EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Ms J Rajput	**v**	**(1) Commerzbank AG** **(2) Société Générale**

Heard at: London Central
On: 27 September 2021 – 1 October 2021

Before: Employment Judge Hodgson

Representation

For the Claimant: Mr R Downey, counsel
For the Respondent: Mr G Mansfield, QC

(PRELIMINARY ISSUE – JURISDICTION)

DECISION

1. **The respondents' contention that there is no reasonable prospect of the claimant establishing that all allegations of discrimination, harassment, and victimisation may be conduct extending over a period to be treated as ending on the date of dismissal fails.**

2. **There has been no determination of whether any claim has been brought outside the time period provided for in section 123 Equality Act 2010.**

3. **The determination of any issues pursuant to sections 123(1) and 123(3) Equality Act 2010 cannot be resolved as a preliminary issue and will be reserved to the tribunal that hears the merits of the claims.**

REASONS

Introduction

1. At the preliminary hearing, I initially decided the remaining TUPE issue on day three, I confirmed that I had decided the date of transfer was 1 October 2019. I have dealt with that decision in a separate set of reserved reasons.

2. I then considered the first respondent's application of 7 July 2021. I will come to the detail that in due course, but it is first necessary to set out some history

Background

3. In 2017, the claimant brought proceedings against her employer at the time, Commerzbank (case number 2207126/2017). At a tribunal chaired by EJ Tayler (as he was) some claims were upheld, including harassment, and maternity and sex discrimination. Following an appeal, the finding of sex discrimination and harassment has been remitted to a new tribunal. The other matters found to be discrimination were not overturned.

4. The claimant was dismissed on 30 March 2020. On 27 June 2020, this claim was presented against both respondents. There are claims of victimisation, harassment, direct discrimination, unfair dismissal, and breach of the consultation provisions under TUPE.

5. The fact of the TUPE transfer was not initially admitted. It has been admitted during the course of these proceedings. The date identified by the respondents was disputed by the claimant. That matter has now been resolved.

6. It appears to remain the respondents' position that the claimant "never worked" for Société Générale (SG), despite her being their employee.[1]

7. On 30 November 2020, EJ Glennie listed a preliminary hearing to determine the following points:

   a. Issue 10.1: Whether the Tribunal lacks jurisdiction in respect of any complaints on grounds of limitation ("**the Limitation Issue**").

   b. Issue 10.2: Whether a TUPE transfer of the Claimant's employment from Commerzbank to SocGen took place, and if so when ("**The TUPE Issue**").

   c. Issue 10.3: Whether the claim, or any part of it, against SocGen should be struck out on grounds that it has no reasonable prospect of success, or made subject to a deposit order.

[1] See, for example, paragraph 13 respondent's submissions 10 September 2021.

d. Issue 10.4: Whether the claim should be heard together with the First Claim ("**the Combination Issue**").

8. That preliminary hearing came before me on 21 May 2021. I determined issue 10.4; I refused to order the claims be heard together. The first claim will now be determined at a separate hearing in November of this year. The 2020 claim remains listed for a final hearing starting in January next year.

9. I revoked orders 10.1, 10.2, and 10.3.

10. Issue 10.3, which is the contention that the claim or any part of it against SG should be struck out on the grounds of no reasonable prospect of success or made subject to deposit order, has been abandoned and is no longer pursued.[2]

11. At the hearing on 21 May 2021, it was apparent that there was a fundamental dispute concerning the scope, nature, and identification of the claims. Put simply, the relevant claims advanced by the claimant could not be properly or adequately identified from the particulars of claim. Much of the hearing was dedicated to resolving those difficulties and attempting to produce a list of issues which identified the claims that were clear, identified claims that appeared to exist but needed further particularisation, and identified matters that could not be said to be pleaded claims capable of resolution by the tribunal. However, there remained conflict. Both parties objected to my approach. It follows that the issues were not agreed.

12. The position remained the claims could not be adequately identified from the particulars of claim. The attempt to clarify the issues had not clarified all the claims before the tribunal. There remained significant dispute between the parties and, at the time, neither accepted my approach, or accepted I had resolved any continuing dispute in relation to the issues.

This hearing

13. Both respondents contend that revoking 10.1, 10.2, and 10.3 of EJ Glennie's order was an error of law. I understand there is an outstanding appeal.

14. I note that issue 10.3 is no longer pursued.

15. Issue 10.2 has been resolved, first by the admission by the respondents of the transfer, and second by my finding the date of transfer was 1 October 2019.

[2] See paragraph 15 respondent's submissions 10 September 2021.

16. The only remaining live matter before me was a potential determination of whether the tribunal lacks jurisdiction in respect of any of the complaints because they have not been brought in time. The parties have referred to this generally as "the limitation issue." I will use this term as a shorthand.

17. Unfortunately, the parties have not been able to agree how any limitation issue should be approached or if I should consider it at all. At the preliminary hearing, it was necessary to review, in some detail, the underlying procedural process before considering the substantive issue, and I should record the position as discussed, the agreements reached, and the matters which remained in dispute which I resolved.

18. It had been the respondents' position that in some manner I should revoke my decision of 21 May 2021 and reinstate the order of EJ Glennie. The only mechanism by which this 'revocation' could be achieved would be by variation applying rule 29 Employment Tribunals Rules of Procedure 2013. It is the respondents' position that I should not have revoked EJ Glennie's orders because there had been no "change of circumstance" at the material time. I noted that the rule allows any case management order to be varied, suspended, or set aside where that "is necessary in the interests of justice." I confirmed that I had difficulty varying my order of 21 May 2021, as it was unclear that it was in the interests of justice to do so, and in any event, it did not appear to be "necessary."

19. It is not possible for me to know, with certainty, all the matters taken into account by EJ Glennie. He was not required to set out his full reasoning. Therefore, it is necessary to make certain assumptions.

20. Before any time point can be determined, or claim struck out, it is necessary to identify, with sufficient certainty, the claims before the tribunal. I must presume that EJ Glennie took the view that those claims had been identified, could be identified, or would be identified. The reality is that by the time the preliminary hearing came about on 21 May 2021, those claims had not been identified and there was a fundamental dispute about what claims were pleaded, which could not be resolved at the hearing on 21 May 2021. It follows that a fundamental assumption, on which EJ Glennie's decision must have been based, proved erroneous.

