EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms K Blake	**v**	Lawtons Solicitors Ltd

Heard at: Watford (CVP) **On**: 2-5 June 2021

Before: Employment Judge R Lewis
Mr S Bury
Ms C Grant

Appearances
For the Claimant: Mr A Morgan, Counsel
For the Respondent: Mr P Michell, Counsel

JUDGMENT

1. The claimant's complaint that she was discriminated against because of pregnancy fails and is dismissed.

2. The claimant is ordered to pay to the respondent costs of £3,000.00.

REASONS

1. Mr Morgan asked for these reasons after judgment was given.

Procedural history

2. This was the hearing of a claim originally presented on 9 April 2018. The claimant has throughout been represented by the same solicitors. It has been the subject of a number of case management hearings, including those conducted by the present Judge on 17 July 2018 and 29 June 2020.

3. On the former date it was listed for hearing for five days starting on 30 May 2019. That hearing was postponed due to resource issues in the Tribunal. The re-listed hearing in 2020 could not proceed because of the lockdown.

4. The parties had exchanged witness statements. The claimant was the only witness on her own behalf. The respondent's witnesses in order of giving evidence were:

    - Mr S Halloran, Director, and a solicitor;
    - Mr A Hobdell, Consultant solicitor;
    - Mr N Titchener, Director, and a solicitor;
    - Ms R Canavan, solicitor;
    - Ms L Munjic, former Manager;
    - Mr N Seeley, solicitor.

    The Tribunal read the signed statement of Mrs N Hobdell, Legal Executive, in the absence of the witness.

5. The Tribunal was provided with a pdf bundle of between 400 and 500 pages. The parties and witnesses also had paper copies. The bundle was exceptionally challenging to work from, because it was poorly organised and poorly presented. We were grateful to Mr Michell, who seemed to have fully mastered the discrepancies between the hard and soft bundles and their numbering.

6. We were told that a remedy bundle was served by the claimant's representative on Friday 28 May, the last working day before this hearing: allowing that a claimant may in principle update remedy evidence in a discrimination case, it is simply not acceptable practice to serve a remedy bundle on the last working day before a long delayed hearing, without even the courtesy of a request to the Tribunal.

7. The hearing was conducted entirely by CVP. The non-legal members took part remotely. It was agreed at the start of the hearing that this stage of the hearing would deal with liability only. The claimant's case was heard first. Oral evidence was concluded on the late morning of the third day, following which we heard submissions from both sides. There was a helpful opening skeleton from Mr Morgan and closing submissions in writing from Mr Michell. We gave judgment on liability at the end of the third day. At that stage neither side applied for written reasons. Mr Michell indicated that he wished to apply for costs, which we adjourned to late morning on the fourth day.

8. The Tribunal met on the fourth morning to hear the respondent's costs application. Mr Michell had provided a written skeleton supported by a modest bundle of documents. The claimant did not attend. Mr Morgan's instructions were to proceed in her absence, and without being able to take instructions during the hearing. After we had given judgment on costs, Mr Morgan applied for these reasons.

9. This case arose out of events in a solicitors' firm. At the hearing in July 2018 the judge had directed that no reference was to be made to any client by actual name or actual initials. It is not necessary in this judgment to refer to any case or client or former client of any party. Likewise, reference had

arisen in pleadings to matters involving a non-party. No privacy issue arises in the judgment or this evidence.

General

10. We preface our findings with preliminary observations. In this case, as in many others, we heard evidence about a wide range of matters, some of it in detail. Where we have made no finding about a matter of which we heard; or where we do so, but not to the depth to which the parties went, our approach does not represent oversight or omission but reflects the extent to which the point was of assistance to us.

11. Although Mr Morgan suggested that the respondent had been derelict in its disclosure obligations, we do not find that that has been shown. We do not agree that disclosure in this case required the respondent to disclose every item relating to the claimant's employment between 2012 and 2018. While that may be the approach of subject access, the obligation in this tribunal was to disclose necessary and relevant documents to the issues in this case.

