related to her sex. None of the alleged treatment is gender specific. There is nothing from which we could infer that any treatment was related to the claimant's sex. Where we have found the 'reason why', those reasons are unrelated to the claimant's sex.

If so, did this have the purpose or effect of violating her dignity, and/or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

If any of the claimant's complaints are made out, what award should be made for injury to feelings?

167. These remaining 2 issues do not arise.

Jurisdiction

168. The question of whether the claims are out of time is now academic but we shall deal with it, in case we have been wrong about any of the above. Only the last allegation dated 22 December 2015 was made in time. Given that we have found no discrimination, it would be difficult to find that there was any link in the Hendricks sense between the various acts. Even so, we have heard no evidence – beyond speculation - of any collusion, conspiracy, policy, practice or other link, ongoing situation or state of affairs which would lead us to conclude that the respondent's treatment of the claimant was, however characterised, a course of conduct. Each individual has made his or her own individual and independent decisions according to what he or she has considered appropriate at each stage as the chronology has unfolded. Insofar as there is consistency between different decisions and reactions, that is because the evidence has tended to lead different people to the same or similar conclusions: including that the facts about which the claimant was complaining were the result of a misunderstanding, she had in fact been given the leave she wanted, that while apology was appropriate for the original mistake, once that was done, the reaction to the events should be kept in proportion.

169. We would not consider it appropriate to extend time, and particularly not for the events arising in January and February 2014. There have been numerous incidences of witnesses telling us that their memories are blurred or that events were a long time ago and they do not remember certain details. We have found it difficult to piece together findings of fact for the events of January and February 2014. It may very well be that there are now pieces of the jigsaw missing of which no one, including the claimant, is now aware. The passage of time has caused significant damage to the cogency of the evidence. The claimant has had access to help from her union from at least 10 March 2014. Mr L is not a lawyer, but had there been an early view that this was discrimination, he could have had access to union advice. If the claimant

suspected that there had been sex discrimination, she did not raise it as an issue until March 2016.

170. The claimant herself told us that she did not suspect sex discrimination until she received a letter from Mr Claydon dated 11 August 2015 giving her the outcome of the grievance appeal hearing. She said that two lines made her realise that there had been discrimination:

> '*When I interviewed the two Crew Managers, they admitted to blocking out periods of leave for other personnel too and acknowledged that this procedure was outside the Booking of Leave policy*.'

171. The claimant said that those two lines made her realise that there had been sex discrimination because she said she knew that the crew managers had not done the same to others. Yet, she must have possessed that knowledge before she read those two lines. On her case, she did not need anything from the respondent to show her that her rights had been breached. We found it difficult to discover from her when she first thought that she was being treated differently from a man. (We also found it difficult to discover from her with any clarity when and whether she had had equal opportunities training and when she first spoke to Mr R about discrimination.)

172. If 11 August is the date when she became aware that her rights had been infringed, then she did not contact ACAS until 16 March 2016, 7 months later. She had access to the internet and could also seek advice via her union, yet she delayed.

173. She told us that she delayed because she was trying to seek an internal resolution. She blamed the respondent for causing delays.

174. She has not acted promptly in seeking legal advice or redress through the tribunal. We do not accept that the delay was because she was seeking an internal resolution. She has herself repeatedly given her employer the impression that matters were in fact resolved. We think that on these occasions she did consider matters resolved. There have then been delays, in particluar from April to December 2014 while the claimant has left matters in abeyance. In all these circumstances, and taking into account the factors set out in *British Coal Corporation and Keeble* we would not consider it appropriate to extend time because it would not be just and equitable to do so.

175. For all those reasons, therefore we dismiss the complaints.

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Employment Judge Heal

Date: 22/03/2017

Sent to the parties on: 05/04/2017

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For the Tribunal Office