EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107376/20 (V)

Hearing on the Merits heard on the 5th, 6th, 7th and 28th May 2021 by CVP

Employment Judge Porter
Tribunal Member: J Torbet
Tribunal Member: R Henderson

Ms J Coupe	**Claimant** **Represented by:** **Miss Evans-Jones, solicitor**
Hyaltech Limited	**Respondent** **Represented by:** **Mrs Young, solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

It is the judgment of the Employment Tribunal to dismiss all claims brought by the claimant in these proceedings.

Introduction

1. The claimant has been employed by the respondents since July 2017, initially as an Accounts Assistant, thereafter as HR Assistant then HR Co-ordinator. She remains an employee of the respondents.

2. The claimant's claims are resisted and there was a Preliminary Hearing ("PH") in the case on the 27th January 2021. Following the PH the case was set down for a full Hearing on the Merits between the 4th and the 6th May 2021.

3. The Hearing on the Merits commenced on the 5th May 2021 due to a delay in receiving the paper bundles of productions. Additional dates were required and the case continued to the 7th and the 28th May 2021.

4. The Tribunal heard evidence from the claimant herself, her sister Michelle Boyle and her partner John Paul Andrew. For the respondents, evidence was led from Debbie Smart, HR Manager and Aidan Walsh, Head of Operations. Evidence was taken from these witnesses by witness statements. The parties referred to documentation which was numbered **1**-**380**.

The Issues:

5. The parties agreed a Joint List of Issues which is replicated below.

Jurisdictional issues

- Of the acts complained of are any out of time (occurring before 20th August 2020) such that the Tribunal does not have jurisdiction to hear them unless it exercises its discretion to extend the time limit?

- Where they are out of time is it just and equitable to extend the time limit in the circumstances to bring the acts in time?

- Unfavourable treatment under s 18 Equality Act 2010

- Was there a role of HR administrator available?

- If so did the respondent fail to notify the claimant that a role of HR administrator was available?

- If so, did this amount to unfavourable treatment?

- Was the treatment because the claimant was on maternity leave.

- **Did the respondent treat the claimant detrimentally contrary to s19 of the Maternity and Parental Leave etc Regulations 1999 in:-**

- not returning the claimant to her to previous duties on her return from maternity leave

- Not allocating her office space

- Not explaining that SG had been appointed to a role more senior than her

- Not explaining that she would not be performing her former duties

- Not allocating other duties to the claimant

- Not allocating her duties she could do at home

- Not providing CIPD training or any other HR training

- Not properly investigating the claimant's grievance relating her claim under s18 of the Equality Act 2010, and her claims of detriment under the Maternity and Parental Leave Regulations in respect of not returning her to

her previous duties on her return from maternity leave, not allocating other duties to her, and not allocating her duties she could do at home

- Paying her less because she could not work from home

- Did the respondent treat the claimant unfavourably, contrary to section 5 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 in:-

- failing to notify the Claimant that the role of HR Administrator was available while she was on maternity leave

- not returning the claimant to her to previous duties on her return from maternity leave

- Not allocating her office space

- Not explaining that SG had been appointed to a role more senior than her

- Not explaining that she would not be performing her former duties

- Not allocating other duties to the claimant

- Not allocating her duties she could do at home

- Not providing CIPD training or any other HR training

- Not properly investigating the claimant's grievance in relation to her claim under s18 of the Equality Act 2010, and her claims of detriment under the Maternity and Parental Leave Regulations in respect of not returning her to her previous duties on her return from maternity leave, not allocating other duties to her and not allocating other duties she could do at home.

- Paying her less because she could not work from home

- If so was the treatment on the ground that the claimant was a part time worker and the treatment was not justified on objective grounds.

Remedy

- Did the claimant suffer any loss of earnings for which she should be compensated?

- What level of injury to feelings should the claimant be awarded in the circumstances?

Findings in Fact

6. The Tribunal, having considered the evidence of the witnesses, made the undernoted essential Findings in Fact.

7. The claimant commenced employment with the respondents initially as an Accounts Assistant on 16th June 2017 and worked 16 hours per week. At the same time she was studying for a degree in Social Sciences on a part-time basis.

8. Debbie Smart has a BSc(Hons) in a scientific discipline and was initially recruited for the role of Management Assistant. She then took on the role of HR Administrator supported by central HR at the respondents' HQ in Germany. She undertook course work for a Level 5 CIPD qualification, which was funded by the respondents, and completed this coursework in September 2018. She was promoted to the post of HR Manager in March 2018 and Head of HR in December 2019.

9. The Tribunal accepted the evidence of Debbie Smart that having undertaken extra study to gain qualifications in HR and having been promoted to HR Manager she had no plans to do anything other than that role for the foreseeable future.

10. In late April/May 2018 the claimant commenced the role of HR Assistant working with Debbie Smart. As such she carried out a range of HR tasks. The Tribunal accepted the evidence of Debbie Smart that these tasks included the Workday project spreadsheet which was seen as an important, administrative task, the filing of correspondence relating to recruitment **(95-97)** and the compiling of a Managers Handbook (which was later disregarded). The Tribunal accepted the evidence of Debbie Smart, (unchallenged in cross examination) that the claimant's role prior to her maternity leave was office based and involved a great deal of filing and dealing with paperwork. The claimant's job title was changed to 'HR Co-ordinator' in September 2018. The claimant's role as 'HR Co-ordinator' was a Grade 4 role.

11. Debbie Smart was aware that the claimant was studying part time for a degree in Social Sciences and had no formal education or training in HR. The Tribunal accepted the unchallenged evidence of Debbie Smart that the claimant's role of HR Co-ordinator did not require specific HR Training. In August 2018, however, the claimant attended an ACAS course which was entitled 'HR Management for Beginners' and which was funded by the respondents. The Tribunal accepted clear evidence from Debbie Smart that at no point did the respondents offer to fund qualifications in HR for the claimant, as they had done for Debbie Smart herself.

12. Prior to taking her maternity leave the claimant worked mainly at Debbie Smarts desk.

13. The Tribunal accepted the evidence of the claimant and Debbie Smart that there was a lot of work in HR and Debbie Smart could not keep up with the breadth of tasks or with all the paperwork that was involved. Debbie Smart found the claimant to be of great assistance in the HR Department.

14. The claimant assisted in the recruitment of her maternity cover substitute and assisted in shortlisting the candidates. The claimant recognised that the department was under resourced and for this reason the role was advertised as a 12-month fixed term role between 16 and 37.5 hours per week **(109-110)**.

