



# EMPLOYMENT TRIBUNALS

## Claimant

Ms S Sharma

## Respondents

Career Teachers Ltd

**Heard at:** London Central

**On:** 5, 6, 10 March 2020  
In chambers: 9 March 2020

**Before:** Employment Judge Lewis  
Ms S Samek  
Mr D Carter

## Representation

**For the Claimant:** In person 5-6 March;  
with support of Mr Newton (husband) 10 March 2020.

**For the Respondent:** Ms S. Bowen, Counsel

## JUDGMENT ON LIABILITY AND RESERVED JUDGMENT ON REMEDY

The unanimous decision of the tribunal is that:

1. The claimant (Ms Sharma) was unfairly constructively dismissed.
2. The claimant was also constructively dismissed under the Equality Act 2010 as a result of going onto statutory maternity leave.
3. The claimant was treated unfavourably because she was about to or had exercised her right to statutory maternity leave in the following respects:
  - a. By recruiting another employee to cover the Lewisham desk on a permanent basis

- b. By Sarah Mitchell telling the claimant that she was the highest paid consultant and giving her the impression by her comments that she did not want the claimant to return to the business but was obliged by law to allow her to
  - c. By failing to provide clarity prior to her maternity leave commencing in relation to whether the claimant could return to her original role on the Lewisham desk
  - d. By telling the claimant in the return to work meeting in January 2018 that there were alternative desks that she could cover on her return instead of the Lewisham desk.
4. For the discrimination under the Equality Act 2020, the tribunal awards **£24,800** (£20,000 injury to feelings + £4800 interest).
  5. For unfair dismissal, the tribunal awards **£2024** (a basic award of £1524 and £500 for loss of statutory rights).
  6. No adjustment of the award is made for any breach of the ACAS Code is made.

## REASONS

### Claims and issues

1. Ms Sharma has brought claims for pregnancy / maternity discrimination and constructive dismissal.
2. The issues were set out in the tribunal's letter recording the case management hearing on 14 January 2019 and confirmed with the parties at the outset of the present hearing as follows:

#### Jurisdiction (time-limits)

- 2.1. Are any or all of the discrimination claims out of time?
- 2.2. If so, do the claimant's allegations amount to an act extending over a period so as to bring the claims in time?
- 2.3. Would it be just and equitable to extend time for submitting such claims?

#### Unfair constructive dismissal

- 2.4. Did the respondent fundamentally breach the claimant's contract etlg her to resign? The conduct the claimant relies on is that by 2 April 2018 she had not been provided with confirmation following her maternity leave that she could return to her original role covering the Lewisham area.
- 2.5. Was the breach a reason for the claimant's resignation?
- 2.6. Did the claimant affirm?

2.7. If the claimant was constructively dismissed, was the dismissal unfair?

Discrimination on grounds of pregnancy or maternity – s18(2)(a) and s18(4)  
Equality Act 2010

2.8. Did the respondent treat the claimant unfavourably:

- a. By recruiting another employee to cover the Lewisham desk on a permanent basis
- b. By Sarah Mitchell telling the claimant that she was the highest paid consultant and giving her the impression by her comments that she did not want the claimant to return to the business but was obliged by law to allow her to
- c. By failing to provide clarity prior to her maternity leave commencing in relation to whether the claimant could return to her original role on the Lewisham desk
- d. By telling the claimant in the return to work meeting in January 2018 that there were alternative desks that she could cover on her return instead of the Lewisham desk, but that the claimant would need to start again, meaning those desks were likely to generate significantly lower levels of commission compared to the Lewisham desk the claimant had built up
- e. By constructively dismissing the claimant?

2.9. Did the unfavourable treatment take place in a protected period and/or was it in implementation of a decision taken in the protected period?

2.10. Was any unfavourable treatment because of the pregnancy or because the claimant was exercising or seeking to exercise or had exercised or sought to exercise the right to ordinary or additional maternity leave?

**Summary of claim**

3. Ms Sharma worked as a recruitment consultant on Career Teachers' Lewisham desk. Her complaint is essentially that when she went onto maternity leave, a permanent replacement was recruited for that particular desk, and that she was never given a concrete reassurance she could go back to the same desk. She says she was generally met with vagueness and encouraged to look at alternative posts, and that ultimately she felt she needed the security of a new job and resigned. Career Teachers argues that they intended to move her maternity locum into another position if Ms Sharma wanted to return to her same desk and that she was never discouraged from doing so. It says she clearly resigned in order to take a higher paid job of higher status.

4. There were significant disputes of fact, particularly regarding what was said in a series of meetings between Ms Sharma and Ms Mitchell. The outcome of the claims would be greatly influenced by what the tribunal decided, on the balance of probabilities, was actually said by each side. For that reason, we have

set out in more detail than usual what Ms Sharma and Ms Mitchell each say happened and the supporting evidence, before explaining the reason for our findings.

### **Procedure**

5. The tribunal heard from the Ms Sharma and, for the respondent, Sarah Mitchell and on remedy, Morag Forse. Ms Forse's witness statement was originally written for a hearing in April, but she was able to give oral evidence on the updated position.
6. Ms Sharma submitted an unsigned witness statement from Mani Das. She said she was not calling Ms Das. The tribunal explained we would read this document but could not give its contents much importance because Ms Das had not come to the tribunal to answer questions. Career Teachers did not object to this approach.
7. There was an agreed trial bundle of 231 pages.
8. On the final day of the hearing, Ms Sharma's husband attended to help represent her as she has dyslexia. This was absolutely fine. Ms Sharma had not told us at the start of the hearing that she had dyslexia. Apparently she told the tribunal at the aborted hearing in April, but this had not been passed on.

### **Fact findings**

9. Career Teachers Ltd ('Career Teachers') is an employment business which supplies schools in and around London with teachers and support staff. Ms Sharma started work for Career Teachers as a Senior Consultant on 12 January 2015. She received basic pay plus substantial commission.
10. Recruitment Consultants are given a particular 'desk' ie a geographic area within which to work. Ms Sharma was headhunted from another company on the promise of the Lewisham desk within the South Primary Team.
11. Ms Sharma's line manager was Charlene Williams (now Cornwall). Ms Cornwall reported to Michelle Waller, the Operations Director. Ms Waller reported to the Group Managing Director. From December 2016 – August 2018, this was Sarah Mitchell.

