



# EMPLOYMENT TRIBUNALS

BETWEEN

*Claimant*

*Respondent*

Ms Denise Harrington

AND

Hilco Capital Limited

## JUDGMENT ON STAGE II EQUAL VALUE FINDINGS OF FACT HEARING

Heard at: North Shields

On: 11 and 12 February 2019

Before: Employment Judge A M Buchanan

Non-Legal Members: Ms B Kirby and Mr S Carter

### *Appearances*

For the Claimant: Mr Simon Goldberg of Counsel

For the Respondent: Ms Sophie Garner of Counsel

Independent Expert: Ms Gillian Spence

## JUDGMENT

It is the unanimous Judgment of the Tribunal that the thirteen factual issues placed before this Tribunal for determination are resolved in the findings of fact which follow.

### REASONS

#### Preliminary matters

1. By a claim form filed on 19 October 2017 the claimant brings a claim of equal pay on the basis of equal value in respect of her role described as HR Director/Head of HR for the respondent company pursuant to section 65(1)(c) of the Equality Act 2010. The claimant seeks to compare her role with eight comparators in the company namely:

1.1 Investment Directors James Turner, Steven Pell and Chris Emmott

1.2 Investment Manager Adam Gordon

1.3 Senior Investment Manager Matthew Holt

1.4 Head of Investment Modelling and Analysis Ryan Sher

1.5 Retail Director Gavin Caine

1.6 Chief Executive Officer (CEO) Henry Foster.

The reference period in respect of this claim is the period of six years from October 2011 until the date of dismissal in October 2017 (“the reference period”).

2. By a response filed on 17 November 2017 the respondent denied liability and asserted that none of the comparators carried out work of equal value. In addition, it was submitted that any variation was due to material factors other than the difference of sex namely location, ability, skill, seniority, experience, qualifications, economic or market forces and administrative efficiency. No further details of the defence have yet been pleaded.

3. At a private preliminary hearing by telephone on 15 December 2017 a stage one equal value hearing was conducted and various orders made including an order that a member of the panel of independent experts be appointed to prepare a report.

4. The independent expert Ms Spence was duly appointed as notified by a letter from ACAS on 19 January 2018.

5. A private preliminary hearing took place on 27 February 2018 at which various orders were made in respect of agreement of job descriptions. Subsequently a stage II equal value hearing was listed for three days 17 – 19 September 2018 and subsequently a further five days were added between 11 and 15 February 2019.

6. A further private preliminary hearing took place on 30 August 2018 at which final orders were made to prepare for the hearing in September 2018.

7. The stage II hearing came before this Tribunal on 17 and 19 September 2018. At that hearing the parties were allowed to use the time to undertake roundtable discussions and agreed to continue those discussions in December 2018 with a view to agreeing the job descriptions. That time was well spent as it reduced the large number of factual issues between the parties to thirteen matters and accordingly saved considerable time for the Tribunal.

8. The matter came back before this Tribunal as above at which time the parties confirmed that there were 13 matters on which the Tribunal was required to make findings of fact. The hearing took place on 11 and 12 February 2019 and the Tribunal reserved its decision to issue it in writing with reasons in order to comply with rule 62(2) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

9. At the end of the hearing with the parties present, it was agreed that the stage II hearing will reconvene by telephone on 6 March 2019 and orders to that effect have been issued separately.

### **Witnesses**

10. At the hearing the Tribunal heard evidence from the claimant and for the respondent from Henry Foster CEO, Steven Pell investment director, Christopher Emmott investment director, Adam Gordon investment manager and James Turner investment director. The Tribunal had statements from Gavin Caine retail director, Matthew Holt senior investment manager and Ryan Sher head of investment modelling and analysis. These last three witnesses did not attend as the claimant indicated she did not wish to cross-examine them and their statements were read.

### **Documents**

11. The Tribunal had before it four lever arch files extending in all to 2257 pages or thereabouts. The Tribunal was referred to a handful of pages only. Any reference in this Judgment to a page number is a reference to the corresponding page in the agreed bundle.

### **Purpose of the Hearing**

12. The parties had agreed that there were thirteen matters on which the Tribunal was required to make findings of fact. The function of the Tribunal was limited to hearing the evidence and the cross examination, considering the documents and making findings of fact. The findings are set out below. We set out brief reasons for those findings and also in certain instances make a suggestion as to how the relevant job description(s) might be amended to reflect the finding we have made. Strictly that last exercise is outwith our powers but we were asked by the parties to set out any matters we felt able to suggest in order to assist them in reaching final agreement on the job descriptions which in turn will assist the independent expert in the preparation of a report. Any suggestions we make are not binding on the parties and are made simply in an effort to assist.