15. Aryanna Kasi was initially appointed to the maternity cover role and commenced her employment in November 2018. There was an overlap with the claimant who showed her what her role entailed. Aryanna Kasi left her employment with the respondents in mid December 2018 due to difficulties in travelling to the respondents' premises. In her place Sofia Gonzalez was appointed. Sofia Gonzalez held an MSc in Human Resource Management from Napier University and accepted the maternity cover position on a full-time basis.

16. Due to her qualifications, Sofia Gonzalez was able to undertake a range of complex tasks for the respondents which the claimant was unable to undertake. In evidence given in response to Members Questions the claimant admitted that the role undertaken by Sofia Gonzalez in maternity cover was both more senior and more complex than the role undertaken by her prior to her maternity leave. The claimant stated in evidence that she had never disputed that Sofia Gonzalez's role was a different role to that of her own, but that her point was that if she hadn't gone on maternity leave then she would have been trained up for that role. On this issue the Tribunal preferred the evidence of Debbie Smart who stated that the claimant could not have undertaken the Sofia Gonzalez's role as she does not have the qualifications to do so.

17. In early 2020 Debbie Smart created a completely new role which was given the title of 'HR Administrator'. The new role had a specific requirement for HR Educational qualifications **(138-139)** and was a Grade 5 role. The role was in reality created for Sofia Gonzalez as there was a need for such a role within HR and Sofia Gonzalez had performed well during the claimant's maternity leave. The evidence of Debbie Smart was accepted that this role would not

impact on the claimant's own role on return from maternity leave and that the claimant would continue to report to Debbie Smart and not Sofia Gonzalez. The Tribunal found the evidence of Debbie Smart to be clear that the claimant's role remained open to her notwithstanding the additional recruitment of Sofia Gonzalez, and accepted that evidence.

18. The explanation of Debbie Smart was accepted by the Tribunal on the issue of why she did not tell the claimant about the role. The explanation was that the newly created role of HR Administrator specifically required HR qualifications and the claimant had no such qualifications. Indeed the claimant herself admitted in evidence in response to Members Questions that the role was more senior and more complex. The claimant's evidence was that if she hadn't gone on maternity leave then she would have been trained up for Sofia Gonzalez's role.

19. The Tribunal accepted the uncontested evidence of the claimant that she could not undertake HR courses whilst on maternity leave because she would not have been able to do so due to her advanced stage of pregnancy and thereafter with a new born baby. In any event Ms Smart gave uncontradicted evidence that the respondents' position is that contact with individuals on maternity leave should be limited to enable them to have a period of uninterrupted leave for maternity.

20. The claimant returned from maternity leave on the 3rd of February 2020. There was a dispute on the evidence as to whether a Return to Work meeting took place that day. On balance, the Tribunal accepted the clear evidence from Debbie Smart (with reference to a file Note at **145**) that such a meeting took place. The Tribunal formed the view on the evidence that the meeting had been brief, and that as such the claimant may well have perceived it not to constitute a Return to Work meeting.

21. At the Return to Work meeting the claimant was advised that she would continue with the Workday project as she had done before her maternity leave. She was also advised that she would be engaged with an exercise on training

files which had migrated to HR and which was considered important. The Tribunal accepted the evidence of Debbie Smart that the claimant was advised at that meeting that Sofia Gonzalez had obtained a permanent position as HR Administrator in her absence **(145)**.

22. The claimant did engage with Workday (**146)** on her return to work after maternity leave and did also undertake a review of the update on training files which had been conducted by Nicole Oxley. The Tribunal accepted the clear evidence of Debbie Smart that both tasks were commensurate with the claimant's role of HR Co-ordinator and the tasks undertaken by her prior to her maternity leave. The Tribunal accepted the evidence of Debbie Smart that there was a lot of HR work at this time and that she was glad that the claimant had returned to assist the HR department.

23. The claimant was asked to sit in reception beside Nicole Oxley. The Tribunal accepted the evidence of Debbie Smart that there were various reasons for this, being that Nicole Oxley was already working on the updating of the training files and that sitting on reception would enable the claimant to familiarise herself with the task as well as familiarising herself with the identity of new employees. Sitting in reception would also mean that the claimant was well placed to speak to employees about the training file update exercise which required their input.

24. The Tribunal accepted the evidence of Aidan Walsh that the respondents are not, as an organisation, status conscious and that he (as a senior manager) has answered the phones on reception when passing if there was no one else there.

25. There was a further reason for the claimant being placed on reception which was that the office was undergoing a refurbishment and that space was at a premium. The Tribunal accepted the evidence of Debbie Smart that once the refurbishment was complete then the plan was for herself, Sofia Gonzalez and the claimant to sit together in a pod as the HR Team.

26. Following her return to her employment on the 3rd February 2020 after maternity leave the claimant did not request any further HR training from the respondents.

27. The Tribunal accepted the evidence of the claimant and her witnesses that following the birth of her daughter the claimant suffered from post natal depression and that the symptoms of depression returned after her return to work on 3rd February 2020. The claimant was absent with her depression for two days in March 2020.

28. On the 16th March 2020 some of the employees of the respondents were given the opportunity to work from home due to the pandemic and the government guidelines. The claimant had an email exchange with Debbie Smart as to why she had not been afforded this opportunity **(150)** and was advised that in her role she had very little to do from home, therefore her options were to attend work or take unpaid leave or holidays. In the course of that exchange the claimant stated: *"I no longer have the job I did before I went on maternity leave. Sofia has taken over that role, including working on the manager's handbook that I started (which I could be working on) and Nicole has taken over some of that position also"* **(150)**

29. The claimant advised Debbie Smart during the email exchange that she had been absent due to her mental health in the preceding week and asked for clarification why other members of staff with a laptop were able to work from home whilst she was only offered unpaid time off if she wasn't able to attend work. In response Debbie Smart said that the claimant's attendance at work was a *'business needs topic, not an individual one.'* She also stated that the respondents would do all they could to support the claimant back to full health **(148)**. The Tribunal accepted the evidence of Debbie Smart that she also spoke to the claimant at that time to reassure her of her value to the HR Team.

30. In April 2020 the claimant used her holiday to enable her to remain at home. On 21st April 2020 the claimant asked that she be placed on furlough due to the cost of childcare **(164)**. In terms of a letter of the 28th April 2020 Debbie

Smart advised the claimant that; *"It would be possible to furlough you from week beginning the 4th of May 2020 until the 31st of May 2020 for now, until we get word if the scheme will be extended past the 31st of May. We would need you to return your laptop as we are desperate for IT equipment for few on-going projects. You will of course get it back upon your return."* **(171)**. There were only four employees of the respondents that were placed on furlough **(187)** as the respondents' business was deemed 'essential work'.

