EMPLOYMENT TRIBUNALS

Claimant: **Mrs Sharon Smith**

Respondent: **The Vicarage Freehouse & Rooms Limited**

Heard at: **Midlands West Employment Tribunal sitting at Stoke Combined Court Centre**

On: 21, 22 and 23 October 2019

Before: Employment Judge Cookson sitting with Mr Wagstaffe and Mr Pitt

Representation
Claimant: in-person
Respondent: Mr Johnson (consultant)

JUDGMENT

It is the unanimous decision of this employment tribunal that:

1. **The claimant was not subject to any unauthorised deduction from her wages and her claim in this regard is dismissed;**
2. **The claimant has not shown that she was subject to unlawful indirect discrimination on grounds of her sex and her claim in this regard is dismissed;**
3. **The claimant's claim that she was subject to less favourable treatment under regulation 5(1)(b) of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ("PTWR") is well founded and is upheld;**
4. **The claimant has not shown that she was prevented from taking rest breaks to which she was entitled under the Working Time Regulations 1998 and her claim in this regard is dismissed.**
5. **The issue of remedy will be determined before the same tribunal at 10am on 14 January 2020.**

Reasons

Background

1. Oral reasons for this decision were given at the hearing on 23 October 2019. The claimant, by an email on 28 October 2019, asked for written reasons relating to the decision on her PTWR claim and reasons for that part of our decision are given below. To help the parties understand those reasons the facts as found by the tribunal have been set out in some detail below.

Issues

2. By a claim form presented on 25 September 2018, following a period of early conciliation from 31 July to 31 August 2018, the claimant brought the following complaints

    a unauthorised deduction from wages;

    b indirect sex discrimination

    c less favourable treatment under the PTWR;

    d refusal to permit the taking of rest breaks under the Working Time Regulations 1998.

3. In its response dated 25 October 2018, and amended on 5 April 2019, the respondent denied the claimant's claims.

The Law

4. The PTWR confer a right for part-time workers not to be treated by their employer less favourably than that employer treats comparable full-time workers, either as regards the terms of their employment contract (Reg 5(1)(a)); or by being subjected to any other detriment by any act, or deliberate failure to act, of the employer (Reg 5(1)(b)) if the reason for the treatment is that the worker is a part-time worker, and the treatment is not justified on objective grounds. The claimant brings a Reg 5(1)(b) claim in these proceedings.

5. The burden of proof lies on the claimant to show that less favorable treatment, on the balance of probabilities.

The evidence

6. In reaching its decision the employment tribunal panel considered the following:

    6.1 The documents in the 291 page bundle of documents, which we were referred to in evidence or in witness statements, and an additional document which had been prepared by the respondent's representative and which was included in the bundle as page 292, and which I have marked and referred to below as R1.

    6.2 A bundle of witness statements provided by the Respondent including its witness statements and that of the claimant which I have marked and

referred to below as R2.

6.3 We received oral evidence from the claimant to support her own case. For the respondent we heard witness evidence from

a Jamie Reilly, the claimant's line manager;

b Deborah Naidoo, also a breakfast supervisor and colleague of the claimant and her comparator for the purposes of her part time workers claim;

c Dominic Heywood, the respondent's chief executive officer;

d Susan Reilly, an employee of the respondent.

Findings of Fact

Background

7. The claimant was employed by the respondent as a breakfast supervisor from 26 March 2017 until her resignation on 3 May 2018. The Vicarage Freehouse and Rooms is a country pub, restaurant and hotel in Holmes Chapel, Cheshire, operated by the respondent as part of the umbrella brand Flat Cap Hotels. We have been told that the respondent employs around 40 staff at its Holmes Chapel site.

8. The claimant has worked in a number of hospitality environments. She has two young children and in 2017 she had decided to return to work on a part-time basis following a maternity break with her second child. At that time, she was still breastfeeding. The claimant tells us that she decided to approach the respondent on a speculative basis to see if they had any work available. At around the same time, the respondent had advertised for a breakfast supervisor on the "Indeed" website. The claimant spoke to Dominic Heywood, who gave evidence to us, and he had confirmed to her that they were indeed looking for staff. She emailed him a copy of her curriculum vitae and she was then invited to an interview with Robert Smith who was the hotel manager at the time. Mr Smith has subsequently left his employment with the respondent and was not a witness in these proceedings.