13. We remind ourselves that we are not making any evaluation of the value of the tasks undertaken by the claimant compared to those of any of her comparators. That is not the function of this hearing. Our function is limited to resolving the factual disputes in the thirteen areas referred to.

### **Background**

14. The background to the case is that the claimant worked for the respondent from 2001 until she was made redundant in October 2017. The respondent company was formed by Paul McGowan and the claimant worked with him and a few others from the outset. Over the years the company grew in size and it is common ground that in 2007 it underwent a significant change both in terms of the make-up of the staff team and the work undertaken. Throughout the claimant dealt with HR matters and at the time of her dismissal described herself variously as HR director or Head of HR. On 1 January 2017 Paul McGowan stood down as CEO and was replaced by Henry Foster and Paul McGowan took on a new role as executive chairman. The company is now owned by an American company Hilco US and there are regular monthly reports to that company as to the progress of the respondent company.

## **Findings of Fact and Reasons**

15. Having considered the written and oral evidence from the above-named witnesses and having considered the documents to which we were referred, we make the following findings of fact on the balance of probabilities. We deal with each of the thirteen issues before us in turn and in the order presented to us in the agreed list of issues.

### **16. Issue 1. What was the claimant's line responsibility to the chief executive officer with reference to the overall organisational structure?**

#### **Finding of Fact**

16.1 In her internal role within the respondent company the claimant reported to the CEO who was Paul McGowan until 31 December 2016 and thereafter Henry Foster. The claimant did not report to more junior employees in respect of her internal role.

#### **Reasons**

16.2 We accept that the claimant had two main roles. She dealt with all HR matters which arose in respect of the employees and consultants of the respondent company. There were around 40 direct employees only and a varying number of consultants. This role is correctly described as her "internal role". In respect of this role, we conclude by reference to all the evidence we heard and in particular to the charts provided at pages 2056-2061 that the claimant reported directly on these "internal" matters to the CEO. The claimant had other people in the respondent company to assist her in certain HR functions particularly as she was based in the Middlesbrough office and the Head Office was in London. The claimant retained overall responsibility.

16.3 In addition the claimant had a so-called "external role". In respect of some, but by no means all, of the businesses in which the respondent invested, HR tasks were required to be performed and the claimant was asked to perform those functions on various projects. This role is the subject of the second issue to which we refer below.

#### **Suggested wording of job description**

16.4 The final two sentences of paragraph 9 of the claimant's job description (page 2046) appear otiose given our finding of fact but otherwise paragraphs 7, 8 and 9 appear in order. Paragraph 12 of the claimant's job description should remain.

### **17. Issue 2. What was the claimant's line responsibility in specific investment projects with reference to the overall structure of investment projects?**

#### **Finding of Fact**

17.1 The claimant was part of a team within the respondent company which provided specialist services to client companies. Each such project had a lead who was an investment director or senior investment manager and who had overall reporting responsibility for that project. The claimant did not lead on any such project. Having

been told what she was required to achieve, the claimant worked autonomously, but alongside other members of the team, to achieve the objective(s) which was/were set for her and which related to HR and payroll functions. The claimant reported her progress to other members of the team as required and they reported their progress to her. The head of each investment team reported progress on at least a monthly basis to the CEO and if relevant to the client of the respondent typically the managing director of the client company. On occasions, the CEO or, if relevant, the representative of the client company would raise a question directly with the claimant about certain aspects of the work she was carrying out. If such an enquiry was raised, the claimant responded to it directly to the CEO or such representative of the client company as the case may be.

### **Reasons**

17.2 The claimant had extensive experience of HR matters and in particular, so far as her external role was concerned, experience of collective consultations required in respect of redundancy exercises (Trade Union and Labour Relations (Consolidation) Act 1992) and in respect of transfers caught by the Transfer of Undertaking (Protection of Employment) Regulations 2006. The client also had extensive experience of managing other aspects of HR which were typically encountered in projects undertaken by the respondent such as all aspects of payroll administration.

17.3 The level of work required from the claimant differed depending on the project concerned. In respect of two projects about which we heard some considerable detail namely the Poundland project and the Co-op project (otherwise Project Chicago) the claimant had lengthy and heavy involvement. We refer in particular to the documents at pages 175-201 in respect of the Co-op project.