31. On 22 May 2020 Debbie Smart contacted the claimant and stated: *"Just a quick email to check that you will be back on the 1st June or if you intend to use holiday/unpaid time off to cover further childcare needs? We are producing as normal and have a heavy work load so we no longer require to furlough staff or fit the criteria to do so. We have requested the other two people on furlough to return also on the 1st of June."* **(171).** The Claimant accepted the unchallenged evidence of Debbie Smart that at that time there was a considerable amount of HR work to be done in the office.

32. In June 2020 the claimant continued to have childcare difficulties due to the repercussions of the ongoing pandemic. The claimant agreed with the respondents that she would work 50% from home and get half her salary **(175)**. In evidence the claimant stated that this was on the basis that Debbie Smart did not believe she would have enough work to do working from home. The Tribunal, however, preferred the evidence of Debbie Smart that the claimant's role was paper and office based; and that at that time there was a great deal of HR work to be done, but it was all only capable of being done within the respondents' premises. For these reasons the Tribunal accepted the evidence of Debbie Smart that the respondents were only able to offer the claimant 50% work from home.

33. The Tribunal heard evidence form Aidan Welsh and Debbie Smart (which was not challenged in cross examination) that the respondents' systems remain paper based. For this reason the Tribunal found that there were limited amount of tasks available to allocate to the claimant whilst she was working from home. The Tribunal found on the evidence of Debbie Smart that the reason why Sofia

Gonzalez could work from home was because her role was different from that of the claimant and lended itself more to home working. To this end it was noted that it was not disputed by the claimant that Sofia Gonzalez's job was more senior and more complex to her own.

34. Further and in any event the Tribunal accepted the uncontested evidence from Debbie Smart that she did not want to overload the claimant with tasks initially because the claimant was unable to return to work in June 2020 due to childcare issues. Debbie Smart therefore had reason to perceive that it may be difficult for the claimant to do a great deal of work remotely.

35. The situation with the claimant part-time working from home continued throughout June, July and some of August 2020 in that Debbie Smart provided some work for the claimant **(188, 190-194)** and the claimant made up the rest of the time with holiday generally or took unpaid leave for care of dependents.

36. There was an email exchange between the claimant and Debbie Smart on the nature of the claimant's role since she returned from maternity leave **(194-197)**. In response to the claimant's email of 2nd July 2020 Debbie Smart stated: *"You appear to be confusing two separate topics, there is plenty of work, in excess of 16 hours to do as described above, however, you are advising you are not able to pay the £80 per week for child care and unwilling to risk putting your child in to childcare, which is understandable, in order for you to come into the office and complete the work available. That is different to your role having been reduced so you don't have the hours to complete."* **(196)**

37. The claimant returned to the respondents' office on the 17th August 2020 but on that day told Debbie Smart she could not wear a mask (as was required in the workplace) due to her anxiety. There was an email exchange between the claimant and Debbie Smart, in the course of which the claimant told Debbie Smart that she was being indirectly discriminated against on the grounds of her disability due to the requirement to wear a mask **(217-221).** Debbie Smart then consulted Dr De Lima, Physician to inquire as to the possibility of the claimant's attendance at work without wearing a mask. Dr De Lima advised

that the claimant could not be permitted to return to work in the absence of a mask and advised that medical certification would have to be provided to justify her absence from work. Dr De Lima suggested therapy, being training in situational anxiety management **(227)**. The Tribunal accepted the uncontested evidence of Debbie Smart that she looked into such therapy but did not take it further as she found no evidence that such therapy could be carried out remotely with any success, and, further, such therapy as was available was expensive.

38. On 17th August 2020 the claimant was placed on full pay under the respondents' sick pay scheme. In November 2020 the claimant advised Debbie Smart that she had accepted alternative employment with William Grant & Son. In response, Debbie Smart advised:*" It is good that you have been able to find some new work in the circumstances. However we do not feel we can consent to you working during hours for which you are contracted to us, for which you are getting paid, accruing annual leave and for which we are incurring normal employment costs. If you want to take up the role, we would be prepared to agree to a period of unpaid absence in which case we would obviously give our consent. We would also give our consent to your working outside your contracted hours."* (**299)**.

39. The claimant remains an employee of the respondents, on unpaid leave. The respondents have another employee who is on ongoing unpaid leave because of his situation during the pandemic.

40. The claimant gave evidence in response to a question from the Employment Judge that she first contacted her solicitors on either the 7th or the 8th July 2020. The advice she then received was that she should initially attempt to resolve matters informally via a grievance process. The claimant gave evidence that this advice was the reason why she did not raise these proceedings until the 20th November 2020. As the claimant's evidence was unchallenged it was accepted by the Tribunal.

41. The claimant raised a grievance on the 2nd October 2020 **(225).** The grievance was conducted by Aidan Welsh, Operations Manager. Aidan Welsh was appointed as he was a senior manager and was relatively new to the business so did not know the claimant or Debbie Smart very well. In investigating the grievance, Aidan Welsh had meetings with the claimant **(231-242)** and Debbie Smart **(243-248)**. After considering the evidence before him Aidan Welsh rejected the claimant's grievances in terms of a letter dated the 27th October 2020 **(264-267)**.

42. In these proceedings the claimant claims that Aidan Welsh failed to properly investigate the claimant's grievance in relation to her claim of unfavourable treatment under s18 of the Equality Act 2010, being the respondents' failure to notify the claimant that the role of HR administrator was available because the claimant was on maternity leave. The claimant also claims that Aidan Welsh failed to investigate the issue that the respondents did not return the claimant to her previous duties on her return from maternity leave and that the respondents failed to allocate other duties to the claimant; and that the respondents failed to allocate the claimant duties that she could do from home.

43. Insofar as the failure to investigate the respondents' failure to notify the claimant that the role of HR Administrator was available is concerned, the Tribunal finds that Aidan Walsh did explore this with Debbie Smart and accepted her explanation that there was no requirement to notify the claimant of the role of HR Administrator as the claimant did not have the qualifications to apply for this role and accordingly did not have the requisite understanding of HR principles **(247, 265)**.

44. The claimant further claims that Aidan Welsh failed to investigate that the respondents did not return the claimant to her previous duties on her return from maternity leave. The Tribunal finds that Aidan Welsh did investigate this with Debbie Smart and found that the claimant's duties remained as they were prior to her maternity leave with a small amount of her duties being covered by managers of different departments at the respondents and the office Co-ordinator. **(249-250, 264)**

45. Finally, the claimant claims that the respondents failed to allocate other duties to her; and that the respondents failed to allocate her duties that she could do from home. The Tribunal accepted the evidence of Aidan Welsh that he discussed this matter with Debbie Smart who advised him that 90% of the claimant's work is office-based due to the respondents' office still having a paper based system; and that were the claimant to return there was a lot of work for her to do as elements of her job were 'piling up' **(248-249, 266)**

46. The Tribunal found that Aidan Walsh was, in hearing the grievance, entitled to accept the explanations given by Debbie Smart and that any failure to revert to the claimant to ask for her further comments on the explanations of Debbie Smart did not result in a failure to conduct a proper investigation into the grievance. To this end, the Tribunal found that in reaching his conclusions Aidan Walsh weighed up the competing statements given to him by the claimant and Debbie Smart and ultimately preferred those of Debbie Smart, which the Tribunal considered he was entitled to do.