21. I am conscious that simple change to an agreed list of issues may not constitute a change of circumstance. However, a fundamental misunderstanding that the claims were clear and agreed, when they were not, such that no list of issues can be agreed, may constitute a change of circumstance. In this case, even after significant attempts had been made to clarify the issues, there remained fundamental dispute about the claims before the tribunal. Until the claims were clarified, it was not in my view appropriate to continue with the limitation issue, as the position was fundamentally uncertain.

22. Deciding preliminary issues should be a way of saving expense and time. The time set aside for the preliminary hearing could not be used in the

manner envisaged by EJ Glennie. Further, the nature of the TUPE issue had fundamentally changed. It was no longer alleged that there was no TUPE transfer. The fact that the date may remain outstanding does not mean that there was no change of circumstance. It was appropriate to allow the parties time to review the position, focus on what matters remained in dispute which could be determined by way preliminary issue, and to allow the parties time to apply.

23. It was in those circumstances that I revoked EJ Glennie's orders. I still consider that decision to be appropriate.

24. In order to vary my decision, I would have to find it was necessary in the interests of justice to do so, but it is neither necessary nor in the interests of justice.

25. On 7 July 2021, the first respondent, supported by the second respondent, made an application as follows:

> **With regard to jurisdiction:**
> **1. Whether any of the complaints were presented outside the primary time limit.**
> **2. To the extent that the Claimant relies on conduct extending over a period, whether there is no reasonable prospect of the Tribunal finding that there was conduct extending over a period such as to bring complaints within time.**
> **3. If any of the complaints were presented out of time, whether it would be just and equitable to hear them, or whether it was not reasonably practicable for them to have been presented within time, and they have been presented within such further time as the Tribunal considers reasonable.**
> **4. When the TUPE transfer of the Claimant's employment from the First Respondent to the Second Respondent took place.**
>
> **As for the Orders sought, the First Respondent seeks:**
> **(1) Declarations that: (a) the date of the transfer was 1 October 2019 and (b) that the Claimant's employment accordingly transferred to Société Générale on that date.**
> **(2) An order that the Claimant's claims prior to 29 January 2020 are out of time and the Tribunal has no jurisdiction to determine them.**

26. Following discussion, both parties agree that there is no reason why I should not consider that application pursuant to my normal case management powers, applying rule 29 and 30. As it is open to me to consider the new application, and as I may now order a preliminary hearing on any preliminary issue, it is not necessary to vary my original decision. It follows that I considered the application of 7 July 2021 as a fresh application.

27. The claimant objected to my hearing the limitation issue. A number of points were raised which I shall summarise:

28. First, it is alleged I should not vary my decision to revoke EJ Glennie's order.

29. Second, any limitation issue must be determined as a preliminary issue at any preliminary hearing, and proper notice had not been given pursuant to rule 54.[3]

30. Third, any time point going to jurisdiction should not be dealt with at a preliminary hearing as it is necessary to hear the evidence in order to resolve whether there is a conduct extending over a period.

31. The respondents' position is addressed in Mr Mansfield skeleton argument of 10 September 2021, in particular paragraphs 38 and 39. In summary, both respondents rely on a number of points.

32. First the majority of acts complained of are prima facie out of time.

33. Second, there will only be jurisdiction if there are "continuing acts"[4] or if it would be just and equitable to extend time.

34. Third, leaving those matters to a substantive hearing will require the parties to prepare evidence for all of the claims on the assumption that they may be allowed to proceed.

35. Fourth, determining all claims at a final hearing will lead to significant extra cost, and significant extra time.

36. Fifth, costs and time may be wasted if many of the complaints are ultimately found to be outside the tribunal's jurisdiction.

37. Sixth, the claimant is able to deal with any limitation issues, and was prepared to do so at the hearing on 21 May 2021, having prepared submissions and filed evidence.

38. I concluded that it was appropriate to hear the limitation issue as a preliminary hearing. I should briefly give my reasons.

39. I was considering a fresh application of 7 July 2021. It was neither necessary to reinstate EJ Glennie's order nor to vary my decision of 21 May 2021.

40. It was open to the respondent to make the application.

41. I did not accept that proper notice had not been given pursuant to rule 54 Employment Tribunals Rules of Procedure 2013. To the extent the Mr Downey alleged the claimant did not understand the nature of the limitation issue, I considered that submission to be without merit.

---

[3] This matter was not originally raised at the point I was deciding whether to proceed with a preliminary hearing, was raised at a later stage. For the sake of clarity, I will deal here.

[4] Various terms have been used by way of shorthand. All refer to the test under s 123(3) Equality Act 2010.

42. It was clear that the respondents alleged that the dismissal was in time and that allegations concerning consultation about redundancy could form part of a conduct extending over a period. It was clear the respondents alleged there was no reasonable prospect of any other allegations being part of any conduct extending over a period ending in any act which had been brought in time. That was the only strikeout issue and did not involve a consideration of evidence.

43. Notice of the hearing had been given on 6 September 2021. It was made clear that limitation issue may be considered. All that is required under rule 54 is 14 days' notice specifying the preliminary issues that are to be, or *may* be, decided. It was fanciful to suggest that the nature of the limitation issue was not understood fully, and the order of 6 September was sufficient to put the claimant on notice that the limitation issue may be determined as a preliminary issue.

44. I accepted that there was a possibility that the limitation issue could not be determined without all the evidence being heard. That was an argument for consideration of the merits of the application, it was not a reason to refuse to hear the application by way of preliminary issue. Should I determine, on substantive consideration of the application, that it was necessary to hear all the evidence before limitation could be allowed, that would resolve the preliminary issue.

45. The question was whether the respondent should be allowed to argue the limitation issue, that is that no evidence should be heard, as there was no reasonable prospect of any tribunal finding that there was a relevant conduct extending over a period with the dismissal as the end point.

46. In my view the respondent was right to identify that there is a possible saving in cost and time. There are authorities which suggest that determining such limitation issues as a preliminary issue may produce little saving in time, as it may be necessary to consider the relevant evidence by way of background. That may be right in some cases; however, it does not necessarily follow. There is a significant difference between matters relied on by way of background, and matters relied on as allegations of discrimination themselves. There are three main ways in which a respondent may defend a case. First, the respondent may establish that the circumstances, which are alleged to amount to some form of discriminatory treatment, never happened at all. Second, the respondent may assert that there are no facts which turn the burden. Third, the respondent can rely on an explanation for the treatment which is free from any discrimination. If facts are alleged by way of background, it may be necessary to engage only with the first line of defence. However, if there are allegations of discrimination, and if there is a risk the burden may turn, the respondent has no choice other than to produce evidence of an explanation. In so doing, the respondent must produce cogent relevant evidence. If the respondent fails to do this, there is a serious risk that any defence will fail. It follows that allowing historical matters, which could be put as background, to proceed as claims will almost inevitably lead to an

increase in costs, because of the necessity to look at any explanations; this will lead to a consequential, and likely significant, increase in the cost of preparation and the length of the hearing.

