



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106046/2019

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Held in Glasgow on 21, 22 and 23 October 2019

Employment Judge M Robison
Members Mrs F Paton
Ms S Jones

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Ms A M Milligan

Claimant
Represented by
Ms A Bowman -
Trainee Solicitor

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Scottish Water

Respondent
Represented by
Mrs A Stobart -
Counsel

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claim under the Equality Act is not well-founded and is therefore dismissed.

REASONS

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1. The claimant lodged a claim with the Employment Tribunal on 30 April 2019 claiming discrimination because of pregnancy/maternity. The respondent entered a response resisting the claims.

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2. At the outset of the hearing, Mrs Stobart requested that a comparator to be referred to during evidence should be identified as AA, and Ms Bowman had no objection. I subsequently advised that I would in any event refer in this judgment to all of the claimant's colleagues who did not give evidence by their initials.

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3. Further, Mrs Stobart sought to delete, again without objection, one line from the ET3 which stated that the claimant was not a "P6 Planner" because it was ascertained that her correct job title was Project Planning Co-ordinator (PPC) but in practice this was used interchangeably with that title.

4. During the hearing, the Tribunal heard evidence from the claimant, and for the respondent from Ms Susan Innes, Programme Services Team Leader (and sometime line manager of the claimant) and Mr Alan Crawford, Ms Innes's line manager and the Programme Control Director.
5. The Tribunal was referred by the parties to a number of productions from a joint bundle of productions. These documents are referred to by page number.

Findings in Fact

6. On the basis of the evidence heard and the productions lodged, the Tribunal finds the following relevant facts admitted or proved:
7. The claimant commenced employment with the respondent on 27 November 2006. Following several promotions, she was appointed a Project Planning Co-ordinator (PPC) on 16 May 2011 (page 37). She continues in that role. That role is also known as a "P6 Planner".
8. The role of a PPC is a generic one which involves a range of administrative duties. The main purpose of the role is stated to be, "To co-ordinate, implement and ensure the effective and efficient delivery of their portfolio of projects (up to £150m over 4 years) in accordance with the Scottish Water Capital Investment appraisal process. Ensuring that the project and programme outputs are achieved as agreed in the SW delivery plan within time, budget and quality standards. Implements best practice project control and co-ordination of all project activities and supports the delivery teams and implements the reporting, governance and approvals processes on behalf of a Delivery Vehicle" (see role profile page 29).
9. Each PPC is assigned a portfolio of projects and undertakes whatever work is required for that specific portfolio. The specific tasks required for each individual PPC will depend upon the project portfolio which the individual supports. The claimant is one of thirteen PPCs employed by the respondent. Each PPC reports to one of seven Senior Planners (SP).
10. The projects that are managed by the PPC are generally capital projects and come from all areas of the respondent's business. It is the role of the PPC to keep a record of the milestones and costs for the specific project and to prepare

monthly reports on these for the relevant business areas. PPCs are allocated projects by SPs based on their current workload. Each project will involve three phases for the PPC: planning, preparation and delivery. The PPC's role is the same throughout each phase but specific tasks and the balance between different tasks will vary depending on the project itself and the stage at which the PPC is involved.

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11. Alan Crawford commenced employment in the role of Programme Controls Manager in or around January 2018. In that role, he headed up three teams, namely Performance and Risk, Reporting, and Programme Controls Services. Programme Controls Services was headed up by Susan Innes (page 71). The claimant was in the Programme Controls Services team under Ms Innes's control.

12. The Programme Controls Services division was itself divided into so-called "delivery vehicles", namely Strategic Customer Service Planning (SCSP) (dealing only with capex stages 0 to 1); Scottish Water Delivery (SWD) (mainly dealing with internal projects and capex stages 0 to 6); and Managed Delivery MD (dealing mainly with large engineering projects, and only capex stages 1 to 6) (see page 28J).