Legal framework and area of dispute

12. This claim was brought only under the provisions of s.18 of the Equality Act 2010. That provides as follows:

> "A person discriminates against a woman if.. he treats her unfavourably because of the pregnancy.. (4) A person discriminates against a woman if he treats her unfavourably because she is exercising or seeking to exercise or has exercised or sought to exercise the right to ordinary or additional maternity leave."

13. The claimant's case was that the sole event of discrimination of which complaint was made was the decision to terminate her employment. Although this was not a case of unfair dismissal, the factual matter was that her fixed term training contract came to an end on 3 January 2018 without renewal. The matter complained of was a decision communicated to the claimant on 2 November 2017 in which she was informed that she would not be offered a post then as a newly qualified solicitor. The claimant's complaint was that that decision was taken because of the notification of her pregnancy which she sent the respondent on 10 October 2017.

14. As a matter of law, the question for the Tribunal was whether the claimant's pregnancy was a material consideration in the decision to dismiss her. The claimant put the case higher, to the effect that pregnancy was the only reason for her dismissal. The respondent's case was that the respondent's two directors, Mr Halloran and Mr Titchener, had made a decision by the end of April 2017 that the claimant would not be retained after 3 January 2018; and that they had communicated that decision in confidence to each of the other witnesses, except to Mrs Hobdell, who had been told by Mr Hobdell.

15. In cross-examination, the claimant starkly said that each of those individuals had lied. Mr Morgan did not put that phrase or anything like it to Mr Halloran in cross-examination. Mr Michell invited him to do so, and we agreed in principle that he should do so. Mr Morgan put a number of indirect questions to the witness, not putting to him that he had been deliberately untruthful. He did not put the allegation of lying in any form to any of the other witnesses.

Findings of fact

16. The respondent company is a solicitors' practice of which Mr Halloran and Mr Titchener are the sole directors. It undertakes legal aided criminal defence work and undertook prison law cases. It worked under severe pressure of time and finance as a result of the requirements of the legal aid system. We accept that it operated an informal management system, in which the two directors spoke and were in constant communication with each other, but did not routinely record decisions or outcomes in writing. They saw no need to. It was clear that their relationship was based on a huge degree of personal trust.

17. We accept that the respondent's management of fee earning staff contained a large element of learning by observation, with fee earning staff sharing communal work spaces and areas, and working on each other's files. There seemed to be relatively little written record keeping.

18. We were taken to some history of the firm's management of trainees. We do not agree with the claimant that there was a 'culture' of retaining trainees on qualification. If it were the claimant's case that she had a legitimate expectation of staying on, we do not agree that she did. We agree with the respondent that some trainees had been retained and some had not, and that these were individual decisions, based on the respondent's need at the time, and on the performance of the trainee in question during training.

19. The claimant, who was born in 1978, had previous experience as a paralegal. She joined the employment of the respondent in October 2012 as a case worker in prison law. During 2015 she went on maternity leave, from which she returned in October 2015. She worked as a paralegal, and on 1 July 2016, after successful application, began a training contract. The usual two year period of training was reduced by the Solicitors Regulation Authority (SRA) to 18 months as a result of her previous experience. Ms Canavan started in near-identical circumstances. She had also been a paralegal; her training contract started on 1 July 2016 and was also reduced to 18 months, so that she and the claimant were due to start on the same day.

20. The first matter on which the claimant relied in evidence as background was that in 2015 she was on maternity leave. She submitted that the management of her occasional work during maternity leave was evidence of the respondent's negative view of maternity leave. The material in the bundle (113ff) indicated that during maternity leave, the claimant worked on

paid keeping in touch days, and also from time to time undertook assignments as an Accredited Police Station Representative, for which she was paid separately and additionally to the KIT days.

21. The claimant's case was that she undertook police station work because she felt under pressure to do so, so as to impress upon the respondent her commitment to her work. We accept that the claimant was under financial pressures. We accept that as the claimant had in mind an intention to apply for a training contract, she may have felt that it would be wise to accept work that was offered to her. We do not accept that she was subjected to any improper pressure by the respondent. We find that she had the option at each stage to explain to the respondent that she was unavailable for work due to family and childcare commitments. We suspect that if she had not been offered police station work she may well have made the parallel complaint that she had been denied some opportunity because she was on maternity. We cannot find that in these events there is any evidence which makes good the contention that the claimant was in any way disadvantaged or subjected to detriment of any kind during the maternity leave in 2015. The events of 2015 do not assist us to decide the claim about events in 2017.

