EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss M Milligan	**v**	**Coca Cola European Partners Great Britain Limited**

Heard at: Watford

On: 25 and 26 September 2017
28 November 2017

Before: Employment Judge Henry
Mrs G Bhatt MBE
Mrs A Brosnan

Appearances

For the Claimant: In person
For the Respondent: Ms G Hicks, Counsel

JUDGMENT

It is the unanimous decision of the tribunal that:

I. The claimant has not been discriminated against on the protected characteristics of pregnancy and/or maternity,

II. The claimant was not constructively dismissed when she tendered her resignation on 18 April 2016.

The claimant's claims are accordingly dismissed.

REASONS

1. The claimant by a claim form presented to the tribunal on 15 July 2016, presents complaints for unfair constructive dismissal and discrimination on the protected characteristic of maternity and pregnancy.

2. The claimant commenced employment on 10 October 2006. The effective date of termination was 21 April 2016; the claimant then having been continuously employed for nine years.

The Issues

3. Constructive Unfair Dismissal/Resignation

3.1 Was the contract terminated in circumstances, in which the claimant was entitled to terminate it without notice, by reason of the employer's conduct (s.95(1)(c) Employment Rights Act ("ERA") 1996)?

3.2 In particular, did the respondent's conduct amount to a series of unreasonable acts, such that, cumulatively, they amounted to a fundamental breach of the implied term of trust and confidence? The claimant relies on the following acts:

3.2.1 The respondent's conduct during the flexible working request application. In particular:

3.2.1.1 The fact that the claimant had to chase for paperwork and information;

3.2.1.2 The slowness of the entire process;

3.2.1.3 Giving the claimant contradictory information regarding the timeframe and manner in which to appeal. The claimant was initially told to appeal in writing within 14 days. The claimant was later sent a form which stated that it needed to be returned within 7 days;

3.2.1.4 Asking the claimant to leave the office in a different direction from her team on 21 March 2016;

3.2.1.5 The fact that the claimant stopped receiving vacancy bulletins for two weeks from 8 April 2016;

3.2.1.6 Asking the claimant whether she was going to resign on 11 April 2016.

3.2.2 The refusal of her flexible working request based on incorrect information:

3.2.2.1 The respondent asserted that the clamant needed to be in the office to answer the phone, but this is incorrect as the First Contact team managed all incoming HR calls;

3.2.2.2 The respondent said that, not having sufficient budget was a reason for the refusal, however, the claimant would have been working fewer hours and would therefore have been paid less. In addition, the

respondent would have had contingencies in the budget to deal with team changes.

3.2.2.3 The respondent relied on incorrect information in respect of the team's working pattern;

3.2.2.4 The respondent relied on incorrect information as to how many cases could be completed on average.

3.2.3 The respondent's failure to advise the claimant of the merger.

3.3 If so, was the respondent's breach a cause of the claimant's decision to terminate the employment contract?

3.4 Had the claimant waived any breaches by the time she terminated the employment contract on 18 April 2016?

3.5 If the claimant is found to have been constructively dismissed, what was the reason for the dismissal? The respondent relies on some other substantial reason; namely, that they could not accommodate her flexible working request.

3.6 Was any dismissal within the band of reasonable responses as a matter of (a) process and (b) substance?

4. <u>Pregnancy/Maternity Discrimination</u>

4.1 Did the respondent treat the claimant unfavourably because she was on maternity leave (s18(2) and (3) Equality Act 2010)? The unfavourable treatment relied upon by the claimant is as follows:

4.1.1 The refusal of her flexible working request. In particular:

4.1.1.1 The refusal to allow her to work a 30 hour week;

4.1.1.2 The refusal to allow her to work the proposed additional two hours per week from home;

4.1.1.3 Not being told verbally that her flexible working request was being refused.

4.1.2 The respondent's failure to advise the claimant of the merger.

4.2 Alternatively, has the respondent provided a coherent non-discriminatory reason for the treatment in question?

5. Remedies

   5.1 To what remedy, if any, is the claimant entitled?

   5.2 If the claimant was unfairly dismissed, should the basic award within s.119 ERA 1996, be reduced to any extent because of any conduct of the claimant, applying s.122 ERA 1996?

   5.3 If the claimant was unfairly dismissed, should the compensatory award be reduced to any extent because of any conduct of the claimant, applying s.123(b) ERA 1996?

   5.4 If the claimant is found to have been unfairly dismissed as a matter of process, should any award be reduced in accordance with Polkey principles to reflect the fact that, had a fair process been followed, the claimant would have been dismissed in any event?

   5.5 Has the claimant taken reasonable steps to mitigate her loss?

Evidence

6. The tribunal heard evidence from the claimant, and from the following on behalf of the respondent: Ms Gurdeep Hallhit – team leader for HR administration team, and Ms Sharon Blyfield – HR business partner supporting cold drinks operations.

7. The witnesses gave their evidence by written statements upon which they were then cross-examined. The tribunal had before it a bundle of documents, exhibit R1.

8. From the documents seen and the evidence heard, the tribunal finds the following material facts.

Facts

9. The respondent is a well known soft drinks company engaged in the manufacturing, distribution, sales and trade marketing of the brands of Coca Cola in England, Wales and Scotland, operating from a number of sites throughout the United Kingdom.

10. The claimant was employed as an HR administrator, based at the respondent's Uxbridge offices.

11. The HR administration team within the HR services department, known as the "HeRe Team" is a centralised unit, offering HR services across all functions of the respondent's business, by which there are a number of teams operating there-under, being:

11.1 *The First Contact Team*, which is the central team which receives emails, telephone and online queries from employees, line managers and external persons about all HR issues in Great Britain, France, the Benelux countries and the Nordic countries, which they either answer directly or forward on to the relevant HeRe Team.

11.2 *The HR Admin Team*, which produces all contract documents for new hires and internal moves within the respondent's Great Britain and the US departments, covering the life cycle of an employee during their engagement with the respondent. As well as producing contract documents, the admin team will update the system to reflect these changes. The team also looks after the structure in the respondent's HR systems as this feeds into the line management and approval processes affecting many other areas of the business. The HR admin team also makes the necessary changes in the system to record employee separations.

11.3 *The Time Team,* which deals with queries in relation to time recording systems.

11.4 *HR Information Services and Centres of Excellence*, including talent acquisition (resourcing) reward, learning and development and employee relations.

12. The claimant was engaged in the HR Admin Team.

13. All queries and jobs that came in to the HR Admin Team, would be logged as "cases" on the systems. The team has objectives to meet service level agreements (SLA's), which had been put in place when the service was set up, using historical information in the system, which were then refreshed from time to time using updated data based on the time it took to deal with queries and the business need for work to be completed within a specific timeframe, for example; when a request was for the HR Admin Team to create a position within the HR system, so that the role could be advertised, this had to be done within three days, as a week's delay was not acceptable for business reasons. A full set of the SLA's is at R1 page 55A to 55C.

14. It is also relevant here to note that, staff would also be required to cross-check one another's work necessitating their presence in the office

15. With regards the HR Admin Team, it is not in dispute that the department required a member of staff to start at 8am, with the rest of the staff starting between 8am and 9am.

16. The claimant's hours of work were Monday and Tuesday 8am to 4.30pm, Wednesday 8am to 4pm, and Thursday and Friday 8am to 3.30pm.

17. On 28 March 2015, the claimant commenced a period of maternity leave for which she was due to return to work on 21 April 2016.