17.4 We had clear evidence from the claimant that, having been set tasks to undertake on any project, she was left to her own devices as to how to achieve those tasks. That is not surprising as the claimant was the only member of the respondent's team with HR experience. We accept the evidence that when a project was undertaken the respondent put a team into the business and that team worked together – each with his/her defined role – to achieve the objectives set by the respondent. The team worked together. There was a team leader in the guise of an investment director or equivalent who lead the team. We accept the evidence from James Turner that he spent a considerable amount of time in 2016 discussing with the claimant the tasks she was undertaking to better acquaint himself of the position prior to him taking over from Henry Foster on 1 January 2017 as investment director for the Project Chicago (Co-op) deal. We also accept that the claimant reported on that deal to Henry Foster from 1 January 2017 onwards even when he became the CEO of the respondent on that date. We conclude that there was more intense reporting by the claimant to Henry Foster in respect of that project given his previous heavy involvement in it and that such level of reporting to the CEO by the claimant was not typical.

### **Suggested wording of job description**

17.5 Paragraph 31 of the claimant's job description:

“When requested, managed such HR and payroll functions in external roles as she was asked to carry out as part of a team”.

17.6 Paragraph 70 of the claimant’s job description (page 2051) accurately reflects the position in respect of the external role.

17.7 Paragraph 17 of the job description of Henry Foster (page 1192) could be amended to reflect the position that the direction from the CEO is usually minimal except through the investment lead on the project in question.

17.8 The job descriptions of the comparators could be amended to reflect the fact that the claimant had autonomy to carry out the duties expected of her and that she worked as part of the team reporting to the Team Lead and on occasions to the CEO and Paul McGowan as Executive Chairman if either of them raised an enquiry of her direct.

**18. Issue 3. Was the claimant part of the respondent’s senior management team?**

**Finding of Fact**

18.1 The structure of the respondent company did not provide for a senior management team. There were monthly/quarterly meetings of investment directors/senior investment managers with the CEO and the chief financial officer (CFO) to report on each project with which the respondent was concerned. The claimant did not attend such meetings. In 2017 such meetings were replaced by a process of written reports. The claimant had no responsibility to complete or present any such report.

**Reasons**

18.2 From all the evidence we heard it was clear that the respondent did not have a senior management team for its business. Given the size of the internal business of the respondent that is not entirely surprising. The business of the respondent is its involvement with other businesses either to liquidate them or to rescue them in some way. Each such project had an investment director or investment manager as its lead and those individuals met together on a monthly basis with the CEO and the CFO to report in on each project. That was found not to be the best use of time and the system was changed in 2017 to one involving written reports along the lines of the template at page 2246. The claimant had no involvement in the preparation or presentation of such reports.

**Suggested wording of job description**

18.3 The job description of Henry Foster (pages 1190/1191) should be amended to reflect the composition of the team of senior investment directors/managers who meet monthly and to make it plain that his direct line management responsibilities are to the investment directors. Any reference to the “Senior Management Team” could be amended to “Senior Investment Management Team”.

18.4 The job description of Gavin Caine at paragraph 6 on page 1198 should be amended in a similar way.

18.5 The job description of Chris Emmott at page 2030 should be amended in a similar way.

**19. Issue 4. To what extent were certain comparators involved with marketing materials?**

**Finding of Fact**

19.1 The comparators Henry Foster, Steven Pell, Christopher Emmott, Adam Gordon, James Turner, Gavin Caine and Matthew Holt all have involvement in the production of content for the marketing materials for the respondent which is then passed to the respondent's marketing team to create the finished product.

**Reasons**

19.2 We accept the evidence from these seven comparators of the extent of their involvement in the production of marketing materials. The comparator Ryan Sher accepted that he had no involvement in the production of marketing materials.

**Suggested wording of job description**

19.3 Those job descriptions which refer to marketing materials should remain as drawn. Consideration should be given as to whether those comparator job descriptions which do not include any such reference (with the exception of Ryan Sher) should have something added.

**20. Issue 5. To what extent did the comparators provide monthly written reports in respect of the projects they were working on?**

**Finding of Fact**

20.1 When appointed as an investment lead on an investment project being undertaken by the respondent, the post-holder is required to collate information for and complete a monthly report on the progress of the investment project for the purposes of review by the CEO and the CFO and to enable an informed monthly report to be made to Hilco US.

