EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106434/2019 (V) Hearing by Cloud Video Platform (CVP) on 6 and 7 April; and Deliberation on 8 April 2021

Employment Judge: M A Macleod
Tribunal Member: N Elliot
Tribunal Member : R Henderson

Mr Basil Hamza	Claimant In Person
HM Revenue & Customs	Respondent Represented by Dr A Gibson Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Employment Tribunal is that the claimant's claims all fail and are dismissed.

REASONS

1. The claimant presented a claim to the Employment Tribunal on 7 May 2019 in which he complained that he had been discriminated against on the grounds of his sex. The claim form also indicated that he wished to complain of discrimination on the grounds of gender reassignment, but it was noted at the Preliminary Hearing on 12 July 2019 that this was ticked in error (24).

2. The respondent submitted an ET3 in which they resisted the claimant's claims.

3. A Hearing was listed to take place on 7 to 9 April 2021, by CVP due to the ongoing restrictions imposed as a result of the coronavirus pandemic. The claimant appeared on his own behalf, and Dr Gibson, solicitor, appeared for the respondent.

4. The respondent called as witnesses:

   - David Matthew Alexander, Team Leader;
   - Kenneth Eve, Real-Time Planning Manager (temporary);
   - Katherine Bell, Senior Delivery Manager; and
   - Lyndsey Taylor, Resources Planning Officer.

5. The claimant gave evidence on his own account.

6. The evidence in chief of each of the witnesses was taken by way of witness statement, and each witness attended the hearing and was available for cross-examination.

7. The parties presented a Joint Bundle of Productions upon which reliance was placed during the course of the hearing.

8. The hearing proceeded in such a way that each participant was able to see and hear all others, aside from occasional interruptions. On one occasion, one of the Tribunal members was unable to participate due to a failure of her internet connection. When she resumed, the Employment Judge summarised the short chapter of evidence which she had missed, with the consent of the parties. No significant disruption took place to the hearing and the Tribunal was satisfied that the evidence was heard clearly and fully during the Hearing.

9. Based on the evidence led and the information provided, the Tribunal was able to find the following facts admitted or proved.

Findings in Fact

10. The claimant, whose date of birth is 1 January 1966, commenced employment with the respondent as a Tax Advisor at the Bathgate Contact Centre on 22 May 2017, on a "CSI Contract", a type of contract designed to assist the respondent to provide cover for the opening hours of 8am to 8pm, Monday to Friday, and also Saturdays and Sunday. Under this contract, employees were contracted to work "mid shifts", which would run until 6 or 7pm, or "lates" up to 8pm.

11. The Contact Centre provided advisors who would answer calls, like the claimant, to different departments from members of the public seeking assistance with taxation-related matters. The areas covered were Taxes, Tax Credits, Child Benefit, Webchat and Processing. Although the claimant was employed to work in Taxes, it is possible that he would be required from time to time to work in the Child Benefit department, when the volume of business hit its peak around the time the schools would return after the summer holidays.

12. The claimant's work pattern when he commenced employment was to work 37 hours per week, in a 4 week shift pattern composed as follows:

    - **Week 1**: Monday, Tuesday, Thursday 8am to 4pm, Friday 8am to 3.30pm and Sunday 9am to 5pm;
    - **Week 2**: Monday, Wednesday, Thursday, Friday 12 noon to 8pm and Saturday 8am to 4pm;
    - **Week 3**: Monday to Thursday 9am to 5pm and Friday 12.30pm to 8pm; and
    - **Week 4:** Monday to Thursday 9am to 5pm and Friday 9am to 4.30pm.

13. The respondent operates, and at that time operated, a Flexible Working Hours policy (45ff), which allowed staff to apply to vary their working arrangements.

14. The claimant's wife, a civil engineer, sought and obtained new employment which meant that she was to move from an Edinburgh city centre post to a job in an office in Dunfermline, Fife, from 4 January 2019. The claimant's wife had hitherto accepted responsibility for collecting their youngest son (they have 3 children) from after-school club at his primary school each day (and dropping him off at school breakfast club each morning), was no longer to be able to do so. The claimant has no close family or close friends to help with this, and accordingly, he submitted an Alternative Work Pattern (AWP) application to the respondent on 27 November 2018 (94).

15. The application sought to reduce his working hours from 37 to 24 each week, in a pattern which did not require him to work beyond 3.30pm on any day, but proposed that he worked each Saturday in order to cover the additional hours which were required by the Centre.