18. It is here noted that, there were no issues arising in respect of the claimant taking maternity leave or otherwise during her maternity leave absence, and indeed, it is accepted by the claimant that up until December 2015, relations were good; having been invited to the respondent's Christmas lunch, and she had remained in close contact with the department having regular social WhatsApp contact with the team leader, Ms Hallhit.

19. On 16 December 2015, Ms Hallhit, WhatsApp'd the claimant asking as to when she would be returning from maternity leave, Ms Hallhit's evidence being that, on a member of her team, Ms Laishley, who had been on secondment in the HR admin team covering the claimant's maternity leave, securing another role as team leader in the first contact team, Ms Hallhit was concerned to know how to replace Ms Laishly, namely, whether to find another secondee or whether they could manage with a temp.

20. With regards the correspondence, Ms Hallhit's WhatsApp message was in reply to the claimant, who had WhatsApp'd Ms Hallhit thanking her for chocolates she had received on her visiting the office and wishing her a "lovely xmas," further advising that she would pop in to the office in January with her son, Ms Hallhit thereon replied:

> "You too, also can you have a think about what date you think you will be back, if Jenny gets the job then I need to get a replacement, thanks."

21. The claimant responded on 28 December by WhatsApp, advising:

> "Hi Gurdeep my return to work date is 28 March but then I have three weeks holiday to take and two Bank Holidays so I worked out my first day back in the office would be 21 April. Also, can I come in to discuss putting in a flexible working request? When are you free? I still want to be in five days a week but need to look at my hours as need to finish earlier to pick Ellie up from school. I was looking at requesting 8.45 until 14.45.
> x"

22. Ms Hallhit responded again by WhatsApp later that evening, stating:

> "Okay that's great, thanks for letting me know. Jenny has got the team lead role so I need to get a short temporary placement for her until you come back. So will you be doing 30 hours per week? We don't have to decide exactly now but just roughly so I can work it out with Linda. Sounds like a plan.
> xx"

23. The claimant again that evening responded:

> "Ahh so happy for Jenny. Yes looking at doing 30 hours per week. Let me know when you want me to come in to go through everything. x"

24. On 30 December, Ms Hallhit responded advising:

> "Will do, won't be for a couple of weeks. I will print off the flexible working form for you and post it to you so you can complete it. I don't see any issues with it but all depends on Linda. Speak to you soon, have a lovely new year. xx"

25. On 14 January, the claimant advised of her seeking to return to work on 21 April, and on account of her looking for nursery places for her child, she required a start date to give them, asking whether Ms Hallhit had had a chance to send out the flexible working form, further advising:

> "I don't mind coming in and completing it if that's easier. xx"

26. Ms Hallhit responded on 15 January, advising that she was waiting for a one-to-one meeting with her manager Linda, stating:

> "I'll be honest with you. When I spoke to her last week she said that having three people in the team part time might be a challenge. So I want to discuss with her the options. Also, I have one head which at the moment is only signed off as temp but it used to be a perm head, so she's finding out what's happening with that."

27. In evidence to the tribunal, Ms Hallhit has stated that the concerns raised were not particularly that of her manager Linda, but concerns that she, Ms Hallhit had, making reference to Linda to deflect focus on her.

28. Ms Hallhit concluded her text message, stating:

> "I really want you back on my team so will do my best to get this through. xx"

29. On 19 January, the claimant wrote to Ms Hallhit asking as to when she would hear about her flexible working request, stating: "because I am a bit worried about it all".

30. Ms Hallhit responded that evening, stating that, she intended to meet Linda the following day and that she would equally send the flexible working form to her the following day as well, advising that she had forgotten to do it, asking the claimant to "just complete the form and send it back and I'll speak with Linda". Ms Hallhit further asked how she would feel about working in First Contact.

31. The claimant responded advising that, she would return the form immediately on receipt, and that she did not think that working in First Contact was the right role for her.

32. The claimant subsequently received the flexible working application form on 22 January. The completed form was received by Ms Hallhit on 26 January, who advised the claimant by text that she would arrange a meeting for the following week.

33. The claimant's flexible working request form is at R1 page 88, which identified the date of the request as 22 January 2016, proposing the date of change as 21 April 2016. The claimant completed the schedule of hours to be worked, identifying her first choice as being for 30 hours, working 8.45 to 14.45 Monday to Friday, and her second choice as being, 9 to 14.30 Monday to Friday, a total of 27.5 hours.

34. The claimant further identified that she was making the request to help with her child care, and at the section enquiring *"If CCE cannot accommodate your request, how will you manage?* The claimant answered:

> "I would need to consider leaving CCE. I do not want to leave, however returning on my previous hours will not enable me to manage my family life with two small children."

35. In respect of the question: *"How do you think the workload of your current role could be managed if you changed your work pattern?"* The claimant provided:

> "I believe this is manageable as currently a team member is working the same hours I have requested across four days. However, my request is across five days so I will be available in the office every day.

36. And to the question: *"If CCE cannot offer you your current role on the hours you want, would you consider an alternative role?"* the claimant responded:

> "No".

37. And in respect of the question: *"Please indicate any affects that you believe the proposed changes may have on CCE and how in your opinion, these may be successfully dealt with?"* the claimant provided:

> "I think by being in the office less hours but still working all five days means that the effects on CCE will be minimal and I will still be able to complete contracts within the required timeframes."

38. On 20 January, Ms Hallhit had her meeting with her manager Linda Dickie, where the claimant's flexible working request was discussed, it being Ms Hallhit's evidence that, she explained to Ms Dickie that she did not feel the reduced hours would work stating:

> "At this time I knew that the team was already working hard to meet our SLA's. I manage the case allocation for the team and I also sit with them in an open plan area so I was very aware that we did not have spare capacity to cope with a 7.5 hour reduction in the team hours."

39. In this regard, the tribunal heard further evidence that Ms Hallhit received monthly reports as to performance and was therefore fully informed of the department's capacities.

40. Ms Hallhit's further evidence was that, she was asked by Ms Dickie whether the department could manage were the claimant to go part-time, but did more than the 30 hours she had suggested. Ms Hallhit's here advised that she thought that if the claimant could do an extra few hours each week, that would make a significant difference for her, stating that:

> "For most people it wouldn't have been workable but Michelle was such an efficient worker that I believe in two hours she could do a lot of cases. Depending on what they are, she could have done up to ten cases in this time – and this extra time could help the team meet its SLA's."

41. The tribunal pauses here, as it had been the subject of much evidence as to the number of cases that the claimant could have done within two hours. It was Ms Hallhit's evidence that, dependent on the type of case concerned, it could potentially have been one case, this being dependent on the complexity of the matter, with simple matters being able to be dealt with more quickly. The tribunal accepts that this is a reasonable representation of the operation regarding cases.

42. The tribunal further notes at this juncture that, it was Ms Hallhit's evidence that in trying to accommodate the claimant's request, noting that the department could not absorb a 7.5 hour reduction in the team's weekly hours and whilst an additional two hours on top of the hours requested by the claimant would not be insignificant for the claimant, she had sought to limit her request of the claimant to two hours stating: "I was really trying to find a way to accommodate her and this would have really helped."

