



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondents**

**Mrs S Hughes**

**C Hoare & Co**

**Heard at:** London Central

**On:** 9 September 2020

**Before:** Employment Judge Lewis

## **Representation**

**For the Claimant:** Mr M Harris, Counsel

**For the Respondent:** Ms R Tuck QC

## **RESERVED JUDGMENT**

The claim for equal pay is in time.

## **REASONS**

### **The issues**

1. The parties agreed a small modification to the Issues set out by EJ Goodman at the preliminary hearing and a modified preamble. The agreed issues now are whether the claim for Section Head work from 2012 was presented in time, specifically:
  - 2.1 Having regard to section 129 of the Equality Act, is this a standard case or a stable work case (within the meaning of S130(3) Equality Act 2010? The claimant has clarified it is not a concealment or incapacity case?

2.2 If a stable work case, was the claim presented within six months beginning with the day on which the stable working relationship ended or is the stable working relationship continuing, within section 129 Equality Act? (as amended by the operation of early conciliation, s1408)

2. In closing submissions, it was agreed that since compensation for any breach of the equality clause can only go back 6 years, it is not necessary for me to make a fact-finding regarding whether the claimant started work in Section E in 2012 or 013.

### **Procedure**

3. This hearing was carried out on CVP (Cloud Video Platform). The parties did not object to it being conducted in this way. Although a few participants had difficulty at certain points with connectivity, this was always satisfactorily resolved. Where there was momentary loss of reception, I read out from my notes the few sentences which had been missed. This only happened on two or three occasions and only a couple of minutes had been missed each time and of no great significance.
4. There were two witnesses, the claimant and, for the respondent, Mr Markham. They each provided witness statements. Each witness and the lawyers had both hard copy and electronic bundles. I had an electronic bundle. There was no difficulty in anyone following.
5. For all these reasons, the procedure was slower than in a tribunal room. This was accommodated by allowing more time and building in breaks. The claimant had indicated she might need additional breaks and she was told she may have these on request.
6. The trial bundle was 881 pages and each party provided a written skeleton argument at the outset. I was also supplied with case law authorities.

### **Fact findings**

7. The respondent is a private bank. The claimant started work for respondent in November 2001 as an Account Manager's Assistant. She was promoted to Junior Relationship Manager in 2003 and was provided with a statement of terms and conditions dated 29 July 2003. The claimant was not provided with a written contract on any of her subsequent promotions or changes of role.
8. The claimant first took on a portfolio of customers in April 2003. As explained below, she continued to look after customers throughout her different roles at the Bank. Some of the customers she took on in 2003 are still part of her portfolio now.

9. In August 2008, the claimant became Relationship Manager ('RM'). Her annual salary was £27,798 pro-rated as she initially worked part-time, then £38,557 and £53,132 from 1 September 2013 when she increased her hours to 35/week.
10. There is some dispute regarding the date when the claimant became Head of Section E. She says she started the role on 1 January 2012, but it was not formalised until 1 December 2013, on a salary of £60,000. The respondent says there was a period prior to her appointment when she was running the section with another SRM. The parties agreed it is unnecessary for me to resolve this.
11. There were 5 sections at the time (A – E). Sections A – D generally comprised challenging customers of high net worth value. Section E had larger numbers of customers, but these tended to be of lower net worth value.
12. Each of sections A – D had Assistant Relationship Managers, Relationship Managers ('RMs'), Senior Relationship Managers ('SRMs') and a Section Head. Section E did not have any SRMs.
13. I was told that the financial results at the end of March 2017 showed that the Bank's total lending book was £1,549,358 million. Section C looked after £414,217 million of this whereas Section E looked after £15,844 million. The Bank took on 169 new customers that year of which Section C took on 50 and Section E took on 6. The claimant did not challenge these figures and I have no reason to query them.
14. Section E was a large volume section. Most of its customers had requirements which were more straightforward than customers in other sections, but there were exceptions. When Section E was first established, the less complex customers were transferred in. But over time, the customers coming into the section became more complex because the less demanding customers had already been absorbed. Where customers' needs did become more complex, they were looked after by the claimant or her deputy.
15. Section E was a useful place to train up future talent because of the volume of transactions. Employees would then often move on to other teams.
16. As Head of Section E, the claimant was responsible for staffing issues and overseeing the team. She carried out appraisals and had input into bonus levels for the Relationship Managers ('RMs') and Relationship Manager Assistants ('RMAs') in the section; dealt with holidays and sickness absences, carried out credit and conduct checks, dealt with customer complaints, cascaded important Bank information and prepared business plans. She also had her own portfolio of customers and acted as a Relationship Manager.