13. Prior to her departure on maternity leave, the claimant was engaged in projects for the Programme Controls Services Team supporting the respondent's Strategic Customer Service Planning (SCSP)/Intervention Definition Process (IDP) reporting to JM (see page 53A).

14. Following two previous periods of maternity leave for her first two children, the claimant gave birth to a third child on 27 March 2018. At that time she was on annual leave (from around the end of February), and it was agreed that she would commence maternity leave on 2 April 2018. She returned from maternity leave on 7 January 2019.

15. In or around July 2018, AA returned from a period of sick leave. For personal reasons, he took on the role of PPC in SCSP/IDP under JM, having previously worked as a senior planner in another department. He was placed in the SCSP team because resource was needed in that section, given that the claimant was

on maternity leave, and one member of staff had left (SC) (and two external contractors were subsequently withdrawn (LH and KI)).

16. On taking over the role of Programme Controls Manager, Mr Crawford was aware that the respondent relied heavily on agency workers (usually called (external) contractors). He was aware that this had a significant cost to the business and that it limited career development for the respondent's employees. The original intention had been to bring in experienced planners on an agency basis and for their knowledge to transfer to the respondent's employees, but agency staff have continued to be engaged beyond that original intention, some for as long as 10 years.
17. Consequently, in or around October 2018, the respondent undertook a review of the manner in which its project portfolios were managed. This review involved reducing the number of external contractors to support the work and changing how projects were distributed to the PPCs and who they would report to. The changes made by the respondent did not alter the fundamental nature of the work being carried out by the PPCs, who were still required to update milestones and report on costs and dates. Only the portfolio of projects was changed.
18. Susan Innes met with the Senior Planners regarding the changes to be made to the PPC's portfolios following the departure of a number of the agency workers. It was not however uncommon for a PPC to move from one delivery vehicle to another depending on the demands of the business.
19. In determining which members of staff should be deployed in each of the different delivery vehicles, the respondent gave consideration to the range of experiences which staff had with a view to ensuring that staff had experience across the delivery vehicles. Further there was some concern that the delivery vehicle Scottish Water Delivery was underperforming, and that there should be a focus on improving performance there. EP was consequently moved to SWD to take over from DG who was returning from sick leave. The claimant was deemed to have the skills and experience needed to assist in improving performance in that delivery vehicle, given that she had 6-7 years of experience as a PPC and had worked in both SCSP and MD. She had not however worked in SWD and this

was seen as an opportunity for her to gain experience in that delivery vehicle as well.

20. On 17 October 2018, the claimant contacted Ms Innes by telephone. During the call she advised that she intended to return to work on or around 4 December 2018, but would take annual leave and would return to work on 7 January 2019 (page 55).
21. On 22 October 2018, the claimant again spoke to Ms Innes on the telephone to advise that she intended to return full-time.
22. On 19 December 2018, Ms Innes contacted the claimant by telephone to advise that following a review, and the departure of a number of the agency staff, there were to be changes to the team. Consequently, on her return from maternity leave she would be assigned to the Programme Controls Services Team supporting Scottish Water Delivery, and she would be managed by EP.
23. Unknown to Ms Innes or Mr Crawford, the claimant had previously been absent with stress which was at least partly attributed to working with EP, and on return to work after sick leave in or around 2015 she was no longer managed by EP. No formal grievance was raised by the claimant at the time and the matter was dealt with informally with her then manager, AL (see page 44).
24. Following that call, Ms Innes consulted Mr Crawford and it was agreed that the review having taken place that the claimant should remain with EP's team and that she should receive support needed from Ms Innes and the situation would be monitored. It was agreed that she would be in contact with the claimant on a weekly basis.
25. By e-mail dated 19 December 2018 at 15.58, CS e-mailed the senior planners and Ms Innes with a copy of a revised organogram for the division stating, "As discussed at this morning's meeting please cascade to your planners" (page 72).
26. By e-mail dated 20 December 2018 at 08.48 CS (as newly appointed senior planner for SCPS delivery vehicle, taking over from JM who as an agency worker was departing) then sent an e-mail copied to JM, SM, AR and AA (the new SCPS team), stating, "Hi all Please find attached the revised Programme Services

organogram, which will be effective from the 10th of January 2019. I'd like to take this opportunity to say that I am looking forward to working with you all" (page 66a).