22. As said, the claimant started her training contract on 1 July 2016. By April 2017 she had been in training for 10 months. As a training practice, the respondent could not offer a sufficient range of areas of law to deliver all the training required for qualification: trainee solicitors were therefore required to undertake a period of secondment with another firm in an area of law not offered by the respondent. It was known to the claimant and Ms Canavan (and the respondent) that this would have to be done during their training periods of 18 months.

23. It was common ground at this hearing that the claimant became pregnant on about 24 April 2017. We did not have evidence of when she became aware of her pregnancy.

24. For reasons which are set out below we accept that the two directors made a joint decision in the last week of April 2017 at the latest that the claimant would not be offered a job as a qualified solicitor on the completion of her training contract. We accept that at about that time they told the other witnesses (except Ms Canavan) in confidence that they had done so. Our reasons for that finding, which is determinative, are, not in order of priority, the following.

25. We accept that both directors were experienced solicitors, who had worked with many trainees. We accept that by the end of April the directors found that based on their observation and experience, Ms Canavan appeared exceptionally able. They also found on the same basis that the claimant appeared to have limitations. It was inevitable that the directors made comparison between two trainees, who were both known to them, and had both started in broadly the same role on the same day. We accept (as the

claimant agreed in cross-examination) that that was their genuine and honest view.

26. April 2017 was the start of the financial year 2017-18. Both directors were conscious of the need for longer term planning and were planning for the financial year 2018-19. They both knew that the legal aid climate and future were uncertain.

27. It would not be right to say that the claimant and Ms Canavan were in competition for a possible solicitor post for which there was only one vacancy. It would be fairer to say, and we find, that observation by April 2017 led the directors to the view that if there were to be an appointment at the beginning of 2018 for the next financial year they would like to retain Ms Canavan. Equally but separately they formed the view that they did not want to retain the claimant. These were two separate conclusions, and they implied a third one, which was that if Ms Canavan were offered a post, and turned it down, the directors would not then appoint the claimant.

28. It was common ground that the directors did not document their view or conclusion. They had no need to: it was the joint view of both directors, jointly held, and there was no need to create an unnecessary record. At this hearing therefore, they were unable to say when exactly the decision was reached; for that reason, the other evidence about timing was particularly significant.

29. The directors also decided that they would not tell the claimant at that stage what their decision was. We accept that they were concerned that to do so would demotivate further a trainee solicitor who (they felt) already had manifested limitations. We also accept that as the claimant would undertake casework and police station attendance for several more months, both directors had a general insecurity about competition and poaching, and had a concern that the claimant's loyalty to the respondent would be undermined if she knew that she were not to be kept on. We add that while we accept that that was part of their reasoning process, we make no finding as to whether it was well-founded, and our finding is not to be read as a criticism of the claimant.

30. We accept the evidence of the other witnesses. If it were the claimant's case that each or any lied, we wholly reject that assertion.

    (1) Mr Seeley said that he was told one day after working hours by Mr Halloran of this decision. He gave striking evidence that he recollected that the conversation took place in the Hatfield office of the firm, which the firm had vacated at the end of April 2017.

    (2) Mr Hobdell's evidence was that he had had a conversation in late April 2017 at the then St Albans office with Mr Halloran, in which he expressed concerns about his perception of the claimant's limitations, to which Mr Halloran replied by stating that she would not be retained.

(3) Ms Munjic's evidence was that Mr Halloran routinely spoke to her in confidence about management decisions which had been made by himself and Mr Titchener and that in the course of late April 2017 Mr Halloran told her that the claimant would not be retained. She said that she could date the news with reference to two points: one that it was before her email of 21 April (see below), and the other that the conversation took place in the Hatfield office.

(4) Mrs Hobdell's written statement was that while at Hatfield she was told by her husband, or Mr Halloran, that the claimant would not be retained.

(5) Ms Canavan's evidence, slightly out of chronology, was that she was offered a post qualification job with the firm in early September 2017, and was asked to keep the offer confidential in language which she understood to mean that the claimant was not to be offered employment and therefore confidence and tact were important.

