EMPLOYMENT TRIBUNALS

Claimant:	**Mrs J Summers**	
Respondent:	**B.I.M.S Ltd**	
Heard at:	**Cardiff**	**On: 18 June 2019**
Before:	**Employment Judge Harfield**	
	Members	**Mr P Charles**
		Ms C Izzard

Representation:
Claimant: In person
Respondent: Ms O'Neill (HR Consultant)

RESERVED JUDGMENT

It is the unanimous decision of the Tribunal that:

(a) The claimant's complaint that the respondent failed to comply with section 80G of the Employment Rights Act 1996 in relation to the claimant's application for flexible working is well founded;

(b) The respondent shall pay the claimant 6 weeks' pay amounting to ***£1832.22***.

REASONS

Introduction

1. By way of a claim form presented on 21 October 2018 the claimant made a complaint about a flexible working request made in May 2018 under section 80 of the Employment Rights Act 1996. By way of a response form submitted on 10 December 2018 the respondent defended the claim.

2. The matter came before the Tribunal on 18 June 2019. During the case we provided the parties with a copy of the Acas Code of Practice on "Handling in a reasonable manner requests to work flexibly" and the accompanying guidance "Making a request to work flexibly: An Acas guide." The parties had time to consider that guidance. We heard evidence from the claimant, and from Mr Wall and Ms Dyche on behalf of the respondent. We received oral submissions from the claimant and from Ms O'Neill. Ms O'Neill also provided written submissions. We also received a bundle of documents extending to 75 pages. Numbers in brackets are a reference to those page numbers. The tribunal were able to complete their deliberations on the day of the hearing but there was not sufficient time available to deliver an oral judgment. It was reserved to be delivered in writing.

3. At the start of the hearing we clarified the issues in the case with the parties. In particular, we clarified with the claimant that her claim was only for a breach of the flexible working provisions of the Employment Rights Act. The respondent had purported to bring a breach of contract counter claim for the costs involved in defending the claim. We explained to the respondent that we had no jurisdiction to hear the counter claim as the claimant had not brought a breach of contract claim. The claimant's claim therefore had not triggered the respondent's right to bring a counter claim. We also explained that, in any event, a breach of contract claim was not the appropriate mechanism for a costs/ time preparation order application and that any such application for costs by a successful party should properly be made, if appropriate, at the conclusion of the proceedings.

Findings of fact

4. To the extent necessary to decide the issues in this case and on the balance of probabilities we made the following findings of fact.

5. The claimant worked for the respondent as an invisible mender from 2003 until her resignation on 17 August 2018. She worked in a factory building. Mr Wall is managing director of the respondent. Mr Wall runs another business, A1K9 Ltd, and does not attend the factory very often. He has premises at his other business where his PA, Ms Dyche, is also based. At the factory the claimant's colleagues were SS (office manager), DD, SB and TS. DD and the claimant were full time workers. SB worked 14.75 hours Tuesday to Thursday, TS worked 23.75 hours spread over Monday to Friday and SS worked 30 hours a week Monday to Friday.

6. On 12 April 2017 the claimant made an application in writing for flexible working [50]. Her request stated that her current working pattern was Monday to Friday 8am to 4:45pm with 45 minutes for breaks and lunch. The claimant sought a change to work Monday to Friday 8am to 2:30pm with 30 minutes for break and lunch. It would mean a change from working 39 hours

a week to 30 hours a week. The claimant stated she was making the request as she wanted to be available to help with the care of her grandchildren and also for better work life balance. She stated: "I believe that the company will not suffer as my productivity is and always will be constant and committed and could save a small amount of money."

7. The claimant gave her letter to SS and asked SS to pass the letter to Mr Wall. Mr Wall then spoke initially, by telephone, with SS and DD. DD did not attend the tribunal to give evidence. There is an unsigned statement from her at [61] in which she states she expressed concerns to Mr Wall about the claimant's request on the basis that she did not know if she would be allowed to be on her own in the factory and that she could not afford to go part time herself. Her statement says that she and Mr Wall also discussed "the fact of work not being able to be completed by the due deadline."