43. The tribunal has been presented with two policies in respect of the respondent's "CCE Ways of Working Policy," one at R1 pages 189 to 200 and a second at R1 pages 200A to 200O. The tribunal has not been informed of the authority of these documents, albeit the claimant was questioned as to the CCE Ways of Working Policy at R1 page 200A. The claimant however, has addressed issues of procedure relevant to the CCE Ways of Working Policy at R1 page 189. The claimant has not been challenged as to the authority of this policy.

44. By these documents, they both provide for the submission of the application, informal discussion and preparation in similar terms; the informal discussion and preparation provisions providing:

> "Your manager may wish to informally discuss the proposed arrangement with you. They may provide you with details on what he/she currently sees as limiting factors, the business requirements and any possible options for consideration. Once these considerations have been discussed, they will then review the application, along with your specific alternative work implications… and any other benefits you are entitled to with the HR business partner."

45. The procedures referred to by the claimant, then provides for advice for people management. The procedures referred to by the respondent then provides for notes for managers, the particulars of which are similar in the following, being, for the manager to speak to their HR business partner to see where similar arrangements have been made in their business area, complete the alternative work response form to understand the implications to the employees' compensation package and if needed, arrange a meeting with the employee and your/their team to discuss any work implications. The procedures then diverge, in that, the procedures referred to by the claimant then provides for the following:

> "Provide information on what you currently see as limiting factors, the business requirement and any possible option for consideration. Be honest with the employee about the areas that could be difficult for you both to overcome and think about how

> you can make them work, giving your employee the opportunity to think of potential solutions. Just because this role has not been completed in different hours before does not mean it cannot be done now.
>
> Consider a trial period under the proposed arrangement. Make sure you explain the process and timeliness as set out in the following steps."

46. Both procedures then set out a stage for a formal meeting, again in similar terms, albeit, the procedures that the claimant has referenced refers to a formal meeting to discuss the application, *"within 28 days of your application (this is a strict legal limit; however your manager may request an extension from you in writing)".*

47. The procedures referenced to by the respondent, do not contain this provision, merely stating that the applicant will be invited *"for a formal meeting to discuss your application as soon as possible after your application."*

48. The procedures then provides for the applicant to be accompanied by a companion at any meeting, that the applicant is to furnish the manager with the companion's details and that it is the applicant's responsibility to notify of any difficulties, so that the meeting can be rescheduled if necessary.

49. The tribunal here notes that, there is no requirement for the applicant to be informed as to their entitlement to a companion, the procedures merely providing that the applicant is entitled to be accompanied for which they are then to inform the manager of that particular individual.

50. The procedures then provide for a review and outcome of the application, again in similar terms, save that the procedure that the claimant has referenced, identifies a decision being communicated verbally and in writing within 14 days of the formal meeting. The procedure which the respondent has referenced however, provides: *"The decision will be communicated to you verbally and in writing as soon as possible."*

51. The procedures then sets out the eight legal business reasons for rejection of an application, and makes provision for lodging an appeal within 14 days of receipt of the decision in writing. The procedures that the claimant has referenced, thereon identifying that the outcome of the appeal will be delivered in writing within 14 working days of the appeal hearing. The procedure that the respondent has had reference to, providing; "the outcome of the appeal will be delivered in writing as soon as possible".

52. The procedures then make provision to "establish a trial period (if applicable) providing for consideration to be given whether a trial period of up to six months would assist in assessing suitability of the new work programme, subject to monthly reviews.

53. On 5 February, Ms Hallhit held a meeting with the claimant to discuss her request. Ms Hallhit informed the claimant that the HR admin team would have difficulty in coping with their workload should she reduce her hours to

30 hours per week, discussion being had as to the particular hours requested, and whether she could do a few more hours than the 30 hours requested, being two extra hours on a Friday.

54. The tribunal pauses here, to record the working arrangements then within the department in that, of the four employees within the department excluding the claimant, one employee did not work Fridays, a Ms Donnelly who had been granted flexible working arrangements during the period that the claimant had been absent on maternity leave. Ms Donnelly then working four days per week excluding Fridays. The respondent then had cover in the office on other days by four members of staff in the office to 3.20pm, three members of staff in the office to 4pm and then two members of staff in the office to 4.30pm. However on a Friday, the position was of three members of staff in the office until 3.20pm, two members of staff in the office to 4pm and one member of staff in the office to 4.30pm. The extra two hours requested of the claimant on a Friday being envisaged to augment cover on the Friday afternoon.

55. Discussions were also had as to the claimant making alternative childcare arrangements with her family, which the claimant undertook to take away and consider. Ms Hallhit's evidence to the tribunal being that the tone of the meeting was positive and she had expected the claimant to return agreeing to do the extra hours.

56. On 8 February, the claimant text'd Ms Hallhit informing her that she could not work late every Friday because of childcare arrangements, but that she could do ad hoc Fridays to cover holidays but that she could not commit to every Friday.

57. On 15 February, Ms Hallhit advised Ms Rodgers, HR business partner, of her having met with the claimant and of the claimant's alternative work pattern option, further advising:

> "She has said she does not want to work in first contact but would be open to any other alternative. Therefore are you able to let me know if there are any other alternatives as I will not be able to accommodate another part-timer in my team as two out of five already work part-time and if Michelle was to go part-time that would be three out of five.
>
> Linda mentioned that there may be some changes in the payroll and time team – with some elements of payroll moving to time, this involves head count moves…"

58. Ms Rodgers advised Ms Hallhit that she would inform the Talent Acquisition Team (TA team) and ask that they keep her informed of any part-time positions, and in respect of a potential payroll/time position, whilst under review they were all full-time needs and therefore not appropriate.

59. Ms Rodgers subsequently informed the TA team of the claimant's returning from maternity leave and looking for a part-time position, identifying the hours sought, asking that she be advised if they were aware of, or working on a professional level role.

60. There was then clarification as to the claimant being at professional level or at staff level, it being qualified that the claimant's role was at staff level, although Ms Hallhit in evidence to the tribunal stated that the claimant being a capable person, would have been considered for a professional role position.

61. In respect of a potential role for the claimant, on it coming to Ms Hallhit's attention that the post was for a job share although about to be offered, Ms Hallhit acted immediately thereon making enquiries for the claimant to be considered for that job share position, Ms Hallhit being informed that her enquiry was then too late as the post was no longer a job share post and had been recruited to full-time.

62. On 22 February, Ms Hallhit held another meeting with the claimant in which Ms Hallhit asked the claimant that, if she could not do the extra two hours regularly on a Friday, whether she could do an extra two hours each week on an ad hoc basis to suit her family requirements, asking that the claimant gives her one or two weeks advance notice of the particular days she could work, to facilitate planning. Ms Hallhit also broached the subject of the claimant working alternative roles which may better suit her requested part-time hours, which discussion was confirmed by correspondence to the claimant on 23 February.

63. The correspondence further provided instructions on how to log on to the respondent's portal from home, so that the claimant could view vacancies. The claimant was also sent the previous week's vacancy bulletin together with the current week's vacancy bulletin, being advised that she would need to view the vacancy bulletins for alternative roles and to contact Ms Hallhit should she need support. The claimant was then asked to inform Ms Hallhit if she had missed or incorrectly interpreted anything from the meeting.

64. On 24 February, the claimant responded to Ms Hallhit advising of the particular hours requested and of the sacrifices she had already made in respect thereof, thereon advising:

> "The current discussion is over two hours per week, which may seem insignificant but for me this will have a huge impact as I will be relying on someone else to collect my children from school and nursery one day per week. This isn't something that I am comfortable with as it means more disruption to my children's weekly routine. My parents also don't live locally to me and share a car so the additional two hours could result in me paying for extra childcare.
>
> Furthermore, if I worked an additional two hours I would be entitled to a lunch break which means I would not be working for the full two hours you are requesting, meaning that the issue is in fact over less than two hours per week."