- 5 27. By e-mail dated 20 December 2018 at 09.03, EP forwarded a copy of the organogram to MR and FM (staff in the SWD team headed by EP), as well as LM and LB (staff previously managed by EP), copied to SG (another SP), stating "Pls find attached the revised team organogram, the main changes, for you/me: - LM and LB now line reporting to SG, effective from Jan-19 – AMM to take on FM's portfolio and line reporting to me. Handover will start Jan-19 but planner will remain FM up to Mar-19 – MR to take on LM's SWD portfolio, effective from Jan-19." (page 72)
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28. On 4 January 2019, Ms Innes telephoned the claimant to confirm that she was looking forward to meeting her on her first day back as arranged.
29. On 6 January 2019 Ms Innes texted the claimant to advise that she could not meet her as arranged because she was ill. She intended to arrange for her to be met by EP but that did not prove possible because of the respective locations of the claimant and EP.
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30. On 7 January 2019 at 10.16 the e-mail with the organogram originally sent by EP to her staff on 20 December 2018 was forwarded to the claimant "FYI" by EP (page 72). This showed the claimant in SWD under EP along with FM and MR (both agency staff). It also showed CS as the SP for SCSP with SM and AR as well as AA (page 73A).
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31. On 11 January 2019, the claimant emailed Ms Innes regarding concerns about EP's management style (page 77), and she responded advising that she would call her on the Monday.
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32. On 14 January 2019, Ms Innes called the claimant and advised that she would speak to EP. The claimant had complained about the requirement for daily updates for EP, and Ms Innes agreed that was unreasonable and advised EP that weekly updates were sufficient.

33. On 21 January 2019, Ms Innes telephoned the claimant to discuss how she was getting on with EP. On 23 and 24 January the claimant emailed Ms Innes regarding arranging to meet to discuss progress with EP.
34. On 29 January 2019, Ms Innes had an informal meeting with the claimant who was accompanied by her union rep (TM) when they discussed a way forward. Ms Innes said that she would speak to Mr Crawford to ascertain if she could be the claimant's point of contact. At this meeting the claimant first raised her concerns about her role, which she said was more financial than planning, with mainly manual inputting. She was of the view that this role was very different from the role she had carried out in SCSP/IDP, where she had been much more involved in planning and facilitating the monthly review meetings.
35. On 4 February 2019, it was confirmed to the claimant that she would no longer be line managed by EP, and that Ms Innes would be her line manager on an interim basis.
36. On 11 February 2019, TM (the claimant's union rep) on behalf of the claimant raised a stage 2 Grievance, concerning a failure to follow process and procedure, job re-evaluation without consultation and maternity discrimination.
37. On 19 February 2019, a meeting to consider the stage 2 Grievance took place at which the claimant attended with her union rep and which was considered by LA and AM. Notes were taken of that meeting which were subsequently revised by the claimant (pages 114). During that meeting the claimant raised concerns about the scale of her portfolio which she said included 662 projects whereas in her IDP portfolio she had 219 projects. At that time, she had 59 projects, but she understood that the balance was to be transferred to her from FM who was due to go on maternity leave on 29 March 2019. She stated that her role was different to that which she had undertaken prior to going on maternity leave, because of the amount of manual profiling, which led her to believe that it was more of a quantity surveyor (QS) role than a P6 planner role.
38. On 20 February 2019, a meeting took place with LA and AM at which Ms Innes and Mr Crawford were questioned (page 120). Both said that the role was neither a QS role nor a financial planner role and that this is a role other P6 Planners

undertake. On the question of the size of the portfolio, they said that it was not larger but had been structured to give her a small portfolio to support her transition back to work and that the plan was to move FM's portfolio to a number of different planners. There was to be a one month transition of FM's portfolio but the 400+ projects would not be transferring to the claimant. They confirmed that they had been unaware that the claimant had escalated the problems of working with EP to her previous business manager AL in 2015.