8. Mr Wall then spoke with the claimant on the telephone and declined her request. The claimant states Mr Wall told her that DD was unwilling to be left alone for 2 hours in the afternoon and that SS had also declined to change her working hours. The claimant states that there was also a discussion about SB's parents. Mr Wall sent the claimant a letter dated 29 May 2017 confirming his reasons for declining the request. The letter [51] stated the decision was based on several factors. Firstly, that due to the small number of staff it would result in DD working alone in the factory for an hour on Monday to Thursday and two hours on Friday which he said "would not be ideal." Secondly, Mr Wall identified that SB's parents had been diagnosed with cancer which he could foresee may require her to take time off work and would potentially leave the factory short staffed. Thirdly, he stated that to recruit and train new people was neither easy or achievable in the short term and that there were already times of the year "when the pressure is on to make sure that orders go out, both on time and to the quality to which we have become known." He said: "Your wish to work less hours would certainly have a detrimental effect in terms of the company completing orders on time and therefore it would not be in the best interest of the business or your other work colleagues for me to consent to it."

9. The claimant did not pursue her flexible working request any further at that time. She states that at the time she could not come up with an alternative. However, her wish to reduce her working hours remained and she stated, and we accept, that she continued to discuss it with her colleagues in the factory. The unsigned statement from DD at [61] records that DD suggested that the claimant could try asking to have Fridays off. DD explains her rationale was that if she was not allowed to lone work in the factory, then on a Friday she would only lose one hour's pay. The claimant likewise states the proposal to work Monday to Thursday came initially from DD on the

basis that DD was agreeable to being alone for 1 hour on the Friday afternoon.

10. In December 2017 the claimant therefore decided to make a further informal request for flexible working. She had hoped to speak to Mr Wall informally as he normally made a visit to the factory at Christmas time and it would have the advantage of DD being present. However, that year Mr Wall did not visit the factory at Christmas as he was abroad. The claimant therefore sent him a further letter on 22 December 2017 which was passed to Mr Wall via SS and Ms Dyche. The informal letter [52] said:

> "As in my letter earlier on in the year I would like to reduce my working hours to 30. It was not possible at the time for the reasons that was discussed. I would like my new working pattern to be spread over Monday to Thursday. I have talked to the girls and I am of course willing to cover any busy periods. As stated above this is an informal request as I would like this new arrangement to begin on time for the new Holiday year April 2018."

11. The claimant's informal request was rejected in April 2018 in a message passed on via SS. The claimant states SS told her Mr Wall had declined her request as he did not trust that she would make good on her promise to help out in busy periods as he had been let down by others in the past. SS did not attend the tribunal to give evidence but there is a handwritten note at [56] apparently completed by her where she states she was told to tell the claimant the request was being refused as it would be detrimental to the company. Ms Dyche's evidence is that Mr Wall told SS that the reasons for the denial of the informal request were unchanged from the first request. Mr Wall states he told SS that the reasons for refusal were the same reasons given after the first request and that he was confused as to why she was asking again just 8 months after the first request as it was outside the flexible working procedures.

12. We found it likely that SS explained the refusal to the claimant in the way the claimant has outlined. This is supported by the fact the claimant refers to Mr Wall feeling let down in the past in her subsequent letter of 3 May 2018.