17. On 1 July 2016, the claimant's basic salary increased to £75,000.

### The collapse of Section E

18. Section E was collapsed on 24 November 2017.

19. In April 2017, Mr Loft (Head of Private Banking) had told the claimant that the Bank intended to collapse Section E, although no date for this was yet fixed. Having heard nothing further, the claimant asked Mr Loft in August 2017 about the respondent's plans. They had a confidential conversation on 10 August 2017. Mr Loft's notes of the meeting begin:

'I arranged the meeting to brief Sue on progress with Section E and the plans as regards her change in role. Opened by saying that I did not want her to have any unnecessary angst (her e-mail before the meeting) and had arranged the meeting specifically to brief her on latest timing and to have deeper discussions now about the role she will have going forward.'

20. Mr Loft said that subject to final confirmation, the Bank would be going ahead with the plan later in the year. He said the timing was unclear, but he would keep the claimant informed. He then moved on to asking her 'what type of role she would want going forward'. Mr Loft and the claimant had spoken previously about an SRM role, but the claimant expressed concern that she did not have the necessary experience. The claimant told the tribunal that her concern was that she did not have business development experience.

21. There is no mention of possible dismissal or redundancy in Mr Loft's note. The nearest it gets to that is a note that 'at this point she was looking for confirmation that she would still have a role to go to'. The account of the rest of the conversation suggests that dismissal for redundancy was not in Mr Loft's mind and that the claimant felt reassured. The respondent's 'strategic considerations document' dated 1 September 2017 also indicates that the intention was to retain the claimant in a team leader role on the same pay. So that the claimant did not perceive it as a demotion, the suggestion was a 'slow consultation period – gentle 'sell' approach. Clarity on remuneration from the start is key'.

22. In a letter dated 25 May 2017 announcing the outcome of the 2016/7 compensation review, the claimant's annual salary was increased with effect from 1 July 2017 to £76,000. Mr Loft scribbled an additional note thanking the claimant for what she had achieved and added 'excited for you with the plans for the new role'.

23. On 21 September 2017, the first formal consultation meeting was held with the claimant regarding a possible new role for her if Section E was collapsed as proposed. Mr Loft and Mr McKenzie from HR were present.

24. The notes of the meeting state that Mr Loftus 'advised that the proposed role for SC [the claimant] is a special projects role. In addition SC is to retain her customer role as an SRM and would continue to oversee Abbie

Berg'. It was explained that the project involved setting up a new Customer Service Team – recruiting and training them and setting up the systems. It was expected to last 6 months and the claimant would report to Mr Loft on the project. The notes continue:

'Beyond the 6 months, the proposal would be that SC would revert solely to a Senior RM role with her existing portfolio based within one of the Business Development teams. The expectation would be that SC continues to develop her portfolio.'