47. Against that background the Tribunal finds that there is no evidence to substantiate the claimant's allegation that Aidan Welsh failed to properly investigate the claimant's grievances in material respects.

48. Further, the Tribunal finds that there is no evidence to substantiate the fact that the claimant was pregnant or had taken maternity leave influenced Aidan Welsh in his investigation and rejection of the claimant's grievances.

49. The claimant appealed the outcome of her grievance **(271-274).** The appeal was heard by Seamus McCabe and was rejected **(289-290).**

50. The Tribunal noted that the evidence of Debbie Smart was that if the claimant had continued to work in the respondents' office beyond the six week period between her return after maternity leave and the commencement of the pandemic then her HR role would have evolved and she would have assumed a great deal of additional HR tasks.

Observations on the evidence

51. The Tribunal were of the view that it could be said that all witnesses were reliable and credible, the difference in their accounts of the events being one of perception.

52. The Tribunal considered it worthy of observation that Debbie Smart was a particularly impressive and coherent witness. She was emphatic and clear in her answers to a lengthy cross examination and clearly bore no personal animosity towards the claimant. The Tribunal formed the view that Debbie Smart was genuinely perplexed as to how the claimant could have formed the impression of her role that she did. To this end the Tribunal found the evidence of Debbie Smart compelling that to this day there remains a job with the respondents with all the elements that were present in the claimant's job prior to her maternity leave, and that the claimant's job would have evolved had she been able to continue attending the respondents' premises to work beyond the six week period between her return from maternity leave and the commencement of the pandemic.

53. The Tribunal did however believe that there were failures in communication between Debbie Smart and the claimant and that such failures resulted in the claimant's perception of events. The Tribunal attributed such failures to the undisputed evidence that Debbie Smart did have a very busy role within the respondents.

54. The Tribunal observed that elements of the claimant's case under s18 of the Equality Act 2010 was not put to Debbie Smart in cross examination. In particular, it was not put to Debbie Smart that she failed to notify the claimant that a role of HR administrator was available and that this was because the claimant was on maternity leave. Neither was it put to Debbie Smart that esto she subjected the claimant to detriments, the reason for those detriments was the fact that the claimant had been on maternity leave, all in terms of Regulation 19 of the MAPLE Regulations.

55. Further, it was not put to Aidan Walsh in cross examination that the reason for his alleged failure to properly investigate the claimant's grievance was the fact that the claimant had been on maternity leave.

56. There was no evidence led regarding the grievance appeal.

57. It was not put to Debbie Smart or Aidan Walsh that the reason the claimant suffered any less favourable treatment or detriment was because she was a part-time worker.

The Parties' Submissions

The parties both provided summaries of their submissions, which are replicated below.

58. **Submissions for the claimant**

Time Bar

It is submitted that the acts complained of form a continuing course of conduct. It is submitted that, if time barred, it would nevertheless be just and equitable to allow the claims to proceed. The Claimant was not aware SG had been appointed until February 2020 and was not fully aware of what had occurred until later in the year. The Claimant did not fail to act but repeatedly raised her concerns. The Claimant would be substantially disadvantaged should the extension not be granted. Any prejudice to the Respondents is minimal. The Respondents were put on notice of the Claimant's initial concerns in October 2018 and were on notice of her grievances from March 2020.

Unfavourable treatment under s 18 Equality Act 2010

The Claimant was promised the opportunity to work up to the HR Administrator then HR Manager role. The Claimant had previously accepted a promotion and understood she would be continuing her career progression in the department. The

Respondent's position is that the role of HR Administrator was not available to the Claimant due to her lack of HR qualifications. This should not be accepted. The Respondents had no contemporaneous knowledge of the Claimant's qualifications and the role, in any case, did not require qualifications.

Detriments

The definition of detriment is a broad one. The Claimant suffered detriments. The Claimant was denied the promised opportunity to continue her progression in the department. The detriments alleged amounted to the Claimant's overall demotion. The Claimant's former duties would have allowed her to work remotely. The failure to continue to pay the Claimant full time stopped the demotion being corrected. Other detriments led to feelings of exclusion, significant confusion and distress and which it is submitted had the purpose of encouraging resignation, along with the detriments amounting to the Claimant's demotion.

Claims under s19 of the Maternity and Parental Leave etc. Regulations 1999

It is submitted that, on the basis of the Claimant's pregnancy or maternity leave, the Respondent's DS moved to replace the Claimant. Following this, she took steps to encourage resignation. The various explanations offered by the Respondent as basis for the detriments or why they did not take place are illogical and not credible.

Claims Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTW Regs)

The claims under the PTW Regulations are claimed in the alternative. SG is an appropriate comparator as equality of qualifications is not a requirement under the relevant legislation and the requirement for qualifications for the role of HR Administrator is, in any case, a falsehood. It is submitted that, on the basis of her belief that the Claimant would not be willing to work full time in the future and her understanding that the Claimant would remain a part-time worker, the Respondent's DS moved to replace the Claimant with a full time worker. Following this, she took steps to encourage resignation. The various explanations offered by the Respondent

as basis for the detriments or why they did not take place are illogical and not credible.

Basis of Treatment

DS sent an email to the Claimant in response to the Claimant raising the issue of her non-existent role. In this email DS justifies the appointment of SG on the basis of short notice absences, which the Claimant indicates were related to her pregnancy. Separately, DS states that she believed the Claimant had told her she did not wish to work fulltime. It is submitted that the responses evidence DS's state of mind which were basis for her actions - the Claimant's pregnancy, maternity leave or, in the alternative, the Claimant's part-time status.

Remedy

The Claimant was placed on 50% working arrangement due to the Respondent's failure to return her work to her. DS often failed to provide 50% of that work. The impact of the treatment on the Claimant has been significant. The Claimant's previous periods of depression are clearly separable from the depression and anxiety caused by her treatment at work. It is submitted an award should be made in the middle Vento band.

In addition to the above submissions the claimant's representative made additional oral submissions at the Hearing on the 28th May 2021. In very short compass, and without doing justice to those submissions, Miss Evans-Jones submitted that she had put all material issues to the respondents' witnesses; esto she did not do so it was not fatal to the claimant's claim; she submitted that Debbie Smart was not a reliable and credible witness and should not be believed by the Tribunal; and she submitted that the claimant was only first aware of the appointment of Sofia Gonzalez in July 2020 and that accordingly the claimant's claims were not time barred.