### **Maternity leave and recruitment of Ms Nicholl**

12. In the last week of November 2016, Ms Sharma told Ms Waller that she was pregnant.
13. After a while, Ms Sharma began to hear rumours that Career Teachers were finding it difficult to recruit a temporary maternity locum and that

someone would have to be recruited on a permanent contract so as to entice them away from their current job. She gained the strong impression that this meant a new person would be recruited permanently to her own role on the Lewisham desk. On 1 March 2017, Ms Sharma asked to speak to Ms Mitchell about this.

14. Ms Mitchell told Ms Sharma that she was unsure the latter would be permitted to return to her Lewisham desk because Career Teachers were having difficulty recruiting a temporary replacement.
15. Ms Mitchell denies this. She says she told Ms Sharma that she could not guarantee the *condition* of the desk would remain exactly the same because there may be changes in the market and it could grow or drop while she was on leave. However, we have accepted Ms Sharma's account of what was said in this meeting. Apart from anything else, it is more consistent with Ms Mitchell's own note in her notebook which states:

'Wants to return to current desk after mat leave. Said couldn't guarantee this. She may have to take another desk. Peaked at 357 days in November 2016. Can only guarantee job with similar terms'

Ms Mitchell was unable to explain to the tribunal why this note supported Ms Sharma's account rather than her own.

16. In April 2017, Candice Nicholl was appointed Senior Consultant on a permanent contract. Career Teachers say their intention was that Ms Nicholl initially cover the Lewisham desk while Ms Sharma was on maternity leave, and that when Ms Sharma returned, they would find Ms Nicholl another patch. Ms Sharma believes the intention from the outset was that Ms Nicholl would be given the Lewisham desk on a permanent basis.
17. Ms Nicholl had been working for one of Career Teachers' main competitors, where she ran a big desk. Ms Mitchell told us that the attraction for Ms Nicholl was in coming to join an equally big desk. We only have Ms Mitchell's account of what was said to Ms Nicholl on recruitment about retaining the Lewisham desk after Ms Sharma's return and we found her evidence vague. Nor is there any clarity in writing. While her offer letter does not specify her patch (unlike the claimant's own offer letter), neither does it say that the appointment is initially to cover maternity leave, after which she will be moved to a different patch. We find on the balance of probabilities that Ms Nicholl was recruited to fill Ms Sharma's Lewisham desk on a permanent basis. Career Teachers could not find a satisfactory temporary appointment. They had in mind that Ms Sharma would not necessarily return to work after her maternity leave. We do not believe they would have been able to lure Ms Nicholl away from a job elsewhere with a large desk if there was any uncertainty regarding what she would be given after Ms Sharma's return from maternity leave. We believe that Ms Mitchell's subsequent vagueness with Ms Sharma regarding whether she would be able to return to her own desk to be consistent with having promised the desk to Ms Nicholl.

18. Ms Sharma was asked to give Ms Nicholl a detailed handover before she went onto leave.

16 May 2017 meeting and alleged meeting 25 May 2017

19. On 16 May 2017, Ms Sharma had another meeting with Ms Mitchell. By this time Ms Nicholl had been appointed. Again there are two different accounts of the meeting, Ms Sharma saying the discussion was about whether she would be able to return to the Lewisham desk and Ms Mitchell saying the discussion was about whether the desk would be in the exact same condition. Ms Mitchell says Ms Sharma was worried that she would not return to a desk as profitable as when she had left it and that it may not be possible to keep the desk exactly as it was due to market and business needs. By this she meant schools may run out of budget, have recruitment freezes or a new agency may open and aggressively compete. Ms Sharma says that would not have been the discussion as it would be stating the obvious and would apply to all desks at all times.
20. We will discuss below whose account of this meeting we accept.
21. Ms Sharma told Ms Mitchell that the uncertainty was causing her stress and that she was worried about her unborn baby. Ms Mitchell agreed the stress was no good for her health. The option of leaving early for her maternity leave was discussed.
22. Ms Mitchell's notebook entry says:
- 'Brief catch up. Wants to know if she can take mat. leave early. Will check with HR. Worried about desk. Said she needs to speak to Charlene. May not be able to keep desk exactly as it is due to market, business needs etc She'll come back to me regarding mat leave.'
23. At 14:12 on the same day, Ms Sharma emailed Ms Mitchell to say she had had a chance to think about their conversation. She said her official start date for maternity leave was 1 June 2017, but she was due to go Friday 26 May 2017 with 29 – 31 May 2017 taken as holiday. However 'with the stress in the office and things that have come to light after our discussion, I feel it is best to take up your offer .. as soon as possible'. However, she needed to confirm she would be paid as normal until 31 May and that her official date for maternity leave would remain as 1 June. She concluded, 'Please can I meet with you this afternoon before I finish at 4pm'.
24. Ms Mitchell emailed back at 16:01 confirming she would pay Ms Sharma the full month's salary and saying she was happy to have a 5 minute chat.
25. Ms Sharma says this is the last meeting she had with Ms Mitchell and indeed that she went off onto maternity leave that day. Ms Mitchell says there was a further meeting on 25 May 2017. She has made an entry in her notebook under that date which says:

'Met with Sonia as witnessed her shouting at Sinead. She got upset and said it was her hormones. She was really struggling and would like to commence mat leave. Is worried about her desk. I explained that I can't give any guarantee that she can return to her old desk in the same condition. She decided to leave anyway.'

26. On balance we accept Ms Sharma's account of the 16 May 2017 meeting. The discussion was about whether Ms Sharma would be returning to her Lewisham desk, not about what the condition of the desk would be. This is what Ms Sharma was concerned about and what had been discussed at the previous meeting. It makes no sense that Ms Sharma would repeatedly have wanted to discuss whether the business condition of her desk would remain the same. That is not something Ms Mitchell could have done anything about. Also, fluctuating business conditions in the various desks would have been normal and not a logical topic for discussion.
27. We also find that no meeting on 25 May took place. Although not conclusive, the exchange of emails later on 16 May 2017 suggests that the original planned date for going onto leave (ie 26 May) was brought forward, very possibly to 16 May itself. On the balance of probabilities, we find that Ms Sharma's last day at work was indeed 16 May 2017 as she says.
28. Ms Mitchell admitted in the tribunal that she did not always write up her notes of a meeting on the spot and it could be afterwards. She told the tribunal it would be the following day at the latest. We have some doubts about that. It was put to her that the purported 25 May entry was crammed into the bottom half of a page and she was asked whether she could have written it later. She said that was possible. After further questions surrounding the date when Ms Sharma went onto leave, she then said she could have written up the notes on 25 May of a meeting which took place on an earlier date. This led us to view the notes generally as unreliable and potentially self-serving.