25. The claimant was unhappy that she would be losing oversight of a team. Mr Loft told her she would still have some oversight of staff as an SRM. Mr McKenzie 'stressed again that the bank wishes to keep SC and that in the new role that is being proposed she would still be keeping her customers and retaining her RM role'. He said it was important she consider job content, not just job title. The claimant said she would be losing oversight of a team which she currently had. Mr Loft said she would still have some oversight of staff as SRM.
26. Further discussions followed this meeting. The claimant was offered the position as SRM at Fleet street or SRM at Lowndes Street which had more line management duties and fewer business development duties and the option of an initial 6 month project role as Interim Head of Customer Support to assist with the creation of a Customer Support Team. Alternatively, she could opt for an enhanced redundancy package.
27. It was the claimant who initially flagged up the possibility of redundancy in discussions. At no stage was the claimant put formally at risk of redundancy. She was simply offered the option of a package if she wanted it, having raised the matter herself. She was nervous about changing role after so long in one post.
28. In an email dated 18 October 2017, the claimant queried how the SRM role could immediately follow the project role since she would still be carrying out the RM role as she had a portfolio of customers to look after. She said it was almost like a hybrid role from the start. Ms Nicholson from HR replied that there was an expectation she continue with her RM responsibilities while implementing the Customer Service team, though her primary focus would be on the project.
29. The respondent argued that the claimant did not take up the SRM role until her role as Interim Head of Customer Support had ended, although that was the plan from the outset. The evidence supports the claimant's contention that she started in both posts at the same time, albeit with strong primary focus on the Interim role.
30. This indicated by a number of factors, including the statement in the meeting of 21 September 2017 that after the Interim role ended, she would revert 'solely' to the SRM role, and what was said in the 18 October 2017 emails (above). In addition, the job description for each role was signed on the same date, 19 October 2017. Further, the Bank's

organisational chart in October 2017 listed the claimant in both positions. Looking ahead, by 24 May 2018, before the claimant had left the Interim Head role, HR was referring to how well the claimant 'has settled into' the SRM role.

31. I note also the final bullet in the Interim Head role says 'Ensure retained Customer Portfolio is mainlined in line with Senior Relationship Manager job description and look to grow this over time'.
32. Having said all this, although required to maintain her client portfolio and service them as RM, the claimant's primary focus was initially required to be on the temporary project, and she was told she would be gradually inducted into the full range of SRM duties. In practise, this is exactly what happened. The claimant continued looking after her customers, as she had done as Head of Section E and as she continued to do as SRM in Section C. In 2018, she started to take on new customers and grow her book as required for the SRM role. The new Customer Service team was enthusiastic and competent and it went live in February 2018. The claimant started to pull away from the team at that point, sitting more permanently with the Relationship Managers. The person who ran the Customer Relationship Team after the claimant had set it up was an RMA.
33. On 12 April 2018, HR wrote to the claimant in a letter headed 'Change of role', to confirm that the Interim Head of Customer Support role had reached its conclusion. The options were that the claimant would move away from the Customer Relationship Team from 1 July 2018 'and continue to dedicate your full time to the Senior Relationship Manager role within Section C' as per the job description signed on 19 October 2017 or the claimant could sign a settlement agreement for an enhanced redundancy package, the termination date being dependant on the recruitment of 'a replacement Relationship Manager'.
34. The claimant had been anxious about the disbandment of Section E where she had worked for 14 years and about her ability to carry out the SRM role. The aspect that had concerned her was the business development, where she was uncertain whether she had the skills. She still lacked confidence about how well she was doing. Nevertheless, she decided to let the redundancy option lapse and to continue with the SRM role.
35. The claimant's pay after she stopped being Head of Section E remained at £76,000. Her pay has increased since that date.

#### The job descriptions

36. The job description for Head of Section E lists as the overall objectives of the job:
  - leading a Section of RMs and RMAs in managing the Bank's more reactive and less complex customers
  - Overseeing risk and credit control within the Section