65. The claimant thereon sought further information in respect of an executive assistant role job share, further advising that she had tried to access the intranet portal but that the password was not accepted and the link to re-set

it was directing her to an error page, asking Ms Hallhit to re-set the password if able.

66. The claimant concluded her correspondence advising that, she had not arranged a nursery place for her son because she needed to determine the outcome of her request first, and that the process had caused her a lot of unnecessary stress, further stating:

> "I am concerned that this has not yet been resolved as my maternity leave is coming to an end and I sincerely hope that we can reach a resolution that we can agree on as I do want to come back to work."

67. In respect of the claimant's access to the portal, Ms Hallhit raised a ticket for this to be sorted out by the HeRe Team, Ms Hallhit informing the claimant thereof and forwarding correspondence from the HeRe Team for her to re-set her password, the correspondence providing:

> "If that fails, you will need to call IT on … alternatively, email them at myhelpdesk@cokecce.com. Please, let me know if you have any questions. Kind regards. Sandra HeRe Team."

68. Ms Hallhit has received no further communication from the claimant as to accessing the intranet.

69. In respect of the claimant's logging in the respondent's portal, on 26 February, she informed the helpdesk that she could not gain access, it being established that the claimant was seeking to gain access via her iphone for which the system was not compatible the claimant being asked to pop in to the office where she could have her log-in sorted out. The claimant has not taken the helpdesk up on this advice.

70. On Ms Hallhit receiving the claimant's email of 23 February, she then came to the decision that it would not be possible to accede to the claimant's request and raised the matter with Ms Rodgers, HR business partner, where her reasons for refusing the request were discussed; the reasons being that, Ms Hallhit could not re-allocate an extra 7.5 hours to the existing team without impacting on their SLA's and damaging the service to their customers, determining that the statutory reasons for refusal had been met, being, *"Inability to reorganise work among existing staff and detrimental effect on ability to meet customer demand*" and therefore grounds for refusal.

71. Ms Hallhit then instructed an HR co-ordinator to prepare the rejection letter with the reasons as above stated.

72. The flexible working request outcome letter is at R1 page 106, which provided:

> "…in considering your application to reduce your hours I have needed to consider the practicalities of managing your workload as HR administrator, providing support to

customers over the phone, the effect on the cases you will be able to resolve in the day and the effect on your time and that of your colleagues.

To accommodate a reduction in your hours as requested above we would have to re-allocate more workload amongst the team. We currently do not have the option and budget to pay for extra hours or the ability to allocate more work to the existing team.

We also spoke about the option of your working an additional two hours but as stated in our last meeting this is not going to be possible with your childcare.

In summary, having considered your application for an alternative work pattern and taking into account the factors outlined above, I am therefore unable at this time to agree to your request due to the:

- Inability to reorganise work among existing staff
- Detrimental effect on ability to meet customer demand…"

73. The claimant was thereon advised of her right to appeal within 7 working days asking that she state her reasons in writing to HR Services.

74. The letter as prepared by the HR co-ordinator, making reference to *"not having the option and budget to pay for extra hours", it was* Ms Hallhit's evidence to the tribunal, that this was in error, which wording she had not picked up on before the rejection letter was sent out to the claimant. Having heard Ms Hallhit's explanation and on the further evidence provided in respect of the claimant's appeal on this issue, the tribunal finds that this entry was in error.

75. On 2 March, the claimant wrote to Ms Hallhit asking for her to let her, the claimant, know who to address her appeal letter to.

76. Ms Hallhit responded on 3 March, attaching an appeal form for the claimant to complete and submit to HeRe GB stating, *"This will create a case and will be assigned accordingly."* asking the claimant to let her, Ms Hallhit, know if she had any questions.

77. By letter of 4 March, the claimant presented her letter of appeal which is at R1 page 111-113.

78. The tribunal here notes that this letter was not on the prescribed appeal form, the relevance of this being that, the claimant states that having received the appeal form it therein stated that she had 14 working days to appeal. The claimant has argued before this tribunal that she was thereby given contradictory information, being; 7 working days to appeal by Ms Hallhit, but 14 working days to appeal by the appeal form. This information did not however, impact on her presenting her appeal or otherwise of the respondent accepting her appeal.

79. The claimant's appealed challenged the decision on grounds that she felt she could complete her normal workload in the reduced hours of 30 per week, and that the refusal implied that she was not capable of managing her

workload in reduced hours as others in the team, that the team could accommodate her reduced hours and that others in the team should have been asked if they could cover her additional tasks, that because she would be in the office for part of each working day she would be able to meet customer demand and be better able to meet the team's service level agreement than her colleague team member who only worked four days a week, that she did not understand how working an additional two hours per week would have made a significant difference to meeting customer demand, that she did not believe it to be correct that the team did not have the option or budget to pay additional hours over 7.5 noting that she would be reducing her workload, and further that aspects of procedure had not been followed, for example access to the respondent's intranet and vacancies.

80. Ms Blyfield, senior HR business partner, was appointed to hear the claimant's appeal; Ms Blyfield being an experienced officer in dealing with flexible working requests.

81. As an appeals manager, it was Ms Blyfield's role to decide whether the respondent had followed the correct process, whether they had given due consideration to being able to accommodate the claimant's request and whether there was more that the respondent could do to accommodate the claimant's request, such as alternative posts.

82. The tribunal here notes that Ms Blyfield, not being clear from the information she had been provided with as to what analysis had been done to factually justify the decision to refuse the claimant's request, carried out a full analysis of the team's working patterns and capacities, which showed that there would be a gap in resource predominantly on a Friday afternoon due to current working patterns of the team. Ms Blyfield also identified that there would be a gap first thing in the morning, but that she did not deem this to have had as great an impact due to the fact that it would only then have been for 30 minutes in the morning.

83. Ms Blyfield was also provided with data demonstrating the number of cases handled by the HR team during 2015, carrying out a further analysis as to the average number of cases done per day to see whether it would be possible from a capacity perspective, for others in the team to pick up cases that the claimant would have done in the 7.5 hours that she would not then be working, to include project work.

84. It is also Ms Blyfield's evidence that, it was made clear to her by all those that she spoke to during her investigation that, the claimant was a very valued member of the team and a really good worker and that if the team could have found a way to accommodate her request to return her in the business, they would have done so, advising the tribunal that from her analysis, it was apparent that it would not have been possible to accommodate the claimant's request even with an extra 2 ad hoc hours per week.

85. An appeal meeting was held on 21 March 2016, notes of which are at R1 page 123. It was set out at the outset of the hearing by Ms Blyfield that:

> "The purpose of the meeting today is to understand more behind your appeal… I want to understand more about your application and then your appeal.
>
> I won't give an outcome today as need all info and then may need to go away and look at more detail."

86. It is here recorded that, the claimant does not challenge the notes as being a true reflection of what was discussed, addressing all of the claimant's grounds of appeal, and that she had raised all the issues which she had wished, albeit, she did not get answers to the questions she raised, as is recorded by the notes.