59. **Submissions for the respondents**

Submissions relating to the claimant's claims under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTW Regs)

The Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 are not pleaded in the alternative and under Scottish law the reason for the treatment, must be the sole treatment. There is no comparator, Ms Gonzales was not 'engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience.' The majority of claims are out of time and it is not just and equitable to extend time because the claimant knew of the ability to bring claims, had research skills so could have found out more details and information on time limits, and took legal advice in August 2020. The reasons for the treatment were unrelated to the claimant's part time worker status. The claimant failed to adduce any evidence to show the reason was the part time status. The respondent presented evidence that went untested that it was not. The claimant 's claims must fail.

The failure to notify the claimant that the role of HR Administrator was available whilst she was on maternity leave was unfavourable treatment under s 18 Equality Act 2010 (EqA 2010)

The claim is out of time because the role was filled on 9th December 2019 and could not have been available after that point, so the claim needed to be brought by 9th March 2020.There can be no continuing acts later taken into account in respect of this because this is the only discrimination claim made. It is not just and equitable to extend time. The role was created for Ms Gonzales and so was not 'available' to the claimant. The unavailability of the role from the respondent's perspective and the claimant's lack of qualification in any event were the reasons that she was not notified of its availability. The reason was not the claimant's maternity leave. It was not suggested by the claimant in evidence or put to the respondent's witnesses that the reason was her maternity leave.

Various claims under s19 of the Maternity and Parental Leave etc. Regulations 1999

Most of claimants' claims are out of time. The acts were not continuing, and each act was distinct from the other, had a different trigger or cause and were unrelated. In respect of ten detriments relied on (all other than the failure in respect of CIPD of other HR training) the claimant did not give any evidence in her evidence in chief or under cross examination that the reason for the treatment was because she took maternity leave. Further this was not put to either of the respondent's witnesses. In respect of the allegation that the claimant was not returned to her to previous duties on her return from maternity leave she did. Her job description expressly said she was responsible for 'administration' of the employee lifecycle 'including mandatory training' so training file work allocated was one of her duties. She was given others. The reason for the allocation of tasks and work, was not because of the claimant's maternity leave. The reason for the treatment was not related to the claimant's maternity leave. Overall the reasons for all of the acts complained of related to the various needs of the business, Ms Smart's view of what could and could not be done at home by the claimant, or was because of the claimant's inability to work in the office, because of the impact of Covid on her child care arrangements, or because of her health and the need to wear a mask. They were not related to her maternity leave. The events did not amount to detriments, and a reasonable employee would not have seen them as such. Where the matter related to something the claimant was requesting in not having to work in the office or to be allowed to work elsewhere, these could not be detriments, achieving at least in part what the claimant wanted and being at her request. Paying sick pay when off sick cannot be a detriment.

Remedy

The claimant has suffered no loss to date. There was no obligation on the respondent to provide her with work from home, the entire arrangement was one by agreement. Compensation should only be awarded if the loss flows from the unlawful treatment complained. Even if there are any findings against the respondent, these did not cause the loss (to the extent there is any), as any loss resulted from the claimant's own personal circumstances and her wish not to attend the office. Had she done so, she would have had no loss. Whilst it is accepted that

the claimant has been unwell, injury to feeling should be limited to an amount that properly reflects the reasonable impact on the claimant of any unlawful treatment. The claimant was aggrieved and upset about a wide number of matters which were not discriminatory, unlawful or matters which attract injury to feelings awards. The claimant was unwell when she returned to work, and it is impossible for her to say for certainty that any specific unlawful treatment impacted her. Any injury to feelings award should be minimal in the circumstances, and be at the low end of the lowest Vento Band accordingly.

The Law

The Equality Act 2010

60. S18 of the Equality Act 2010 provides:

> *"Pregnancy and maternity discrimination: work cases*
>
> *(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.*
>
> *(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, a right to ordinary or additional maternity leave."*

61. In order for a discrimination claim to succeed under s18 of the Equality Act 2010 the unfavourable treatment must be 'because of' the employee's pregnancy or maternity leave. On the interpretation of the words 'because of' and issues of direct discrimination generally, the Tribunal found it helpful to refer to the case of **Onu v Akwiwu and anr; Taiwo v Olaigbe and anr 2014 ICR 571,** where at the stage of the Court of Appeal Lord Justice Underhill stated: *"What constitutes the 'grounds' for a directly discriminatory act will vary according to the type of the case. The paradigm is perhaps the case where the discriminator applies a rule or criterion which is inherently based on the protected characteristic. In such a case the criterion itself, or its application,*

plainly constitutes the grounds of the act complained of, and there is no need to look further. But there are other cases which do not involve the application of any inherently discriminatory criterion and where the discriminatory grounds consist in the fact that the protected characteristic has operated on the discriminator's mind... so as to lead him to act in the way complained of. It does not need to be the only factor...it is enough if it has had 'significant influence.' Nor need it be conscious; a subconscious motivation, if proved, will suffice." It is accordingly incumbent on a Tribunal to consider a respondents' mental process in order to determine a claimant's s18 claim, unless a rule or criterion is applied which is inherently based on the claimant's protected characteristic.

62. S123 of the Equality Act provides:

"123 Time Limits

Proceedings on a complaint...may not be brought after the end of-

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal considers just and equitable."

63. In determining whether to exercise their discretion to allow the late submission of a discrimination claim, the EAT in **British Coal Corporation v Keeble & Ors 1997 IRLR 336, EAT** provides authority for a checklist of relevant factors for a Tribunal to consider, notably the prejudice which each party would suffer as a result of the decision reached. However, in **Adedeji v University Hospitals Birmingham NHS Trust 2021 EWCA Civ 23** Lord Justice Underhill stated (at para **37**): *"the 'Keeble factors" and "the Keeble principles" still regularly feature as the starting-point for tribunals' approach to decisions under section 123(1)(b). I do not regard this as healthy... rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion, and confusion may also occur where a tribunal refers to a genuinely relevant factor but uses inappropriate Keeble-based language.*

The best approach for a tribunal in considering the exercise of the discretion under s123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time."

64. Whilst Tribunals have a wide discretion to allow an extension of time under the 'just and equitable' test in s123, it does not necessarily follow that exercise of the discretion is a foregone conclusion in a discrimination case. Indeed, the Court of Appeal made it clear in **Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA** a Tribunal cannot hear a complaint unless the claimant convinces it that it is just and equitable to extend time. Accordingly, the exercise of the discretion remains the exception rather than the rule.