9. The claimant's evidence was that at the interview with Mr Smith she explained that her husband was undergoing chemotherapy but that he was hoping to return to work soon. She explained that from the time that he returned to work she would only be able to work on Mondays and Fridays because these were his non-working days, for childcare reasons. Until then she could be flexible. She was looking for 16 hours work and a 7am to 3pm shift would be perfect to fit round her requirements looking after a 10 month-old baby and her older daughter who is at school. She had asked which days were the busiest and she had been told that Wednesdays and Sundays were generally the busiest so she had indicated that she would be happy to work those two days and could also help out on other days if possible.

10. It is relevant to note at this stage that unfortunately the claimant's husband's treatment and absence from work went on for much longer than had initially been expected and in fact he was not able to return to work until April 2018.

Terms of the claimant's employment

11. The claimant told us that Mr Smith said that ideally he would like to have her working full-time, but that he would accommodate the hours that she was looking for. The claimant provided her statutory right to work documents and completed the start of work form which can be found at pages 41 to 43 in R1. There is a section in that document for hours of work to be set out and the claimant told us that she filled in the form with Mr Smith there and he told her what to put in the job information section. She filled in 16 hours per week in the "hours per week" section, her job title as breakfast supervisor in the front of house department and that she would be paid £8 per hour. This document is described as being no more than the provision of personal information by the respondent, but it was their form and it was returned to, and processed by, the respondent. We had no evidence that the respondent ever contested what was set out in that document. It is material that there is no evidence that a statement of employment or contract of employment was provided to the claimant at this time.

12. Mr Heywood told us that he assumed that the claimant had been employed on a flexible basis and he was not aware that Mr. Smith had agreed anything else. We have no reason to doubt that evidence, but it also does not mean that the claimant's evidence is incorrect. She gave a detailed and credible account of her meeting with Mr Smith and we have no reason to doubt that when she left that meeting with Mr Smith the claimant thought she had a very particular agreement with him.

13. In light of the nature of the claims brought by the claimant, it is important that as an employment tribunal we make findings about what the terms of her employment were at this point in time. The respondent was not able to present any evidence contesting the claimant's evidence of her discussion with Mr Smith. No steps were taken by the respondent to correct the information which the claimant set out on the personal information form under the heading job information. It is not disputed that the claimant was taken on as an employee so, although there may not have been a written document, clearly there was a contract of employment in place between the parties. The only evidence available to us is that the claimant was initially employed on the basis she has set out in her evidence, namely that she would work 16 hours per week as breakfast supervisor, on a flexible basis as to which days she worked, but initially on Wednesdays and Sundays.

14. However, whatever was agreed between the parties when the claimant met Mr Smith, once she began employment that initial agreement as to working hours was not followed. As the document at page 292 in R1 shows (noting that the hours worked in the first two weeks are shown incorrectly and have been inverted) the claimant never in fact worked for just 16 hours. On two occasions she worked more than that but, on the whole, she worked far less than 16 hours

per week and her hours of work varied. The claimant tells us that she asked for additional hours of work but we saw no evidence that she alleged that there had been a breach of contract by the respondent. We find the initial agreement reached with Mr Smith was varied by the conduct of the parties almost immediately to become an agreement to work on a flexible basis.

15. The claimant told us that she had agreed with Mr Smith that she would work from 7am. However, she was scheduled to work from 6am on many of those initial occasions when she worked. In addition, rather than working until 3pm she was usually scheduled to work until 12pm.

16. The respondent offers breakfast to its hotel guests and to other customers. It appears to be agreed by all of the witnesses that it is usually the weekends which are the busiest, and Sunday is usually the busiest day of the week. Mondays and Fridays are usually the quietest days, but sometimes the hotel has conferences and other events which will make breakfast then busier, especially on a Monday. During the week, breakfast is served from 7am and is always busy from the time when breakfast starts to be served so it is necessary for someone to set up breakfast from 6am.