87. The meeting concluded on Ms Blyfield asking the claimant: *"If we cannot accommodate coming back into this role what does that mean to you?"* the claimant answering: *"To be honest, spoken to Citizens Advice and think I would go down legal route as I don't think I have been treated fairly".* The meeting lasted approximately one hour.

88. On the parties leaving the meeting, there was discussion between Ms Blyfield and the claimant as to the claimant leaving the building, the claimant leaving to the left as a consequence, being the opposite direction to where her team at that point in time were holding a meeting. The tribunal address this point further herein.

89. On the claimant raising in the meeting with Ms Blyfield that, having previously been receiving vacancy bulletins from Ms Hallhit, since her appeal it had stopped, enquiring why? Ms Blyfield undertook to follow it up. This was done and Ms Hallhit on 22 March, offering her apology on account of her having been on a course the previous week and had then forgot to send the claimant the vacancy bulletin, thereon furnished them to the claimant for the period 8 March to 15 March. The claimant here advances that, as a consequence, she did not then receive bulletins for the period 1 March to 7 March. Although it is not alleged that there were vacancies that she was thereby denied, the claimant nevertheless states that she is not aware of what vacancies there were during that period. The claimant has received vacancy bulletins for all other material periods.

90. Following the meeting, Ms Blyfield made further enquiries as to alternative working patterns looking at the feasibility of creating a job share to allow the claimant to work part time with an additional person, and further made enquiries of the claimant whether she would be prepared to reduce her hours beyond 30, to make it viable for another person to job share her role, Ms Blyfield identifying that she wanted to ensure that *"we have explored all possibilities before she met with the claimant again"*.

91. The claimant responded to Ms Blyfield's approach, advising that, she had provided two options for returning to work being 30 hours per week Monday to Friday, alternatively 27.5 hours per week Monday to Friday, further

advising that less than 27.5 hours would have to be considered financially, asking that she be provided with the days and hours for any potential job share for her consideration.

92. Ms Blyfield responded on 29 March, advising that she was pursuing all of her options but she could not give specifics around a particular job at that time, seeking to understand whether there was any further flexibility in the claimant's hours, asking that they meet on 1 April for Ms Blyfield to give an outcome to the claimant's appeal.

93. With regards Ms Blyfield's enquiries for a job share in the HR admin team, she was advised that because of the nature of the work, a job share arrangement would not be a case sharing arrangement as cases needed to be handled end to end, for which urgent cases would need to be handed over between job sharers creating more work, and there would be a risk of things being missed which did not therefore support a job share.

94. It is also here noted that a position within the First Contact Team, as a way to keeping the claimant within the HR team was pursued; First Contact being the only other area of HR where this was possible as other HR service teams served countries other than Great Britain where staff needed to speak a second language; it being proposed that a job share of two to three days with the job share working the other two days.

95. On 1 April, Ms Blyfield again met with the claimant to give her the outcome of her appeal. Ms Blyfield rejected the claimant's appeal. Notes of the meeting are at R1 page 127.

96. On the claimant having asked that her working from home for some of her hours be considered. Ms Blyfield determined that the only person in the team who was permitted to work from home for some of her hours was that of the manager, Ms Hallhit, which had been possible because she had management responsibilities which could be fulfilled from outside the office. With regards the majority of the work undertaken by the HR Team, this however required people to be in the office to use case management tools and access files which were necessary for their roles. Accordingly, were the claimant to work from home the respondent would have to find project work for her to do in those hours, as it would not then have been feasible for her to do actual casework remotely; casework requiring access to files which were kept in the office and on office based systems, as well as a relationship with colleagues in the team.

97. With regards the claimant further raising issue that she did not need to answer phones as part of her duties, because the First Contact Team undertook that function, whilst the First Contact Team were the first port of call, whenever a call to that team concerned an open request that HR admin team were dealing with, First Contact Team needed to be able to hand the call over to the relevant HR admin team member. It was Ms Blyfield's view that on there being an expectation in the business, that HR admin team

would be available during the core contact hours, 8am to 5pm, the claimant's absence while working at home would not be conducive thereto.

98. The claimant challenges this evidence, advancing that she only needed to be in the office to address old cases where she would need reference to files which was not the case in respect of new cases, and that in respect of working at home for the additional two hours, she would have been able to collect her children from school and drop them at her parents and then work the extra two hours within the core time. This however had not been put to the respondent at the material time. The tribunal does however, note the claimant's evidence accepting that, working from home she could not then cross-check work, however she maintains that that would have been minimal, working only two hours at home.

99. Ms Blyfield also considered whether it was appropriate for the claimant's reduced hours being pursued on a trial period basis, Ms Blyfield's evidence to the tribunal being that, having considered the evidence presented to her in respect of the HR admin team, together with Ms Furnival, she concluded that this would not have been appropriate because they could not address the fact that they would be 7.5 hours down in the HR admin team, which did not have the capacity to absorb such a loss and that there would then still be the resource gap at the start and end of the day. In respect hereof, the tribunal for completeness records that the issue as to a trial period was not an issue pursued before the tribunal as an issue for the tribunal's determination.

100. It was Ms Blyfield's decision that, based on her analysis, it would not have been reasonable to require other members of the team to absorb the caseload of the claimant on her working reduced hours, and on the claimant being asked if she would consider the vacancy in the First Contact Team on a job share of two to three days a week, working 8am to 2.45pm on a trial basis, and on the claimant stating that she could not do this because of the 8am start which impacted on her ability to drop her daughter off at school for those three days a week, the appeal was rejected.

101. Ms Blyfield's decision was confirmed by correspondence of 6 April, Ms Blyfield setting out her rationale in respect of: (1) inability to reorganise work among existing staff and detrimental impact on customer service level; (2) inability to recruit additional staff; and (3) inability to find a suitable alternative position within the claimant's specified hours, advising the claimant that in not upholding her appeal it brought her flexible request procedure to an end and that she would not then be able to make a further request for a further 12 months from the date of her original request.

102. The tribunal pauses here, to address the issue of the claimant leaving the meeting on 21 March, whereon she exited the building away from her team as above stated at paragraph 88.

103. It is the claimant's claim that, on leaving the meeting, Ms Blyfield had informed her that her team was at the end of the corridor to her right, and that she was told to leave from the exit to her left, which the claimant states implied that there was something wrong.

104. It is Ms Blyfield's evidence that, being aware that the HR admin team were in the informal meeting area at the end of the corridor to the right, on concluding the meeting with the claimant, she had mentioned this to her so as to make her aware that if she were to go to the exit to the right, her colleagues were there having a meeting; Ms Blyfield stating that, the aim of this was so that the claimant had advance notice that she might come across her team and she did not want her to feel that she needed to explain why she was in the building if she saw them or should they ask her questions, Ms Blyfield further stating that, the purpose had been to give the claimant a choice as to whether or not she wanted to see them. Ms Blyfield further informed the tribunal that, in the past, she had dealt with individuals who having attended the office from maternity leave to discuss work related matters, did not then want to meet their colleagues on those occasions and that not knowing the relationship that the claimant had with her team, she had sought to point out the circumstance, but that she had not asked the claimant to exit away from her team.

105. In this regard, the tribunal notes the entry in the notes of the meeting on 1 April 2016, where the claimant raised this issue, stating:

> "… It was said after last meeting, when I was told to go in the other direction to my team, I wondered if there was something wrong?"