13. On 3 May 2018 the claimant made a further formal request, which is the request at issue in these proceedings. She again sent Mr Wall a letter stating:

> "This is a formal request for flexible working. It has been over 12 months since my last request and 5 months since I made an informal one. My current working pattern is 39 hours Monday to Friday. I would like my new working pattern to be Monday to Thursday 30

> hours. I have given the company the best of myself over the 16 years of service and as I explained in my first letter I need a better work life balance. I am sorry that you have felt let down in the past. Which was the reason I was given for the refusal of my request (informal). Let me stress again my willingness to help cover busy periods. I am also sorry you have not come to know me during the years I have worked for this company, and you. We have become a very close team of girls, we rely on each other and always support one another. We always strive to complete our work on time in a sometimes challenging environment. I would like this new arrangement to begin as soon as possible at least by the 1st June 2018. Again as always I am happy to discuss this at your convenience."

14. Ms Dyche states that Mr Wall dictated a letter in response on 1 June 2018 which she typed and posted on her way home that day, keeping a hard copy of the letter on file. The hard copy of the letter [63] states:

> "I am writing in connection with your most recent formal request (03.05.18) for flexible working to change your hours from 39 to 30 hours per week. It is with regret, that I feel I am unable to facilitate your request to work reduced hours for reasons that I have explained in the past:
>
> 1. Due to the small number of staff within your team, it would result in one of your colleagues lone working in the factory for an hour Monday to Thursday and two hours on a Friday.
>
> 2. It would be nigh on impossible to recruit and train a new member of staff to make up the shortfall in production, not to mention, the added problems that would occur during busy periods and holiday times where there is often a problem getting the work out in a timely fashion with the staff levels as they are currently…"

15. The claimant's claim is presented on the basis that she did not receive that letter of 1 June 2018. The respondent, in closing submissions and having heard the claimant give evidence on oath, accepted that, for unknown postal reasons, the claimant had not received the letter. At the relevant time however neither party knew of the other party's position.

16. The claimant thought there had been no response from Mr Wall. The claimant's evidence was that she continued to chase Mr Wall every couple of weeks through SS who told her that Ms Dyche was reminding Mr Wall. We did not have the benefit of hearing from SS as a live witness. Ms Dyche's evidence was that she thought the chasing had stopped when the letter was sent. Mr Wall's evidence was that he did not realise that the claimant had not received the letter until the tribunal claim was received and

that he had told SS to tell the claimant that he was sending a letter. The claimant, in turn, states that whilst SS had asked her if she had received the letter rejecting the first formal request, SS did not do the same in respect of the second formal request and that SS was well aware the claimant had not received a response as it was openly discussed in the factory.

17. We accept that the claimant continued to chase SS for a response and that SS was aware the claimant had not received a formal response. That said, it is possible that the degree of chasing that made its way through to Ms Dyche and thereafter Mr Wall did diminish over time. Likewise, Mr Wall or Ms Dyche did not check that the letter had been received.

18. On 9 August 2018 the claimant resigned. She states that the situation was causing her stress and she decided that she could not go on that way, so she took a chance, handed in her notice and joined an agency. The claimant's resignation letter stated "As per my terms of Contract I will continue to work for the company for the next week, completing my employment on the end of working day 17th August 2018. I have mostly enjoyed being part of the workforce/team here and thankful for the opportunities you gave me 16 year ago and during my time here. I hope that I can rely on you for a positive reference in future."

18. The claimant's ET1 states:

> "In May 2018 I again put in a formal request for flexible working to reduce my hours to 30. I had no response. No phone call No communication No discussion. I was, I felt simply ignored. I felt Mr Wall was hoping that I would just stop asking and that he would not have to deal with me. I felt so strongly about the way I was treated after so many years in Mr Walls employment that I left to take agency work. With no guarantee of long term employment."

The claimant said in evidence that she did not mention the flexible working issue in her resignation letter because she was hoping to get a good reference.

19. The claimant worked for a recruitment agency between 20 August and 14 October 2018 at TT electronics. On 15 October 2018 she took up permanent full-time employment in the same workplace as a quality inspector.