20.2 The relevant post-holders in this regard are those who take the lead in investment projects namely investment directors, senior investment managers and investment managers.

**Reasons**

20.3 We accepted the evidence from the relevant post-holders called before us of the requirement to report monthly on the position in relation to projects on which they are acting as lead. We accept that these reports were originally made in a monthly meeting at the Head Office in London at which all attendees were present and who

had to spend a considerable amount of the day listening to reports on projects in which they were not involved. We accept that Henry Foster changed the method of reporting to a written report in early 2017 to remove the necessity for meetings in person and with the aim of making more efficient use of time.

**Suggested wording of job description**

20.4 The job descriptions of the comparators should remain as drawn in respect of any comparator who was/is required to complete written reports for the CEO and the CFO.

**21. Issue 6. What appraisal system if any was operated by the respondent internally or in relation to investment projects and who carried out such appraisals?**

**Finding of Fact**

21.1 Prior to 2017 there was no formal appraisal system in place within the respondent company. From 2015 onwards, some investment directors adapted appraisal templates they had used in previous employment(s) in order to appraise the performance of investment managers who reported to them. From 11 April 2017 an appraisal system for all investment directors and investment managers is in place. The appraisal system does not extend beyond the investment directors and investment managers.

21.2 The claimant had no involvement in any appraisal system during her employment.

**Reasons**

21.3 We accepted the evidence of James Turner that he began to appraise the investment managers reporting to him in 2015. We also accept the evidence of Henry Foster supported by the email at page 2195 that from 11 April 2017 there is in place an appraisal system for the investment directors and investment managers. We accept that the system does not extend to other members of staff. We also accept that the claimant was not at any time involved in any appraisal system during the period of her employment in respect of her internal duties.

**Suggested wording of job description**

21.4 The job description of James Turner at paragraph 20 could have words added at the end of that paragraph “including formally appraising on an annual basis the junior members of the team who report to him”.

21.3 Similar amendments could be made to the job description of the CEO and all other Investment Directors who undertake appraisals.

**22. Issue 7. To what extent was/is the CEO responsible for carrying out disciplinary, grievance and redundancy procedures?**



### **Finding of Fact**

22.1 In her internal role the claimant was responsible for all disciplinary, grievance and redundancy procedures.

22.2 The CEO may carry out certain of those functions in relation to specific employees if he so chooses.

### **Reasons**

22.3 We accept the evidence of the claimant that she was responsible for these matters in her internal role. Given the size of the respondent company, such matters did not arise often.

22.4 A more frequent occurrence was when a decision was made to “exit” an employee from the business and in such circumstances the CEO would on occasion undertake those sensitive negotiations himself and report the outcome to the claimant. We accept that when doing so the CEO would generally take legal advice and may or may not involve the claimant as head of HR before doing so. In any event, the result of any negotiation was reported to the claimant to record.

22.5 Involvement of the CEO in these matters will generally not be appropriate given that the CEO presumably is charged in the disciplinary and grievance policies to deal with appeals and if he was involved at the initial stages, considerable problems in respect of fairness could arise.

### **Suggested wording of job description**

22.6 Paragraph 38 of the job description of Henry Foster (page 1195) should be amended to reflect the minimal involvement of the post-holder. The word “*will*” could be replaced by “*may if appropriate*”.

### **23. Issue 8. What are the responsibilities of the CEO and the CFO respectively in relation to budgeting?**

#### **Finding of Fact**

23.1 The responsibilities of CEO and the CFO in relation to budgeting are:

- a. The CEO meets with each of the investment directors and senior investment managers to review and agree each of the individual investment portfolio budgets. The CEO uses this information to develop the assumptions around the forecast profit and loss accounts produced by the investment team for inclusion in the budget.
- b. The CEO meets with the Head of Retail to develop the assumptions around the forecast profit and loss for retail advisory work for inclusion in the budget.
- c. The CEO develops the assumptions around anticipated new business opportunities and forecast level of income.
- d. The CEO is responsible for the full integration of overheads and for assumptions around central overhead budget and cost control.

- e. The CEO then provides the budget assumptions under (a)-(d) above to the CFO to put into the standardised budget template to generate a budget profit and loss account.
- f. The CEO reviews the output produced by the CFO and amends it as appropriate.
- g. The CEO meets with the Executive Chairman to discuss the budget and to provide an overview.
- h. The CEO discusses the budget submission with Hilco US including a full review of the assumptions underpinning the budget and then on a monthly basis reports actual results against the budget.
- i. In August/September each year, the CEO provides the CFO with updated assumptions for the remainder of the financial year in order that the CFO can generate an updated actual plus forecast profit and loss account.
- j. The CEO discusses the updated reforecast with Hilco US after submission of reports against the forecast and original budget on a monthly basis.