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39. By letter dated 21 February 2019, the claimant was advised of the outcome of her grievance, which was upheld in regard to micromanagement by EP and lack of support during maternity leave and on return. The complaint about a lack of consultation in regard to the change in portfolio was not upheld and it was concluded that her role remains a P6 planner and that other P6 planners undertake the same role. The complaint about the resultant scale of portfolio was not upheld because this was the result of a misunderstanding between the claimant and her team leader. It was recommended that she meet Ms Innes and Mr Crawford for a full discussion about the portfolio.

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40. Following a request to progress to stage 3 Grievance, a meeting took place at which this was considered by IW (page 130) on 25 March 2019 (pages 143 – 147), the outcome of which was communicated to the claimant on 29 March 2019. The claimant's complaint about "maternity discrimination" was not upheld. Mr Watt also recommended that a meeting take place between the claimant and Ms Innes and Mr Crawford.

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41. That meeting took place on 15 April 2019. The claimant was accompanied by her trade union rep and a member of HR staff attended by telephone. Notes were taken of that meeting (pages 158 – 164).

42. The claimant was subsequently signed off sick with stress and anxiety stated to be due to a combination of personal (regarding her father's health) and work-related stress (since returning from maternity leave) (page 165).

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43. A meeting was arranged which took place on 27 June 2019 between the claimant, Ms Innes and Mr Crawford to discuss the pressures at home and outside of work and to ascertain what support could be given. The claimant was accompanied by

her trade union rep. The outcome of that meeting was that upon the claimant's return to work following sick leave, she would be moved to support the IDP portfolio as she requested, and reporting to CS (page 169 – 170).

Relevant law

- 5 44. Section 18(2) and (4) of the Equality Act 2010 relates to pregnancy and maternity discrimination in the employment context, and states that an employer discriminates against a woman if, during the protected period, that is while the claimant is absent on maternity leave, he treats her unfavourably because of the pregnancy or because she is exercising maternity leave. Section 18(5) makes it
10 clear that if the treatment is in implementation on return of a decision taken in the protected period, the decision is taken to have been made in that period.

Claimant's submissions

- 15 45. Ms Bowman lodged written submissions which she summarised orally. She confirmed that the claimant claims that she has been discriminated against contrary to sections 18 and 39 of the Equality Act 2010, and she set out the relevant provisions, specifically section 18(2) and 18(4). In summary, she argues that the claimant was treated unfavourably for two reasons, that the respondent failed to consult with her regarding a restructure because she was exercising her right to OML or AML; and that the respondent failed to allow the claimant to return
20 to the job she held prior to taking maternity leave, requiring her to return to an unfavourable job because she was exercising her right to OML.
46. She set out the relevant case law, specifically in regard to unfavourable treatment and the causal link.
- 25 47. With regard to comments on the witnesses, Ms Bowman submitted that the claimant gave her evidence in a credible way; she narrated her story as she saw it; it was clear and convincing; she was honest where she could not recall and elaborated on answers with clarity and certainty. She submitted that the claimant gave her evidence in a reliable manner; that she was able to articulate the differences in her role before and after her maternity leave in a thorough and
30 comprehensive and straightforward and accurate way; her oral evidence was

consistent with her time lines, emails and grievances; yet she made little reference to the documents in explaining her position, illustrating a strong command over her job and the difference between the IDP and SWD roles.

5 48. She submitted that Susan Innes was not a credible witness; she avoided answering questions at times, and when pressed in cross examination, gave conflicting answers, particularly around the difference between the two roles, stating at one point that the roles were exactly the same then said the duties in SWD were different to that of SCSP in terms of bucket loading and inputting remaining spend. Ms Innes also said that the projects were different in scale and
10 volume.