#### 24 January 2018 meeting

29. Ms Sharma was initially due back from maternity leave on 13 June 2018. On 16 January 2018, she contacted Ms Mitchell to arrange a meeting, as she was thinking of returning to work early. Ms Mitchell spoke to HR who sent her an application form for flexible working. HR said that if Ms Sharma wanted to return on a part-time basis, Ms Mitchell should give her the form and ask her to complete and return the form.
30. The meeting was held on 24 January 2018. This was another vague meeting. Ms Sharma asked if Ms Nicholl was still running the Lewisham desk. Ms Mitchell said that she was. Ms Sharma asked whether the desk would be available to her on her return. Ms Mitchell did not say yes and reassure Ms Sharma. Instead she said that it was 'early days' as Ms Sharma was not yet due to come back. Ms Sharma asked what the other options would be. Ms Mitchell then spent the entire meeting talking vaguely about other options. Ms Sharma inferred from this that returning to her own post was unlikely to be an option.

31. One of the options discussed was taking over the management of the Primary North team as the manager of that team (Mr Edge) would be leaving. This was another large desk with good performance and growth potential. It would also involve managing a team of people, which would be one step up for Ms Sharma. Another possibility was heading up a new 'perms' team, ie getting into permanent recruitment activity. In the event, Career Teachers did not pursue the idea of setting up such a team.
32. Ms Sharma also floated the idea of flexible working. Ms Mitchell was not particularly amenable, but when Ms Sharma said her manager and others worked a 4 day week, Ms Mitchell said she would check and get back to her. We accept Ms Sharma's evidence on this because we know that HR had given Ms Mitchell a flexi-working form to hand to Ms Sharma, yet she had not done so. Ms Mitchell's explanation that she forgot seems unlikely given that the topic of flexible working actually came up.
33. Ms Mitchell says that she included the Lewisham desk as one of the options. We do not accept this. She could not remember any specifics as to what the discussion was around the Lewisham desk. When asked in the tribunal why she discussed other options at all, she said it was because Ms Sharma had asked about her options. She says it is a possibility that there had been a misunderstanding. She says that perhaps Ms Sharma had been asking about her options in relation to part-time working, but Ms Mitchell had understood her to mean other posts. We find this an unlikely misunderstanding. It must have been obvious when Ms Sharma was talking about the Lewisham desk and when she was talking about reduced days. A straightforward discussion about whether Ms Sharma might wish to and could return part-time to her own desk would have been clear and uncontroversial. We do not see how other desks / posts came into the discussion especially as Ms Sharma had made it clear also before her maternity leave that she was anxious about returning to her own desk. It was a very profitable desk and it would not have made sense to Ms Mitchell for Ms Sharma to have suddenly shown an interest in other desks.
34. In the course of this conversation, Ms Mitchell told Ms Sharma that she was the highest paid consultant and that even if she did not want Ms Sharma back, she would have to allow her to return by law. Ms Mitchell says she has no recollection of using 'those words', but there may have been a discussion 'around that context'. She says it is true that Ms Sharma was the highest paid but that was because she was earning a lot of commission as she was good at her job. That meant Ms Sharma was bringing a high level of revenue into the company. Ms Mitchell says she was keen for her to come back after maternity leave for those reasons. We note that Ms Sharma did not mention this remark in her resignation letter (which was brief and said little). However, in her exit interview, she alluded to it, saying that Ms Mitchell had 'said she had to take her back under the rules of returning from maternity leave, but that didn't make her feel valued or wanted'. She also added that the last straw was when Ms Mitchell said 'If you want to come back, come back' which did not make her feel wanted or valued. We accept this remark was also made. It



is of the same tenor. Ms Sharma mentions it as a throwaway line in the exit interview and it has the ring of truth about it.

35. Ms Mitchell's general evidence regarding this meeting is unreliable in that she seeks to persuade the tribunal that she discussed the Lewisham desk as a realistic option when she did not. This completely changes the tenor of the meeting from one where all options were open including a return to Ms Sharma's own desk if she wanted, to one where Ms Sharma was being pressed towards other positions against her will. Moreover, Ms Mitchell in her evidence did not give a categorical denial of the comments, but rather emphasised that she would not have meant anything negative. We find that Ms Mitchell did make those comments and that she did not say them in a positive way. Making those comments to a woman discussing her return from maternity leave, who you are trying to push towards a different post against her will, suggests some irritation if not animosity.
36. The meeting was left that Ms Mitchell would get back to Ms Sharma about the possibility of flexi working and about the post generally.
37. Ms Sharma says Ms Mitchell gave a concrete date by which she would get back ie 2 April 2018. We do not find that Ms Mitchell did in fact give a date. There is no mention anywhere of the date. There is no mention of it in particular in the resignation email of 2 April 2018 or Ms Sharma's follow-up email of 5 April 2018 (see below), where logically we would expect it to be mentioned.
38. After the meeting, Ms Mitchell emailed HR to report that she had met Ms Sharma, who was hoping to return around the end of March / early April, but would be contacting HR to check how much holiday she could take first. Ms Mitchell said Ms Sharma was thinking about applying for flexible working 'but will come back to us on that'.
39. Ms Mitchell has noted in her notebook:

'Popped in. Wanted to know options. Went through a number of roles and suggested she speak to Stuart Edge about Primary North. Big desk, 230 days +. Wants to apply for flex. Working. HR to send form.'

This entry is puzzling since Ms Mitchell had already been given a form by HR to pass on to Ms Sharma. It is also inconsistent with Ms Mitchell's email to HR, which does not ask for a form to be sent.

### Resignation

40. Neither Ms Sharma nor Ms Mitchell got in touch with each other after this meeting. No flexible working form was ever sent to Ms Sharma. Ms Mitchell never got back about whether flexible working would be acceptable or with confirmation about what post Ms Sharma would be given.