47. In my view, if the respondents were right, and there are proper grounds to find there is no reasonable prospect of finding the relevant conduct extended over a period in relation to all or any of the historical claims, there is a real prospect of a saving of costs and time. In the circumstances, it would have been inappropriate, in principle, for me to refuse to allow the respondent an opportunity to argue the matter at a preliminary hearing, at least in circumstance where there appears to be some prospect of the application succeeding. I therefore confirmed that I would hear the application of 7 July 2021.

48. Mr Downey agreed, in the circumstances, any just and equitable extension arose out of the limitation issue. The claimant had filed evidence. She was able to give evidence at the hearing. It was appropriate that I should also consider the question of just and equitable extension, should it be necessary. It follows the claimant chose to give evidence concerning the just and equitable extension.

The law

49. Section 123 Equality Act 2010 provides –

> **(1) Subject to section 140S and 140B proceedings on a complaint within section 120 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 thinks just and equitable.**
>
> **…**
> **(3) For the purposes of this section—**
>
> > **(*a*) conduct extending over a period is to be treated as done at the end of the period;**
> > **(*b*) failure to do something is to be treated as occurring when the person in question decided on it.**

50. Under sec 123(3), it may be possible to run together acts constituting different types of discrimination to establish conduct extending over a period, provided that as a matter of fact there is a connection between them: **Robinson v Royal Surrey County Hospital NHS Foundation Trust** UKEAT/0311/14. It may not be possible to run together discriminatory acts with others which are not discriminatory. It is necessary to consider each case on its merits.

51. **E v X, L and Z** UKEAT/0079/20 at paragraph 50 provides guidance on the procedure where there is an application to strike out of a case raising a question of whether there were acts extending over a period:

> **The key principles distilled**
>
> **50. With the qualification to which I have referred at para 47 above, from the above authorities the following principles may be derived:**
> **1) In order to identify the substance of the acts of which complaint is made, it is necessary to look at the claim form: *Sougrin*;**
> **2) It is appropriate to consider the way in which a claimant puts his or her case and, in particular, whether there is said to be a link between the acts of which complaint is made. The fact that the alleged acts in question may be framed as different species of discrimination (and harassment) is immaterial: *Robinson*;**
> **3) Nonetheless, it is not essential that a positive assertion that the claimant is complaining of a continuing discriminatory state of affairs be explicitly stated, either in the claim form, or in the list of issues. Such a contention may become apparent from evidence or submissions made, once a time point is taken against the claimant: *Sridhar*;**
> **4) It is important that the issues for determination by the tribunal at a preliminary hearing have been identified with clarity. That will include identification of whether the tribunal is being asked: (1) to consider whether a particular allegation or complaint should be struck out, because no prima facie case can be demonstrated, or (2) substantively to determine the limitation issue: *Caterham*;**
> **5) When faced with a strike-out application arising from a time point, the test which a tribunal must apply is whether the claimant has established a prima facie case, in which connection it may be advisable for oral evidence to be called. It will be a finding of fact for the tribunal as to whether one act leads to another, in any particular case: Lyfar;**
> **6) An alternative framing of the test to be applied on a strike-out application is whether the claimant has established a reasonably arguable basis for the contention that the various acts are so linked as to be continuing acts, or to constitute an on-going state of affairs: *Aziz*; Sridhar;**
> **7) The fact that different individuals may have been involved in the various acts of which complaint is made is a relevant, but not conclusive, factor: *Aziz*;**
> **8) In an appropriate case, a strike-out application in respect of some part of a claim can been approached, assuming, for that purpose, the facts to be as pleaded by the claimant. In that event, no evidence will be required — the matter will be decided on the claimant's pleading: *Caterham* (as qualified at para 47 above);**
> **9) A tribunal hearing a strike-out application should view the claimant's case, at its highest, critically, including by considering whether any aspect of that case is innately implausible for any reason: *Robinson* and para 47 above;**
> **10) If a strike-out application succeeds, on the basis that, even if all the facts were as pleaded, the complaint would have no reasonable prospect of success (whether because of a time point or on the merits), that will bring that complaint to an end. If it fails, the claimant lives to fight another day, at the full merits hearing: *Caterham*;**
> **11) Thus, if a tribunal considers (properly) at a preliminary hearing that there is no reasonable prospect of establishing at trial that a particular incident, complaint about which would, by itself, be out of time, formed part of such conduct together with other incidents, such as to make it in time, that complaint may be struck out: *Caterham*;**
> **12) Definitive determination of an issue which is factually disputed requires preparation and presentation of evidence to be considered at the**

> **preliminary hearing, findings of fact and, as necessary, the application of the law to those facts, so as to reach a definitive outcome on the point, which cannot then be revisited at the full merits hearing: *Caterham*;**
> **13) If it can be done properly, it may be sensible, and, potentially, beneficial, for a tribunal to consider a time point at a preliminary hearing, either on the basis of a strike-out application, or, in an appropriate case, substantively, so that time and resource is not taken up preparing, and considering at a full merits hearing, complaints which may properly be found to be truly stale such that they ought not to be so considered. However, caution should be exercised, having regard to the difficulty of disentangling time points relating to individual complaints from other complaints and issues in the case; the fact that there may make no appreciable saving of preparation or hearing time, in any event, if episodes that could be potentially severed as out of time are, in any case, relied upon as background more recent complaints; the acute fact-sensitivity of discrimination claims and the high strike-out threshold; and the need for evidence to be prepared, and facts found (unless agreed), in order to make a definitive determination of such an issue: *Caterham*.**

52. In **Lyfar v Brighton and Sussex University Hospitals NHS Trust** [2006] EWCA Civ 304 the Court of Appeal set out the correct approach when determining the question of time limits at a preliminary hearing [para 10]:

> **10. I turn to the first issue: the test to be applied by the ET. In Hendricks v Metropolitan Police Commisioner [2002] EWCA Civ 1686, [2003] 1 All ER 654, [2003] IRLR 96 Mummery LJ (with whom the other members of the court agreed) set out the test to be applied at a preliminary hearing [now a Pre-Trial Review] when the Claimant, otherwise out of time, seeks to establish that a complaint is part of an act extending over a period. The Claimant must show a prima facie case. Miss Monaghan submitted that that the ET must ask itself whether the complaints were capable of being part of an act extending over a period. I, for my part, see no meaningful difference between this test and the prima facie test.**

53. In **Aziz v FDA** [2010] EWCA Civ 304, at paragraph 36, the test was phrased in this way:

> **Another way of formulating the test to be applied at the pre-hearing review is this: the claimant must have a reasonably arguable basis for the contention that the various complaints are so linked as to be a continuing act or to constitute an ongoing state of affairs**

54. A tribunal should view the claimant's case, at its highest, critically. It should consider if any aspect of that case is innately implausible (see **Caterham Ltd v Rose** UKEAT/0149/19 (para. 59); **Robinson v Royal Surrey County Hospital NHS Foundation Trust** UKEAT/0311/14 (para. 71); and **E v X, L & Z** UKEAT/0079/20 (para. 50).

55. The leading authority on what constitutes a continuing act is **Hendricks v Commissioner of Police for the Metropolis** [2002] EWCA Civ 1686, in which the Court of Appeal held (Mummery, LJ):

> **48. On the evidential material before it, the tribunal was entitled to make a preliminary decision that it has jurisdiction to consider the allegations of discrimination made by Miss Hendricks… She is, in my view, entitled to pursue her claim beyond this preliminary stage on the basis that the**

> **burden is on her to prove, either by direct evidence or by inference from primary facts, that the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of "an act extending over a period." I regard this as a legally more precise way of characterising her case than the use of expressions such as "institutionalised racism," "a prevailing way of life," a "generalised policy of discrimination", or "climate" or "culture" of unlawful discrimination.**
>
> **49. At the end of the day Miss Hendricks may not succeed in proving that the alleged incidents actually occurred or that, if they did, they add up to more than isolated and unconnected acts of less favourable treatment by different people in different places over a long period and that there was no "act extending over a period" …. It is, however, too soon to say that the complaints have been brought too late.**
>
> **50. I appreciate the concern expressed about the practical difficulties that may well arise in having to deal with so many incidents alleged to have occurred so long ago; but this problem often occurs in discrimination cases, even where the only acts complained of are very recent. Evidence can still be brought of long-past incidents of less favourable treatment in order to raise or reinforce an inference that the ground of the less favourable treatment is race or sex.**
>
> **51. In my judgment, the approach of both the Employment Tribunal and the Appeal Tribunal to the language of the authorities on "continuing acts" was too literal. They concentrated on whether the concepts of a policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken, fitted the facts of this case: see Owusu v. London Fire & Civil Defence Authority [1995] IRLR 574 at paragraphs 21-23; Rovenska v. General Medical Council [1998] ICR 85 at p.96; Cast v. Croydon College [1998] ICR 500 at p. 509. (cf the approach of the Appeal Tribunal in Derby Specialist Fabrication Ltd v. Burton [2001] ICR 833 at p. 841 where there was an "accumulation of events over a period of time" and a finding of a "climate of racial abuse" of which the employers were aware, but had done nothing. That was treated as "continuing conduct" and a "continuing failure" on the part of the employers to prevent racial abuse and discrimination, and as amounting to "other detriment" within section 4 (2) (c) of the 1976 Act).**
>
> **52. The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of "an act extending over a period." I agree with the observation made by Sedley LJ, in his decision on the paper application for permission to appeal, that the Appeal Tribunal allowed itself to be side-tracked by focusing on whether a "policy" could be discerned. Instead, the focus should be on the substance of the complaints that the Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the Service were treated less favourably. The question is whether that is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed.**

56. In **Aziz v FDA** [2010] EWCA Civ 304 at 36, the Court of Appeal made clear:

> **… the claimant must have a reasonably arguable basis for the contention that the various complaints are so linked as to be continuing acts or to constitute an ongoing state of affairs...**

57. As was also made clear by the Court of Appeal in **Aziz**, one significant (albeit not determinative) factor is whether the same individuals or different individuals were involved in those incidents. If the incidents are alleged against different people the task of establishing a linking act is more difficult for a claimant.

The scope of the preliminary issue

58. It is the respondents' case that the dismissal and allegations concerning failure of consultation are in time. It is said that all other allegations are out of time and there is no reasonable prospect of the claimant arguing that any other claim is prima facie part of any conduct extending over a period with the end of that period being deemed to be the dismissal.

59. Neither respondent alleged that any individual allegation has no reasonable prospect of success.

60. Neither respondent sought a deposit order in relation to any argument or allegation.

61. It was agreed that I may, if appropriate, consider whether it was just and equitable to extend time in relation to any claim.

62. The reg. 15 TUPE claim of failure to consult may be out of time. The respondents agreed that it would be inappropriate to consider the time issue as it would involve determining whether presentation of the claim was not reasonably practicable. Neither respondent had admitted there was a transfer until after the proceedings started. There was a real possibility that the claimant could argue it was not reasonably practicable to bring the claim earlier, and this would involve a consideration of all of the evidence. It was therefore inappropriate for it to be heard as a preliminary issue.

Submissions

The respondent's submissions

63. Mr Mansfield relied on written submissions dated 10 September 2021. He also gave oral submissions.

64. The submissions are extensive, but the relevant points can be summarised briefly.

65. First, it is now accepted that the list of issues as appended to my order of 21 May 2021 has been adopted by the respondents as the document which most fully identifies the issues, and which should be used going forward. It is accepted that I have identified key areas of difficulty with the

claim. It is alleged that the claimant has failed to take any steps to clarify the nature of the claims since 21 May 2021, despite my comments highlighting numerous problems.

66. Second, it is alleged that the claimant brings a number of claims including sexual harassment, maternity discrimination, victimisation, unfair dismissal, and failure to inform and consult on the transfer (TUPE reg. 15). It is alleged that each cause of action should be treated as a separate head of claim, and each head of claim should be treated as having an endpoint, being the final allegation of the particular form of discrimination (e.g., victimisation, harassment, direct discrimination). Further, the conduct referred to in each head of claim should not be, for the purposes of section 123, conduct extending over a period for the purpose of any other head of claim.

67. Third, within specific heads of claim, for example victimisation, there are various sub heads of claim. Whilst there is some crossover between the allegations of victimisation and direct discrimination, it is alleged each subheading should be treated separately and, for the purposes of section 123(3), the endpoint of any conduct extending over a period should be the final allegation in each subcategory.