49. With regard to Alan Crawford, Ms Bowman submitted that he gave a detailed account of the team structure and the claimant does not doubt his evidence will be of assistance to the tribunal in explaining the way in which the teams are structured. However, Mr Crawford was unable to recall pertinent conversations
15 and did not seem to involve himself in the management of the claimant during or after her maternity leave.

50. Ms Bowman set out the undisputed facts, and suggested that the content of what was said in the telephone calls on 29 October, 19 and 20 December as well as the meeting on 29 January are in dispute.

20 51. In regard to the unfavourable treatment, she then listed the facts upon which she relied to support her submission that the failure to consult regarding the move to SWD was unfavourable; and that the change of roles duties was unfavourable.

52. With regard to the reason for the unfavourable treatment, the claimant set out the facts from which the Tribunal should infer that it was because she had exercised
25 the right to ordinary or additional maternity leave.

53. With regard to remedy, Ms Bowman relied on the claimant's evidence regarding the anxiety, stress and upset she suffered for seven months; and submitted that an award of injury to feelings in the upper limit of the first Vento band was justified.

Respondent's submissions

54. Mrs Stobart lodged written submissions which she summarised orally. She opened by accepting the claimant's summary of the legal concepts, including the reference to the *Shamoon* case and the fact that the best approach is to deal with the question of pregnancy/maternity discrimination in two stages, first the unfavourable treatment and second the reason why.
55. She stated that she had understood this case to be whether or not AA had replaced the claimant in her role and whether or not there was a failure to consult. She suggested that the ground had however shifted during the hearing, so that the unfavourable treatment alleged related to consultation in October and being moved from SCSP to SWD.
56. The respondent's position is that there was no restructure that would necessitate consultation; and that there was no fundamental change to her role, having been employed as a planner both before and after maternity leave. Mrs Stobart set out suggested findings in fact.
57. With regard to the allegation of unfavourable treatment in respect of the lack of consultation, the Tribunal is invited to find that the claimant's role did not change on her return from maternity leave. Both before and after maternity leave her role was that of PPC which is not specific to any one delivery vehicle. It was common practice to move planners between vehicles when business needs dictate. As this was not a change of role, there was no requirement to consult, and others who were required to move were not consulted. The claimant had initially expressed concerns about EP but not about the role itself. A change to a different portfolio in order to wider the claimant's experience and facilitate an exchange of knowledge from the present contractor is not "intrinsically unfavourable treatment" (*Williams*).
58. If that is wrong and the Tribunal consider that there was unfavourable treatment, then relying on the evidence of the reasons behind the review from Mr Crawford to reduce the reliance on contractors, the lack of consultation over the changes to the teams was not "because" she is exercising her right to maternity leave. In particular, the decision not to consult with planners and instead to cascade the

information down to planners – by way of e-mail to the planners and by way of telephone to the claimant – was not related in any way to the fact that the claimant was exercising her right to maternity leave.

59. With regard to the allegation of unfavourable treatment in respect of the change in role, the tribunal is invited to find that whilst the types of projects she is working on are different the actual tasks do not fundamentally change. The tribunal is invited to reject her allegation that her role was nearly all financial.
60. On return, the claimant's portfolio of projects would have either matured and been passed onto another delivery vehicle given the life of a project in SCSP so she could not have returned to work on the same projects but would be assigned to new projects wherever she was placed. The respondent refutes the allegation that AA got more favourable treatment; rather he was placed in SCSP because there was a lack of resource there. In any event he did not return to work until July 2018. Further, there was never any question of her taking on 660 cases or taking over all of FM's portfolio
61. She submitted that there was no unfavourable treatment, but if she is wrong about that, relying on *Indigo Design Build and Management Ltd v Martines* EAT/0020/14, she argued that the decision to move staff was a decision taken as part of the ordinary course of business and had nothing to do with the fact that the claimant was on maternity leave. The decision taken not to consult was one taken because in good faith because both Ms Innes and Mr Crawford believed that it was not necessary to consult and that planners were able and ready to move between portfolios. It was not accepted that SWD less good or less congenial than other delivery vehicles. The decision to place the claimant into SWD was made on the basis of business needs not because the respondent wanted AA to have the claimant's role, or because she was on maternity leave.
62. If the Tribunal find against the respondent she submitted that the injury to feelings should be at the lower end of the Vento scale, noting that the claimant was off sick in April because of her father, not because of issues at work.