The parties' submissions and evidence on the rationale for refusing the request

20. Within their ET3 the respondent states that the first request was rejected because:

- Due to the small number of staff on site it would result in a colleague having to lone work which may have an increased impact on health and safety matters;
- There was a need to allow a colleague time off to care for her parents which meant the claimant was needed to work the full 39 hours to meet completion time scales;
- It would be extremely difficult to recruit. It takes 3 years to learn the unique weaving techniques used in invisible mending and to recruit a person to work 9 hours a week would be nigh impossible.
- The profit of the business has been lower than expected and Mr Wall had fed personal income into the business to keep it afloat.

21. The ET3 states that the response to the second, informal, request was that the claimant was not permitted to make a second application in the same year and that the reasons had not changed from the request made earlier in the year.

22. For the request at issue, the ET3 says the business rationale was again that a colleague lone working may impact on health and safety matters and again the extreme difficulties in recruiting. It also states:

> "It may have been more acceptable if a proposal had been made for a staggered plan towards a job share whereby we could have considered a training period over the next 1 – 3 years, perhaps bringing on board an Apprentice who could be trained. This is something we would have considered. However, with the business not meeting budget, the additional cost of Employer's NI and associated social costs, this would have had a financial impact on the business and may have resulted in loss of employment for others."

23. The respondent's written submissions state the request was rejected because the business:

- Could not assume additional costs (such as the cost of training and employing somebody else on a full-time contract);
- Was unable to re-organise other work staff and schedules;
- Was unable to recruit additional staff for 9 hours with the skill level required;
- Could not grant the request due to a likely impact on quality and performance;
- Was unable to meet customer demands and deadlines.

24. Mr Wall gave evidence as to the poor financial state of the respondent and the sums of money he had personally injected into the business to keep it afloat. He said that the claimant's colleagues did not want to work additional

hours as overtime. He said that he could not rely on the claimant's goodwill in promising to help out at busy times as it was not enforceable and he had had difficulties with other staff in the past where he had to force individuals to work their contracted hours. He said that he had asked SB's cousin, Tracey, if she could assist with the workload with some homeworking but that this was declined. Otherwise he did not explore again at that time other ways of replacing the claimant.

25. Mr Wall accepted that work levels did fluctuate and that in June 2018 work levels were not that bad but that the September to December period tends to be a busy time and he needed to plan ahead. He stated that he did not offer the claimant a trial period as he could not judge how long would be needed as a trial period as it would depend on when a problem arose. Mr Wall explained the difficulties in training and recruiting staff to such specialist work. He confirmed that the claimant had not been replaced and that he had axed some customers as a result. Mr Wall's evidence was that he was aware that lone working sometimes took place in the factory, for example, if someone was unwell for a day or two. He stated that some lone working had happened since the claimant left but that they tried to keep it to a minimum. The respondent does not have any written lone working policies in place.

26. The respondent asserts that the claimant resigned because she had secured a job in the factory where her husband worked and that the claimant has taken a full-time job with increased travel despite having made an issue of part time working and the need for work-life balance. The respondent says the claimant has suffered no financial loss.

27. The respondent also argues that the claimant's request did not include any detail about how the claimant thought the changes she was requesting might impact on the business or how any impact might be dealt with.

28. The claimant's position was that she considered her proposal was workable. She said that, and we accept, DD was prepared to be by herself for an hour on a Friday afternoon. Her evidence was, and we accept, that she and her colleagues were a small, close knit team who were used to some give and take. She said that if someone needed time off or there was sickness or holidays then they would sort out amongst themselves swapping days or hours or working additional hours but that there could be times when individuals had to lone work.

29. The claimant maintained in evidence that she did not think productivity would be affected as work fluctuated on a daily basis and the staff were not all flat out every day. She was also prepared to cover busy periods and she would have agreed to a trial period. She stated that the idea of training an apprentice was never discussed with her. Again we accept her evidence.