Ms Blyfield responding:

> "They were in breakout meeting and as the entire team were sitting in the corridor I thought it was easier for you not to have to walk past them and answer any questions if you did not want to, it was nothing more than that…"

From the notes, there is no further discussion as to this incident or otherwise of the claimant challenging Ms Blyfield's explanation.

106. In evidence to the tribunal, the claimant has further stated that, on Ms Blyfield's account having been put to her, that was not how she felt. The claimant does not challenge the account of the discourse had, and for which the tribunal has had reference to the claimant's comments to the notes of the meeting as furnished, the claimant there stating:

> "My point re… being advised to exit the meeting in a different direction to where my team were having a meeting has been underplayed here. This was something that made me feel very uncomfortable following the meeting on 21 March 2016 as it implied that there was an issue between my colleagues and I. I don't feel that this should have been mentioned."

107. The tribunal on the evidence before it, accepts the evidence of Ms Blyfield, as is echoed by the claimant's comments on the meeting notes of 1 April, that she was "advised" and not told, so as to be an instruction.

108. On 6 April, the claimant wrote to Kirsty Anderson, sales operational manager cold, in respect of an admin sales support role, stating:

> "Following our conversation last week regarding the admin, sales support role I was just wondering if there would be an option for the role to be 37.5 hours per week (30 hours in the office and 7.5 hours from home)?"

109. On 14 April Ms McArdle responded to the claimant advising:

> "I understand that you may be interested in returning to CCE on a part-time basis in an admin position in the cold trading team.
>
> Can you let me know your general availability to chat?"

110. On 11 April, Ms Hallhit made enquiries of the claimant as to her continued employment stating:

> "Hi Michelle
>
> Hope you are well.
>
> Following your appeal hearing I have not received a resignation notification from yourself. Therefore please can you confirm that you will be returning to work on 21 April?"

111. The claimant responded on 14 April, advising:

> "I cannot return to work on 21 April for 37.5 hours per week for the reasons that I have already given."

112. After experiencing difficulties in contacting the claimant, claimant responded on 15 April, advising that having been unwell the previous night she did not feel up to a phone call, asking to be emailed, for which Ms Garner wrote to the claimant, advising:

> "I would really like to have a chat with you to talk about the next steps from here. I am aware that your flexible working request was declined, and you were offered a couple of alternative options which you were not able to do.
>
> When a flexible working request is declined, we would assume that the employee will be returning to work on their original work pattern, unless advised otherwise. Following your email to Gurdeep and copying in myself, dated Thursday 14 April, you have said: "I cannot return to work on 21 April for 37.5 hours per week for the reasons that I have already given". Can you confirm if this is a resignation from you for the role of HR admin?
>
> I have heard that you may be interested in another role at CCE which is part-time. Can you confirm if you are already in the recruitment process for this role? I will be happy to talk to you about possible options whilst this recruitment process is completed.

> As mentioned I think it would be beneficial for us to talk next week, if you are feeling better."

113. Ms Garner then asked for a suitable time for her to call.

114. On the claimant not responding thereto, on 18 April, Ms Anderson wrote to the claimant enquiring whether she was still interested in the admin role, advising that, Tara from HR, had been trying to contact her to arrange a suitable time that week for an interview.

115. Later that day, the claimant responded advising that the post was not something she was going to pursue.

116. Subsequent thereto, on 18 April, the claimant then wrote to Ms Garner advising that, she was not in the recruitment process for any other role at CCE, further stating:

> "I can confirm that I am resigning from the position of HR administrator at CCE. Please accept this as my formal resignation.
>
> I have been left with no choice but to resign as I cannot return to my role based on working 37.5 hours per week and also ensure that my two children are taken to and collected from school and nursery every day."

117. The claimant then addressed issue regarding the recovery of childcare voucher payments.

118. By correspondence of 19 April, Ms Garner responded to the claimant advising, "I can confirm that we will make the relevant changes in the system to make you a leaver with effect from Thursday 21 April 2016" further advising that they would calculate holiday pay and would look into the claimant's query regarding childcare vouchers.

119. In August 2015, the respondent, then Coca Cola Enterprises Ltd, announced that it was to merge with the Iberian and German Coca Cola Bottling Companies, which announcement was made to all employees on the staff intranet and by email. It was also announced publicly in the general media.

120. The merger process continued until 28 May 2016, when the merger was completed. Regular updates were given to employees during this time by internet and email, examples of which are at R1 page 56.

121. It is the respondent's evidence, which is not challenged by the claimant, that no information was provided to staff about the potential impact of the merger on shareholdings at any time until the merger was nearing completion, when on or around 18 May 2016, a communication was sent to all employees who participated in the share plan, detailing the proposed arrangements for the exchange of shares in Coca Cola Enterprises Inc, for shares in the merged company, "Coca Cola European Partners plc", a copy of which is at R1 page

169. The proposal was for shares to be converted on a one for one basis with additional cash payments of 14.5 US Dollars to be made for each CCE share held by an individual at the date of the merger.

122. The claimant, who held shares at the date of the merger, had her shares converted into a cash payment in the sum of $1,788.04 on 4 July 2016. The payment was an additional payment to the conversion of shares on a one to one basis.

123. The claimant presented her complaint to the tribunal on 15 July 2016.

Submissions

124. The tribunal received written submissions on behalf of the parties, the submissions have been duly considered.

The law

125. The law relevant to constructive dismissal was set out by Lord Denning, MR in the case *Western Excavating (ECC) Limited v Sharp 1978* ICR page 221, as follows:

> *"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."*

126. On the contention that there was a fundamental breach of the contract of employment, by breach of the implied term of mutual trust and confidence, this breach has been considered in the case of *Post Office v Roberts* [1980] IRLR, page 347 at paragraph 45 per Talbot J, referring to Kilner Brown J. in Robinson v Compton Parkinson Ltd [1978] IRLR 61, that:

> *45. …."It seems to us although there is no direct authority to which we have been referred, that the law is perfectly plain and needs to be restated so that there shall be no opportunity for confusion in the future. In a contract of employment, and in conditions of employment, there has to be mutual trust and confidence between master and servant. Although most of the reported cases deal with the master seeking remedy against a servant or former servant for acting in breach of confidence or in breach of trust, that action can only be upon the basis that trust and confidence is mutual*. Consequently, where a man says to his *employer "I claim that you have broken your contract because you have clearly shown you have no confidence in me, and you have behaved in a way which is contrary to that mutual trust which ought to exist between master and servant" he is entitled in those circumstances; it seems to us, to say that there is conduct which amounted to a repudiation of the contract*."

46. *In stating that principle, in our view Kilner Brown J does not set out any requirement that there should be deliberation, or intent, or bad faith.*

47. Finally, there are very important words in a part of the judgment in Palmanor Ltd v Cedron [1978] IRLR 303, the words appearing in the judgment of Slynn J at page 305. It is a short quotation and reads as follows:

"It seems to us that in a case of this kind the tribunal is required to ask itself the question of whether the conduct was so unreasonable that it really went beyond the limits of the contract. We observe that in the course of the argument on behalf of the employee, it was submitted that the treatment that he was accorded was a repudiation of the contract."

48…..We would agree …. that there may be conduct so intolerable that it amounts to a repudiation of contract. There are threads then running through the authorities whether it is the implied obligation of mutual trust and confidence, whether it is that intolerable conduct may terminate a contract, or whether it is that the conduct is so unreasonable that it goes beyond the limits of the contract. But in each case, in our view, you have to look at the conduct of the party whose behaviour is challenged and determine whether it is such that its effect, judged reasonably and sensibly, is to disable the other party from properly carrying out his or her obligations. If it is so found that that is the result, then it may be that a Tribunal could find a repudiation of contract.