16. He explained in the application: *"New shift request submitted due to change in personal circumstances impacting childcare arrangements and no longer able to work late shifts. Agreed with manager to offer alternative unsocial elements ie Sat/Sun working."*

17. The claimant had spoken to David Alexander, his line manager, about this change in his personal circumstances brought about by his wife's new job and location. Mr Alexander advised the claimant that he should look to indicate that he was prepared to provide an unsociable hours element into the proposal, by suggesting that he would work later hours or more often at the weekend. He thought that the claimant's willingness, in this case, to carry out weekend working would help his application.

18. On the application, the details of discussion with his line manager were recorded:

"New shift request submitted due to change in personal circumstances impacting childcare arrangements. I have discussed all available shifts with Basil on 23/11/18. I followed up a discussion with my OP (Suzi), following up this conversation again with Basil. Basil discussed recommended shift options with his partner. Agreed best pattern for both Basil & business on

27/11/18. I discussed with LRT both 23/11 & 27/11 to see if possible and submitted application 27/11/18."

19. The application was signed, electronically, by the claimant and Mr Alexander, who added his supporting comments:

"I fully support this application which is essential to help Basil have work life balance. I have discussed all available shifts with Basil on 23/11/18. I followed up a discussion with my OP (Suzi), following up this conversation again with Basil. Basil discussed recommended shift options with his partner. Agreed best pattern for both Basil & business on 27/11/18. I discussed with LRT both 23/11 & 27/11 to see if possible and submitted application 27/11/18."

20. Suzi Hilton also applied her support to the application, having discussed the matter with Mr Alexander.

21. On 28 November 2018, Lyndsey Taylor emailed the application to Shirley D'Alby, operations manager (103/4), observing that the jobholder was a Taxes advisor on a CSI contract *"which means that we are losing late cover and Sunday's but the requested shift is a standard WP with the inclusion of working every Saturday for the unsocial element."* She asked Ms D'Alby if she were happy to agree this.

22. Ms D'Alby recommended (103) that they met with the claimant – *"we need to be more strict with those who have a commitment to Sundays and lates."*

23. The local resources team (LRT) met on 12 December 2018, and discussed the claimant's application. Mr Alexander attended the meeting to support the claimant, who was also present. The meeting was chaired by Lyndsay Taylor and notes were taken by Kenny Eve, both local resource analysts. The notes were produced (102/3) as part of an email to Ms D'Alby, dated 12 December 2018.

24. The claimant explained the circumstances which had given rise to the application to vary his working arrangements. It was noted:

"Lyndsey asked Basil if there were any other childcare options that he could explore, however Basil stated that his options were limited due to the fact that he is from Iraq and his family options are limited. He stated that he has friends that would be able to help him out on occasions if required but this could not be a standard arrangement.

Current childcare costs are a major factor in the reasons for the changes. Lyndsey asked Basil what time his partner would be working to in her new role from the 7th Jan 29 (sic). Basil stated that she would be working until 5pm each day but that no weekend working was required. Basil stated that she would not be able to commute to the After School care in time for the current 17:30 pick up.

Basil was asked if it was possible to provide any late cover on Weekdays, however he stated that he was not able to commit to this, however did commit to continuing to work a Sunday and offered to do every Saturday if required and was flexible on start and finish times on Saturday and Sunday.

Lyndsey stated that she would send this information to the decision maker (Shirley) and hoped to have an answer for him soon. Basil asked if any agreement could be for 3 or 6 months initially to determine whether the pattern was working.

Lyndsey stated that she would relay his request to the decision maker and hopefully get back to him soon. However to manage expectations it was explained that due to the demands of his current CSI contract, what he is proposing doesn't really meet the terms of this and the expectation is that he would need to provide late and weekends cover. This was also reiterated by the Teams Leader David Alexander at the meeting."

25. Mr Eve sought the comments of Ms D'Alby in relation to the application. However, Ms D'Alby became unwell and was absent from the business from December 2018 until January 2019. Katherine (Kate) Bell sought to deal with matters in her absence, and when it was brought to her attention by Mr Eve, she responded to Lyndsey Taylor by saying that the claimant was specifically recruited to provide more of an unsocial element and there were

concerns about the level of late night cover which the respondent would be losing.

26. Ms Taylor emailed David Alexander on 21 December 2018 (107) to advise him that they had discussed the matter with the decision taker, and repeated that *"Basil was specifically recruited to provide more of an unsocial element and there are concerns about the level of late night cover we would be losing."* The email asked Mr Alexander to discuss this with him and to let them know how he wished to proceed. When Mr Alexander received this email, he concluded that the LRT had decided not to grant his application.