41. On 12 March 2018, Ms Sharma contacted HR to ask to end her maternity leave early as her SMP finished on 13 March 2018 and then to take accrued holiday. This was agreed with a return to work date of 1 May 2018.
42. From about March 2018, Ms Sharma started looking for a new job. She had lost confidence in Ms Mitchell's desire to have her back and had been left with great uncertainty regarding whether she would be returned to her Lewisham desk. She was anxious about finding herself in a different desk with lesser opportunities to earn commission.
43. Eventually she found another job for which she had been headhunted. We were not given clear evidence as to when the offer was made.
44. At 21:35 on 2 April 2018, Ms Sharma sent Ms Mitchell an email resigning with 4 weeks' notice, so that her last official day would be Monday 30 April 2018. Ms Sharma said:

'Please accept this email as my resignation as senior consultant at Career Teachers as of today Monday 2 April 2018.

'I have had a very successful time at career teachers and have produced some excellent results that I am very proud of and will continue to build on my skills to progress even further'.

The rest of the letter simply deals with practicalities. There is no mention of any concerns Ms Sharma has with the company or over her right of return and no mention of any 2 April deadline.

45. Ms Mitchell replied the next day:

'Hope you are well – I am sorry to hear that you don't wish to return – I was hoping that following our meeting that you'd like to come back however I do understand you wanting a fresh start. Is it worth the two of us meeting up again before you make your final decision?'

46. Ms Sharma replied:

'I have been appointed for a new position which I will be starting in May 2018.  
Good luck at Career Teachers.  
All the best.'

47. Ms Sharma's new job was a managerial position at slightly higher pay than she was receiving at Career Teachers. For the year prior to her maternity leave, she earned £93,242.22 including commission. For the first 11 months of her new job, her total was £94,000. This included an initial guaranteed commission of £1000/month for the first year.
48. Career Teachers argue that the reason Ms Sharma left was to get a higher paid job in a managerial position. Ms Sharma says she would not voluntarily have embarked on a new job for a marginal pay rise and with

managerial responsibilities when just becoming a new mother. She says that she had to go for a managerial job because, had she gone for the same position as she held with Career Teachers, she would have to 'build up her milestones' to reach the same level of commission earnings.

#### Exit interview

49. Career Teachers asks an independent organisation to carry out exit interviews of its staff. Ms Sharma carried out an exit interview over the telephone during lunch break in her new job. This was in roughly the first week of May 2018.
50. We have taken account of all Ms Sharma's comments in the exit interview, which do not always support her case. On the other hand, we treat them with some caution. This was an exit interview carried out over the phone during a lunchbreak in Ms Sharma's new job. Ms Sharma did not know the person she was talking to. That person knew nothing of the circumstances of the case. Ms Sharma also had mixed feelings about Career Teachers. There were aspects of the organisation and her previous employment which she had really valued. Also, as she explicitly stated, she did not want to burn any bridges.
51. When asked what were her reasons for leaving, it is noted that Ms Sharma said she had wanted to come back but her return meeting with Ms Mitchell had made her feel like a body not an individual. Ms Mitchell had said she had to take her back under the rules of returning from maternity leave, but that didn't make her feel valued or wanted. She had not researched her background and commitment which would have been appreciated in terms of her response to the possibility of part-time working.
52. When asked if Career Teachers could have done anything differently that might have affected the decision to leave, Ms Sharma said if she had been made to feel valued about her return and also if promises had been kept such as keeping her desk. Also if opening and running a Perm Team had been followed through. She would have taken that.
53. Her new job was as a manager at 'Empowering Learning'. When asked what her new employer was offering that Career Teachers were not, Ms Sharma said a managerial position with a fantastic salary. She also noted that the hours were quite flexible which helped. Regarding suggestions to improve Career Teachers, she said 'To ensure employees are made to feel valued and that promises are kept'.

#### Time-limits on discrimination claim

54. Ms Sharma notified ACAS under the early conciliation scheme on 19 July 2018. The certificate was issued by email on 19 August 2018 and the tribunal claim was submitted on 11 September 2018. Therefore any discriminatory treatment prior to 20 April 2018 would be out of time unless it formed part of a continuing act of discrimination which continued beyond that date. As already

mentioned, Ms Sharma handed in her notice on 2 April 2018 and the termination date was 30 April 2018.

55. The tribunal asked Ms Sharma why she had not presented a tribunal claim sooner. She said it was because she had always been hoping matters would be resolved.

## Law

### Constructive dismissal

56. The claimant contends she was constructively dismissed under s95(1)(c) of the Employment Rights Act 1996. Under s95(1)(c) an employee is dismissed where she terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate it without notice by reason of the employer's conduct.

57. An employee will be entitled to terminate her contract without notice to her employer only if the employer is in repudiatory breach of contract: see Western Excavating (ECC) v Sharp [1978] ICR 221. The claimant contends that her employer was in breach of the implied term of trust and confidence. Breach of the implied term of trust and confidence will mean inevitably that there has been a fundamental or repudiatory breach going necessarily to the root of the contract (Morrow v Safeway Stores Ltd [2002] IRLR 9, EAT).

58. In Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606, [1997] IRLR 462. the House of Lords held the implied term of trust and confidence to be as follows:

'The employer shall not without reasonable and proper cause conduct itself in a manner calculated *and* likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.'

The italicised word 'and' is thought to be a transcription error and should read 'or'. (Baldwin v Brighton & Hove City Council [2007] IRLR 232).

59. In employment relationships both employer and employee may from time to time behave unreasonably without being in breach of the implied term. It is not the law that an employee can resign without notice merely because an employer has behaved unreasonably in some respect. The bar is set much higher. The fundamental question is whether the employer's conduct, even if unreasonable, is calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.
60. There is no breach of trust and confidence simply because the employee subjectively feels that such a breach has occurred no matter how genuinely this view is held. If, on an objective approach, there has been no breach then the employee's claim will fail (see Omilaju v Waltham Forest London Borough

Council [2005] EWCA Civ 1493, [2005] ICR 481, CA). The legal test entails looking at the circumstances objectively, ie from the perspective of a reasonable person in the claimant's position. (Tullett Prebon PLC v BGC Brokers LP [2011] IRLR 420, CA.)