Observations on the witnesses and the evidence

63. Ultimately there was in fact little dispute on the facts in this case. The Tribunal found the claimant to be a credible witness who explained events as she recollected them. We did find however that she viewed events from her own personal perspective without taking account of other requirements on the business. For example, we understood why she might see AA's name in her place on the amended organogram and assume that he had taken over her role, but that was based on a simplistic interpretation of the organogram and without taking account of the bigger picture and the business needs of the respondent. She may well have been unaware that he had returned in July so could not have taken over her specific projects and in any event the organogram shows that agency staff had left and therefore would require to be replaced. We formed the view that she was a diligent and competent employee who was well regarded, and it was for development reasons that she was assigned to SWD following the review. However, did not accept her recollection in respect of some details, and for example we took the view that she misunderstood Ms Inne's reaction to her suggestion that the role she was doing was more akin to that of a quantity surveyor, and her understanding that the weekly contact was to take the form of meetings.
64. With regard to Ms Innes, we found her to be a credible and broadly reliable witness. We thought that she was being careful when she was giving evidence when she could not recollect the details of what had happened, rather than evasive. She came across as a caring manager who was very concerned to find herself in this situation. Further, she accepted that the claimant's position was as a result of misunderstandings rather than any willful misinterpretation.
65. We accepted the evidence of Ms Innes that the claimant she had been placed in SWD because of her past experience, that she would be able to assist others who were trying to improve business performance there, because she had no previous experience there and because it was deemed helpful to have an understanding of how all of the delivery vehicles worked.

66. Although the claimant had got the impression that there would be weekly meetings with Ms Innes on return, it would appear that Ms Innes understood that to be weekly contact. We accepted Ms Innes's rationale that phoning was preferable to making arrangements to meet given the claimant's personal circumstances, with three young children and as the sole carer for her ill father. Ms Innes was not only aware of that but took that into account in making her decisions. Although the claimant had said in evidence that during a telephone call in October, Ms Innes had said that she would meet in early December, we had no note of Ms Innes being cross-examined on that point directly. In any event, we accepted Mrs Stobart's submissions that the case was not "about" contact during maternity leave.
67. She explained too that the reason she had agreed to move the claimant from SWD in June (and not before) was because she could see that on top of her personal pressures which had result in her going off sick, she was stressed and anxious about the job. When she said that she would do things differently that was in the hope of avoiding misunderstandings which might in turn have avoided matters coming to this Tribunal, and she clearly takes seriously the accusation of having discriminated against a member of staff.
68. With regard to the very limited matters in dispute, while we accept that the claimant may have misunderstood Ms Innes's response when she raised the point about the QS and that she may have said nothing or used some placatory words, she accepted that she did not agree that it was a QS role because that is not her opinion (nor that of others), which is clearly objectively correct.
69. With regard to Mr Crawford we found him to be a credible and reliable witness. We found that he gave his evidence in an unhesitating and spontaneous way and that he was quick to explain if he did not know or could not recall. We agreed with Mrs Stobart that his evidence about what he could not recollect was an illustration of his honesty, and not any attempt to be evasive. We noted too that despite not having detailed knowledge of day to day operations, on material points his evidence aligned very much with the evidence of Ms Innes in terms of the details about which he was aware and the culture of the organisation.