127. The issue was further espoused Per His Honour Judge David Richardson in **Blackburn v Aldi Stores** [2013] UKEAT/0185/12/JOJ, that:

The implied term of trust and confidence is an implied term of the contract whereby an employer must not (**Malik v BCCI** [1998] AC 20, per Steyn LJ):

> "[…] without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee."

128. The law relating to discrimination on the protected characteristics of Pregnancy and maternity, is provided for by section 18 of the equality Act 2010, (EqA) that:

(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably
(a) because of the pregnancy, or
(b) because of illness suffered by her as a result of it.

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

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

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

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

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

(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—

(a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or
(b) it is for a reason mentioned in subsection (3) or (4).

129. In order for a discrimination claim to succeed under S.18 EqA, the unfavourable treatment must be 'because of' the employee's pregnancy or maternity leave. The meaning of this expression was considered by the EAT in Indigo Design Build and Management Ltd and anor v Martinez EAT 0020/14. where, His Honour Judge Richardson, noted that the law required a consideration of the 'grounds' for the treatment, having reference to Lord Justice Underhill in Onu v Akwiwu and anor; Taiwo v Olaigbe and anor 2014 ICR 571, CA, that: 'What constitutes the "grounds" for a directly discriminatory act will vary according to the type of case. The paradigm is perhaps the case where the discriminator applies a rule or criterion which is inherently based on the protected characteristic**.** In such a case the criterion itself, or its application, plainly constitutes the grounds of the act complained of, and there is no need to look further. But there are other cases which do not involve the application of any inherently discriminatory criterion and where the discriminatory grounds consist in the fact that the protected characteristic has operated on the discriminator's mind… so as to lead him to act in the way complained of. It does not have to be the only such factor: it is enough if it has had "a significant influence". Nor need it be conscious: a subconscious motivation, if proved, will suffice.'

Conclusions

Pregnancy/maternity discrimination

130. Refusal to allow the claimant to work a 30 hour week

130.1 The tribunal on the evidence before it is satisfied that the respondent had refused to allow the claimant to work 30 hours a week.

131. Refusal of the respondent to allow the claimant to work the proposed additional two hours per week from home

131.1 The tribunal equally finds that the respondent at the appeal did refuse to allow the claimant to work from home for the additional two hours per week.

132. Not being told verbally that her flexible working request was being refused

132.1 It is accepted that, on Ms Hallhit making her determination to refuse flexible working, she had not done so verbally, writing to the claimant on 26 February 2016.

133. Did the respondent fail to advise the claimant of the merger?

133.1 The tribunal finds that the claimant, along with all other relevant employees, being persons within the respondent share scheme, were advised of the merger via email and information on the intranet, both mediums to which the claimant had access to during her maternity. The tribunal does not find that the respondent failed to advise the claimant of the merger.

134. It is not in dispute that the acts complained of were done within the protected period in relation to the claimant's pregnancy.

135. Was the treatment complained of because of the pregnancy or because of illness suffered by her as a result of it?

135.1 The tribunal, on the case presented by the claimant, does not find that the acts complained of were predicated on her pregnancy or of an illness suffered as a result of it. The reason for the refusal was that the claimant's requests could not be accommodated within the service, which was not predicated on any illness of the claimant or otherwise her pregnancy. It is further here noted that, the issue of concern was ostensibly that of childcare responsibilities and not the claimant's pregnancy or maternity.

136. Have the acts complained of been done because the claimant was on compulsory maternity leave?

136.1 The tribunal does not find that the treatment complained of was because the claimant was on compulsory maternity leave. The treatment complained of was in respect of the claimant seeking to reduce her hours of work because of childcare responsibilities.

137. Have the acts complained of been because the claimant is exercising or seeking to exercise or had exercised or sought to exercise her right to ordinary or additional maternity leave?

137.1 The tribunal does not find that the treatment complained of was because the claimant was exercising or seeking to exercise or had exercised or sought to exercise her right to ordinary or additional maternity leave. The treatment complained of was in respect of the claimant seeking to reduce her hours of work because of childcare responsibilities, not for having exercised or having sought to exercise or having exercised her right to ordinary or additional maternity leave.

138. For these reasons, the tribunal does not find the claimant to have been discriminated against on the protected characteristic of pregnancy and/or maternity.

Constructive unfair dismissal

139. The claimant chasing for paperwork and information.

139.1 As set out at paragraph 17 to 24, the discussions had, were of a general nature where the claimant suggested that she would be looking for 30 hours per week, asking in a casual way for a time to meet to go through everything. Ms Hallhit responded on 30 December as to her printing off a flexible working form for her and to post it to her to complete. Before this date, there is no application from the claimant in respect of the flexible working.

139.2 On 14 January, on the claimant making a general enquiry as to whether Ms Hallhit had had a chance to send out the flexible working form, further advising that she did not mind coming in to complete it, the claimant was thereon advised that Ms Hallhit was waiting for a one-to-one with her manager and would advise thereafter.

139.3 On 19 January, on the claimant writing to Ms Hallhit, asking as to when she would hear about her flexible working request, Hallhit then forwarded the claimant the flexible working application form on 22 January.

139.4 From this evidence, the tribunal finds that while the claimant chased for paperwork and information in respect of flexible working, the period of concern was that as between 14 January and 22 January when the claimant was furnished with the form requested. The tribunal does not find these facts to support the claimant's contention for unreasonable behaviour of the respondent, there being a very casual relationship between the claimant and Ms Hallhit and the correspondence being in a very friendly context, there is nothing thereby to suggest that Ms Hallhit was unreasonable in her dealings with the claimant at this time.

140. <u>The slowness of the entire process</u>

140.1 Pursuant to Regulation 4 of the Flexible Working Regulations 2014, and s.80F(2) of the Employment Rights Act 1996, being the date the application is put in writing, on the claimant completing and returning the flexible working application form on 26 January, the process commenced, and on Ms Hallhit furnishing the flexible working request outcome on 26 February, being four weeks and three days thereafter, the tribunal does not find this to have been tardy.

140.2 Giving further consideration to the further process, on the claimant presenting her appeal on 4 March, the appeal process was then concluded on 1 April, the decision then being confirmed in writing on 6 April; a further period of four weeks.

140.3 On the tribunal giving further consideration to s.80G(1B) of the Employment Rights Act 1996, that the decision period is that of three months beginning with the date on which the application is made, the tribunal does not find the process to have been slow.

141. <u>Giving the claimant contradictory information regarding the time frame and manner in which to appeal</u>

141.1 Whilst it is not in dispute that by Ms Hallhit's decision letter, it informed the claimant that she had 7 working days within which to appeal, which was not that as provided for by the procedures; being 14 working days. On the claimant having submitted her appeal and on the respondent having accepted the claimant's appeal without reservation, the tribunal does not find there to have been unreasonable conduct or otherwise a breach, by the mere mis-statement of the appeal period time frame.

142. <u>Asking the claimant to leave the office in a different direction from her team on 21 March 2016.</u>

142.1 As set out at paragraph 107 above, the tribunal does not find that the claimant was asked to leave the office in a different direction from her team. The tribunal finds that Ms Blyfield made a

suggestion that the claimant may wish to leave in the opposite direction, or as the claimant puts it "advised".