31. Mr Morgan referred to three contemporaneous documents. He submitted that they used language which showed a longer term commitment to the claimant's employment and were therefore inconsistent with the suggestion that she had been dismissed. On 28 March 2017, in an email trail with Mr Titchener about the claimant's limitations, Mr Halloran wrote "Long game" (143AA). On 21 April 2017 Ms Munjic wrote to Mr Halloran referring to "problems" concerning the claimant, which she summarised, and then wrote "I know it is only a problem for the next three months but in the long term it is going to be detrimental to us all" (146). On 5 September Mr Halloran and Mr Titchener were in touch about the claimant's secondment to another firm and Mr Titchener commented "Anything to progress her training and transition!" (182).

32. Mr Morgan's submission was, in short, that the references to the long game and the long term indicated the future management of the claimant after her qualification and the transition referred to no more than the period of time in which she would be on secondment. We are cautious about applying excess weight to email trails at work. Email is often written hastily, and without thought of scrutiny in litigation years later.

33. These are all ambiguous turns of phrase. Their caginess itself suggests consistency with the respondent's case; there would be no need to be quite so cautious if the subject matter were the good news of keeping the claimant on. We do not find that taken individually or together these items are consistent with the claimant's case that the directors were planning for her long term future with the firm; on the contrary they seem to us more consistent with the respondent's case.

34. In the context of other evidence we accept that the "long game" may have referred to the period until the claimant qualified, and that Ms Munjic's reference to the long term problem was that of managing the claimant's

open files, time recording and billing after she left the firm the following January. On 5 September, the claimant was about to go on secondment, and we accept that Mr Titchener referred to that transition only (knowing, as both he and the recipient did, that the claimant would never return to the firm).

35. Accordingly, our finding is that the decision to terminate the claimant's employment was made at a time when the claimant was either not pregnant, or within the first few days of pregnancy. It follows that her pregnancy could not have been within the knowledge of either decision maker, and therefore pregnancy played no part whatsoever in the decision to dismiss her. Her claim fails.

36. Although that finding is determinative, we now turn to major strands of further evidence. Strictly, we need make no finding on these points, but having heard the evidence, we think it right to set out conclusions.

37. We were taken to evidence which indicated that in the late spring and early summer of 2017 the directors received reports from colleagues, and from Mr Halloran's own observation (Mr Titchener was based in Bedfordshire, and saw much less of the claimant's day to day work) that there were limitations or shortcomings in the claimant's work. We are not in a position to judge whether these were the routine to be expected of a trainee. Certainly, we accept that there was recurrent concern that although the claimant was trained and capable in specific tasks, she fell short of performing tasks which she was well able to perform. We noted also a recurrent theme that the claimant was resistant to criticism, and that when it was put to her that a piece of work was not of the appropriate standard, her responses were denial, and/or shifting of blame.

38. The respondent's management model was that staff learned by communal working, observation, asking when unsure or in difficulty, and correction through file sharing. The individual case or file or client did not belong to an individual fee earner, but to the firm as a whole, so that if the claimant worked on a case, her work would be seen by the next colleague who worked on the same case.

39. In cross-examination, the claimant very fairly conceded that the critical observations made about her by the directors represented their genuine and honest assessments, even though she disagreed with them.

40. We attached, however, little weight if any to this material in relation to our finding of when the decision to dismiss took place. The implication of this evidence was that it was probative of the reasoning which led to the decision to dismiss. We can understand the logic of that approach but it really did not assist us.

41. A second strand was that after they had made their decision to dismiss, the directors understood that the claimant was to leave the firm in around late August (in the event mid-September) after which she would complete her

training contract on secondment to another firm. They knew, but the claimant did not, that as soon as that happened, the claimant would never return to the respondent as its employee. They also understood that during the period of secondment, the claimant would continue to have responsibilities towards the respondent as a police station representative. That knowledge was tinged by the insecurity factor to which we have referred above: the directors had a lurking concern that the claimant's work as police station representative could give rise to her channelling work elsewhere. (We hasten to add, in fairness to the claimant, that we heard no evidence whatsoever that this ever happened). It followed therefore that the directors' management planning for the period from autumn 2017 onwards did not include the claimant. We attach no weight for example therefore to their decision in about late June 2017 that she was not to be issued with a laptop. They knew that she would be office based for the next two months, and after that would not need a respondent's laptop.