30. There is an unsigned statement from SB at [73] who did not appear as a live witness before the tribunal. SB explains that she has always found Mr Wall to be flexible, allowing her to work 3 days a week and around school hours when she had children and that she had also been allowed home working, time off to nurse her parents to alter the days she came in to work, and to make lost time up (for example when having to attend appointments and meetings relating to her children).

The legal principles

31. Section 80F(1) of the Employment Rights Act 1996 ("ERA") gives a qualifying employee the right to apply to their employer for a change in their terms and conditions of employment. This includes a change relating to the hours or times when the employee is required to work.

32. Under Section 80F(2) an application must state that it is such an application, specify the change applied for and the date on which it is proposed the change should become effective and explain what effect, if any, the employee thinks making the change applied for would have on the employer and how, in the employee's opinion, any such effect might be dealt with. The Flexible Working Regulations 2014 also provide that an application must be made in writing, must be dated, must state whether the employee has made previous applications and, if so, when.

33. Section 80F(4) provides that there must be a 12-month gap between applications made to the same employer.

34. Section 80G states:

"(1) An employer to whom an application under section 80F is made-

(a) shall deal with the application in a reasonable manner,

(aa) shall notify the employee of the decision on the application within the decision period, and

(b) shall only refuse the application because he considers that one or more of the following grounds applies –

(i) the burden of additional costs,
(ii) the detrimental effect on ability to meet customer demand,
(iii) inability to re-organise work among existing staff,
(iv) inability to recruit additional staff,
(v) detrimental impact on quality,
(vi) detrimental impact on performance,

(vii) insufficiency of work during the periods the employee proposes to work,
(viii) planned structural changes, and
(ix) such other grounds as the Secretary of State may specify by regulations.

35. Under section 80G(1B) the decision period is the period of 3 months beginning with the date on which the application is made, or such longer period as may be agreed by the employer and employee.

36. Under section 80H(1) an employee who makes an application under section 80F may present a complaint to an employment tribunal:

(a) that their employer has failed in relation to the application to comply with section 80G;

(b) that a decision by the employer to reject the application was based on incorrect facts; or

(c) that the employer's notification under section 80G(1D) was given in certain circumstances (this is not relevant to the facts of this particular dispute.)

37. Section 80I states that where an employment tribunal finds a complaint well founded it shall make a declaration to that effect and may –

(a) make an order for reconsideration of the application, and

(b) make an award of compensation to be paid by the employer to the employee.

38. The amount of compensation that may be awarded is such amount not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances. Under the Flexible Working Regulations 2014 regulation 6, the maximum amount of compensation that can be awarded is 8 weeks' pay. A week's pay is calculated in accordance with Chapter 2 of Part 14 of ERA and is subject to a maximum limit as set out in section 227 of that Act. In April 2018 the cap on a week's pay was £508.

39. In Commotion Ltd v Rutty [2006] IRLR 171 the Employment Appeal Tribunal held that in deciding whether an employer has made out a reason for refusing a request for flexible working, the tribunal is entitled to investigate the evidence to see whether the decision was based on incorrect facts. The tribunal is not entitled to look and see whether the employer acted fairly or reasonably in putting forward his rejection of the flexible working request. However, the tribunal is entitled to look at the ground which the employer

asserts was the reason why the application was not granted and to see whether it was factually correct. In doing so the tribunal must examine the evidence as to the circumstances surrounding the situation to which the application gave rise. In doing so the tribunal is entitled to enquire into what the effect of granting the application would have been, For example, could it have been coped with without disruption? What did other staff feel about it? Could they have made up the time and matters of that type.

Acas Code of Practice on Handling in a Reasonable Manner Requests to Work Flexibly

40. Acas has issued a Code of Practice and an accompanying guidance document on handling flexible working requests in a reasonable manner. Under Section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992 a failure to comply with a Code of Practice will not of itself render the person liable to proceedings. However, in any proceedings before an employment tribunal any Code of Practice issued by Acas shall be admissible in evidence, and any provision of such a Code which appears to the tribunal to be relevant to any question arising in the proceedings must be taken into account in determining that question. The longer guidance document does not have such a statutory effect.