142.2 The tribunal does not find these acts to amount to unreasonable conduct, or otherwise a breach of the implied term of trust and confidence.

143. <u>The claimant stopped receiving vacancy bulletins for two weeks from 8 March 2016</u>

143.1 On Ms Hallhit having forgotten to furnish the vacancy bulletins to the claimant from 1 March until it was brought to her attention on 21 March following the claimant's appeal meeting, for which the claimant was then furnished with job vacancies from 8 March, the tribunal does not find these facts to support a submission of unreasonable conduct by Ms Hallhit, or otherwise breach of trust and confidence. On the claimant raising the issue, the claimant was immediately furnished with the relevant documents save for the period 1 March to 7 March, together with an apology therefore.

143.2 There is nothing by these facts to support a finding of unreasonable conduct, or of a breach of the implied term of trust and confidence, for the two week period from 8 March 2016.

144. <u>Asking the claimant whether she was going to resign on 11 April 2016</u>

144.1 On the claimant having been unsuccessful in her appeal, which by the procedures dictated that the claimant should return to work in her substantive role, on the claimant not having communicated with the respondent thereafter, and on the claimant having stated in her flexible working application that, were she not successful in her request for reduced hours, she would resign, in these circumstances, this tribunal finds the request of Ms Hallhit, to have been reasonable.

144.2 The tribunal does not find anything thereby that would have breached the implied term of trust and confidence; the enquiry of Ms Hallhit being for information as to the claimant's returning to work.

145. <u>The respondent asserted that the claimant needed to be in the office to answer the phone but this is incorrect as the First Contact Team managed all incoming HR calls.</u>

145.1 The flexible working request outcome letter and appeal outcome letter do not make mention of the claimant's need to be in the office to answer the phone, it having been presented in terms "providing support to customers over the phone", as set out by the flexible working request outcome letter of 26 February 2016.

145.2 Despite this, the tribunal notes that by the claimant's grounds of appeal, advancing the contention that "supporting customers over the phone was referenced in my outcome letter, however this is managed by the First Contact Team" which is then captured by Ms Blyfield in the appeal meeting, it is accepted by the respondent that it is the role of the First Contact Team to field incoming calls. However, this is in respect of first contact only. Once they have received the incoming call they then pass queries on to the relevant team and any incoming calls concerning contract queries would have to be referred to the HR admin team, or otherwise where there are ongoing cases for which the HR admin team would need to address over the phone. To this extent, the information provided by the respondent in respect thereof was correct, and not as alleged by the claimant.

146. The respondent said that, not having sufficient budget was a reason for the refusal. However, the claimant would have been working fewer hours and would therefore have been paid less. In addition, the respondent would have had contingencies in the budget to deal with team changes.

146.1 It is not in dispute that the respondent in the flexible working request outcome letter of 26 February 2016, did make reference to budget considerations, albeit as presented to, and found by the tribunal to have been in error, and was not a consideration that Ms Hallhit had given consideration to in reaching her determination.

146.2 Whilst the claimant had been informed thereof, the tribunal has considered whether such a factual state was then incorrect.

146.3 On the matter being raised at appeal, Ms Blyfield addressed this issue setting out the setting of the budget arrangements annually, accounting for head count, namely that the budgets being set in or around October annually, being set for a team or function on assumptions made based upon existing head counts and expenses at that time, and that in respect of the HR admin team the head count assumption for 2016 would have included the 0.8 full time employees in respect of Ms Donnelly, having had her hours reduced before October 2015, the financial budget being set for the entire HR services team, were the HR admin team to increase head count capacity during the year beyond the level accounted for the previous October, any such increase would then have to be balanced against a reduction elsewhere in the HR budget, that the position regarding the budget, although not a consideration of Ms Hallhit, was a true state of affairs, and for which the tribunal is satisfied that there would not then have been a budget for the increased head count to cover the additional hours in respect of Ms Donnelly working reduced hours and the reduced hours requested by the claimant, as was then advanced by the claimant, of the respondent having a budget for an additional 15 hours per week.

146.4 The tribunal further here notes that, it was Ms Blyfield's evidence to the tribunal that, recruiting an individual to cover 15 hours as suggested by the claimant would not have addressed the issue she had identified in respect of the gap in cover, at the start and the end of the day, in that, in recruiting someone for 7.5 hours or alternatively 15 hours per week in respect of the reduction in hours of Ms Donnelly and the claimant, it was unlikely that it would have been possible to recruit someone who could then do the start and end of each day, without the hours in the middle, to address the shortfall in service delivery.

146.5 The tribunal does not find the claimant to have been furnished with incorrect information in respect of a budgetary deficiency.

147. <u>The respondent relied on incorrect information in respect of the team's working pattern and the respondent relied on incorrect information as to how many cases could be completed on average.</u>

147.1 The information pertaining to the teams' working pattern and information as to how many cases could be completed on average was information gathered from Ms Blyfield's analysis for the purposes of the claimant's appeal; Ms Blyfield considering the hours that the HR admin team worked, plotting where there were gaps in coverage were the claimant's request approved, which calculations the tribunal finds to be empirically sound, and to further consider the number of cases handled by the HR admin team during 2015, analysing the average number of cases done per day to see whether it was possible from a capacity perspective, for others in the team to pick up the cases that the claimant would have done in the 7.5 hours that she would not be working by her reduced hours, again this was empirically sound.

147.2 The tribunal is satisfied that the information relied on by Ms Blyfield was correct information upon which to determine the team's working patterns and the number of cases completed per day.

148. <u>The respondent's failure to advise the claimant of the merger</u>

148.1 The tribunal restates its finding at paragraphs 121 and 122 above, and finds that there was not a failure of the respondent to advise the claimant of the merger; the claimant having access to the internet and emails during her maternity leave for information as to the merger, being specifically advised as to the share options and being the only advice known to have been given to staff and upon which the claimant had acted.

149. From the findings of the tribunal as above stated, the tribunal has found no evidence to support the claimant's contention that there has been unreasonable conduct, whether individually of cumulatively, to amount to a breach of the implied term of mutual trust and confidence. The tribunal

has found no evidence by which this tribunal could say that "without reasonable and proper cause, the respondent has conducted itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. per Lord Steyn in Mahmud v BCCI [1997] IRLR 462.

150. Were the tribunal wrong in its determination of the factual matrix, giving regard to the events leading to the claimant's resignation and the resignation letter itself, the tribunal finds that the reason for the claimant's resignation when she so tendered her resignation, was not on account of any of the incidents for which she alleges a breach of the implied term of mutual trust and confidence, but was in respect of the single factor that she could not make childcare arrangements to meet her working the hours unreduced as requested. The tribunal is satisfied that the respondent gave careful and full consideration to accommodating the claimant's request, relevant to the service requirement being met, that whilst the rejection of the claimant's request was disappointing for the claimant, the respondent had equally not there without reasonable and proper cause, conducted themselves in a manner likely to destroy or seriously damage the relationship of confidence and trust with the claimant.

151. For the reasons above stated, the tribunal does not find the claimant to have been discriminated against on the protected characteristics of pregnancy and/or maternity, or otherwise that the claimant was constructively dismissed when she tendered her resignation on 18 April 2016.

152. The claimant's claims are accordingly dismissed.

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Employment Judge Henry

Date: ……12 .3 .2018

Sent to the parties on: .....

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For the Tribunal Office