17. We were told that in the summer of 2017 the respondent identified that a number of front of house staff, including the claimant, did not have contracts of employment. This was revealed as the result of an HR audit. The respondent says this failure was due to a failing on the part of Robert Smith. As a result, a statement of main terms of employment, along with a number of other documents, were prepared for those employees. The documents prepared for, and signed by, the claimant can be found at pages 44 to 51 in R1. What was signed included a statement of employment terms, a deductions from pay agreement, a 48 hour opt out agreement and a restrictive covenant agreement. Mr Heywood told us that these were issued to all of the relevant employees in October 2017. The claimant told us that while on shift one day she was told that there was a contract waiting for her in a drawer. She looked at the documents while she was working and signed them at the time, without having read them carefully. She says now she thought they were related to working time because the 48-hour opt out agreement was placed at the top of the pile of documents for her to sign, and some confusion on her part is perhaps understandable in light of the slightly curious wording in the signature clause at page 46. However, the claimant also told us that she knew the document referred to other matters such as holiday and she also acknowledges that she was given a copy of the agreement for her records. She did not raise any concerns about the discrepancy between what she says she thought her agreement with Mr Smith had been and the contents of that document at the time.

18. The claimant says that there was no consultation with her about the agreement. Mr Heywood told us that he did not have meetings with employees who were issued with the contracts unless they raised concerns. This would be consistent with the belief of the respondent that the claimant was employed on a flexible hours basis as the contract would have been a confirmatory document. Mr

Heywood did not meet with the claimant at that time because she did not raise any concerns. The tribunal notes that the claimant refers to the document she signed as a contract when she asks for a copy during discussions with Mr Reilly sometime later. This exchange can be found at page 221 of R1. If the tribunal are wrong that there was a variation through the conduct of the parties in the months following the commencement of the claimant's employment, we find that there was a variation of contract by the claimant when she signed the contract in November 2017 and worked without objection to its terms for a significant period of time.

The breakfast service hours

19. We heard conflicting evidence from witnesses about exactly what the arrangements for setting up breakfast are. On one hand we were told that it is essential that the setup was undertaken by a supervisor by Mr Heywood, but Mrs Reilly told us that she and the supervisor would take it in turns to set up. The staff take it in turns to set up because this means they benefit from an extra hour's pay. Certainly from the rotas in R1, it appears that it was not always the breakfast supervisor who was on shift at 6am and there are clearly occasions when it is the supervisor who is on shift from 7am and another member of staff has set up breakfast. The rotas appear to be consistent with what Mrs Reilly told us and we prefer her evidence. On occasions when there was an event, one of the senior managers is also on duty.

20. On quiet Mondays and Fridays when there is no conference event, only one member of staff is required to cover breakfast. On most days breakfast is covered by two members of staff and at weekends it sometimes requires three employees.

21. In his evidence Mr Heywood told us that the standard shifts are 6am to 12pm, 12pm to 5pm and 5pm to 12am. Reference was also made to an "11am to 11pm full shift". Mr Heywood told us that the company does not have a dedicated 7am to 3pm shift, which he described as an "overlapping" shift, which would only be required if there was sufficient business demand. In cross-examination he told us that a shift like this would be very unusual. However, the rotas which were included in the bundle of documents suggest that it is commonplace for employees to work on shift patterns which are different from the standard shifts described. In particular, there are numerous examples of staff working 7am to 3pm shifts.

The claimant's comparator

22. The claimant points to Deborah Naidoo as her full-time comparator for the purposes of her less favourable treatment claim on the grounds of her part time status. In her witness statement at page 23 of R2 Mrs. Naidoo describes herself as a working in a "full-time" role. In response to a supplemental question from the respondent's representative she qualified that by saying that she was employed on a variable hours contract, but in response to a subsequent question from the panel, she said again that she considered herself to be full-time and that she worked essentially the same hours every week. Mrs. Naidoo

also identified that she works full-time in questions from the claimant in cross-examination. This description of her is consistent with responses which Mr Reilly gave under cross examination. When he was being asked about page 249 of R1 he described Mrs. Naidoo as the "full-time supervisor". When we considered the rotas we could see that although there are sometimes slight variations in working days or start and finish times, Mrs. Naidoo's working hours are very consistent.

The allocation of hours

23. The panel heard at sometimes contradictory evidence from witnesses in relation to shift patterns and the allocation of hours. Having carefully considered that evidence, on the balance of probabilities, we find the following facts. Rotas were prepared by Mr Robert Smith as the hotel manager, and then subsequently by the restaurant managers, Mr Reilly, who we heard evidence from, and by another restaurant manager, who can be seen in the documents referred to as Nicola, who was not a witness.