68. The respondents develop, at length, the theme that there are separate heads of claim and they should be treated independently. I do not need to record the detail of this.[5]

69. Fourth, there is no dispute that the claimant was dismissed on 31 March 2020 and that the dismissal itself, together with any acts which "concern the claimant's redundancy are capable of forming an act extending over a period with the last act in time." It is asserted, that those acts are separate and distinct from the others identified

70. Fifth, it is accepted that the unfair dismissal claim is in time. It is accepted that consultation in relation to redundancy can form a continuing act with the dismissal for any discrimination claim. It is asserted there is no reasonable prospect of any other act, or series of acts, being found to be conduct extending over a period with any act which is in time.

71. Sixth, it is suggested that the claimant has failed to set out adequately or at all in her particulars of claim that any of the various matters relied on as claims form part of any conduct extending over a period.

72. Seventh, it is submitted it would not be just and equitable to extend time.

---

[5] As recently approved in *DPP Law v Greenberg* 2021 EWCA Civ 672 (see para 57(2)), a tribunal is not required to express every step of its reasoning in any greater degree of detail than that necessary to be Meek compliant (*Meek v Birmingham City Council* [1987] IRLR 250).

73. Eighth, it is asserted, and this appears to be agreed, that any claims prior to 29 January would be out of time, unless they form part of conduct extending over a period or time is extended

The claimant's submissions

74. On 13 July 2021, the claimant's solicitors filed a letter which set out submissions in relation to the proposed preliminary hearing. An initial skeleton argument was filed by Ms Sarah Clarke which was dated 26 July 2021. That was adopted by Mr Downey. Partway through the morning, Mr Downey indicated that he had prepared a further "note." Following an adjournment, just prior to midday, he filed a further skeleton argument which ran to 17 pages. This was filed initially without any explanation. Thereafter, it was confirmed that preparation had not commenced until the previous day, and he had not received instructions to file it. Mr Mansfield noted that the claimant's approach was inappropriate and expressed serious concerns. I adjourned for an early lunch to allow Mr Mansfield time to consider the submissions which had been filed late and in breach of my previous order.

75. Those submissions deal in detail with the limitation issue. They deal in detail with the just and equitable extension. They offer a reason for the delay, and deal with the potential cogency of the evidence. They also set out the claimant's current position on the list of issues. It is clear from that note, which was prepared prior to my determination of whether the preliminary issue should proceed, that the nature of the preliminary issue was fully and adequately understood by the claimant.

76. I shall summarise the claimant's position.

77. First, when considering a preliminary issue, it is necessary to identify the substance of the acts of which complaint is made from the claim form. The claimant relies on paragraph 50 of **E v X**.

78. Second, it is not necessary to make a positive assertion in the claim form that there is a discriminatory state of affairs, as such any contention may be apparent from evidence or submissions. In any event, the claimant states that the particulars of claim make it sufficiently clear that on returning to the first respondent's employment, there was a campaign which was designed to lead to the claimant resigning or her being removed from post. It is said this campaign culminated in her dismissal.

79. Third, it remained the claimant's position that the issues were not sufficiently clarified.

80. Fourth, the fact that alleged acts may be framed as different types of discrimination, victimisation, or harassment is immaterial.

81. Fifth, when faced with a strikeout application arising from the time point, the test to be applied, having regard to **E v X** is whether "the claimant has

established a prima facie case, in which connection it may be advisable for oral evidence to be called." An alternative framing is whether the claimant "has established a reasonably arguable basis for the contention that the various acts are so linked as to be continuing acts, or to constitute an ongoing state of affairs."

82. Sixth, the fact that different individuals may have been involved in various acts about which complaint is made is relevant but not conclusive.

83. Seventh, in general, when considering strikeout, the tribunal should normally proceed on the basis that the claimant may prove the facts as alleged in the claim form and the tribunal should view the claimant's case as its highest.

84. Eighth, the tribunal should exercise caution and should recognise the difficulty of disentangling time points concerning individual complaints.

85. Ninth, there may be no saving in time or expense when it is necessary to consider as background those matters which may have proceeded as complaints.

Discussion

86. There remains a serious difficulty with this case. It is the claimant's position, as confirmed by Mr Downey, that the claims cannot be properly or adequately identified from her own particulars of claim. This is both unfortunate and inappropriate.

87. It is the claimant's responsibility to plead her claim. It should be possible to identify, from the particulars of claim, those matters which are put forward as specific allegations. The cause of action should be clear. Unclear claims inhibit effective case management.

88. An absence of clarity prevents a respondent preparing adequately. The respondent should be able to say whether the alleged treatment occurred at all, whether there is any evidence which turns the burden, and whether it has any explanation supported by evidence. The failure to set out the claims adequately leads to a respondent being disadvantaged in relation to one or more areas of preparation. An inadequately pleaded claim may prevent a fair hearing.

89. An absence of clarity leads may prevent the tribunal understanding the case it is to judge. This creates numerous case management difficulties. It may result in excessive and unsatisfactory case management hearings, and that is the position in this case. It is difficult to identify the scope of the relevant evidence. Proper case management, including striking out claims that have no real prospect of success, is frustrated.

90. I observe that it may not be appropriate for the claimant to pray in aid, when resisting applications which may involve strikeout, the claimant's own default.

91. The identification of issues should be a simple process, which involves no more than extracting the relevant information from the particulars of claim. Identifying the issues is not a substitute for a clear pleading.

92. Where there is dispute about the issues, it is for the tribunal to resolve that dispute.

93. The difficulty identifying the issues in this case demonstrates significant failings on the part of the claimant. Mr Downey appears to recognise that the case should be pleaded in the particulars of claim. He states "a list of issues is not a substitute for the requirement for the parties to set out the grounds of the claim in the claim form or response." I agree. Mr Downey acknowledges that the particulars of claim are inadequate and do not set out the claims sufficiently. Despite these difficulties, which were discussed and highlighted at the hearing on 21 May 2021, the claimant has taken no steps to clarify her claim.

94. The case of **E v X** does not, establish any new principle of law. However, paragraph 50 does set out a useful summary of important principles by way of guidance. It reiterates the point, which should be obvious, that it is necessary to start with the claims identified in the claim form.

95. Where the claims are fundamentally unclear, it may not be appropriate to determine time points. I have noted that when claims remain unclear because of fault on the part of the claimant, this may lead to fundamental questions about the conduct of the proceedings, and the possibility of having a fair hearing.