- Managing a portfolio of High Net Worth customers.
37. The reporting line shows RMs/RMAs report in to the Head and that the Head reports to the Head of Front Office.
38. The principal duties and responsibilities cover risk and control, relationship management, team management and compliance with the certification regime. Team management covers leading, coaching, mentoring and developing a professional and effective section and work with others within an efficient environment which aims to maximise the customer experience and generate new high-quality business. Relationship management includes overseeing customer contact with the Section on major day-to-day issues, preparing customer reviews, managing the bank's relationship with a portfolio of customers, assessing and making recommendations for the suitability of prospective customers; overseeing correspondence to customers and professional intermediaries.
39. The job description for Interim Head of Customer Support has a preamble about the Bank. It says the respondent has succeeded 'by offering an exceptional standard of service to our customers through a detailed understanding of their requirements. Our ambition is to build a sustainable banking service for our existing customers and a select number of new customers. We will achieve this ambition through the continuous enhancement of our service quality ...'
40. The overall objectives of the job are to 'play a pivotal part in helping the Bank achieve its goal of offering exceptional customer support by establishing a new operational team to support the front office.' The main focus of the team of 5 will be to provide a wide-range of administrative support to the Relationship Management team. As interim manager, the role included dealing with customer enquiries, verifying payment instructions, maintaining customer data, overseeing the day-to-day tasks of the team and ensuring regulatory requirements were adhered to.
41. The position reported to the Head of Private Banking. The principle duties and responsibilities involved:
- Working with the Head of Private Banking to establish a new operational team to support the front office
  - Leading the recruitment process
  - Creating and implementing the necessary policies and procedures for the department
  - Leading, coaching, mentoring and developing an effective team
  - Initially overseeing the day-to-day work of the team
  - Recruiting and training a junior team lead ultimately to take over day-to-day management
42. The final listed duty stated: 'Ensure retained Customer Portfolio is mainlined in line with Senior Relationship Manager job description and look to grow this over time'.

43. The job description for SRM (Fleet Street) has the same preamble about the Bank. It then lists the overall objectives of the job as
- To manage and develop a portfolio of High/Ultra High Net worth customers.
  - To lead a team.
  - To play a leadership role in managing risk and credit control. Directly involved in contributing to departmental strategy.
  - To ensure that the bank's standards are maintained with regard to facilities and service levels.
44. The organisational chart shows that the SRM reports to the Head of Section and that RMs and RMAs report to the SRM. In fact, the claimant was responsible for only one RMA.
45. The principal duties and responsibilities comprised predominantly leading and developing the Bank's relationship with a portfolio of customers; assessing the suitability of prospective customers; preparing customer reviews; customer contact on day-to-day issues; a guiding hand on banking issues internally; letters to customers and professional intermediaries; business development – existing customers and developing professional contacts; setting a high standard and following established bank policies and procedures.
46. The claimant no longer managed a whole team and it was the Head of Section C who was responsible for appraisal, bonuses, approving holidays and sickness etc for the RMAs in his team. The main thrust of the claimant's role as SRM was dealing with customers and growing the portfolio. The claimant had dealt with customers in all her years at the bank, initially as an assistant and then as a Relationship Manager since 2003. What was new for her was the business development aspect.

## The law

47. Time-limits for equal pay cases are set out in section 129 – 130 of the Equality Act 2010. The parties agree that this case is neither a concealment nor an incapacity case. It is therefore either a standard case or a stable work case. The time-limit for a 'standard case' (subject to any ACAS early conciliation extension, which is not a controversial issue in this case) is 6 months beginning with 'the last date of the employment'. The time-limit for a stable work case is 6 months beginning with 'the day on which the day on which the stable working relationship ended'.
48. Section 129(3) says a stable work case is one where the proceedings relate to a period during which there was a 'stable working relationship' between the worker and employer. There is no further definition and I therefore have to consider the guidance in the case law. The Equal Pay Act 1970 referred to a 'stable employment relationship'. It was agreed by the parties that 'stable employment relationship' and 'stable working relationship' mean the same thing for these purposes.