61. The repudiatory breach or breaches need not be the sole cause of the claimant's resignation. The question is whether the claimant resigned, at least in part, in response to that breach. (Nottinghamshire County Council v Meikle [2004] IRLR 703, CA; Wright v North Ayrshire Council UKEATS/0017/13.)
62. The duty not to undermine trust and confidence is capable of applying to a series of actions by the employer which individually can be justified as being within the four corners of the contract. (United Bank Ltd v Akhtar [1989] IRLR 507, EAT).
63. A claimant may resign because of a 'final straw'. The key case of London Borough of Waltham Forest v Omilaju [2004] EWCA Civ 1493 established various principles in regard to the final straw. The final straw act need not be of the same quality as the previous acts relied on as cumulatively amounting to a breach of the implied term of trust and confidence, but it must, when taken in conjunction with the earlier acts, contribute something to that breach and be more than utterly trivial.
64. The claimant must not 'affirm' the breach. A claimant may affirm a continuation of the contract in various ways. She may demonstrate by what she says or does an intention that the contract continue. Delay in resigning is not in itself affirmation, but it may be evidence of affirmation. Mere delay, unaccompanied by any other action affirming the contract, cannot amount to affirmation. However, prolonged delay may indicate implied affirmation. This must be seen in context. For some employees, giving up a job has more serious immediate financial or other consequences than others. That might affect how long it takes the employee to decide to resign. (Chindove v William Morrisons Supermarket PLC UKEAT/0043/14.)
65. The 'final straw' might refer to two different situations: either the employer's conduct has not previously amounted to a breach of trust and confidence or it may be that the employer's conduct has already crossed that threshold, but the employee has soldiered on until the last act which triggered her resignation. The significance of the 'last straw' is then that it revives the employee's right to resign. (Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978.)
66. An employee who is the victim of a continuing cumulative breach is entitled to rely on the totality of the employer's acts, even if he or she has previously affirmed, provided the final act forms part of the series (in the way explained in Omilaju). The final action does not land in an empty scale. (Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978.)

## Discrimination

67. By virtue of reg 20 of the Maternity & Parental Leave etc Regulations 1999, it is automatic unfair dismissal under s99 of the Employment Rights Act 1996 if the reason or principal reason for an employee's dismissal is connected with her pregnancy.
68. Under s18 of the Equality Act 2010, it is pregnancy discrimination if a person treats a woman unfavourably because of her pregnancy or because of an illness suffered by her as a result of it. The unfavourable treatment must take place during the woman's protected period' ie between the start of her pregnancy and the end of her statutory maternity leave or when she returns to work if sooner. A decision taken during the protected period but implemented afterwards is included.
69. Under s18(4) of the Equality Act 2010, it is discrimination to treat a woman unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.
70. Under s136, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless that person can show that he or she did not contravene the provision.

#### Time-limits

71. The relevant time-limit is at section 123(1) Equality Act 2010. Under section 123(1)(a), the tribunal has jurisdiction if the claim is presented within three months of the act of which complaint is made.
72. Dismissal is a discriminatory act under s39(4)(c). Under s39(7), dismissal includes constructive dismissal. The CA in Nottinghamshire County Council v Meikle confirmed (albeit under the previous Disability Discrimination Act) that the time-limit for a discriminatory constructive dismissal runs from the termination date. The act complained of in a case of constructive dismissal is the unlawful dismissal which is constituted by the termination of the employee's employment when she accepts the repudiation by her employer.
73. By subsection 123(3), conduct extending over a period is to be treated as done at the end of the period. A series of different acts, especially where done by different people, does not (without some assertion of link or connection), constitute conduct extending over a period. In Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96, the CA held that 'an act extending over a period' can comprise a 'continuing state of affairs' as opposed to a succession of isolated or unconnected acts
74. Under s123(1)(b), if the claim is presented outside the primary limitation period, ie the relevant three months, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable. This is essentially an exercise in assessing the balance of prejudice between the parties using the following principles:

75. The burden of persuading the tribunal to exercise its discretion to extend time is on the claimant. There is no presumption that the discretion should be exercised unless the tribunal can justify failure to exercise the discretion. (Robertson v Bexley Community Centre [2003] IRLR 434, CA.)

## Conclusions

76. We now apply the law to the facts to decide the issues. If we do not repeat every single fact, it is in the interests of keeping these reasons to a manageable length.

### Unfair constructive dismissal – issues 2.4 – 2.7

77. Ms Sharma resigned primarily because she had been told there was no guarantee she could return to her Lewisham desk after her maternity leave and because she felt left in limbo after a series of vague and inconclusive meetings about her future position including comments which made her feel unwanted. Following the final meeting of 24 January 2018, she had not been sent a form about flexible working, Ms Mitchell had not come back to her about that possibility or about what post she would be given. By the resignation date of 2 April 2018, Ms Sharma had heard nothing even though her return to work date – 1 May 2018 - was only a month away. (Ms Sharma now thinks Ms Mitchell had also made a very specific commitment to come back to her by 2 April 2018, but we do not believe this to be the case.)
78. As a result of Career Teachers' continuing failure to confirm she could return to her Lewisham desk, Ms Sharma felt stressed and insecure and from about March 2018 started looking for new employment. When an offer came, she accepted it. The offer was attractive because it provided financial security at a time when her desk at Career Teachers was uncertain. It was an appealing post too in terms of its hours. However, as we find from the totality of the evidence and a reading of the exit interview as a whole, had she not lost trust and confidence in Career Teachers, she would not have left. As a new mother, it would not have been a time when she wanted to start again or to have to take on managerial responsibilities in order to continue at the same pay level. Although the new post paid more, this was only marginal.
79. Ms Sharma resigned primarily because of the ongoing failure to guarantee she could return to her post over a period of time starting before she went onto maternity leave and continuing afterwards which destroyed her trust and confidence. She did not resign because she found a job which was more appealing in terms of pay or status as Career Teachers contend.
80. The next question is whether, on an objective basis, this amounted to a breach of the implied term of trust and confidence. We find that it did. When she started with Career Teachers, Ms Sharma had been headhunted from another company specifically on the promise of the Lewisham desk. It was important to her. She was successful and comfortable in that desk and

earning high commission. Then she was told that because of the difficulty finding a temporary replacement during maternity leave, she may have to take another desk on her return. This uncertainty was maintained over a succession of meetings right up to the meeting in January 2018 to discuss an early return, when she was told by Ms Mitchell that it was 'early days', when the discussion was entirely about posts other than her own, and when she was told somewhat begrudgingly that she was the highest earner and that even if Ms Mitchell did not want to have Ms Sharma back, she would have to allow her back by law.