27. Mr Alexander replied that day (106/7) to ask what his options were, setting forth 4 possible options:

"1. an alternative approach to shifts altogether.

2. Provide a certain level of late cover to make it successful.

3. Provide more weekend cover and it could be approved.

4. As Basil was recruited on this pattern no options are available to support Basil with AWPs".

28. No reply was received to that email, and accordingly, Mr Alexander wrote to Suzanne Hilson (106) on 31 December 2018 to say that so far they had not heard anything from LRT or Ms Bell which was expected due to leave and unexpected circumstances. He stressed that the claimant needed to know the outcome of the application as soon as possible as his children were due to start back at school in early January and they had no childcare. He gave Ms Hilson the claimant's mobile telephone number so that he could be contacted direct in Mr Alexander's absence on leave.

29. Ms Hilson inquired of Mr Eve what the current situation was. Mr Eve replied on 3 January 2019 (105):

"Hi Suzi

I popped down to speak to you about this case earlier. I'm not really sure where else to go with it to be honest.

Before the festive break, I briefly discussed this with David and informed him that Kate had concerns with the proposal and that he should probably discuss with yourself with a view to you maybe having a discussion with Kate on a way forward. Kate's comments were as follows:

'Basil was specifically recruited to provide more of an unsocial element and there are concerns about the level of late night cover we would be losing.'

From Kate's reply it seems that she is looking for Basil to provide a level of late cover as per a CSI contract. I think that if Basil revisited the proposal and included late cover somewhere in there and keep the Sat/Sun cover as proposed that the decision maker would be able to reconsider the application on that basis.

In the meantime, if you feel it's appropriate, a TRA [Temporary Restriction on Attendance] could be submitted to bridge the gap until the issue is resolved.

I hope this is helpful Suzi and would be happy to discuss if required.

Thanks,

Kenny Eve"

30. The respondent's position was that the application had not been met with a "categorical no", but that it may be possible to discuss matters with the claimant and resolve the issue. They were insistent, however, that there had to be an element of late shift working during the week, perhaps for one day each week, in order to cover the calls.

31. Evenings tend to be the key area of demand in the respondent's business, as members of the public tend to call HMRC for advice on tax, tax credits and other matters at the end of their working or caring day. There is less demand at the weekend, and indeed since the claimant's departure from their employment the Centre no longer operates a Sunday shift.

32. A Temporary Restriction on Attendance is an arrangement put in place to bridge the gap between the existing and the applied for shift pattern. In this case, the Tribunal understands that the effect of a TRA would have been to allow the claimant to work a shift pattern without late working in order then to take time to establish whether or not a new arrangement could be agreed. If not, then the application would be formally rejected and the claimant's original shift pattern reinstated.

33. Ms Hilson forwarded this email to David Alexander at 2.55pm on 3 January 2019 (110), advising that some later cover was required, and asking him to review with the claimant.

34. Mr Alexander returned to work on 4 January 2019 following the festive holiday break. He spoke with the claimant by telephone and asked him to confirm whether there was any flexibility in his schedule which might permit late working. The claimant reiterated that he could not do that due to his personal circumstances. Then he told Mr Alexander that he had no option to resign and that he would come into the office. They did briefly discuss the possibility of a TRA but the claimant simply could not accommodate a late shift working pattern. He told Mr Alexander that he did not have the family or friends to support even one late shift a week, and that he could not afford the necessary childcare.

35. Mr Alexander emailed the Resources team, copying in Ms Hilson, on 4 January 2019 at 12.05pm (109) to advise that having spoken with the claimant, it was his intention to come to the office that day at 3pm to hand in his resignation, making his last day 4 January 2019.

36. The claimant did attend the office that day, with his children, and confirmed his resignation to Mr Alexander, meeting him in the canteen. It was a brief discussion, during which the claimant advised that he thought it likely that he would have to return to driving a taxi, as he had done before.

37. The claimant secured a private care hire licence from the City of Edinburgh Council on 5 November 2019 (115/6). He was unable to find any alternative

work between the termination of his employment with the respondent and that date.