49. There is no neat encapsulation of what a 'stable working relationship' means. Instead, the parties both referred me to the same set of authorities, starting with Preston & Others v Wolverhampton Healthcare NHS Trust & Others (No 3) [2004] IRLR 96, and including, North Cumbria University Hospitals NHS Trust v Fox & Ors [2010] IRLR 804 (previously referred to as Potter), Slack v Cumbria County Council [2009] IRLR 463 and the two EAT decisions in Barnard v Hampshire Fire and Rescue Authority – the first unreported (UKEAT/0179/18) and the second reported at [2020] IRLR 176.
50. I was also referred to Dass v College of Haringey Enfield & North East London UKEAT/0108/12 (20 June 2014, unreported), which states that the issue is not analogous to whether there is continuity of employment for unfair dismissal purposes under the Employment Rights Act 1996.
51. I was referred in particular to the summary of the case law in Barnard (No.2). I have read it carefully. I will not repeat it here. Some additional observations were made in the two Barnard cases.
52. The early authorities focussed particularly on the temporal nature of the employment relationship and any breaks, rather than on a changing work pattern over a continuous period of employment. The EAT in Barnard (No.1) pointed out that words such as 'fundamental', 'radical' and 'significant' had been used in describing the degree of change required to bring a stable working relationship to an end, but there had been no guidance on the practical application of that test. The EAT said there was no reason why a promotion or change in role within the same organisation could not amount to something short of a fundamental (or 'radical' or 'significant') change.
53. In Barnard (No.2), the EAT said a 'broad and non-technical approach' should be adopted to determine whether a stable working relationship continued in the circumstances in issue in any particular case. Following the Court of Appeal in Fox, the EAT accepted that the tribunal needs to look at the character of the work as well as the employment relationship.
54. Any difference in the work done in successive roles is therefore a relevant factor, but it is not on its own a determining factor. The EAT in Barnard (No.2) said that a significant difference in the type of work undertaken need not necessarily mean that the relationship has been brought to an end: 'adopting a broad, non-technical approach – looking at the character of the work and the employment relationship in practical terms – such a change would always need to be seen in context.'
55. In relation to a standard case, whether an employee is employed on a single continuous contract of employment or a succession of contracts, requires an examination of the facts. It is not essential that the employer has explicitly terminated the old contract and issued a new contract. For example, where an employer unilaterally imposes radically different terms

of employment, there is a dismissal if on an objective construction of the relevant letters or other conduct on the part of the employer, there is a removal or withdrawal of the old contract. (Hogg v Dover College [1990] ICR 39 and Alcan Extrusions Ltd v Yates [1996] IRLR 327.)

## Conclusions

56. I find that this is a standard work case. The claimant's employment with the respondent was not at any stage brought to an end, either explicitly or implicitly. Although she changed role on a few occasions after leaving her post as Head of Section E, the changes constituted a variation to her contract and not a termination of her old contract and re-engagement on a new contract. I say this for a combination of the following reasons.
57. There was no explicit dismissal or termination of the claimant's contract of employment, either in writing or orally, on leaving her post as Head of Section E or on leaving the Interim Head of Customer Support post. The claimant was not even notified formally that she was 'at risk' of redundancy. Indeed, the whole tenor of the conversations at the relevant times was the language of transition and variation, not termination and re-engagement.
58. The last occasion on which the claimant was given a written contract was 2003, confirming her promotion to Junior Relationship Manager. She was not provided with any new written terms and conditions on any of her subsequent promotions or changes, including for the Interim Head of Customer Support post and the SRM post.
59. Although the claimant was eventually offered the option of an enhanced redundancy package once it was identified that the Section E post would disappear, the initial discussion concerned what post she would like to move on to. The respondent showed a clear intention that she should remain in its employment. She was only offered the redundancy package, belatedly, after she asked if it was an option, and even then, together with other options.
60. Moreover, the simultaneous granting of the two roles of Interim Head of Customer Support and SRM at Fleet Street strikes me, in context, as more consistent with variation than with separate contracts.
61. Nor do I consider the job content or terms of employment to be radically different such as to suggest on an objective construction a withdrawal of the old contract and replacement with a new contract. Although there were some changes in duties, which I discuss further below, neither the terms nor the duties were radically different.
62. For all these reasons, I find this is a standard case. The claimant is still employed on the same contract of employment under which she worked in her role of Head of Section E. Her equal pay claim is therefore in time.