81. An employee who is going onto maternity leave with her first child, with all the uncertainties that entails, and who then with a young baby is discussing her return, is bound to feel substantially undermined when faced with such a response by her employer. What Ms Mitchell could and should have done was very simple. She only had to say, 'Of course the Lewisham post is yours. Although we have recruited a permanent replacement, she will only be covering your desk while you are on leave. As soon as you come back, she will be moved sideways and she has been informed of that'. Further, it is not unreasonable to expect this to have been put in writing. This is an employer with an HR manager and high paid employees. None of this was done and the reason, as was apparent to Ms Sharma, was that a permanent replacement to her desk had been appointed.

82. Ms Sharma did not affirm. She attended a short number of meetings with her maternity leave in between. She was strung along with vagueness. There is nothing in her conduct to suggest she had accepted or reconciled herself to the position. She tried to get a clear answer in January 2018 when discussing an early return from maternity leave. Instead she was told that it was still early days, she was pointed towards different positions which were not yet concrete, and she was told in an unfriendly way that she was the highest paid consultant and that even if Ms Mitchell did not want her back, she would have to allow her by law. There was no follow up contact after the meeting and no reassurance or clarification. When no progress was made, she started looking for another suitable job and she resigned on 2 April 2018 when one was found. As at that date, she still had not been provided with confirmation that she could return to her original role.

83. We therefore find that Ms Sharma was constructively dismissed. The dismissal was unfair. No reasonable employer would have told Ms Sharma there was no guarantee she would return to her own post after maternity leave and have maintained that uncertainty.

#### Discrimination under the Equality Act: Issue 2.8

84. Issue 2.8.1 – In April 2017, Career Teachers recruited Ms Nicholl to cover the Lewisham desk on a permanent basis. This was unfavourable treatment because Ms Sharma was seeking to exercise her right to statutory maternity leave. It would not have been unfavourable treatment to appoint Ms Nicholl to cover the Lewisham desk purely while Ms Sharma was away and to have clearly told Ms Sharma that she could go back to her desk on return from



maternity leave. However, Career Teachers recruited Ms Nicholl permanently into the post.

85. Issue 2.8.2 – In a meeting on 24 January 2018, Ms Mitchell told Ms Sharma that she was the highest paid consultant and that even if she did not want her return, she would have to allow her by law. This gave Ms Sharma the impression that she did not want her to return. These comments were unfavourable treatment. In the context, they carried a negative connotation that went beyond the mere statement of fact. They were made because Ms Sharma had been and was still exercising her right to statutory maternity leave.
86. Issue 2.8.3 – Ms Mitchell failed to provide Ms Sharma with clarity prior to her maternity leave commencing as to whether she could return to her Lewisham desk. Indeed Ms Mitchell said that could not be guaranteed. The reason for this was that Ms Sharma was seeking to exercise her right to statutory maternity leave. The discussions took place in particular in a meeting between Ms Sharma and Ms Mitchell on 1 March 2017, when Ms Mitchell told Ms Sharma she may have to take another desk. There was a similar discussion on 16 May 2017, after which Ms Sharma went onto maternity leave still in a state of uncertainty.
87. Issue 2.8.4 – Ms Mitchell told Ms Sharma in the 24 January 2018 return to work meeting that there were alternative desks she could cover on her return. There was no mention of the Lewisham desk. The reason was that Ms Mitchell wanted to keep Ms Nicholl on the Lewisham desk and wanted to push Ms Sharma into one of the other desks. In the circumstances, this was unfavourable treatment. Ms Sharma wanted to keep her Lewisham desk. She was comfortable there and it was profitable. The reason for Ms Mitchell's treatment of Ms Sharma was because Ms Sharma had exercised her right to statutory maternity leave.
88. Ms Mitchell did not explicitly say that Ms Sharma would have to start again, but Ms Sharma believed the other desks would generate significantly lower commission.
89. Issue 2.8.5 – Ms Sharma was constructively dismissed. The reason for Career Teachers' actions amounting to the breach of trust and confidence was that Ms Sharma was exercising her right to statutory maternity leave.
90. Issues 2.9 – 2.10 – the above actions were discrimination contrary to section 18(4) of the Equality Act 2010, ie they were unfavourable treatment because Ms Sharma was seeking to exercise, was exercising or had exercised her right to maternity leave. They did not constitute pregnancy discrimination during the protected period.

Issues 2.1 – 2.3: discrimination time-limits

91. As explained above, any discriminatory treatment prior to 20 April 2018 is out of time unless it forms part of a continuing act of discrimination extending beyond that date.
92. By way of context, Ms Sharma's last day of work prior to her statutory maternity leave was, on the balance of probabilities, 16 May 2017. By the time of her resignation on 2 April 2018, she had brought forward her return date to 1 May 2018, although technically she was taking accrued holiday from 14 March 2018.
93. On 1 March 2017, Ms Mitchell told Ms Sharma that she could not guarantee she would return to the Lewisham desk and she may be put onto another desk because of their difficulty recruiting a temporary replacement. In April 2017, Career Teachers recruited Ms Nicholl to cover the Lewisham desk on a permanent basis. On 16 May 2017, Ms Mitchell continued not to give an assurance. As a result of the stress caused by the uncertainty, Ms Sharma went onto maternity leave at the end of that day. At the 24 January 2018 meeting to discuss Ms Sharma's return from maternity leave, Ms Mitchell continued not to provide the reassurance. She talked about alternative desks which Ms Sharma could cover when she returned. During that meeting, Ms Mitchell told Ms Sharma that she was the highest paid consultant and that even if she did not want her return, she would have to allow her by law. Following the meeting, Ms Mitchell failed to get back to Ms Sharma at any point prior to Ms Sharma's resignation on 2 April 2018 with notice. Although Ms Mitchell on 3 April 2018 emailed to offer a further meeting, there was nothing in that email which changed the position which had existed since 1 March 2017. Right up to the termination date on 30 April 2018, Ms Nicholl remained on the Lewisham desk and the position was unchanged. The continuing discriminatory state of affairs therefore continued into and beyond the primary time-limit.
94. We further find that the constructive dismissal is itself in time. Under the Equality Act 2010, a constructive dismissal can in itself be an unlawful action separately from the breaches it relies on. The constructive dismissal took place on the termination date, ie 30 April 2018.
95. Finally we add that if we are wrong and the continuing discrimination stopped on the resignation date of 2 April, Ms Sharma would be 18 days out of time. We would have allowed the claims in as just and equitable. We take account of the fact that Ms Sharma did not provide us with particularly compelling reasons for why her claim was late. She did not say the reason was because she was just coming back from maternity leave and indeed she had been able to find herself a new job and start it. But on the other hand, she is representing herself. It is only 18 days and that short extra period would be most unlikely to make any difference to how much the respective witnesses could remember events. We can see no other prejudice caused by the 18 day delay in itself. Career Teachers have had to face an in-time constructive dismissal claim in any event, and it would deprive Ms Sharma of the opportunity of gaining explicit recognition of her maternity discrimination claim.