The Maternity and Parental Leave Regulations 1999

65. Regulation 19 provides:

Protection from detriment

"(1) An employee is entitled under section 47C of the 1996 Act not to be subjected to any detriment by an act, or any deliberate failure to act, by her employer done for any of the reasons specified in paragraph (2);

(2) The reasons referred to in paragraph (1) are that the employee-

(d) took, sought to take or availed herself of the benefits of, ordinary maternity leave or additional maternity leave."

66. In **Ministry of Defence v Jeremiah 1980 ICR 13, CA** Lord Justice Brandon said that detriment meant simply 'putting under a disadvantage', whilst Lord Justice Brightman stated that a detriment 'exists if a reasonable worker would or might take the view that (the action of the employer) was in all the circumstances to his detriment." This view was approved by the House of Lords in **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR**

337, HL where their Lordships emphasised that a sense of grievance which is not justified will not be sufficient to constitute a detriment.

67. The wording of the Maternity and Parental Leave Regulations makes it clear that employees have the right not to be subjected to any detriment for having exercised or sought to exercise one of the rights to family leave. Thus, the mere fact that a detriment arises is insufficient-there must be a link between the employer's act (or deliberate failure to act) and the exercise of the right.

68. S 48 of the Employment Rights Act 1996 provides:

> *"(1) An employee may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section...47C*
>
> *(3) An employment tribunal shall not consider a complaint under this section unless it is presented –*
>
> *(a) before the end of the period of three months beginning with the date of the failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*
>
> *(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."*

69. On the meaning of 'not reasonably practicable' Lady Smith stated in **Asda Stores Ltd v Kauser EAT 0165/07** that: *"the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done."*

The Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000

70. Regulation 5 of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 provides:

> *"5 Less favourable treatment of part-time workers*
>
> *(1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker-*
>
> *(a) as regard the terms of his contract; or*
>
> *(b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer."*

71. Regulation 8 of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 provides:

> *"8 Complaints to Employment Tribunals etc*
>
> *(2) Subject to paragraph (3), an employment tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months ...where an act or failure to act is part of a series of similar acts or failures comprising the less favourable treatment or detriment, the last of them.*
>
> *(3) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so."*

72. The cases of **Gibson v Scottish Ambulance Service EATS 0052/04** and **McMenemy v Capita Business Services Ltd 2007 IRLR 400 Ct Sess (Inner House)** are authority for the proposition that any less favourable treatment

claimed under Regulation 5 of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 has to be on the sole ground of the claimant's part-time status.

Evidence

73. It is a long established rule of evidence that where facts are in dispute the cross-examiner should always put his own side's version, so that the witness may have the opportunity to refute it and give his own version **(Aberdeen Steak Houses Group plc v Ibrahim (1988) IRLR 420)**.

Discussion and Decision

74. In their discussion and decision the Tribunal was guided by the parties' Joint List of Issues replicated above.

75. Insofar as the **Jurisdictional Issues** concerned, the Tribunal considered it apt to deal with the issue of jurisdiction under each head of claim, given the differing statutory tests on the issue of time that apply to the claimant's separate heads of claim.

Unfavourable Treatment under s18 of the Equality Act 2010

76. The issues which the Tribunal had to consider are: Was there a role of HR administrator available? If so did the respondents fail to notify the claimant that a role of HR administrator was available? If so, did this amount to unfavourable treatment? Was the treatment because the claimant was on maternity leave?

77. On the facts as determined by them, the Tribunal found that in late 2019 there was a role of HR Administrator available and the respondents failed to notify the claimant of the same. The Tribunal accepted the evidence of Debbie Smart and found in fact however, that the reason for this was that the role of HR Administrator was an entirely new position within the company and one which required HR qualifications. The claimant had no such qualifications. The

claimant herself accepted in evidence that the role of HR Administrator was a more senior and complex role than that of her own. The Tribunal accepted the evidence of Debbie Smart that the claimant could not have undertaken the role of HR Administrator as she did not have the qualifications to do so. Further and in any event the Tribunal accepted the evidence of Debbie Smart that the claimant's own role remained intact notwithstanding the appointment of Sofia Gonzalez.

78. Separately, it was never put to Debbie Smart in cross examination that the claimant was not notified of the role of HR Administrator because she was on maternity leave. The Tribunal were therefore left without the evidence of Debbie Smart on this key issue.

79. For these reasons which are based on the evidence heard and the Tribunal's Findings in Fact it is the unanimous decision of the Tribunal that the failure of the respondents to notify the claimant that the role of HR administrator was available did not amount to unfavourable treatment in terms of the Equality Act 2010.

Time Bar

80. For the sake of completeness, the Tribunal proceeded to consider whether the claimant's claims under s18 of the Equality Act 2010 are time barred. To this end the Tribunal observed that the claimant's claims brought under s18 of the Equality Act are defined solely as: *"The failure to notify the Claimant that the role of HR Administrator was available while she was on maternity leave was unfavourable treatment in terms of s18 of the Equality Act 2010."*

81. The Tribunal accepted the evidence of Debbie Smart and found that Sofia Gonzalez commenced her role as HR Administrator in December 2019 and the claimant was advised of this full time appointment in the course of her return to work meeting on the 3rd of February 2020 **(145)**. The claimant's ET1 was received on the 20th November 2020. On that basis, and given these Findings in Fact, the Tribunal finds that the claimant's claims are time barred.

82. The Tribunal then considered the exercise of the 'just and equitable' extension under and in terms of s123 of the Equality Act 2010. The Tribunal noted that the only evidence before them in favour of exercising the 'just and equitable' extension was the claimant's own evidence in response to questions asked by the Employment Judge. To this end the claimant stated that she first contacted her solicitors on the 7th or 8th July 2020 and that she was then given advice that she should initially attempt to resolve matters informally via a grievance process. This was the sole reason given by the claimant for the delay in initiating proceedings.

83. The Tribunal noted that the exercise of the 'just and equitable' extension remains the exception rather than the rule, and that the onus remains on a claimant to convince a Tribunal that the exercise of that discretion should be invoked. Notwithstanding the fact that it is undoubtedly the case that the balance of prejudice favours allowing a claimant to continue with a claim of discrimination, the Tribunal was not persuaded that the claimant had provided sufficient reason to justify the granting of an extension in all the circumstances of this case. Following the case of **Adedeji** the Tribunal considered all relevant factors which include their Findings that the claimant knew of the appointment of the Sofia Gonzalez on her return to work on the 3rd February 2020; and that the claimant clearly had knowledge of Sofia Gonzalez's appointment and role when she wrote to Debbie Smart on the 16th March 2020 and stated: *" I no longer have the job I did before I went on maternity leave. Sofia has taken over that role..."* **(150)** Further, the Tribunal observed that there was a gap of some four and a half months between the claimant contacting her solicitors on the 7th or 8th July 2020 and receipt of the ET1 on the 20th November 2020 containing claims under the Equality Act 2010 and observed that it is to be presumed that the claimant was advised of her claim under the Equality Act 2010 shortly after her first contact with her solicitors. In reaching this decision, the Tribunal considered the issue of delay in this case and observed that Sofia Gonzalez was appointed in December 2019 and the ET1 presented in November 2020 some 11 months later; and that the only explanation provided

for the delay was the advice given by the claimant's solicitors that she should initially attempt to resolve matters through a grievance process.