38. The claimant raised a comparator, a female colleague named Jamie Jeffrey.

39. Ms Jeffrey was employed by the respondent as a member of Mr Alexander's team, on a full-time basis when recruited. She went on maternity leave and was due to return to work towards the end of 2018. She decided, however, to return earlier than scheduled, on 5 November 2018, but wished to change her working pattern from full-time to part time to accommodate her childcare needs. She submitted an Alternative Work Pattern application dated 17 September 2018 (90), having raised the matter with Cheuk Riley (known as Bo) who, in Mr Alexander's long term absence on training, was acting as lead for the team.

40. The application sets out Ms Jeffrey's previous shift pattern, working 37.5 hours per week, 9am to 5.30pm each day apart from Friday when she would finish at 5pm. The proposed work pattern, which she discussed with Mr Riley before submitting the application, was that she would work 9am to 5.30pm on Tuesday and Wednesday, and 11.30am to 8pm on Friday, a total of 24 hours per week.

41. She added the comment that she wished to return to work earlier than she had previously indicated.

42. Ms Jeffrey was able to confirm to Mr Riley (87) that having spoken to her mother she was able to accommodate the shift pattern proposed.

43. The full APW process was not followed, on the basis that the standard shift pattern was selected by the applicant in that case.

44. Mr Alexander himself worked part-time, engaged for 34 hours per week. His working pattern was Monday 8am to 6.30pm; Tuesday 9am to 5pm; Wednesday 10am to 8pm and Friday 8.30am to 4.30pm. He did not work on a Thursday but covered a Saturday every 8 weeks. He reduced his working hours in order to have a better work/life balance, and to coordinate with his wife's working arrangements, in order to benefit his family.

45. Mr Alexander confirmed that other male colleagues, to his knowledge, worked part-time as well.

Submissions

46. For the respondent, Dr Gibson presented a written submission, to which he spoke.

47. He set out the issues in this case, helpfully, and these appear below. Essentially, there are two claims which the Tribunal requires to determine: a claim of direct discrimination on the grounds of sex, by treating the claimant less favourably than they did an actual comparator, Jamie Jeffery, or hypothetical comparators, when not granting his application for an Alternative Work Pattern; and an indirect discrimination claim based on the respondent's application to the claimant the PCP of requiring male employees to work a full-time shift pattern and not giving adequate or reasonable consideration for requests for part-time working for men.

48. Dr Gibson set out a summary of the findings in fact which he proposed the Tribunal should make, together with the appropriate legal provisions applicable to this claim.

49. With regard to the claim of direct discrimination, Dr Gibson said that the key points for consideration related to the shift pattern he was engaged to fulfil. He referred to Ms Bell's evidence about the need for CSI contracts, and in particular the need to have sufficient cover for the whole of the working day. The respondent was concerned about the loss of the claimant's late shifts and that was the reason for the questioning of the application when it was first made. He submitted that the fact that the claimant was a man had no bearing whatsoever on the respondent's approach.

50. Dr Gibson argued that in order to succeed, the claimant would require to show that a member of the opposite sex, whose circumstances are not materially different to theirs, is a comparator against whom they may say that they have been treated less favourably on the grounds of sex. The comparator in this case, Ms Jeffrey, is not a good comparator for the

claimant. Her AWP application was entirely different to the claimant's, and in her application she confirmed that she was willing to work late on a Friday evening. This is deemed to be a "hot spot" or an area of high demand for the respondent, and is an unpopular shift. The reason for the different treatment of Ms Jeffrey was her willingness to work this shift, rather than her sex. The evidence was clear, he said, that if the claimant had been able to provide some flexibility and work a late night, even on a rotational basis, his application would have been granted, but he did not accept this. It was not anticipated that the claimant would resign, as in most cases a compromise would be identified and the relationship would continue. The resignation meant that no such compromise could be identified.

51. He went on to submit that a hypothetical comparator would have been refused the same application made by the claimant, because of the need for staff to cover the late shift.

52. He moved then to the indirect discrimination claim. The PCP pled was that the respondent requires male employees to work a full-time shift and do not give adequate or reasonable consideration for requests for part-time working for me.

53. This claim falls at the first hurdle, he argued, on the basis that for a PCP to be discriminatory, it has to be applied to persons who do not share the protected characteristic under examination. Since the PCP is pled on the basis that only men are subject to it, it cannot be indirectly discriminatory.

54. Even if the PCP were interpreted as requiring all staff to work full time, that would similarly fail, because such a PCP would not place men at a particular disadvantage when compared to women; indeed, the case suggests the opposite. Women who would be required to work full-time would be placed at a greater disadvantage than men would be because women are usually the ones who have the greater degree of child care responsibilities.