41. The Code of Practice includes the following best practice guidance:

- The employer should arrange to talk with the employee as soon as possible after receiving their written request. If the employer intends to approve the request then a meeting is not needed;
- The employer should allow an employee to be accompanied by a work colleague for the discussion and any appeal discussion and the employee should be informed about this prior to the discussion;
- The employer should discuss the request with the employee;
- The employer should consider the request carefully looking at the benefits of the requested changes in working conditions for the employee and the business and weighing these against any adverse business impact of implementing the changes;
- Once the employer has made its decision it must inform the employee of that decision as soon as possible;
- The employer should inform the employee of its decision in writing as this can help avoid future confusion on what was decided;
- The employer should allow the employee to appeal the decision. It can be helpful to allow an employee to speak with the employer as this may reveal new information or an omission in following a reasonable procedure when consideration the application.

42. The Acas non statutory guidance document states that if an employer is unsure whether the arrangements requested are sustainable it might

choose to agree flexible working arrangements for a temporary or trial period rather than rejecting the request. In relation to rejecting an application on the grounds of "detrimental effect on ability to meet customer demand" the guide states that the employer could consider allowing a trial arrangement to see if it is sustainable over the longer term. In respect of "inability to re-organise work among existing staff" the guide states that the employer should (a) consider the cost of recruiting additional staff against the potential cost of losing the existing member of staff making the request and (b) consider talking to the team about any reorganisation of work before coming to a decision.

Discussion and Conclusions

Did the claimant make a qualifying request?

43. There is no dispute that the claimant was a qualifying employee. The tribunal is also satisfied that the content of the claimant's application met the requirements of section 80F(2) and the Flexible Working Regulations. Set in the context of the claimant's two earlier requests and the responses received to those, the tribunal is satisfied that the claimant's application did adequately set out the claimant's views on the effect the change would have on the respondent and how any such effect may be dealt with. In particular, she made clear her willingness to help cover busy periods and the commitment of her and her colleagues to complete work on time in light of the concern previously expressed, when rejecting the claimant's informal request, that Mr Wall had felt let down by other employees in the past.

Did the respondent notify the claimant of the decision within the decision period?

44. The respondent accepted in closing submissions that the claimant did not receive the letter notifying the claimant that her request had been rejected. Where the response is sent by letter the tribunal concluded that for the claimant to be notified of the decision she had to have read the letter or have had a reasonable opportunity of reading it. As the letter did not arrive, and the respondent did not adopt measures to double check the claimant did receive it, the claimant did not have a reasonable opportunity to read it. The tribunal therefore found that the respondent did <u>not</u> notify the claimant of the decision within the decision period.

Incorrect facts

45. The tribunal accepts that the respondent's rejection (albeit not received by the claimant) was rejected by Mr Wall because he considered that one or more of the following grounds applied:

    (i) the burden of additional costs,

(ii) the detrimental effect on ability to meeting customer demand;
(iii) inability to re-organise work among existing staff;
(iv) inability to recruit additional staff;
(v) detrimental impact on quality;
(vi) detrimental impact on performance.

46. The tribunal then went on to consider whether the respondent's decision to reject the application on those grounds was based on incorrect facts. Here the tribunal concluded that the respondent's decision was based on incorrect facts. Firstly, the claimant's application was dealt with on the mistaken assumption that the was still asking to work shorter hours Monday to Friday. In fact, in the informal request and the second formal request (which is the subject of these proceedings) the claimant had changed her request so that she would not work on a Friday. Mr Wall's rejection on the basis that "a colleague would end up lone working in the factory for an hour Monday to Thursday and two hours on a Friday" was factually incorrect. There was, in fact, only a potential lone working issue for one hour on a Friday. The tribunal was further satisfied that the respondent failed to appreciate or take into account that if the applicant were granted DD would have been agreeable to lone working on a Friday afternoon for an hour and that some lone working was feasible bearing in mind (i) the respondent had no written policy prohibiting it and (ii) it already happened on occasion in any event.