## Remedy

### Law relevant to remedy

96. Where a claimant succeeds in a claim for discrimination, the tribunal may make a declaration and make appropriate recommendations. It may also award compensation for financial loss arising from the discrimination including compensation for injury to feelings or personal injury as applicable. Finally, a tribunal may award interest.
97. A tribunal can make an award for injury to feelings. Subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, stress, depression etc and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise. Nevertheless, employment tribunals have to do the best they can on the available material to make a sensible assessment.
98. Three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury, were suggested in the case of Vento v Chief Constable of West Yorkshire Police (No.2) [2003] IRLR 102, CA. This claim was presented on 11 September 2018. For claims presented on or after 6 April 2018, the Presidential guidelines set the Vento bands as follows: A lower band of £900 - £8600 (less serious cases), a middle band of £8,600 to £25,700 (cases that do not merit an award in the upper band); and an upper band of £25,700 to £42,900 (the most serious cases).
99. Aggravated damages may be awarded where the claimant's injury to feelings was increased because the respondents' manner in committing the discrimination was high-handed, malicious, insulting or oppressive or their conduct was exceptional in any other way. They can also be awarded where the claimant was aware that the respondents' motive was spiteful or vindictive or intended to wound or their conduct was based on prejudice or animosity. Finally, they can be awarded where the respondents defended the case in an unnecessarily offensive manner.
100. A tribunal may award interest on its award and must consider whether to do so. Interest on an award for injury to feelings runs from the date of the discrimination until the date of calculation by the tribunal (inclusive). The rate of interest is that fixed by section 17 of the Judgments Act 1838. Since July 2013, that has been 8%.
101. The ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2009) is issued under s199 TULCRA 1992 and provides basic practical guidance to employers, employees and their representatives and sets out principles for handling disciplinary and grievance situations in the workplace. Paragraphs 32 – 47 deal with grievances. Paragraph 32 says that if it is not

possible to resolve a grievance informally, employees should raise the matter formally and without unreasonable delay with a manager who is not the subject of the grievance.

102. Under section 207A(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 if the employer or employee has unreasonably failed to comply with the Code may, if it considers it just and equitable in all the circumstances, increase or reduce any award it makes (as applicable) by no more than 25%.

Facts and conclusions on remedy

*Unfair dismissal*

103. Ms Sharma is now aged 34. She had been employed 3 whole years at the termination date. Her weekly gross pay is subject to the statutory cap of £508 for dismissals in the year starting 6 April 2018. Her basic award for unfair dismissal is therefore £1,524 (3 x £508).

104. We award £500 for loss of statutory rights.

105. We shall consider Ms Sharma's loss of earnings arising from the dismissal under the heading of the discrimination claim. This makes no difference as the same amount would be awarded under either claim. It cannot be awarded twice.

*Discrimination: financial loss*

106. The only financial loss claimed for the discrimination is loss of earnings arising from the constructive dismissal..

107. Ms Sharma obtained a new job with Empower Learning Limited. She took this up immediately after the termination date of her employment with Career Teachers. She left Empower in June 2019 for a further maternity leave and to relocate to another part of the country nearer to family members who could help look after the children. Ms Sharma initially suggested she might not have done this had she been allowed back to work with Career Teachers. However, after a break to think about this, she accepted that realistically she would still have needed to relocate. This was sensible. We would have reached the same conclusion. The question was therefore whether Ms Sharma suffered any financial loss for the 11 months when she worked at Empower as opposed to back with Career Teachers. In fact, for the reasons we are about to explain, Ms Sharma earned marginally more at Empower than she would have earned at Career Teachers. It is true that she would have preferred to be at Career Teachers and that she had to carry out managerial duties at Empower which she would like to have avoided. Being forced to do this may be a consideration when we come to injury to feelings. But on the question of whether Ms Sharma suffered any financial loss, it is irrelevant.

108. Ms Sharma's payslip from Empower dated 31 March 2019 has cumulative figures for the entirety of her employment there. The gross figure is £94,389.38 from which we deduct £26,112 tax and £5074.34 national insurance. It was agreed that we should not deduct the figure for Ms Sharma's pension deductions because there was no pension at Career Teachers. This left £63,203.04 net.
109. We also deducted £5500 for car allowance. Ms Sharma had the use of a company car for work trips. Her petrol expenses were not reimbursed as such but she received £500/month in recognition of that cost. At Career Teachers, she would use public transport when seeing clients and get reimbursed expenses. Although it is possible that she did not spend all of the £500, in the absence of any concrete evidence, we are prepared to take a broad brush view and disregard it as effectively reimbursement of expenses. £63,203.04 less £5500 is £57,703.04 net earnings for the 11 months.
110. We now have to consider what Ms Sharma would have earned had she returned to Career Teachers. This is difficult because it would have comprised basic pay and a variable amount of commission depending on her clients. The agreed starting point was what Ms Sharma was earning at the point she went onto maternity leave. It was agreed this would be calculated as the average monthly pay for the previous 12 months. It was also agreed that for ease of calculation, we would rely on the cumulative payslip for the financial year ending 31 March 2017 (even though strictly speaking this is short of the date she went onto leave). This payslip showed gross pay of £93,242.22, tax of £27,041.20 and NI of £5196.76, leaving £61,004.26. In addition, we disregarded Ms Sharma's student loan repayments totalling £2,837. Deducting that, her net pay and commission over 12 months was £58,167.26.
111. Adjusted down to 11 months, this works out at £53,319.98 (£58,167.26 divided by 12 multiplied by 11). This is what she would have got if she had gone back and achieved the same level of commission as before her maternity leave. It is over £4000 less than what she in fact earned at Empower.
112. Ms Sharma argues that had she gone back to Career Teachers, she would have earned an additional 12% commission. She bases this on the fact that in the three years prior to her maternity leave, she received a 25% increase in commission per year. This was the result of increasing her client base and business year on year. She accepts she would have to rebuild the business to an extent to make up from its drop while she was on leave. She therefore estimates an increase of only 12.5% from the pre-maternity leave level.
113. Career Teachers says that she would not have had any increase because profits were significantly down across the company generally and also on Ms Sharma's desk. This is true. We were shown the documents in support.