96. The issues as drafted are the best statement of the claims which have been pleaded and the difficulties which arise. They contain at least 97 separate allegations. Some of those remain unclear. In my view some of them are assertions which do not form actionable claims. It is not necessary for me to consider each of the potential allegations or analyse each separately. I have appended to these reasons the helpful document produced by the respondents which sets out in tabular form the issues annotated with the respondents' position in relation to each allegation and whether it may form part of conduct extending over a period.

97. I have had regard to the totality of the particulars of claim and the draft issues as now adopted by the respondent. For the purpose of these reasons, it is sufficient to set down an overview.

98. In this case, it is both appropriate, and necessary, to step back from the detail.

99. In 2017, the claimant brought allegations of various forms of discrimination including direct sex, maternity, and harassment. Some of those claims succeeded before the tribunal. The respondent appealed but was unsuccessful in overturning the maternity discrimination claims. The position in relation to sex discrimination and harassment remains to be resolved. Those claims have been remitted to the tribunal for the reasons I have previously explored.

100. Soole J ruled that the Tayler tribunal had found facts relating to the existence and presence of stereotyped views which could not be found from the evidence presented. Those remitted claims of sex discrimination and harassment may ultimately succeed or they may be rejected. It is, however, clear that some discrimination claims did succeed.

101. The claimant was on sick leave from 15 January 2018 until she returned on 10 April 2018, following the Tayler tribunal's decision. Whilst there may be difficulty with the detail of the claims presented by the claimant in this case, the broad thrust of her contention is clear. It is her case that following the Tayler hearing the first respondent had resolved to remove the claimant from her employment.

102. The particulars of claim is then set out thematically. There is a section headed victimisation. She relies on the 2017 claim as a protected act. Her claim goes on to say that she was "subsequently subjected to numerous detriments throughout her time at work, until her ultimate dismissal, because she brought the initial claims." It is then alleged that those claims fall under various categories.

103. Those categories include ostracising and alienating the claimant; subjecting her to a sham or absent appraisal process; reducing bonus payments; failure to meaningfully promote or develop her; allocating aspects of her role to others to sabotage her; and undertaking a sham grievance process. It follows that these matters are presented as part of a premeditated plan and are advanced as a seamless progression from her initial treatment on return to her ultimate dismissal.

104. In that context, the claimant then sets out, in relation to the various subheadings reflecting the matters set out above specific contentions, assertions, and allegations. As I have noted, discerning what is intended as an allegation is extremely difficult, but the basic contention, which is of continuing and systematic mistreatment, is clear. It is possible to discern some allegations. I do not need to consider the detail of those here. I have already reviewed the problems with the pleaded case when considering the issues; to the extent that I need to give detailed comments, I have previously recorded them, and I understand that they are replicated in the schedule prepared by the respondent (appendix 1 hereto).

105. At paragraph 70 of the particulars of claim, the claimant refers to the redundancy. She alleges that she should have been identified as a

member of staff transferred to the second respondent. She alleges that the first respondent had deliberately minimised her role to encompass "only the transferred elements" at the time of her dismissal. She alleges she was deliberately excluded from discussions. She alleges that on 8 November 2018, upon the signing the TUPE agreement, the claimant was "the only permanent compliance employee in London." She alleges that she was on sick leave on 23 January 2020, but the redundancy process was rushed through. She was put on notice of redundancy, on her case, on 31 January 2020. She alleges that she was, in some manner, dissuaded from applying for various roles. Whilst the detail of this is inadequately set out, it is clear that she is alleging that there was some form of treatment which is part of a general process designed to either lead to her dismissal or cause her to resign.

106. I have been taken to some documents concerning her grievance. It is apparent that the claimant was concerned that the actions of the first respondent were victimisation and potentially breaches of her contract such that she contemplated, at least at one point, resigning and seeking constructive dismissal.

107. The particulars of claim specifically say that the dismissal was an act of victimisation.

108. The claimant deals with sex discrimination at paragraph 86. She says that she relies on "matters already pleaded in order to assert that the first respondent continued to discriminate against her on the grounds of sex and/or maternity." She specifically says that all acts of victimisation, redundancy, and unfair dismissal are "also acts of sex and/or maternity discrimination and victimisation." It is clear that the claimant is not differentiating between various acts based on specific causes of action. She sees the actions of the first respondent as a continuing deliberate course of conduct ultimately designed to lead to the termination of her employment.

109. As part of her complaint, the claimant identifies several specific roles to which she said she could have, or should have, been appointed. This must be read in the context of her general allegation that she was discouraged, in some manner, from applying.

110. To the extent that she did apply and failed to be appointed, she alleges that the reason was underpinned by the pre-existing intention to terminate her employment.

111. At paragraph 88, she says that the act of dismissal was an act of sex discrimination.

112. Starting at paragraph 89 she refers to "sex harassment". She relies generally on paragraphs 8 – 69 "to form the basis of a continuing sex harassment claim."

113. There is a section on disability discrimination which I need not consider further, as this is now withdrawn.

114. In her amended claim, she refers to TUPE. It is her contention that the transfer took place on 10 May 2020, after her dismissal. As a result, to establish automatic unfair dismissal, the claimant is constrained to plead that the sole or principal reason for her dismissal was the transfer (paragraph 97). Unless it can be found that discrimination is a material reason at the same time as a transfer is a principal reason, it is arguable that her amended pleading is in conflict with the remainder of the claim. I do not need to consider the technicalities of this. It may be that there is a contradiction. However, now that it is clear that the date of transfer precedes her dismissal, the potential for conflict is reduced, if not removed. Undoubtedly, the claimant will consider her position. In any event, whatever the difficulty with this pleading, I do not take it to be an admission that the dismissal was not an act of discrimination or victimisation, or that the dismissal was not the end of a period of conduct extending over a period.

115. The claimant was dismissed. Both respondents have had an opportunity to file amended responses. It is appropriate to consider the position adopted by both respondents.

116. The first respondent filed an initial "holding grounds of resistance." This does refer to there being a breakdown in the relationship between the claimant and other members of the first respondent. There is a bare denial that she was unfairly dismissed and the first respondent states that if she was dismissed unfairly, "there should be a 100% Polkey reduction to reflect the fact that she would have been dismissed in any event." It follows, there is, at least arguably, a clear indication that her termination was contemplated. It is less clear whether that termination arises because of some form of redundancy or whether the alleged breakdown in working relationships, which appears to be asserted, is material.