42. The third strand of which we heard related to Ms Canavan. We accept that she was very highly regarded by the respondent, who thought that the quality of her work was exceptional, and might have taken justifiable pride in the career path which the respondent had assisted her to achieve: she had begun working for the respondent in 2009 as a secretary. As stated, Ms Canavan was told in early September 2017 that she was to be offered employment on qualification, but also told that she was to keep the information confidential in wording which implied, accurately, that the claimant would not be retained. Ms Canavan understood the confidentiality and the reasons for it and respected it.

43. Evidence on the final strand, which was when did the claimant's pregnancy show, and when did the respondent know of it, was predicated on a case which we have rejected, namely the claimant's case that the decision to dismiss her was taken between 10 October and 2 November 2017, respectively the dates when she formally notified the respondent of her pregnancy and the respondent in turn notified her of dismissal. The sequential order was not in dispute.

44. It was puzzling evidence. At the case management hearing in July 2018, the Tribunal had directed the claimant to set out the names of other colleagues who had been told of her pregnancy before 10 October 2017. The claimant eventually produced nine names, and the bundle contained short letters or statements from the named colleagues, none of them confirmed having passed the information on to the directors. The claimant relied on a photograph apparently taken on 30 August 2017 showing the claimant, seemingly pregnant, at a spa. The respondent relied on the email sent to the claimant after 10 October 2017 by Ms Munjic and Mr Edwards (another colleague) both stating that they had just found out about the claimant's pregnancy and offering congratulations. There was curious evidence relating to the claimant's anti-natal appointment in September, indicating that she had given an untruthful excuse to Ms Munjic for not coming to work that day, which in turn suggested that she was concealing the fact of pregnancy. The claimant's eventual notification of 10 October

2017 was couched in terms which indicated that she was reluctant to inform her employer of her pregnancy in case the information impacted the future of her employment. That in turn was curious, because the claimant, like Ms Canavan and a number of her colleagues, had successfully returned to the employment of the respondent after maternity leave.

45. This evidence arose in a number of contexts. The claimant was of course entitled to tell a colleague, or colleagues, or no colleague that she was pregnant, and to do so at a time of her own choice, and/or to ask the colleague to respect the information as confidential. She was entitled to dress and present as she wished, and may have done so in the way which concealed or manifested pregnancy. She was entitled to have financial or career concerns about her pregnancy, and entitled not to discuss those with her employer if she did not wish to.

46. Mr Halloran's evidence was that after he received the claimant's notification of pregnancy, he realised that the respondent's decision had been to dismiss the claimant at a time when she was pregnant, and as a result he took professional advice. He also spoke to ACAS. His concerns were whether he was entitled to dismiss the claimant during pregnancy, and what her entitlement would be to maternity pay. He understood that he was entitled to dismiss her, and that the respondent remained duty bound to pay maternity pay (almost all of which it could recoup).

47. We make the following findings.

48. There was no evidence that any director or manager of the respondent knew that the claimant was pregnant before the claimant notified the respondent on 10 October 2017.

49. We accept that on receiving that notification, Mr Halloran's priority was to take advice so that the firm acted lawfully and correctly in implementing its decision to dismiss the claimant, which he knew had been taken long before the claimant was pregnant and would now be communicated and implemented when she was pregnant.

50. In a striking answer, Mr Halloran denied that he was troubled by any cost consequences of the claimant's pregnancy, describing it (honestly and accurately it seemed to us) as "a cost of the business". Having employed a large number of employees during maternity leave, he understood that maternity pay was recoverable as to more than 90% from the Government, and was largely an administrative burden rather than a financial burden. We accept therefore that there were no significant financial implications for the respondent of the claimant's pregnancy.

51. If we had had to decide on the case advanced by the claimant, namely that the chronology between 10 October and 2 November proved the causative link between the two events of those days, we would find that it did not.