Discrimination because of pregnancy or maternity

70. The claimant argues that the employer's conduct amounts to unfavourable treatment because of pregnancy and maternity. In such cases, no comparator is required, and the focus of our enquiry is the reason why she was treated the way she was treated. Was it because of pregnancy or maternity? We accept that, when it comes to a claim under the Equality Act, discrimination need not be the sole reason or indeed even the main reason for the treatment, so long as it was the effective cause (*O'Neill v St Thomas Moore School* 1996 IRLR 372 EAT).
71. Both Ms Bowman and Mrs Stobart agreed that the appropriate approach to take to the application of the law in this case was to first consider whether there was unfavourable treatment – in regard to the failure to consult and separately in regard to the return to a different role – and if so whether either of those actions could be said to be because of pregnancy or maternity, or because the claimant was on maternity leave. Ultimately, for the reasons discussed below, we have concluded that there was no unfavourable treatment in this case but if we are wrong to come to that conclusion, we have concluded that any unfavourable treatment was not because of the fact that the claimant was on maternity leave.
72. In coming to that conclusion, we took account of the fact that this was not the type of case which we often see where there is alleged to be a restructuring and the woman on maternity leave is the only member of staff who is moved. On the contrary, in this case there was a clear rationale for the review/reorganisation. We accept that this was of a different order to a restructuring and that it was not unusual to move PPCs from one delivery vehicle to another. In this case we heard that Mr Crawford, on coming to head up the division, had concerns about the number of agency staff which were being used, not only because of the inevitable additional cost to the business but also because of how that limited career development for Scottish Water employees, which he was aware had been expressed as a concern by them. We heard that five or six agency staff were withdrawn and inevitably that created gaps which had to be filled by Scottish Water employees. The rationale for the review was entirely plausible and the respondent's explanation about why they had decided to move the claimant to SWD was valid. Further, we have accepted that although the activities of the role

then might change, in essence the jobs were the same. This is clear not least from the generic job description. It was against that background that we considered the claimant's claims about failure to consult and about the change in her role.

5 *Failure to consult*

73. The claimant argues that there was a failure to consult her regarding the restructuring/reorganisation and that amounts to unfavourable treatment. As is clear from the findings in fact, we concluded that none of the planners were consulted about the move, because changes in portfolios was accepted as an aspect of the role, unlike the situation in a restructuring, rather than simply a review of work and resources. It could not be said therefore that the failure to consult was unfavourable treatment because no-one else in the claimant's position was consulted either, and there was no expectation that they would be.

74. We accepted Mrs Stobart's submission that there would have been no difference in her treatment if she had not been on maternity leave, and indeed she would have received the news about the changes in roles in an e-mail on 20 December rather than in a telephone call on 19 December. Had she been present at work, then she may well have had an opportunity to express her concerns in person to Ms Innes. Ms Innes said that had she had a face to face meeting then the claimant's concerns about working for EP may have been clearer to her. However, we came to the view that Ms Innes's response would have been no different, that is she would have consulted Mr Crawford and offered her support while being line managed by EP and the situation would have been monitored. The claimant would not have found out about the differences in the activities related to the roles until January when she had undertaken the job for a monthly cycle.

Changes to role on return from maternity leave

75. The claimant also argues that there were changes to her role which amounted to unfavourable treatment; and that that treatment (the changes) was because of her pregnancy/because she was on maternity leave.