24. Rotas at that time was circulated via social media. It appears photographs of the rotas were distributed via "group chats" on Facebook. The quality of the rotas in the bundle is very poor. Unfortunately, it appears that the only copies of the rotas which were available to us are copies which were kept by the claimant. Very surprisingly we are told that the respondent does not keep details of shifts worked, has not kept copies of rotas and was unable to produce any original documents itself.

25. Mr Reilly told us that when allocating shifts he would start with a blank sheet and "fill in the full-time employees first" and then "slot" part-time employees in "to fill the gaps".

26. The claimant says that she was subject to a detriment because the respondent had a practice of only offering her very limited opportunities to work a 7am to 3pm shift (see page 28 of R1, Employment Judge Camp's case management summary). In essence the claimant says priority was given to the full-time workers for these shifts. We can see on occasions she asked for hours and shifts and was told that those shifts had been given to other employees, see page 245 for example. This seems to be consistent with how Mr Reilly told us he approached the allocation of shifts.

27. The reason the respondent gave for the claimant not being allocated more hours was not because she was part-time, but because she made herself less available. Evidence which the respondent relies upon to demonstrate this comes from social media and text messages which are included in the bundle of documents. We have seen various messages between the claimant and Mr Smith, between the claimant and Mr Reilly and between the claimant and the other manager Nicola. We do not find that the evidence in those text messages paints the picture which the respondent suggests.

28. The messages show that the claimant was working from 6am at the beginning of her employment. At page 209 of R1 (8 August 2017) there is a message which the claimant sends saying that the 6am starts are "killing" her and at page

212 of R1 one where she says that the 6am start that week will have to be the last one (29 September 2017). In October 2017 the claimant asked why her hours have dropped and she is told it is because the new supervisor and full-time breakfast team member have started working. We note the reference there by Mr Reilly to the "full-time" breakfast team member which is consistent with our finding that this respondent did have members of staff who were regarded and identified as full-time, notwithstanding that their contracts of employment were, we are told, "flexible" and give no guarantee of any particular hours. At this time the claimant was told that she would only be given Saturday and Sunday shifts (page 213, R1) and the reason Mr Reilly gives is that the supervisor, Mrs Naidoo will be covering the week time shifts (page 214, R1). In January 2018 the claimant asked for more hours and was told that she cannot have the shifts she asked for because "people already work those shifts" (page 249, R1). This again contradicts the respondent's evidence that all employees are working on a flexible basis with no guaranteed or set working hours. We also find that this evidence is consistent with the finding we have made on the basis of the evidence from Mrs Naidoo and Mr Reilly that some employees were being given the same hours each week. We find that in this regard those employees were prioritised over the claimant when hours were allocated.

29. By this time the claimant is one of the longest standing members of the breakfast team and the employment tribunal struggled to find any reason for priority being given to the other members of staff other than that they are regarded as "full-time" and therefore entitled to be given "their hours" first.

30. The respondent witnesses claimed that the claimant limited herself to very restricted hours. The respondent's witnesses gave some contradictory evidence on this. Mr Heywood refers to this in paragraph 14 of his statement in R2. Mr Reilly said the claimant would not work after 12 at one time (paragraph 9 of his statement, page 17 in the witness statement bundle) and this was put to the claimant in cross examination as a general restriction, but she explained it had been on a short term basis for only a week or so when her husband was really poorly. Mrs Naidoo referred to the claimant saying she could only work Mondays and Fridays (paragraph 7 of her statement, page 24 in the witness statement bundle). The claimant did ask for shifts on a Monday or Friday in the week of 24 January 2018 but she did not say that those are the only shifts that she could ever work from then onwards. The claimant told us that she could be flexible in the hours that she worked until her husband was able to go back to work. This had initially been expected to be February 2018, but in fact he did not go back to work until April 2018. It was only then the Monday or Friday shifts became relevant.

31. In a social media message to Mr Reilly at page 222 of R1, the claimant told him that she could still work on Sundays and Wednesdays, which had always been her usual days of work, until at least 25 February 2018. The only limitation we can see the claimant putting on her hours on any kind of permanent basis is in October 2018 when she said that she was unable to work on Thursdays and Saturdays for childcare reasons (p243, R1).