55. It is clear in any event, he submitted, that the respondent does not apply a PCP requiring male employees or indeed all employees to work a full-time

shift. The issue in this case was not that the claimant sought to work part-time but that he did not offer to work any late shifts. The respondent applies a PCP of employing both full-time and part-time employees, male and female. If he had continued to discuss the matter with the respondent, they may have been able to find a solution without the need for him to resign.

56. The claimant's argument that he was not treated seriously should not be upheld. The respondent is an employer willing to offer flexible working arrangements to suit the individual where that can be accommodated according to business needs. The claimant was asking for something which the respondent considered did not meet its business needs and would have an adverse impact on its ability to meet customer demand. The application was given proper and serious consideration in that there were two meetings held to discuss it and the Local Resourcing Team were involved.

57. Dr Gibson concluded his submission by arguing that the claimant has failed to provide any supporting evidence to demonstrate that he should receive any remedy at all in this case, particularly given that he took so long to secure a taxi driver licence from the City of Edinburgh Council.

58. He invited the Tribunal to dismiss the claimant's claims.

59. The claimant made a short oral submission. He felt I was pushed to quit his job regardless of the fact that he had explained his circumstances for 6 weeks. He tried to keep his job by offering to work unsocial hours on a Saturday and Sunday. The policy, he said, is supposed to be family friendly.

60. He felt that his claim should succeed. The respondent should have taken less time to formulate a response to his application instead of waiting until the last possible day to confirm their decision, on 3 January 2019.

61. The claimant submitted that the respondent's denial that there was any bias relating to his gender is contradicted by Mr Alexander's chain of emails, which show a "huge matter of mistreatment". They were supposed to have a moral and ethical commitment to him as an employee, and this resulted in

his losing his job and salary for 11 months. They "took my umbrella back on a rainy day".

62. He said that working for the respondent was a pleasure for him, and that he felt he was let down when he asked to transfer to part-time work due to his family circumstances.

63. He asked the Tribunal to uphold his claims.

The Relevant Law

64. Section 13(1) of the Equality Act 2010 ("the 2010 Act") provides:

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

65. Section 19 of the Equality Act 2010 provides:

"(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of sub-section (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim."

66. Section 23(1) of the 2010 Act provides that *"On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case."*

Discussion and Decision

67. The respondent's representative set out helpfully the issues in this case, and in determining this claim, we adhere to those issues.

    1. **Did the respondent discriminate against the claimant because of his sex, by treating him less favourably when they did not grant his Alternative Work Pattern application as originally drafted, than the treated his actual comparator, Ms Jamie Jeffrey, or hypothetical comparators, being women who were in the same material circumstances as the claimant?**

68. The crucial question, here, is whether or not the reason for different treatment as between the claimant and Ms Jeffrey was on the grounds of sex. Was he refused his AWP application because he was male, and was she granted hers because she was a woman?

69. There is a curiosity about this case, in that the application was not conclusively rejected. It was not granted, it is quite true, but the respondent's evidence demonstrated that they would have been willing to consider alternative proposals, and to conduct further discussions with the claimant in order to find a solution short of resignation by the claimant.

70. However, on the basis that the application was not granted (which is what the issue requires us to consider, and on which the claim is predicated), we consider that the evidence demonstrates that the claimant's application was rejected due to the fact that he was unable to find a way to work any late shifts. Ms Jeffrey's application was granted, clearly because of the fact that she was able and willing to countenance working late on a Friday.

71. There is no basis in evidence upon which we could conclude that the claimant was treated less favourably than Ms Jeffrey on the grounds of sex. Her circumstances were very similar to his, except in one material respect,

namely her willingness and ability to carry out a late shift on a Friday evening each week. That differentiates her circumstances from those of the claimant and provides a clear explanation for the different outcomes in their applications.

72. The claimant clearly sought to persuade us that the reason why his application was rejected was because he was a man seeking to work part-time. However, it is plain that the respondent were content to allow him to work part-time – reducing his hours to 24 per week was acceptable to them, but the pattern which he wished to work those hours in was not.

73. In our judgment, the reason for the difference in treatment was that the claimant was unable or unwilling to work one late shift per week, and that that was unacceptable to the respondent because they needed staff to cover the late shifts due to the extra demand from members of the public seeking advice from staff like the claimant. We were persuaded that Friday nights are a particularly busy time, and that staff generally prefer to avoid working that shift if possible; that the claimant was engaged to work at least partly to cover such shifts; that the respondent had to be careful about permitting staff employed on a CSI contract to alter their working pattern in case others sought to do the same, and they may be left with insufficient cover for those shifts; and that the reason for not granting his application was based upon that business need.