Costs

52. Mr Michell applied under Rule 76(1)(b), namely that the claim had no reasonable prospect of success. His submission in short was that the claimant's case was based on inference from chronology, and that she had no means at any point of prevailing against the respondent's body of oral evidence to the effect that the decision to dismiss her had been made in April. She should therefore have reassessed the case after exchange of witness statements in March 2019. Mr Michell referred to an email sent by the respondent's solicitors on 18 March 2019 offering the claimant a 'drop hands' deal in light of the witness evidence, failing which an application for costs would be made on the basis of no reasonable prospect of success. He also relied on a reply from the claimant's solicitors on 29 March which made the general point: "It is for your client to prove whatever it asserts via witness evidence and for our client to be able to cross-examine those witnesses and test their reliability."

53. Mr Morgan in reply reminded us of the exceptionality of costs awards in the Tribunal as opposed to the CPR jurisdiction. He noted that Rule 76 is in identical wording in part to Rule 37, and that there had been no application for strike out. He asserted that it was perfectly reasonable to assume at the first stage that a later event was caused by an earlier event. He reminded us that there was no document on disclosure which confirmed the date of the dismissal decision and on the witness evidence commented that it constituted "the massed ranks of the firm" asserting when there was a decision. He submitted that the claimant was not required to accept the evidence against her at face value and was entitled to test it.

54. On ability to pay the claimant was absent from the hearing, although it had long been listed as the fourth day of the case. There was no late witness statement from the claimant either explaining her absence or giving her the case on ability to pay.

55. Mr Morgan referred to tax records for the financial year 2019-20 which were in the remedy bundle, and to some indication of the claimant's modest income from a rental property. He characterised the costs application in general as disproportionate and a case of "victors toying with a defeated opponent."

56. At the first stage, we remind ourselves that the application is made under Rule 76(1)(b). The issue therefore is not reasonableness of the claimant's conduct of the proceedings, but whether, viewed objectively, the claimant had no reasonable prospect of success.

57. We remind ourselves that as matters unfolded, the claimant first had the pure chronology of notification of pregnancy, followed by dismissal. We had no evidence as to whether she had a reasonable expectation of being retained in the firm after qualifying, but we accept that she may well have had a hope or belief that she would do so. On disclosure there was no unambiguous written record which confirmed the decision to dismiss or

when it was taken. The respondent's case was always that the decision to dismiss was taken months before the claimant was told of it.

58. The case presented as a "reason why" case: quite simply if the reason why the claimant was dismissed was to any extent attributable to her pregnancy, she must succeed. However, what was unusual was (a) the reason why was tied up with when was the decision taken; (b) there was no contemporaneous written record of the decision to dismiss; (c) the respondent's case was that six months elapsed between the decision being taken and the claimant being told of it; but (d) a number of other colleagues nevertheless knew about it in confidence .

59. When the claimant came to analyse the witness statements, she will have seen that both directors gave evidence of when the decision was taken; why it was taken; and why the claimant was not told of it at the time.

60. Mr Seeley's evidence (WS13) was that he was told before the move to Hertford in May 2017. Mr Hobdell's evidence was that he was told at the end of April or early May 2017 in the course of a conversation about the claimant's performance with Mr Halloran. Mrs Hobdell, whose witness statement we read in her absence, wrote (WS13) that her husband passed on this news to her at about that time. Ms Munjic's evidence (WS12) was that she knew before sending an email on 21 April 2017 (262). Each of the four secondary witnesses therefore was able to attach timing to some extrinsic point, which fixed the communication at around late April early May 2017. Ms Canavan's evidence was consistent with the respondent's case.

61. When we ask whether the claim objectively had no reasonable prospect of success, we note that the claimant could give no evidence on when the decision was made; her evidence could only be on when she was told. Almost by definition, she could call no witness evidence to contradict any of the above six witnesses. The above witnesses were not just, in Mr Morgan's phrase, "massed ranks" but they were colleagues with whom the claimant had worked for a number of years, and there was no evidence of anything other than good working relationships. She had to consider the sheer weight of evidence and the absence of counter evidence. She was entitled to say that she could test their evidence, but in that light, it was incumbent on her to consider how likely an advocate was to persuade the Tribunal that each of these witnesses was mistaken or lying.