32. Much of the evidence which the respondent appears to rely on to show the claimant's lack of availability is in the context of text messages when the claimant is offered additional shifts at short notice. The employment tribunal finds that these hours were arranged on a quite different basis from the shifts on a week to week basis which are set out in rotas in advance.

33. It can be seen for example that the claimant is not able to work when she is offered shifts on the same day at page 233 and that she says she is unable to work on Mother's Day 2018 when she is asked to work by a message on 8 March 2018. Mother's Day was on 11 March in 2018 and the claimant has already made family plans. On another occasion the claimant says she cannot work on a Wednesday because of a funeral and she also refuses work at short notice on one occasion because her mother-in-law is unwell. The claimant has young children and it is not surprising that she cannot make herself for available for work sometimes only hours later. That is quite different from the claimant making herself generally unavailable for planned shifts a week in advance which appears to be the respondent's case.

34. On several occasions the respondent's witnesses referred to the claimant's unavailability being clear from the book which was kept for the purposes of noting availability in the restaurant. However, that evidence was not produced to us and is disputed by the claimant. The tribunal also notes that on an occasion when she phoned in sick because she was unwell, the claimant offered to swap a shift and cover somebody else's shift later in the week. On other occasions she asked if she could work other individuals' shifts which she thought might be available. The evidence which the respondent says shows that the claimant was constantly making herself unavailable does not suggest that to the tribunal. The idea that the claimant had made herself generally unavailable appears to have arisen on the basis of a perception amongst some of the respondent's staff. This is reflected in the fact that evidence was offered on this by Mrs Reilly who herself admitted that she rarely worked with the claimant and appeared to be relying on second-hand evidence in this regard. The tribunal finds that the evidence relied on by the respondent as showing a general position was misrepresented and unreliable.

Submissions

35. In oral submissions Mr Johnson, the respondent's representative argued that Mrs Naidoo is not a comparable full-time worker for the purposes of the PTWR because she was employed on a flexible hours contract. Mr Johnson referred us to a case in Scotland the name of which he could not recall and a case involving a university lecturer. We believe the cases he was referring to are The Advocate General for Scotland v Barton [2015] CSIH 92 and Roddis v Sheffield Hallam University (UKEAT/0299/17). He also argued that the reason for the claimant not being offered shifts should be found to be the reaons suggested by Mr Heywood. The claimant made oral submissions briefly summarising the evidence that she relied upon to support her claim.

Application of the law: less favourable treatment in accordance with Regulation 5 of the Part-time Workers (Less Favourable Treatment) Regulations 2000 ("PTWR").

36. As set out by Employment Judge Camp in his preliminary case management order the first question the employment tribunal has to ask is whether the respondent had a practice of only providing very limited opportunities to the claimant to work 7am to 3pm shifts. We find that the simple answer to this question is yes, and indeed this was acknowledged by the respondent's own witnesses. The respondent's witnesses told us the reasons why the claimant was not offered these shifts was either (1) because of the claimant's unavailability; but as our findings explain, we do not find evidence that the claimant consistently made herself unavailable for shifts when she was given notice; or (2) on the evidence of Mr Heywood, that this is simply not a common shift which is available to any employees. That assertion is not consistent with the numerous examples of 7am to 3pm shifts which can be seen in the rotas included in R1. We find that the respondent did have a practice of offering some 7am to 3pm shifts to employees who worked in the breakfast team and that these were rarely offered to the claimant.

37. On the basis that we find that the respondent did have a practice of offering very limited opportunities to the claimant to work 7am to 3pm shifts, we have to ask whether the respondent, by applying that practice to the claimant, treated her less favourably than it treated or would have treated a comparable full-time worker.

38. The tribunal found that neither of these cases which Mr Johnson referred us to assisted us in the questions that we have to answer. The Sheffield Hallam case looks at whether a worker employed on a zero hours basis could compare himself to a permanent full-time employee and in the Barton case it was found that the fact that the comparator had been treated as a full-time employee for certain statutory pension purposes did not mean that it could be said that he was a full-time employee as a matter of fact. Mrs Naidoo and the claimant were employed on the same type of contract and it is claimed that Mrs Naidoo was identified and treated as a full-time employee by the respondent.