84. For these reasons the Tribunal finds that in any event they have no jurisdiction to hear the claimant's claim under s18 of the Equality Act 2010 due to time bar.

S19 of the Maternity and Parental Leave etc Regulations 1999

85. The claimant claims under s19 of the Maternity and Parental Leave Regulations 1999 in respect of not returning the claimant to her previous duties on her return from maternity leave; not allocating her office space; not explaining that Sofia Gonzalez had been appointed to a role more senior than her; not explaining that she would not be performing her former duties; not allocating other duties to the her; not providing CIPD training or any other HR training; not properly investigating her grievance and paying her less as she could not work from home.

86. The Tribunal considered firstly the issue of not returning the claimant to her previous duties when she returned from maternity leave. To this end the Tribunal were guided by their Findings in Fact that both the Workday and the training files exercise were commensurate with her previous role as HR Co-ordinator prior to her maternity leave. The Tribunal also had regard to the evidence of Debbie Smart that had the claimant been able to continue attending the workplace beyond the six week period between her return to work and the commencement of the pandemic then her role would have evolved and she would have been assumed a great deal of additional HR tasks.

87. On the basis of the evidence heard and their Findings in Fact it is the decision of the Tribunal therefore that the claimant's claim in respect of not returning the claimant to her previous duties as HR Co-ordinator must fail, and that her claim in this regard could be categorised as a sense of grievance which is not justified.

88. The claimant also claims detriment in respect of not allocating her office space. Again, the Tribunal had regard to the evidence heard and to their Findings in Fact. The Tribunal found that the reasons for placing the claimant on reception were that Nicole Oxley was already working on the updating of the training files and that sitting in reception would enable the claimant to familiarise herself with the task as well as familiarise herself the identity of new employees; and that sitting in reception would mean that she was well placed to speak to employees who were passing about the training files update which required their input. Insofar as sitting in reception itself was concerned the Tribunal accepted the evidence of Aidan Welsh that as an organisation the respondents are not status conscious and that he himself, as a senior manager, would answer the phone at reception if he was passing and there was no one else there.

89. Importantly, the Tribunal also accepted the evidence of Debbie Smart that in February 2020 there was refurbishment going on and that once the refurbishment was complete then the plan was for herself, Sofia Gonzalez and the claimant to sit together in a pod as the HR Team.

90. The Tribunal also noted that they found that in March 2020 Debbie Smart spoke to the claimant and reassured her of her value to the HR Team.

91. After considering the facts as found by them, it is the decision of the Tribunal that the claimant's claim of detriment in respect of failing to allocate her office space fails and that again this claim of detriment could be categorised as a sense of grievance which is, on the facts, not justified.

92. The claimant also claims that she was treated detrimentally contrary to Regulation 19 of the Maternity and Parental Leave etc Regulations 1999 in that it was not explained to her that Sofia Gonzalez had been appointed to a role more senior to her. After hearing the evidence the Tribunal finds, with reference to **145,** that Debbie Smart did explain to the claimant on the 3rd February 2020 that Sofia Gonzalez had been appointed HR Administrator on a permanent basis. The Tribunal also observed that the claimant's own evidence to the

Tribunal was that Sofia Gonzalez had been appointed to a role on her maternity leave which was more complex and more senior to that of her own.

93. In view of these Findings in Fact it is the unanimous reason that the claimant's claim of detriment in respect of failing to explain that Sofia Gonzalez had been appointed to a role more senior to her fails.

94. The claimant claims that she suffered detriment as it was not explained to her that she would not be performing her former duties. After hearing the evidence the Tribunal found in fact that, on return from maternity leave, the claimant was given duties (namely the Workday project and review of the training files) that were commensurate with duties as HR Co-ordinator prior to her maternity leave. The Tribunal also accepted the evidence of Debbie Smart that had the claimant been able to continue attending the office after the six week period between her return from maternity leave and the pandemic then her HR role would have evolved and she would have assumed a great deal of additional HR tasks. For these reasons it is the unanimous decision of the Tribunal that this claim of detriment must also fail and that this detriment also can be categorised as a sense of grievance on the part of the claimant that is not justified on the facts.

95. The claimant also claims detriment in respect of not allocating other duties to her and not allocating her duties she could do at home. The Tribunal was unclear as to what the claim of detriment was in respect of 'not allocating other duties'. Insofar as not allocating the claimant duties she could do at home, the Tribunal reminded itself that the wording of the Maternity and Parental Leave Regulations 1999 makes it clear that there must be a link between any alleged detriment and the exercise of family leave in terms of the Regulations. To this end the Tribunal observed that the reason that the claimant was working at home was due to the pandemic coupled with the cost of childcare. The claimant was not working from home because she had taken maternity leave. For this reason alone the claimant's claim of detriment in respect of not allocating her duties she could do at home must fail.

96. Further and in any event, after hearing the evidence of Debbie Smart and Aidan Welsh the Tribunal found in fact that the respondents have paper based systems; that the claimant's role prior to maternity leave was office based, and involved a great deal of filing and dealing with paperwork; and that therefore there were limited tasks that could be allocated to the claimant whilst she was working from home. The Tribunal also accepted the evidence of Debbie Smart that she did not want to overload the claimant because the claimant was unable to return to work due to childcare issues.

97. For all of these reasons it is the unanimous decision of the Tribunal that the detriments alleged of failing to provide other duties for the claimant and, specifically other duties at home fails and that this detriment also can be categorised as a sense of grievance which is not justified.

98. The claimant also claims detriment in respect of the respondents failure to provide CIPD training or any other HR Training. The Tribunal observed that after hearing the evidence they found in fact that in August 2018 the claimant attended an ACAS course which was entitled 'HR Management for Beginners' and was funded by the respondents; that the claimant herself was of the view that she could not have undertaken HR courses whilst on maternity leave because she would not have been able to have done so due to her advanced state of pregnancy and thereafter with a new born baby; and that following her return to work on the 3rd February 2020 the claimant did not request any further HR training. The Tribunal also observed that the claimant was present at the respondents' premises undertaking her role for a six week period only between her maternity leave and the commencement of the pandemic.