74. We were fortified in our view that that was the reason why his application was not granted and Ms Jeffrey's was by the fact that Ms Jeffrey was willing to continue to work such a shift and he was not. That was the material difference between them, and the difference in treatment was for that reason, an objective business reason, and not the fact that he was male and she was female.

75. Dr Gibson submitted that a hypothetical female comparator would have had an application of the sort presented by the claimant refused as well, due to the need to have late shifts covered. In our judgment, based on the evidence we heard from the respondent's witnesses, which we accepted,

we agreed with that submission. The priority for the LRT was to ensure that the shifts which the respondent had to cover were covered by the staff who were engaged to do that work.

76. Accordingly, it is our finding that the claimant was not directly discriminated against by the respondent in their decision not to grant his application for an AWP as it was submitted.

2. Did the respondent discriminate against the claimant by applying to him the provision, criterion or practice (PCP) of requiring male employees to work a full-time shift and not giving adequate or reasonable consideration for requests for part-time working for men, which was discriminatory in relation to the claimant's sex?

a. Did the respondent apply the PCP to people of the opposite sex?

b. Did the PCP put men at a particular disadvantage when compared with women?

c. Did it put the claimant at that disadvantage?

d. Was the PCP a proportionate means of achieving a legitimate end [aim]?

77. It appeared to us that the PCP should properly be read – as Dr Gibson noted we may consider appropriate – as the requirement that all employees, male and female, work a full-time shift pattern; the second part, however, does not bear scrutiny as a PCP, since in our view it was a criticism of the process of considering requests for part-time working for men. This is more a complaint of direct than indirect discrimination.

78. Dealing with the second part first, it is our judgment that the claim cannot succeed. The claimant's claim was not rejected because it was a request for part-time working: it would have been granted, on the evidence, had the claimant sought to reduce his working hours to 24 hours per week but agreed that at least part of his working week would involve working a late

shift. As a result, it is impossible for the claimant to prove – and he has failed to do so – that the respondent did not give proper consideration to an application for part-time working, since part-time working was not the reason for the rejection of the application.

79. As to the main part of the PCP, it is our judgment that, on the evidence we heard, this bound to fail. The respondent plainly did not require all staff, male and female, to work full-time. Ms Jeffrey was permitted to work part-time. The claimant would have been allowed to work part-time had a suitable pattern been agreed. Mr Alexander worked part-time. The respondent operates a Flexible Working Hours Policy and we accepted that that policy was one which was offered to staff to allow them to seek to work according to arrangements which were suitable for them.

80. Accordingly we can only conclude that the respondent did not apply such a PCP in the workplace, and thus did not apply such a PCP to the claimant.

81. In any event, we are unable to find that the claimant suffered any substantial disadvantage on the grounds of his sex. It is not obvious why it should be said that a male could not work on a Friday evening, but a female could. The claimant was therefore unable to demonstrate that he suffered any disadvantage in these circumstances because of his sex.

82. As a result, it is our judgment that the claimant's claim of indirect sex discrimination cannot succeed, and must be dismissed.

83. We should say, however, that we readily understood the claimant's frustration at the way in which these events played out. Firstly, the fact that he was told on 3 January 2019, the day before the arrangement required to be in place, that the application was not being granted, left him feeling like there was no choice for him but to resign. Secondly, as it turns out, it may have been possible for him to have a TRA put in place, and while it is clear that this was raised with him by Mr Alexander, we felt that it was not entirely clear to him at the time what this might have meant, in terms of buying him some time to consider what alternatives to resignation he might have had.

The process took rather longer than was ideal, and the claimant clearly felt aggrieved about that, in which we sympathised with him.

84. However, notwithstanding that, we were not persuaded that the claimant's treatment was on the grounds of or in any way related to the fact that he was a man, and therefore we could not uphold his claims before us.

85. The claimant presented himself as a pleasant, courteous gentleman, who conducted himself in a very dignified and respectful manner during the course of the hearing, for which he is to be commended. Dr Gibson, similarly, demonstrated courtesy to the claimant and sought throughout to assist the Tribunal, and we record our gratitude to him for doing so.

Employment Judge: Murdo Macleod
Date of Judgment: 18 May 2021
Entered in register: 21 May 2021
and copied to parties