39. The tribunal turned to the wording of the relevant statutory provision. Regulation 2(1) of PTWR, states that *"a worker is a full-time worker for the purposes of these regulations if he is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the worker's employer under the same type of contract, is identifiable as a full-time worker"*. In this case we have found that Mrs Naidoo was identifiable as a full-time worker through the custom and practice of the respondent. That was how she was referred to by the restaurant manager. That was how she described herself. We can see that other employees employed on flexible hours contracts were also identified as "full-time" and Mrs Naidoo's working patterns are consistent with her being treated as a full-time worker by the respondent. We find that Mrs Naidoo is an

appropriate comparator to the claimant in these proceedings for the purposes of the PTWR.

40. In relation to the question of detriment we have already identified that Mr Reilly admitted that full-time employees were given their shifts first and that part-time employees were used to fill in any gaps. This approach resulted in less hours been given to the claimant, she was not often offered any available 7am to 3 pm shifts and that was a detriment to her.

41. On the question of whether that treatment was justified on objective grounds contrary to Regulation 2(2)(b) it is clearly legitimate for the respondent to organise its workforce to meet the demands and needs of its customers. The tribunal can understand why the respondent was not able to offer the claimant shifts on Mondays, when there was no conference or event, and Fridays when only one employee was required who would have to start at 6 am to set up breakfast for guests. However, on a more general basis we have not been presented with evidence which explains why the claimant could not have been offered other shifts, including the 7am to 3pm shifts, which were being made available to the employees identified as full time.

42. The approach which the respondent took to the assignment of shifts was not proportionate and could have been organised in a way which did not result in the less favourable treatment of a part-time worker whilst still meeting the respondent's business needs. Accordingly, we find that the respondent has not justified the less favourable treatment which the claimant was subject to and her claim in that regards succeeds.

Remedy and orders

43. After the parties were given the tribunal's decision they were encouraged to seek to resolve the issue of compensation between themselves without a further hearing, if that is possible. The parties are reminded that the services of ACAS remain available to them. If that is not possible the issue of remedy will be determined by the same tribunal panel on 14 January after hearing any relevant evidence and submissions from the parties.

44. We did not give orders to the parties at the time of the decision but I consider that it will useful to do so now to ensure the efficient conduct of the remedy hearing if it is required.

45. **Accordingly the parties are ordered as follows (pursuant to the Employment Tribunal Rules of Procedure):**

45.1 **Statement of remedy / schedule of loss**

The claimant must provide to the respondent, copied to the tribunal, by **4pm on 5 December 2019** a document – a "Schedule of Loss" – setting out what remedy is being sought and how much in compensation and/or damages the tribunal will be asked to award the claimant at the final hearing in relation to each of the claimant's complaints and how the amount(s) have been calculated, together with copies of any documents

and/or statement of evidence that she wishes to rely upon at the remedy hearing.

45.2 **Counterstatement of remedy / counter- schedule of loss**

The respondent must provide to the claimant, copied to the tribunal, a counter schedule of loss if it disagrees with the Claimant's schedule by **4pm on 20 December 2019** together with copies of any documents and/or statements of evidence that it wishes to rely upon at the remedy hearing.

45.3 **Remedy bundle**

The claimant must prepare a paginated file of documents ("remedy bundle") relevant to the issue of remedy and in particular how much in compensation and/or damages they should be awarded and provide the respondent with a 'hard' and electronic copy of it by **7 January 2020**. The documents must be arranged in chronological or other logical order and the remedy bundle must contain the up to date schedule of loss and any counter schedule of loss at the front of it.

45.4 **On the day of the remedy hearing** (but not before that day)

a the claimant must lodge with the Tribunal four copies of the remedy bundle(s),

b if either party is relying on witness statements, four hard copies of the witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with rule 44), must be lodged by whichever party is relying on the witness statement in question;

c three hard copies of any written opening submissions / skeleton argument must be lodged by whichever party is relying on them / it.

45.5 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.

45.6 **Public access to employment tribunal decisions**

The parties are reminded that all judgments and reasons for the judgments are published, in full, online at *www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

45.7 **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal**

offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.

45.8 **Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

Employment Judge Cookson
18 November 2019