99. After considering these Findings in Fact it is the unanimous decision of the Tribunal that the claimant's claim of detriment in respect of the failure on the part of the respondents to provide CIPD training or other HR training must fail.

100. The claimant claims further detriment in respect of a failure to properly investigate her grievances in respect of her claim of unfavourable treatment under s18 of the Equality Act 2010; and detriment in respect of not returning

her to her previous duties on return from maternity leave, not allocating other duties to her and not allocating her duties that she could do at home. The Tribunal observed that after hearing the evidence of Aidan Walsh they concluded and found in fact that such grievances were properly investigated. Accordingly it is the unanimous decision of the Tribunal that this claim of detriment must fail and should be categorised again as a sense of grievance that is not justified on the facts as found.

101. Finally, the claimant claims detriment in respect of paying her less because she could not work from home. The Tribunal observed firstly that the claimant may have intended to frame this detriment as 'paying her less because she could not work from the respondents' premises.' Further, the Tribunal observed that the reason the claimant was working from home was twofold; namely, the pandemic coupled with the cost of childcare. The reason the claimant was working from home was therefore unconnected with her maternity leave. For this reason alone the claimant's claim of detriment in this respect must fail.

102. Further and in any event, after hearing the evidence the Tribunal found that the claimant herself agreed that she would work 50% from home and get half her salary. The Tribunal found in fact after hearing the evidence of Debbie Smart that the claimant's role was office and paper based; and that although at that time there was a great deal of HR work to be done it was only capable of being done within the respondents' HR premises. For these reasons the respondents were only able to offer the claimant a role of 50% working from home.

103. After considering their findings in fact the Tribunal finds that the claimant's claim of detriment in respect of paying her less because she could not work from home must fail and that such a detriment amounts again to a sense of grievance which is not justified on the facts as found.

104. Further and in any event the Tribunal observed that it was not put to Debbie Smart or Aidan Walsh that the detriments allegedly suffered by the claimant under Regulation 19 of the Maternity and Parental Leave Regulations 1999 were for the reason that she had taken maternity leave. The Tribunal therefore

had to proceed to determine the matter without the evidence of Debbie Smart on this important issue.

Time Bar

105. The Tribunal observed that in the claimant's ET1 the detriments alleged by her are pled as a series of failures culminating in paying the claimant less as she could not work from home. To this end, the Tribunal found in fact that the claimant was paid 50% until she went on sick pay on the 17th August 2020. The claimant contacted ACAS on the 6th October 2020, and her ACAS certificate was issued on the 21st October 2020. The claimant's ET1 was received on the 20th November 2020.

106. Against that factual background and having regard to s 48(3)(a) of the Employment Rights Act 1996,s18A and s18B of the Employment Tribunals Act 1996 and s207B of the Employment Rights Act 1996 it is the unanimous decision of the Employment Tribunal that the claimant's claims of detriment under Regulation 19 of the Maternity and Parental Leave Regulations 1999 are theoretically made timeously, and that this Tribunal has jurisdiction to hear such claims.

Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000

107. The Tribunal proceeded to consider the claimant's claim of less favourable treatment under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000. To this end, the claimant claims that the failure on the part of the respondents to notify her that the role of HR Administrator was available while she was on maternity leave was unfavourable treatment under Regulation 5 of those Regulations. She also claims in respect of each and every detriment relied upon in respect of her claim under the Maternity and Parental Leave Regulations 1999, saying that such detriments also constitute less favourable treatment.

108. In determining the claimant's claims under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Tribunal considered firstly that it is the respondents' position that any less favourable treatment or detriment under Regulation 5 has to be on the sole ground of the claimant's part-time status. To this end they rely on the cases of **Gibson v Scottish Ambulance Service** and **McMenemy v Capita Business Services** cited above. Accordingly, it is not open to a party to claim under the Part-Time Workers (Prevention of Less Favourable Treatment) Regs unless such a case is the sole case or is pled in the alternative. The respondents state that the claimant's claim is not pled in the alternative and must fail. The claimant's position is that she agrees with the authority of **Gibson and McMenemy** but states that her claim under the Part-Time Workers Regulations advanced in the ET1 is pled in the alternative.

109. The Tribunal considered the terms of the ET1 which states: *"The same acts and omissions set out at I and II above were also less favourable treatment in terms of s5 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000."* On the wording of the ET1 the Tribunal considered it clear that the claimant's case under the Part-Time Workers Regulations is not pled in the alternative but is pled as an additional case to her case under the Equality Act 2010 and her case under the Maternity and Parental Leave Regulations 1999. For this reason alone the claimant's case under the Part-Time Workers Regulations must fail.

110. Even if the Tribunal were incorrect in this conclusion, the Tribunal's Findings in Fact preclude the claimant's claims being successful for the explanations given above based on the Tribunal's Findings in Fact in respect of her claims under the Equality Act 2010 and the Maternity and Parental Leave etc Regulations 1999. To this end it was noted that the claimant's claims made under the Part Time Workers Regulations are identical in terms to those made under the Equality Act 2010 and the Maternity and Parental Leave Regulations 1999.

111. Separately, the Tribunal concluded that the unfavourable treatment alleged by the claimant in respect of the respondents' 'failure to allocate duties she could do at home' and in respect of 'paying her less because she could not work from home' arose from the claimant's home working which, in turn, was caused by a cumulation of the pandemic and the cost of childcare and not by her part-time worker status.

112. The Tribunal observed again that it was not put to Aidan Walsh or Debbie Smart that esto the claimant suffered such unfavourable treatment or detriment, the reason was because she was a part time worker. The Tribunal therefore was placed in the position of having to determine this case without the benefit of such evidence.

113. For all of these reasons it is the unanimous decision of the Employment Tribunal that the claimant's claims under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 fail.

Time Bar

114. For the sake of completeness the Tribunal proceeded to consider whether the claimant's claims under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations are timeous and accordingly whether this Tribunal has jurisdiction to hear such claims. To this end the Tribunal observed that the incidents of less favourable treatment or detriments alleged are identical to the detriments alleged under her claims in terms of the Maternity and Parental Leave Regulations 1999. For the reasons stated in terms of that claim, and with reference to Regulation 8(2) of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations it is the decision of the Employment Tribunal that this claim is (theoretically) also timeous.

Conclusion

115. It is for these reasons that it is the unanimous decision of this Tribunal that the claimant's claims under the Equality Act 2010, the Maternity and Parental Leave Regulations 1999 and the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 do not succeed and accordingly are dismissed.

Employment Judge: Jane Porter
Date of Judgment: 15 June 2021
Entered in register: 23 June 2021
and copied to parties