### **Reasons**

23.2 It was agreed that this evidence be accepted.

### **Suggested wording of job description**

23.3 Embody the above finding of facts into the job description of Henry Foster and attach to it pages 2248 and 2249. The first sentence of paragraph 9 of the job description of Henry Foster should be in a separate paragraph. There should then be a paragraph reflecting the above finding of fact in respect of budget responsibility and the final sentence of the existing paragraph 9 should be added to the end of that new paragraph.

### **24. Issue 9. Can the claimant properly be described as responsible for the internal matters listed at paragraph 20 of her job description.**

**(a) If not, what was her role in relation to those matters and**

**(b) If so was the CEO ultimately responsible?**

### **Finding of Fact**

24.1 The claimant had responsibility for the following HR functions:

- a. management and maintenance of HR personal records
- b. back to work interviews
- c. disciplinary matters
- d. maternity and paternity matters
- e. workplace disputes
- f. redundancies
- g. leaver interviews
- h. adherence to the law
- i. legal process
- j. inter-personal relationships
- k. fairness
- l. employee treatment
- m. anti-bullying
- n. moral and ethical guidance

- o. adherence regarding ethics
  - p. whistle blowing policy
  - q. racial discrimination
  - r. company confidentiality issues
  - s. delivery of payroll including implementation of Sage add-on for auto enrolment
  - t. right to work
  - u. company pensions.
  - v. salary sacrifice schemes
  - w. BUPA
  - x. Childcare
  - y. Illness
  - z. Other personnel health issues
- (a) This question falls away.
- (b) As with all other aspects in relation to the activities of the respondent company, the CEO has ultimate responsibility.

### **Reasons**

24.2 The claimant accepted in cross examination that she had no responsibility for what might be called strategic HR matters such as HR budget and its control, promotions, recruitment and selection, any appraisal system, pay structure and bonus payments or salary increases. With that acceptance, the respondent was content for the claimant's job description to include the list set out in our finding of fact. The claimant had no budget to control in her role.

24.3 We adopt that list as it is agreed between the parties and make no further comment on it. The claimant accepted that the CEO carries ultimate responsibility for these HR duties as he does in respect of all aspects of the activities of the company.

### **Suggested wording of job description**

24.4 The appropriate wording should be added to the claimant's job description at paragraph 20 (page 2047) before the wording of that paragraph which is not in dispute.

### **25. Issue 10. Did the claimant participate in discussions with Gavin Caine about staffing costs within the investment business on more than one occasion?**

#### **Finding of Fact**

25.1 The claimant did participate on a handful of occasions and as required in discussions with Gavin Caine, the Head of Retail, about the costs of the staff in the businesses with which the respondent was concerned and in which the claimant had been asked to carry out HR functions. The claimant provided information to Mr Caine which he was then free to use if he wished in order to inform his strategic decisions on staffing questions.

### **Reasons**

25.2 The claimant worked alongside Gavin Caine on a handful of external projects as part of the respondent's team. If there were staff involved in the project and the claimant was brought in to deal with relevant staffing issues, then it is not in the least surprising that Mr Caine would speak to the claimant: indeed it would be remarkable if he did not. The claimant accepted that she was in effect providing information to Mr Caine and that any strategic decisions on staffing matters remained with him.

**Suggested wording of job description**

25.3 It would seem appropriate to amalgamate paragraphs 31 and 53 (pages 2048/2049) of the claimant's job description and to add the word "occasional" before the word "discussions" in paragraph 53.

**26. Issue 11. Did the claimant manage the HR aspects of employee consultation through any CVAs handled by the respondent within the reference period?**

**Finding of Fact**

26.1 In the reference period the claimant was only involved in one Company Voluntary Arrangement (CVA) and that related to the Co-op deal. In the event the CVA did not proceed and the company entered into administration.

26.2 The claimant managed the HR aspects of the collective consultation required in the CVA in respect of 24 stores at risk.

**Reasons**

26.3 We had clear evidence of the involvement of the claimant in HR and staffing aspects which arose from a proposed CVA in the Co-op project. We are satisfied that there was only one CVA during the reference period in which the claimant had any involvement.

26.4 As in other external projects with which the claimant was involved, having been given instruction by the investment lead and/or the representative of the client company, the claimant had autonomy to move on with the task as she saw fit in order to achieve the required objective. The claimant was left alone to get on with the job in hand. We accept the evidence from page 177 as to the number of stores which were at risk and whose staff were subject to the collective consultation.

**Suggested wording of job description**

26.5 It would appear to be appropriate to amalgamate paragraph 64 of the claimant's job description with paragraph 31 but add to paragraph 31 the words "*including all HR aspects of any collective consultation required in respect of redundancy proposals or transfer of undertaking proposals*".

**27. Issue 12. What was the extent of the claimant's autonomy to direct her own internal work and (on) investment projects?**

### **Finding of Fact**

27.1 In respect of her internal role, the claimant was required to undertake the duties of that role with self-responsibility.

27.2 In respect to her external roles, the claimant was directed as to what aspects of HR and staffing matters she was to deal with and having received that direction, the claimant had a significant degree of self-responsibility to perform the tasks required of her for the benefit of both the respondent and the client of the respondent.

### **Reasons**

27.3 It was not in dispute that in respect of her internal role, the claimant had self-responsibility to perform her duties as she saw best.

27.4 In respect of external roles, we accept in particular from the evidence in respect of the Co-op and the Poundland transactions that once she had been told what areas of HR and staffing matters she was required to deal with, the claimant was allowed a significant degree of self-responsibility to achieve the tasks set for her. In external roles, there was some reporting to other team members involved (both from and to the claimant) but the investment lead had overall responsibility for the project. The duties the claimant was to undertake were matters in which she had expertise and she was expected to achieve the required results in the context of being allowed significant latitude to achieve those results as she saw best.

### **Suggested wording of job description**

27.5 The reference in paragraph 70 of the claimant's job description at page 2051 to "*significant degree of self-responsibility*" would appear accurate. Words could be added to make the position clear that there was a greater degree of self-responsibility for internal role duties (such as "*very significant*") but even in respect of external role duties the degree was significant.

## **28. Issue 13. To what extent did the claimant and her comparators work away from their respective offices?**

### **Finding of Fact**

28.1 The internal duties of the claimant were significant but did not fill the claimant's hours of work. The claimant worked on external projects for the respondent throughout the reference period and in so doing, the claimant worked away from the Middlesbrough office (where she was based) for a significant period of time during the reference period. The projects were:

- a. 2010 - 2012 Habitat.
- b. 2011 - Park Precision, Allied Carpets and Brilliant Media.
- c. 2012 - Oceans Furniture, Pyramid Outdoor, Stoke/Mackenzie Isaac, Scomark, Cronite, Awear, Alders Croydon) and 1927.
- d. 2013 – Pochins Concrete Pumping, Butler & Gardener and HMV.

- e. 2014 – Braintree - HMV Tribunal cases, HMV online, Collectables, Belfast HMV and Insight people.
- f. 2015 – HMV Digital, HMV Pure, and Poundland.
- g. 2016 – Poundland and Co-op.

28.2 The comparators worked away from their respective office bases to the extent set out in table contained in supplemental their witness statements prepared for this hearing. In all cases, that involved time spent abroad. The claimant did not spend time abroad in the reference period on the respondent's projects. The claimant spent a significant part of her time in the reference period working on external projects away from her office base.

### **Reasons**

28.3 We are satisfied that the claimant spent a significant amount of time away from her office in Middlesbrough. The claimant referred to having hotel receipts and the like but none were produced to us.

28.4 The claimant cannot challenge the figures set out in the statements of the respondent's witnesses and we accept that evidence. We have seen nothing to suggest that the time spent away from the office by the claimant was significantly to the comparators different save in relation to time spent abroad.

### **Suggested wording of job description**

28.5 The table contained in the witness statements of the comparators should be annexed to their respective job descriptions.

### **Final Comment**

29. It is anticipated that with this Judgment in place, the parties will now be able to create fully agreed job descriptions for the claimant and all eight comparators in time for the resumed Stage II hearing on 6 March 2019. In order to save time and cost, that hearing will take place by telephone and it is anticipated that it will result in the Independent Expert being formally commissioned to produce her report and in a date being set either for the final hearing or for a further Telephone Private Preliminary Hearing to review matters after the production of the report.

**Employment Judge A M Buchanan**

**Date: 13 February 2018**

### **Public access to employment tribunal decisions**

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