62. In that context, we have given thought to whether it makes any difference that the witnesses were four solicitors and a legal executive. In principle, it does not, because it would be naïve if not dangerous to impute a higher standard of conduct to solicitors than to other decision makers and their confidants. However, it is right to note that the witnesses are professionals whose daily livelihood consists of testing evidence on paper and on oath, who are therefore familiar with the solemnity of sworn evidence, and who are subject to professional regulation related to equality (let alone truth telling).

63. We attach no weight to the failure to apply for strike out, given the body of authority against strike out in discrimination cases. The present judge conducted two case management hearings and did not initiate consideration of a deposit order.

64. In our judgment this was a claim which by late March 2019 at the latest, on then objective analysis of the witness evidence, had no reasonable prospect of success in accordance with rule 72(1)(b).

65. We turn secondly to the interest of justice. We recognise the importance of workplace access to justice through the Employment Tribunal. We recognise the gravity of our role in addressing equality and discrimination issues. At the same time we are duty bound to safeguard respondents against the burden of unmeritorious claims and to assist so far as we can with applying the resource of the Tribunal to meritorious rather than unmeritorious cases. We agree with Mr Morgan that we must consider exceptionality. In this case, an exceptional factor seemed to us to be that right from the start the claimant did not know when the decision was taken and had no means of knowing it until told; but when told had no means of proving or disproving it either way. Once she received witness statements, she received a weight of unanimous evidence none of which she could factually challenge. She was not taken by surprise at this hearing by any piece of information or evidence which had not been available to her for over two years.

66. In light of all of the above, it seems to us that this is a case where the interest of justice test is met.

67. We have under Rule 84 attached little if any weight to the issue of ability to pay. As stated, we have no recent evidence from the claimant and she was not present. We accept Mr Morgan's broad outline which is that since returning from maternity leave in 2018 the claimant has worked as a freelance (we are not sure whether as police station representative or solicitor advocate or both). We accept that she has not applied to a firm for employment as a solicitor. We accept that there have been incomplete indications of relatively modest income in 2019-20, including from work and from rental income.

68. It seems to us however, that the claimant's financial and earning prospects are only likely to improve, and that we should in fairness take into account that likelihood. She is clearly an able and hardworking person, at the start of a professional career.

69. Mr Michell's application was for £20,000. We were however told that in without prejudice communications overnight between the third and fourth days of this hearing, the respondent indicated that it would accept £5,000 and we therefore did not consider going above a maximum of £5,000 plus Mr Michell's refresher fee for today, which was probably £1,500 (being the figure for previous refreshers).

70. In all the circumstances, it seemed to us that £3,000.00 is the fair, realistic and proportionate figure, and that is the award.

71. We add a final observation. At the heart of this case were two women, the claimant and Ms Canavan, who have qualified as solicitors. The bundle contained the claimant's CV and Ms Canavan gave brief evidence about the working background which had preceded her qualification. Neither had qualified as a solicitor through the traditional path of school to law degree to training or pupillage, which traditionally led to qualification in one's early twenties. Both came to qualification as a solicitor after years of working in other capacities around the law, whether as secretary, paralegal, or police station representative. Their path to qualification may have included hurdles of age, background, gender, maternity, or race, although there is no express evidence about this from either. Whatever those hurdles, they both overcame them. They are both at an early stage in their careers. At the heart of the case therefore is the achievement of two solicitors at the start of their qualified careers, to whom this Tribunal wishes well in pursuit of those careers. We add that the traditional hurdles and biases which faced entrants to the legal profession did not arise spontaneously: they were the produce of years of bias or prejudice by the then leaders of the profession. It is entirely to the credit of this respondent, and its directors, that they have provided the pathway to the claimant and Ms Canavan, and no doubt others, towards legal qualification, without the slightest regard to any of the traditional sources of bias or prejudice. The achievement of the two women is therefore not just their own individual achievement, but owes much to the support which both received towards qualification.

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Employment Judge R Lewis

Date: ……11th June 2021.

Sent to the parties on: .....25th June 2021
THY
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For the Tribunal Office