114. Career Teachers has been on a downward slide. In the year ending 1 January 2016, audited accounts show net profit of £3,226,000. In the year ended 30 December 2016, they show net profit of £1,760,000. In the year ended 29 December 2017, net profit was £188,000. For the year ended 4 January 2019, the company actually suffered a loss of £191,000. The directors' report in the audited accounts stated that 2018 had been another challenging year with a significant decline in gross profit. The challenging public sector environment had dampened demand and there was a struggle in the education sector to both attract and keep teachers. Brexit had also increased uncertainty about hiring decisions. On the plus side, the company had reorganised to improve staff retention and client retention and profitability was growing.
115. Specifically on the Lewisham desk, average monthly turnover was £103,154 in 2015, £129,094 in 2016 and £124,315 from January – May 2017. So even while Ms Sharma was still in post, there was no increase in the first half of 2017 and actually a slight drop. There was then a dramatic drop in the second half of 2017 to £52,113 and only a small recovery in 2018 to £87,001.
116. Commission shows a similar pattern. Ms Sharma's average monthly commission in 2015 was £3,157.95, in 2016 was £3,613.31 and up to her maternity leave in 2017 was £3,275.67.
117. These figures indicate there was already an external problem before Ms Sharma went onto leave, but that there was also loss arising directly from the fact that Ms Sharma had been replaced. She may have been able to recover some of that loss.
118. The statistics of the company as a whole suggest that there would have been a major downturn even if Ms Sharma had returned to her post. Although we do not have the finer detail of how profit was generated within the company, it is not credible that Ms Sharma would have been able to entirely buck the trend. We also note the directors' description of the general problem in the accounts described above.
119. We have therefore reached the conclusion that Ms Sharma would have been lucky to recover her commission to the level it was prior to maternity leave. She certainly would not have been able to increase it.
120. For these reasons, Ms Sharma has not incurred any financial loss as a result of her constructive dismissal.

*Discrimination claim: Injury to feelings and aggravated damages*

121. Ms Sharma has suffered a serious injury to feelings as a result of the discriminatory treatment. At a time when she should have been looking forward to having a baby, she was subjected to the stress of not knowing whether she could come back to the same post. This made her increasingly stressed during her pregnancy and sometimes she did not eat at work. This got to the point where she worried about her unborn child and had to take

maternity leave early. The stress and worry continued over a prolonged period, from 1 March 2017, through the remainder of her pregnancy, then through her maternity leave and right up to her resignation in April 2018. She was made to feel undervalued and unwanted at a time when she was coming to terms with being a new mother. She worried that her stress would tip her into post-natal depression. She found herself sitting with her newborn son and worrying, instead of enjoying it. She was the primary earner in the family and she was worried that losing her desk would lead to a loss in her earnings because of less commission elsewhere and that she would be letting her husband down. Even after she left and got a new job, she had to cope with managerial duties which she did not want. She has lost confidence in how an employer might treat her in the future. At times in the tribunal she was visibly still very upset, even after being informed that she had won her case.

122. Having said all that, and not in any way belittling the impact, Ms Sharma was able to go out and take on a new job of equivalent or even higher status. She did not leave because she could not cope with it. She did not in fact succumb to depression. We do not think this is a case of the top band of Vento.

123. We think the appropriate level of compensation is therefore in the middle band of Vento but towards the high end. We award £20,000.

124. We do not award aggravated damages. We would not say this is a case where the employer's manner in carrying out the discrimination was high-handed, malicious, insulting or oppressive or of that nature. The nearest to that category would be Ms Mitchell's comment about Ms Sharma's pay and being required by law to take her back, but we do not think it was said in a way that reaches that threshold.

#### *Interest*

125. We award interest on the £20,000 for injury to feelings for a three year period ie 11 March 2017 – 10 March 2020 (the calculation date). Although the discrimination continued over a period, we think it appropriate to calculate interest broadly from the first meeting in March 2017, since that is what triggered Ms Sharma's stress. At 8% per annum, this amounts to £4800.

#### *ACAS Code*

126. Career Teachers argued that Ms Sharma's compensation should be reduced under the ACAS Code of Disciplinary and Grievance Procedures because she had failed to bring a formal grievance. Ms Sharma says she made verbal complaints amounting to grievances.

127. We do not find that Ms Sharma unreasonably failed to comply with the ACAS Code nor would it be just and equitable to reduce her compensation. Ms Sharma tried to speak to Ms Mitchell on a number of occasions to get clarity. She even came in during her maternity leave. Ms Mitchell was at the time the managing director and the relevant decision maker on the issue

concerning Ms Sharma. Ms Sharma was already stressed and vulnerable during a period of pregnancy and maternity leave as a result of Career Teachers' actions. The issue was quite simple and she should not have needed to bring a grievance in order to get straight-forward clarification and reassurance.

128. We also do not find that Career Teachers unreasonably failed to comply with the Code. Ms Sharma did not trigger the Code by submitting a formal grievance.

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Employment Judge Lewis

Dated: 11<sup>th</sup> March 2020

Judgment and Reasons sent to the parties on:

12/03/2020

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For the Tribunal Office