47. The tribunal accepted the difficulties with recruiting additional staff for such specialist work, particularly in the short term. However, the respondent also needed to properly weigh into the balance, and did not do so, the risk of losing the claimant as an employee and with it the total loss of her skilled work which could not easily be replaced (as indeed has happened). The tribunal therefore concluded that the respondent's ground of "inability to recruit additional staff" was based on incorrect facts. The tribunal also concluded the respondent's ground of "burden of additional costs" was based on incorrect facts as, given the difficulties with recruiting, if the claimant's request were granted the respondent would save a small amount of salary cost whilst retaining the claimant's skilled work.

48. The tribunal also concluded that the respondent's grounds based on a detrimental effect on ability to meet customer demand / quality/ performance were based on incorrect facts. Mr Wall did not regularly visit the factory and he did not have first-hand day to day knowledge of its working, organisation, and the give and take demonstrated by the claimant and her colleagues on a daily basis on the ground. The tribunal was satisfied that the claimant, was prepared to help out at busy times, that the work demands were not always constant, and that a long trial period to monitor the impact on any fluctuating demands would have been feasible.

Reasonable manner

49. The tribunal considered whether the respondent dealt with the claimant's flexible working application in a reasonable manner. In considering this question the tribunal considered the Statutory Acas code of practice.

50. The tribunal found that the respondent did not deal with the application in a reasonable manner. In particular:

    (a) The respondent did not have a meeting or a telephone discussion with the claimant about the application;
    (b) The claimant was not offered the right to be accompanied by a trade union representative or work colleague;
    (c) The respondent did not check the claimant had received the letter notifying her the request had been rejected;
    (d) The claimant was not offered a right of appeal (even if it were back with Mr Wall).

51. These were material errors as if the above steps had happened it is likely that Mr Wall's error about the fact there was only potentially one hour of lone working for DD would have come to light and there might have been a different outcome to the claimant's request. Likewise, there would have been the opportunity to discuss and potentially resolve the other incorrect facts discussed above. Taking all those matters into account and considering, as a whole, the application and the procedure adopted the tribunal found that the application was not dealt with in a reasonable manner.

Remedy

52. It is important to bear in mind this is not a constructive unfair dismissal claim. The tribunal therefore does not need to decide whether the claimant resigned in response to a fundamental breach of contract by the respondent or has directly suffered financial loss as a result of any breach of the flexible working regulations by the respondent. Instead, the tribunal has a wide discretion to award compensation (up to 8 weeks' pay) that it considers just and equitable in all the circumstances. The tribunal has taken into account that the respondent (i) did not deal with the request in a reasonable manner, (ii) did not notify the claimant of the refusal in the decision period and (iii) reached a decision based on incorrect facts and that the claimant is likely to have been caused stress by the failings. There were therefore significant breaches of the legislative requirements and much of the problem could have been addressed by simply having a discussion with the claimant. The

respondent also failed to follow the Acas Code of Practice. However, the tribunal also takes into account (i) that the respondent is a small employer with limited resources, (ii) that the respondent did try to respond to the request, (iii) that the claimant could have done more before resigning to make it clear she had not received a response and was contemplating resigning and (iv) she did not suffer a financial loss when changing employment. On balance, the tribunal therefore awards the claimant 6 weeks pay.

Summary

53. In summary:

(a) The tribunal makes a declaration that the claimant's complaint under section 80F of the Employment Rights Act I well founded:

(b) The respondent must pay to the claimant compensation in the sum of 6 weeks' pay/ ***£1832.22***

_____

Employment Judge Harfield
Dated: 16 September 2019

JUDGMENT SENT TO THE PARTIES ON

17 September 2019

……
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS