



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms J Broom

**Respondent:** Alternative Care Limited

**HELD AT:** Leeds

**ON:** 6 and 7 March 2019

**BEFORE:** Employment Judge Lancaster  
Mr M Lewis  
Mr M Brewer

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Miss T Vittorio, Citation Ltd

**JUDGMENT** having been sent to the parties on 8 March 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided, taken from the transcript of the oral decision given immediately upon the conclusion of the case:

## REASONS

### Like Work

1. We have unanimously decided that the Claimant was doing like work with her named comparator Mr Kieran Sartori.
2. The Claimant was employed initially as an office administrator from 1 February 2016. Her contract was revised and new terms and conditions issued in June of that year. Her title then was described simply as “administrator”. The new terms and conditions state that a job description would be attached to it but there has never at any material time been a job description for an “administrator” role.

3. At some stage during the first year of her employment we can see that the Claimant in a one to one with her line manager, Emma Lloyd, did discuss written terms and conditions of employment which are headed "finance and administration assistant".
4. The Claimant's role developed. We accept her evidence that she was asked to ensure that she was in a position to stand in for the finance director, David Hodgson, in respect of any of his duties in addition to her general responsibilities of managing the financial side of the business as an administrator. We accept her evidence that her title was subsequently formally amended to "finance administrator" at the same time that she received a pay increase in December 2016 when her salary went up from the £16,500 starting salary to £18,000. And although there is no formal recognition of the change in job title at that stage, that is what she was clearly referred to in subsequent correspondence. We also accept in fact that approximately a year later towards the end of 2017 the Claimant was informally referred to as the "finance manager" and was given an amended name badge to wear with that title. Her role at the end of 2017 was finance administrator/financial manager.
5. On 3 January 2018 she submitted her resignation. We are satisfied that at that stage the Respondent company intended not to replace her with a like-for-like successor, but with another officer administrator, and the job advert that was then put out did not require any particular financial qualifications. Subsequently the Respondents particularly in the person of Gaynor Smith, director, decided to use the opportunity of the Claimant's leaving to approach Mr Kieran Sartori who is the partner of Emma, her daughter by her ex-husband, David Hodgson, also a director of the company. So there was a family connection. That initial approach on the evidence of Ms Smith was around 26 January or shortly before and there was then a family meeting to discuss the possibility of Mr Sartori joining the company the family business. And he did agree to do that.
6. All the documentation at that stage indicates that he was to be appointed as a direct replacement for the Claimant with a job title of "finance administrator". That is the term used in the job offer that was sent to Mr Sartori, and sent out in fact by his partner Emma Hodgson. She was responsible for recruitment within the Respondent. She would be expected to get these details correct and she had also been party to the family meeting on 26 January where the possibility of Mr Sartori joining had been discussed. So she was aware of the terms of which he had been invited to take up employment.
7. That job offer as finance administrator was at a salary of £21,500, £3,500 more than the Claimant had been paid. There is no indication as to how or when Mr Sartori in fact accepted that job offer of the 6<sup>th</sup> February, but on the same date an internal email is sent out by Emma Lloyd the registered manager indicating that "as everyone knows Jane, (that the Claimant, Ms Broom) has decided to leave Alternative Care and therefore her position needs to be filled. It gives me great pleasure to introduce Kieran Sartori who will fulfil the role as financial administrator effective from 19 February. I sincerely hope that everyone will welcome Kieran and support his transition into Jane's role".
8. There is only one interpretation of that email and that is that Emma Lloyd understood that Mr Sartori was being employed as a direct replacement for the Claimant. And on 14 February Emma Hodgson sent out a further internal email confirming that Mrs Sartori would commence employment on 19 February as the "finance administrator". Having received that confirmation that he would be a new

starter it was part of the Claimant's responsibility to deal with payroll. And it was then that she learnt that her replacement was being paid significantly more than she had been. She communicated that to David Hodgson and his response on 14 February was to record the Claimant's extreme dissatisfaction describing this as "a kick in the teeth" that he feared may have prompted her to cut short her notice and leave angry and crying. And in an email then sent to Ms Smith, Ms Hodgson and Ms Lloyd, Mr Hodgson poses the rhetorical question "why is it that everything we do seems to be so controversial?"

9. Immediately after that, having already expressed her dissatisfaction, the Claimant put in a formal grievance on 16 February. When Mr Sartori was then appointed to start on the 19<sup>th</sup>, the written terms of his contract as drafted by Emma Lloyd (she certainly was the signatory on behalf of the Respondent) has moved from describing his position as "financial administrator"- consistent with all the earlier company documentation, and indeed with Mr Sartori's own written job application - to referring to him as "finance manager or trainee financial director". There is reference within those terms and conditions again to a job description being attached. Mr Sartori's evidence is that it was not immediately attached to that contract but he did receive it sometime thereafter. And there is some evidence to suggest that a document with a job description for "finance manager/trainee director" specific to Mr Sartori was prepared or started to be prepared on 19 February the same date as the contract. It is therefore not in accordance with normal practice that a job description is available before somebody actually starts in a new position.
10. At that stage there was still no job description for the "finance administrator", the role that the Claimant had actually been performing. It is also clear from the screenshot provided to us that around the same time, 20 February, the original and outdated "administration assistant" job description was updated purportedly to reflect what the Claimant was doing. We are satisfied that there was no specific reason why that would be necessary at this stage other than to seek to reinforce an apparent difference in job roles between the Claimant and Mr Sartori. The Claimant, as we say, had not previously had an actual job description and at this juncture, 20 February, she was on point of leaving the company so it was not necessary to record that.
11. In looking at what is or is not like work we have course remind ourselves that we look principally at what the people are doing in their respective jobs rather than what they may have been required to do under the contract.
12. In this situation we are therefore satisfied that Mr Sartori was in actual fact recruited as a replacement for the Claimant. They were only working alongside each other for a relatively short time from his appointment on 19 February until the expiry of the Claimant's notice on 29 March. During that time it is accepted that Mr Sartori was effectively shadowing the Claimant. He would therefore only be doing a limited amount of work, but that does not of itself defeat the claim that this was like work. There is a substantial notice period required. The Claimant's contract was varied in mid 2016 to require her to give three months' notice rather than one, which suggest that it was recognised even at that stage just six months into employment that she was fulfilling an integral role that required long notice. Where long notice is required the purpose of that is to allow a sufficient handover and ensure a smooth transition to the replacement; and of course during that transition period it will be

expected that whilst the new employee is working alongside the old they would not necessarily be doing all the jobs their predecessor had undertaken.

13. Within that period the only people who provided any induction or training to Mr Sartori on his substantive role, that is apart from the general introduction to the company on day one, were the Claimant and the office assistant Sarah Nettleton, who was a reportee and answerable to the Claimant. There was also external training provided on the systems, particular SAGE and Carefree, but those are the systems that were run by the Claimant at this stage. There was no additional induction or training by anyone else in the company, either the registered manager Emma Lloyd and certainly not by the finance director David Hodgson.
14. We accept the Claimant's general submission, which appears no longer to be controversial, that she effectively trained Mr Sartori to "take over from her", as it had been communicated to her he would be doing by the company in an email of 6 February.
15. During that period they were doing effectively the same job the Claimant still substantively in post, Mr Sartori learning his new role.
16. The Claimant has prepared for the purposes of this hearing a detailed job description itemising the tasks that she fulfilled. That is at pages 50 and 51 in our bundle. Mr Sartori confirms that that corresponds with the day to day job that he did. He identifies only minor changes but they are changes that result in the removal of some direct responsibilities from that list. Those are matters that are delegated downwards: so some matters, he says, were in fact and already delegated down to Sarah Nettleton, who reported to the Claimant and who continued to fulfil those tasks when reporting to him. And some other general tasks, he says, were now further delegated: those are in relation to arranging vehicle maintenance, shopping and property repairs. But that again does not diminish from the general proposition that this was broadly similar work in every single detail as itemised by the Claimant.
17. For the purposes of this hearing that is the only job description that purports to set out in detail the tasks carried out. The job description produced by the Respondents for the Claimant's role is, as we have already commented, a rehashing of the earlier administration assistant role and it is largely in generic terms.
18. The Respondent's primary case is that Mr Sartori was in fact recruited to a senior and strategic role with the intention that he would step up to be finance director in anticipation of Mr Hodgson stepping down, and perhaps even also of Ms Smith stepping down from directorship. That would preserve the family business, Mr Sartori of course being the partner of Emma Hodgson the daughter of those two directors.
19. During the coincidental period where the two worked together there was no significant stepping up into that alleged strategic role nor any training for it. Indeed we are further satisfied that any further differences in the future are not of any practical significance. The Claimant was already functioning to all intents and purposes as the financial manager. So the fact that the comparator Mr Sartori was officially described as "manager" and that his recruitment was under the auspices of "management" does not mean it is practically different to the job the Claimant was doing. His actual tasks were identical to hers for the most part.

20. He did not at this stage, we are satisfied, in fact undertake and nor would he be anticipated to undertake in the immediate future any tasks of any strategic significance that practically differ from what the Claimant would have done. The Claimant, as she has expressed it, had a “hands on” understanding of the financial state of the business because she managed it. She therefore would provide that information as required to the company, and particularly to the finance director Mr David Hodgson: and as she put it in her evidence “if having provided that information about the state of the business at any particular time the company then act upon it, is that not effectively my giving advice”. And in reality that is the same situation as described by Mr Sartori as to his involvement at this stage.
21. The Claimant worked we are satisfied closely alongside the director and he would have discussions with her, identifying information that she could provide about the finances of the business. It is accepted by Ms Smith that the Claimant was a valued employee and had she not put in her resignation she would have remained in post. And had she done so we are quite satisfied that she would have seen her job evolve. So for instance where there is a change in the way that the funding of residential care by local authorities was to take place, with a pilot being conducted in conjunction with Wakefield authority, responsibility for that fell to Mr Sartori because that was a new development. Had the Claimant remained in post similar functions supporting the director would, however, have fallen to her. Similarly there is no substantive evidence that any involvement Mr Sartori had in relation to the acquisition of properties placed him in any different position to the Claimant.
22. In due course we accept that the intention of the family was that Mr Sartori would step up and assume more responsibility, but that was all contingent upon his learning how to do the job.
23. The Claimant having raised her grievance Mr Sartori was interviewed in relation to that on 6 April. That is shortly after she had left. When he was asked on that occasion “do you know what you expected to do?” he said “I’m going to learn to do contract management” which would suggest he had not yet done so “which DH Mr Hodgson does at the moment. My understanding is that I will be taking over some of the duties that he does, I have a meeting that is a future meeting booked with Merston’s which I’m going to be involved in the contracts with them” “What is your understanding of your job role?” “The day to day running of the business but I know there is a lot more to learn what I’m going to be doing”. Earlier in that interview he said “I’m continuing to learn and *will* provide a job description”, which does not suggest that he was familiar with a detailed job description, even if one was prepared on 19 February at that stage.
24. All these additional potential responsibilities that may fall to Mr Sartori in his position as the partner of Ms Hodgson and being brought into the family business with a view potentially to take over from Mr Hodgson, are all contingent on the future. In practical terms he was brought in initially as the replacement for the Claimant. His job title we are satisfied was only changed once she had raised her complaints and her grievance and up until that stage it was intended that he would actually start with the same title that the Claimant had held.
25. Within the structure of the business we are satisfied that he sat in no different position to the Claimant. The Claimant reported to the registered manager Emma Lloyd. She had one reportee Sarah Nettleton. The comparator Mr Sartori in practice we find also would have reported to Emma Lloyd as the office manager. Although his contract purports to state he is answerable to the financial director,

that is Mr Hodgson, Mr Sartori confirmed in evidence that he understood that he was on a similar level to where the Claimant had been under Emma Lloyd. Indeed we note in the email that Emma Hodgson sent out on 14 February that she states specifically that within the management team Emma (that must be the other Emma, Emma Lloyd) has been allocated to conduct the probation reviews for Mr Sartori. At that stage it was envisaged there would be a six month probation, though the contract for some reason extends that to 12 months. Then if all proved satisfactory Ms Lloyd was to conduct the first annual self-assessment and progress review in August. So she was the allocated manager with responsibility in just the same way that she had sat as the line manager of the Claimant. So the purported change in the contract of line management to the director it had no practical significance in our view.

26. Nor do we accept that there is any practical difference in the level of qualifications. She may not wish to be reminded of it but Ms Broom is of an age like the tribunal where she did O levels rather than GCSEs and that was the level of her academic attainment. They are not spectacular O level results but they have a range: she passed them all within the grading structure that then existed and her best results were a B. She did not progress beyond that level. Mr Sartori took GCSEs. His results similarly are not spectacular academically. They are all Cs the lowest level of a pass. He went on to also gain a pass in a BTEC national diploma level 3 in tourism, equivalent to A level but again at the lowest grade. Some units of that he said in his statement were useful within his new role and he also has some other qualifications, but he does not ascribe any particular significance to those within his own statement. Therefore his intermediate certificates in personal finance, IT and communication skills obtained whilst working as we understand it for Barclays are not of huge significance.
27. There is no practical difference in the level of academic qualification. And indeed academic nor even professional qualifications are not essential to Mr Sartori's role. Because he bypassed any recruitment process it was never suggested that these were pre-requisites of the person specification. In any event they are outweighed in this case by the fact that the Claimant's practical experience in areas of bookkeeping over 30 years in various capacities is certainly equivalent to the eight years' experience in a limited area of the financial sector, working for Barclays, that Mr Sartori had. We are not disparaging the abilities, qualifications or experience of either the Claimant or her comparator. They are different, but they are comparable and therefore have no practical significance in deciding whether this is like work. It is not work that Mr Sartori did which carries any particular need for greater qualifications that would enable him to undertake a different strategic role. In reality the Claimant's qualifications and experience would have enabled her to evolve into a similar role had she not put in her resignation. She of course would have not expected in due course to be admitted into the family business in the same way but in terms of actually doing the job there is no distinction.
28. So for those reasons looking at practically what the two jobs entailed, determining that any differences that did arise in relation to qualifications or any further duties that Mr Sartori was expected to conduct in the near future at the end of the Claimant's employment are not of practical significance, we conclude that this is indeed like work. It is broadly similar. In fact to all intents and purposes it is the same job. Mr Sartori was the replacement for the Claimant and therefore this is like work and the equality clause on the face of it applies.

**Material Factor**

29. We have now also considered the argument that the sex equality clause implying a comparison of benefits under the contracts does not apply because there is a material factor defence under section 69 of the Equality Act. The Respondents have not satisfied us that they have made out such a defence. Within the amended response no particulars are given of what that defence might be. Within the original submissions a number of factors are identified which do not amount to sufficient reason. Now the Respondent argues that the reason is in fact that there was a wish to recruit a family member and that when that particular family member Mr Sartori would not move for less than his existing salary, that is the reason for the differential.
30. But the fact remains the Claimant and her comparator were doing the same job. Mr Sartori was initially approached and recruited to replace the Claimant within the same title of financial director. There was no transparency in relation to the offer of a higher rate of pay above that paid to the Claimant. And no steps were taken to address that discrepancy once Mr Sartori had been appointed. The Respondent is saying that it was prepared to pay £21,500 for the role the Claimant had been doing and there were no steps taken to rectify the position and pay the Claimant an appropriate approximation of the going rate for her job.
31. The Respondents have not therefore refuted the suggestion that this was some grounds because of sex. The Claimant had wished to be paid more. On the facts of this case when a man asks to be paid more he is. Alternatively if the argument is that the comparator is a family member, there is no imperative to recruit from the family. The initial job advert did not suggest that. It was an afterthought. There was initially no suggestion Mr Sartori would necessarily take up that position and if he had not then the alternative replacement would simply have been somebody else. And indeed there was no guarantee that he would remain in post. He was employed on a contract subject to a long probationary period.
32. In respect of the argument that it was necessary to pay the enhanced rate to secure Mr Sartori's recruitment to the company, there is no evidence of any difficulty in recruiting at a lower rate because the Respondent did not go to advert for this post, it did not seek to recruit. So there is no suggestion that they had to pay an enhanced rate to replace the Claimant with somebody from outside.
33. Furthermore the whole argument that Mr Sartori was brought in as a family member is also potentially tainted by sex discrimination. This was a particular desire to bring in the partner of Emma Hodgson. Necessarily any woman is going to be disadvantaged by that desire to recruit from that very limited pool of one and that pool happens to be somebody who is male. The material factor has to be a relevant and significant factor justifying the differential in pay between a particular woman and a particular comparator. In this case the reality is that they were doing the same job, the Claimant may well have been underpaid. The Respondent was not prepared to acknowledge that disparity in pay in a transparent and open manner and the attempts to justify this are all belated and they do not appear in the original defence or arguments.
34. So the material fact of defence is not made out, the equality clause under section 66 does take effect, albeit only for that limited period that the Claimant and Mr Sartori were in joint employment.
35. The compensation figure of £390.40 gross in respect of that period is agreed.

Employment Judge Lancaster

Date 3<sup>rd</sup> April 2019