117. The first respondent's amended grounds of resistance maintain the same assertion.

118. Transfer to SG is denied in the original grounds and the amended grounds expand on this, at least by way of technical assertion as to where responsibility for any dismissal lies.

119. The first respondent’s amended grounds reiterate that there were difficulties between the claimant and a number of other individuals. Little detail is given concerning the alleged redundancy. It is asserted that "legacy work" continued on a “diminishing basis” throughout 2019. It is said that when she was put at risk of redundancy, “such work was negligible” and, "as a consequence the EMC compliance role that the claimant performed became redundant." The amended grounds go on to say, "it is not admitted either that the claimant was assigned to the undertaking transferred." There is a general assertion that SG "did not

want to engage any further compliance staff." This may suggest there were some active communications between the two respondents, but no detail is given.

120. It is unclear to me why the first respondent on the one hand says it is obvious that her role was diminished, such that redundancy was contemplated, but on the other hand fails to confirm that she was part of the relevant undertaking. It is now clear she was part of the relevant undertaking, as that was subsequently admitted. It is unclear why the first respondent adopts a position in its amended grounds of resistance from which it has since, and without proper explanation or amendment, resiled.

121. The second respondent's amended grounds of resistance does little to clarify matters. It is stated "the second respondent does not admit that the claimant's employment should have transferred…" The grounds of resistance go on to make assertions about what information the claimant gave to the first respondent, but does not set out the basis on which any such information was known by the second respondent. It also goes on to make assertions about the work undertaken by the claimant for the first respondent, but it is unclear what knowledge, or interest, the second respondent had.

122. As I have noted, it is necessary to stand back from the detail of all of this. An unhappy picture emerges. The claimant had succeeded before the Tayler tribunal, at least in part, in a claim which alleged discrimination. When she returned to work in 2018, she alleges there were continuing difficulties and she was mistreated. The fact that there were difficulties cannot realistically be disputed. It appears to be part of the first respondent's case that there was a breakdown in relationships, and at least one possible interpretation of the first respondent's response is that termination of the claimant's employment was contemplated. There is no suggestion that those matters improved prior to the termination of her contract. There is no suggestion whatsoever that any grievance, or any other process, led to any form of resolution. It appears the first respondent never accepted the finding of discrimination made by the Tayler tribunal, and instead pursued an appeal. That process had not completed by the time she was dismissed. There is no explanation from the respondent as to what steps it took, if any, to resolve any ongoing difficulties, or what effect, if any, the first respondent’s continuing denial of discrimination had on the working relationship. It is certainly possible that all these difficulties had a serious ongoing negative effect on the working relationship, but what the first respondent did to address any difficulties, if anything, is not set out.

123. The position adopted by both respondents in relation to the dismissal is unsatisfactory. At the very least, the claimant was not treated as an employee who should transfer. There is no attempt by either respondent to explain why she was not identified as being part of the relevant undertaking. There is some reference to the operation of German law, but

this is difficult to understand in the context of a transfer of the business across numerous countries in which others were transferred.

124. The failure to identify her as being part of the business or undertaking which transferred is surprising when it is clear that her compliance role was supporting EMC, the entity which, essentially, was transferred. The fact that her role was intimately connected with the undertaking that was transferred appears to be confirmed by the assertion that her role disappeared on transfer such that a redundancy situation was created.

125. Both respondents had an opportunity to reflect when the claim was brought. Neither chose to admit, in their original grounds of resistance, the claimant had transferred. At a later date, the respondents have accepted that she was assigned to the relevant organised grouping of resources and her employment did transfer. The reason for that change has not been set out adequately or at all. The grounds of resistance have not been formally amended. No proper or adequate explanation has been advanced. There is at least some evidence that the respondents actively considered her position, but given the lack of transparency, I treat with some caution the respondents' assertions in relation to her dismissal. I find it is at least arguable that the way in which the claimant was treated when dismissed was unreasonable.

126. During submissions, Mr Mansfield appeared to suggest that there was no prospect of a tribunal finding the dismissal was an act of discrimination. This was a surprising position to take. First, it was not a matter before the tribunal. It was open to the respondents, at any time, to allege any specific allegation had no reasonable prospect of success. That was not advanced as part of the preliminary issue. It is only the establishment of a relevant course of conduct extending over a period which is said to have no prospect of success. However, as it has been submitted that the dismissal itself may have no prospect of success, I should deal with that submission, briefly.

127. The reality is that there is a real argument that the claimant's treatment leading to dismissal was unreasonable. In the absence of any proper explanation from either respondent, that unreasonableness alone may be sufficient to turn the burden. The explanation should come, primarily, from the second respondent, and no explanation is advanced at all. It is therefore arguable that the burden could shift in relation to the dismissal and there will be a failure of explanation. There is real doubt as to whether any or any adequate explanation has been put forward for the dismissal. Given the difficulties with the respondents' position, in no sense whatsoever could it be said that the claimant dismissal has no reasonable prospect of success.

128. The matter I need to resolve is whether there is no reasonable prospects of the claimant showing that the various matters relied on constituted a course of conduct extending over a period, the endpoint of which was the dismissal.

129. I have considered the various submissions. I accept that there are continuing difficulties with the way this claim is pleaded, and I set out some of my concerns above.

130. The respondent invites me to consider each head of claim and sub-head of claim separately and to consider the last allegation under each head of claim as the endpoint. I accept that such an approach may be appropriate in some cases. I do not accept that there is a general principle of law that it is necessary to consider the endpoint for each head of claim. It is not necessary to consider all claims of victimisation, all the claims of harassment, and all claims of discrimination and ask, in relation to each, what is the final act complained of and then take that as the endpoint for each head. If that is to be the approach, there must be a reason for it. For example, it may be that all the acts of harassments are undertaken by one specific individual. It may be the allegations of victimisation are brought against different employees. In those circumstances, it may well make sense to treat them separately. The reverse may also be true. If one person is accused of both harassment and victimisation, it would make little sense to treat their actions as some form of separate course of conduct with separate end periods, just because that individual may choose to use different weapons at different times. Each case turns on its merits.

131. In this case, the respondent has sought to take a technical point based on the alleged structure of the claimant's particulars of claim. In no sense whatsoever has either respondent sought to found its submissions on any logical argument that the various heads of discrimination can be attributed to different individuals, or come from different sources. It is well recognised that when different individuals are involved in various acts, that may be a good reason for taking the view that they are not part of the same course of conduct. However, the respondents have not approached it in this manner.