76. We did not accept that there was any change in the claimant's role. She was a PPC before and after maternity leave; and the *roles* did not change, as is clear from the role profile. We did understand that the balance of activities/tasks might change, so that there might be more financial inputting in some delivery vehicles where there was no QS or fewer review meetings where information was provided in spreadsheets. We heard that usually there was no QS appointed for portfolios in SCSP or SWD but there would be for MD, which makes sense since these are mainly the larger commercial projects with which the respondent is involved.
77. We did not accept Ms Bowman's submission that Ms Innes's evidence was contradictory in regard to whether the role was different. We considered it to be quite clear that the role was not different. Ms Innes explained that in terms of activities and focus there were differences of degree in the tasks undertaken in the different delivery vehicles, which was inevitable given the different type of projects which each delivery vehicle dealt with.
78. We agreed with Mrs Stobart that it was very telling that the claimant did not complain about the move to SWD as such when she was told about it during the telephone call on 19 December. We accepted Mrs Stobart's submission that this indicates that it was not unusual to move between delivery vehicles. This was confirmed by the evidence about both P6 planners and senior planners, who had previously been moved between delivery vehicles, as indeed the claimant had herself. It was also confirmed by the fact that others were moved in the review, as was evident for example by the e-mail sent by EP to her teams.
79. Further, given that we heard that the SCSP projects tended in general to have a shorter life span than some of the other larger projects, and so that it would not have been possible for the claimant to come back to work on the same projects. Wherever she worked, she would have come back to work on new projects/portfolios.
80. During the telephone discussion in December the claimant's concern was about being managed by EP. Her focus was not on any lack of consultation either but on the fact that she was to be managed by someone who, as far as she was concerned, she had previously been told that she would not require to work with.

Her own evidence was that she did not complain about the work or the move to SWD until towards the end of January when she came to realise that, in her view, the work was very different from her previous roles. This suggests that the focus of her concern was not on the lack of consultation but initially on being managed by EP and then on the alleged changes to her role.

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81. Further and in any event, Ms Innes moved very quickly to deal with her concerns about being managed by EP, when she said at the end of January (by which time the claimant had only been working with EP for three weeks) that she would as an interim measure be managed by herself.

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82. Further, we have found that there was never any intention that she would require to take over all 600 projects which were being dealt with by FM. The claimant on return had around 60 projects, and that increased to 125. The intention was that FM's projects would be spread between planners, but the claimant had got the impression that she was to take over her whole portfolio. It is unfortunate although understandable that she would have got this impression from the e-mail sent to her with the organogram on 7 January 2019 from EP.

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83. Although the claimant was subsequently moved back to work on IDP after the meeting in June, but this was clearly an act of compassion on the part of the respondent, with Ms Innes then recognising the toll that the tasks were taking on her, in light of considerable pressures in her personal life. This was no indication that any treatment prior to that was because the claimant had been on maternity leave.

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84. We accept therefore there was no unfavourable treatment by a lack of consultation, because none of the P6 planners were consulted, and there was no unfavourable treatment by changing the claimant's role, because her role was not changed.

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85. If it could be said that there was unfavourable treatment, we accept Ms Stobart's submission, notwithstanding the fact that others were treated the same, that any treatment could not be said to be because of pregnancy/maternity or because the claimant was on maternity leave. We accept that the claimant would have been treated no differently in regard to how the changes following the review were

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implemented had she not been on maternity leave; and we accept that any changes to the tasks which she carried out on return was because of the review following a decision to reduce dependency on agency workers and the subsequent need to rearrange resources. The claimant's treatment was nothing to do with the fact that she was on maternity leave, and is fully explained by other business factors.

86. Indeed, we consider that Ms Innes showed a good degree of concern for the claimant; that she decided to inform her personally on the telephone about the changes (although that would normally have been the role of a SP); that she did respond appropriately and quickly to the claimant's concerns about being managed by EP; that ultimately her decision to move her back to the IDP work which she requested was because of a genuine concern for her health.

Conclusion

87. Ultimately, we came to the view to use the language of *Shamoon* quoted to us, that the claimant in this case did have an "unjustified sense of grievance". We do not accept that she was subjected to any unfavourable treatment, and in any event any treatment that she was subject to could not be said to be because of pregnancy or maternity or because she was on maternity leave. Consequently, the claimant's claims under the Equality Act fail and are dismissed.

Employment Judge:

M Robison

Date of Judgement:

14 November 2019

Entered in Register,

Copied to Parties:

19 November 2019