63. The parties were keen to debate whether this was a stable work case. Had I not found it to be a standard case, and had I found that the claimant was employed on new contracts, I would have found it to be a stable work case for the following reasons.
64. I do not consider that the differences in role between Head of Section E, Interim Head of Customer Support and SRM were fundamental, radical or significant changes. Certainly there were differences between the three posts, but there were also similarities.
65. Looking at the overall context, the claimant's jobs involved acquiring and servicing customers herself and/or setting up systems and overseeing teams engaged in broadly the same activities, often doing both at once.
66. As Head of Section E, the claimant still carried her own portfolio as RM; she retained this portfolio when moving to the SRM role and while prioritising the Interim Head of Customer Support role. She still retains some of the customers today.
67. The SRM role did require the claimant to substantially build up her portfolio and develop it with Higher Net worth customers. The proportion of her time spent on RM work was greater than in the Head of Section E post and while in the Interim post. The strategic skills required as SRM were different. Indeed, the claimant was afraid she did not have the necessary business development experience. However, RM work in one form or another was a constant from prior to acquiring the Head of Section E post, during that post and on into the SRM post. The respondent clearly thought there were notable similarities and regarded it as a question of gradually assisting the claimant to transition and build up her portfolio.
68. In the formal consultation meeting on 21 September 2017, Mr McKenzie actually said that in the proposed new role she would still be keeping her customers and retaining her RM role. When the claimant pointed out she would be losing oversight of a team, which is certainly a notable difference between the Head of Section E role and the SRM role, Mr Loft told her she would still have some oversight of staff as SRM. That appears to be only oversight of a single SRA, but the point is that the respondent in that meeting sought to persuade the claimant that the two roles were not so dramatically different.
69. As far as the Interim Head post is concerned, even if I thought it an entirely different type of job, I would not consider that it disrupted the stability of the employment relationship, firstly because it was only ever intended to be short term; secondly, the SRM post was given to the claimant at the same time; thirdly, the claimant carried out elements of the SRM post at the same time, albeit her major focus at first was on the Interim Head post. The claimant was also marked on the Bank's chart as in both positions at once.

70. That would be sufficient. But in any event, I do not consider the nature of the Interim Head work to be radically different from work done by the claimant as Head of Section E, although there were certainly some differences of note. There were also common themes in being responsible for a team and its processes. The Interim Head post had extra duties in the sense setting up and recruiting an entirely new team, which is different, though not entirely unrelated. The team itself was very different in one sense in that it was a new type of operational team which would support the front office. However, it was still within the general ambit of services to customers and it drew on skills the claimant had used as Head of Section E.
71. The respondent's approach is also suggestive of a stable work relationship. Mr Loft had a confidential conversation with the claimant at a very early stage in April 2017. He told her he didn't want her to worry and they would have discussions about her role going forward. The Bank proceeded in that manner. There was no suggestion of redundancy dismissal. A redundancy package only came up later when the claimant asked if it was an option. The Bank wanted to retain the claimant in another role on the same pay. It was prepared to undertake a slow consultation period to bring her along. This is all suggestive of stability.
72. Offering the claimant and starting her in the SRM role at the same time as the Interim Head role also suggests stability in approach. Although the respondent formally checked at the end of 6 months that the claimant did want to continue work exclusively on the SRM role and let the offer of a redundancy package lapse, that offer does not in my mind undermine the general feeling of stability. The respondent did not seek to persuade the claimant to leave. On the contrary. It had provided the claimant with steady encouragement towards building up her portfolio for the SRM role.
73. The claimant's own approach is slightly less stable in that she repeatedly expressed anxiety about moving to the SRM post and asked whether a redundancy package was an option. She was thrown by losing a post which she had held for 14 years and was sorry to lose oversight of a team. She was unconfident about whether she had the necessary business development skills for the SRM post. I take this into account. But in the overall context, I do not think it undermines my conclusion that there was a stable working relationship. At the end of the day, at the key points, she let herself be persuaded by her employer. She also turned down an enhanced redundancy package.
74. I am aware that continuity of employment under the Employment Rights Act 1996 is an entirely different test and not analogous. However, it is a further small factor to put into the balance when considering stability that the claimant worked continuously for the respondent with no gaps in her employment and no suggestion that any gap was likely.

75. For all these reasons, had I not found this to be a standard case, I would have said it was a standard work case which still continues, and the equal pay on this alternative basis would also be in time.

Employment Judge Lewis

Dated: 14 September 2020

Judgment and Reasons sent to the parties on:

16/09/2020.

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For the Tribunal Office