EMPLOYMENT TRIBUNALS

Claimant: Ms N Poole

Respondent: One To One (North West) Limited

Heard at: Liverpool **On:** 7 August 2018

Before: Employment Judge Robinson
Ms F Crane
Mr A Wells

REPRESENTATION:

Claimant: Mr B Henry of Counsel
Respondent: Mr P Clarke, Legal Advocate

JUDGMENT

The judgment of the Tribunal is that:-

1. The claimant's claim for indirect discrimination relating to the protected characteristic of the claimant's sex succeeds

2. The parties agreed, after the liability hearing, that the claimant should receive £4,614.78 inclusive of interest by no later than 4pm on 21 August 2018 in full and final settlement of her claim.

3. The application for expenses made by the claimant is refused and is dismissed.

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REASONS

1. The claim is a simple one by Ms Poole against One To One (North West) Limited. It is a claim for indirect discrimination. We are very grateful to the parties for producing the list of issues.

Findings of Fact

2. Ms Poole went on maternity leave on 29 January 2017. She was to return to work to One To One (North West) Limited in February 2018. In March 2017, and early in her maternity leave, the managers decided that a reorganisation was to take place at One To One. Ms Poole's role as lead midwife was no longer required. Consequently the claimant realised that she would not be returning to the job she had been doing prior to that leave.

3. During her leave the claimant decided she would not be able to go back full-time to carry out, as part of her job, the on-call role with a full caseload. She put various options to the respondent in an email. She was proactive in trying to sort out what her role would be after her maternity leave had finished. The respondent knew the claimant's personal email address.

4. The claimant did not receive, nor did other midwives on maternity leave receive, internal emails sent by One To One. One of the roles that the claimant felt she could do was the safeguarding practitioner's role which she found out was in the offing. She was told that there was a possibility that that role would become available shortly but not the actual date when recruitment would start. The claimant never got the opportunity of applying for that role because, put simply, she was not sent an email by the respondent advertising the role. Attached to the advertisement was the job description. The job was given to two other employees to share. Both were in work and received the email advertising the post so could apply.

5. The job description of safeguarding practitioner does not require the person chosen for the role to deal with a caseload. It may be that the persons doing that role now do have a caseload as was suggested by the respondent witnesses. If the claimant had been given the opportunity to apply for the role she could have discussed and negotiated the details of the job with the respondent's managers at any interview to which she was invited. That opportunity has been denied to the claimant.

6. The claimant did not apply for, or be interviewed for, other roles that cropped up between September 2017 and February 2018. The policy of the respondent was changed so that, from September 2017, it sent out communications to all midwives, whether in work or not. The claimant put in a grievance about the lost opportunity. That grievance was not upheld either at first instance or on appeal.

7. Not sending the email of the safeguarding vacancy was an oversight by the respondent. One To One (North West) Limited has remedied that by changing its policy. All employees, whether absent ill or on maternity leave or absent for any other reason, now receive those emails and can apply for any vacancies which those emails have contained within them. On those facts the burden has shifted to the respondent to explain themselves. The pleaded justification defence is that not sending out emails to personal addresses was to protect those women on maternity leave. We heard no explanation from the respondent as to exactly what that protection is. It was not explained how that policy protected those women on maternity leave. We have assumed the respondent did not want to pester pregnant employees whilst they were on their maternity leave.

8. However, despite that pleaded case, Ms Collins when giving her evidence made it plain that that was not the reason the claimant was not sent emails to her personal email address prior to the change in policy. It was simply an oversight by the safeguarding team, who did not run the advert past the Human Resources Department before sending it out to those employees who could receive the internal emails with the job specification attached.

The Law

9. Firstly, we have to identify the provision criteria or practice applied (PCP). That PCP is the notification of vacancies generally but the specialist safeguarding role in particular, only through internal email. Was it applied equally to a man? Does the PCP put women at a particular disadvantage. We have to construct a pool for comparison comprising those individuals who are affected potentially by that PCP. That pool comprises women who are pregnant and on maternity leave, and we have to establish whether a disadvantage has occurred as stated above, both to the group and to the individual. Can the respondent show the PCP to be a proportionate means of achieving a legitimate aim?

10. Applying that law we concluded as follows. The email sent internally covers all midwives interested in the safeguarding job, including two male midwives (so men as well as women are included). That email was sent via midwivesonetoone.co.uk address, internally but not externally. Therefore, in not sending the email out to all relevant midwives, whether in work or not, the respondent has put women at a disadvantage because women on maternity leave are not informed of vacancies. The claimant, as an individual, was also placed at a disadvantage because she was not informed of the vacancy either. A vacancy for which she would have been interested to apply. The respondent's pleaded justification defence , in any event, did not correspond with the evidence given. The respondent's officer in the safeguarding team made a mistake by not sending the job vacancy out to all midwives. Consequently the means chosen by that team in order to fill the vacancy did not correspond to a real need on the part of the respondent; the means were not appropriate with a view to achieving the object in question - the filling of the post with a suitably qualified midwife chosen from a pool of all midwives whether in work or absent ; and was necessary to achieve that end.

11. The fact that that omission was unintentional by the respondent is not relevant to our finding. The respondent has not discharged the burden placed upon it to prove its actions were justified. In those circumstances, when the burden has shifted because the claimant has proved her prime facie case and the respondent has not proved their justification defence, the claimant's claim for indirect discrimination must succeed and she should receive the appropriate compensation. That compensation was agreed by the parties after the liability hearing and is set out above.

12. There is no provision under the rules to pay the claimant witness expenses, so Mr Henry's application for such was refused.

13-08-18

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Employment Judge Robinson

JUDGMENT AND REASONS SENT TO THE PARTIES ON

18 August 2018

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2424603/2017**

Name of case(s): **Ms N Poole** v **One To One (North West) Limited**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **17 August 2018**

"the calculation day" is: **18 August 2018**

"the stipulated rate of interest" is: **8%**

MRS L WHITE
For the Employment Tribunal Office