132. Further, the respondents have ignored the totality of the claimant's particulars of claim. For the reasons I have set out, it is obvious that the claimant's position is that the conduct she received when she returned to work following the Tayler tribunal led to her dismissal. She views it as one seamless, premeditated campaign. The respondents' approach is to portray each area of concern as a separate head. The respondents' interpretation, is unsustainable, it does not survive a fair reading of the claim form and I do not need to consider the detail further.

133. A tribunal should not take too technical a view of the pleading. To allow a pleading to be dissected in the way the respondent suggests, and thereafter to give effect to it when considering section 123 Equality Act 2010 may be inappropriate; it is inappropriate in this case. Moreover, such an approach would encourage claimants to plead every potential allegation as every potential head of claim. That is an approach which

would lead to uncertainty, imprecision, and a lack of proportionality. It should not be encouraged.

134. I reject the assertion that the claimant has failed to set out adequately or at all in her particulars of claim that the various matters form part of conduct extending over a period. That submission cannot withstand even a cursory examination of the particulars of claim. In any event, there is no specific requirement in law that the continuing act point should be pleaded.

135. When the technical argument concerning the endpoints for various heads of claim is removed from the respondents' submissions, the remaining submission amounts to little more than a bare assertion that the matters pleaded cannot form a course of conduct extending over a period and ending with the dismissal.

136. I do not need to consider the claimant's submissions in detail. The general test is whether the claimant has established a prima facie case, such that evidence should be called. The test may be put in various ways. Ultimately, I am deciding if there is no reasonable prospect of the claimant succeeding in her argument that there is conduct extending over a period which ends in the dismissal.

137. The respondents do not seek to say that in some manner different people are involved. It is clear on the respondents' own pleadings that the difficulties continued from the point when she returned to the point when she was dismissed. There is nothing irrational, illogical, or fanciful in the claimant's suggestion that there was conduct extending over a period.

138. It is possible that an individual who brings a claim, and who then returns to work, may be treated badly. Such poor treatment may reflect a desire to terminate the individual's employment. There may be an express termination, or the conduct may be calculated to prompt a resignation.

139. There is clear evidence of continuing difficulties. That much is confirmed by the first respondent's own pleaded case. The circumstances and nature of the dismissal raise the most serious concerns and for the reasons I have given, both respondents' explanations are poor. The respondents' pleaded cases contradict the later admission. There is no proper explanation for why the position of both respondents was that the claimant was not part of the undertaking transferred. It is at least arguable that one or other respondent used the opportunity to terminate the claimant's employment. That is a matter which will have to be tested by evidence. There is at least indication in the first respondent's own grounds of resistance that there was a significant breakdown in the relationship and this, at the very least, is consistent with the possibility that her removal was contemplated.

140. I find, the claimant has established a prima facie case. The respondents' arguments come nowhere near to undermining the prima facie case.

There is reasonable prospect of the claimant demonstrating the relevant conduct extending over a period.

141. I should note that neither respondent sought to strike out any specific claim. There are allegations that the claimant applied for specific roles but did not get them. I am conscious that such allegations may require the production of significant amounts of evidence. However, there is nothing fanciful about suggesting that barriers can be placed in the way of promotion, or that such barriers may well be utilised in a situation where there is an overarching desire to terminate someone's employment. Further, if any allegations are particularly weak, it is open, and has always been open, to both respondents to seek to strike out those allegations. They have not done so. Therefore, my consideration must be of the course of conduct as a whole. The claimant has shown a prima facie case.

142. It follows that I decline to dismiss any claims on the grounds that they are out of time. Beyond those claims which is respondents have admitted are in time, I can make no further determination. Therefore, the time point is left to the tribunal that hears the claim. As I have not found any claim is out of time, there is no need to consider the exercise of any just and equitable discretion and that will also be a matter for the tribunal that hears the case.

Employment Judge Hodgson

Dated: 12 October 2021

Sent to the parties on:

12th October 2021

For the Tribunal Office

See appendix 1

Appendix 1

IN THE EMPLOYMENT TRIBUNAL
LONDON CENTRAL

B E T W E E N:

MRS JAGRUTI RAJPUT

Claimant

-and-

(1) COMMERZBANK AG
(2) SOCIÉTE GÉNÉRALE

Respondents

DRAFT LIST OF ISSUES AND JURISDICTION TABLE

This table derives from the 20 May 2021 draft List of Issues as commented on by EJ Hodgson during the hearing in May 2021, and as appended to EJ Hodgson's order [1036]. It has been prepared to expand upon Rs position in relation to limitation issues only.

THE PARTIES' 20 MAY LIST OF ISSUES

The first column replicates the draft LOI as it was submitted by the parties' counsel on 20 May 2021. That draft contained mark up form the parties as follows:
Red – for the Claimant
Blue – for the Respondents
Green – further amendments for the Claimant

In this table, for the purposes of the limitation issue, Rs have sought to simplify the LOI by accepting C's text as much as possible, by removing marked up text and competing formulations of the same point. In those instances coloured text has been put into black text, and struck through text has been removed.

EJ HODGSON'S COMMENTS

The second column reproduces EJ Hodgson's comments per the document at [1036]. EJ Hodgson used the following categories:

- Category one – the issue as drafted is sufficiently clear such that it may proceed unless (a) there is objection because there is a need for amendment, or (b) it is objected to on any other ground.)
- Category two – the allegation is unclear because it lacks at least one essential detail, but could proceed if clarified unless (a) objection is taken as amendment is required, or (b) objection is taken on any other ground.
- Category three – the allegation of detriment is one which cannot proceed as it cannot be adequately met for one of the following reasons: (a) it is a bare allegation; (b) it is a bare arguments, (c) it is fundamentally unclear or lacking sufficient clarity to enable it to be

understood adequately or at all by the respondent or the tribunal. Any allegation envisaged by a cataegory three allegation will normally requiire an application to amend and formal adjudication because any allegation will be a new claim on new facts.

Despite EJ Hodgson's comments, C has not produced a further version of the LOI, nor made any further application to amend.

RESPONDENTS' POSITION ON LIMITATION

Rs' position on limitation is set out in the third column. See Also Rs Skeleton Argument paras 41-62 and R1's Schedule of Acts Complained of in the POC.

The claim was filed on 27/6/20. An ACAS notification was made on 28/4/20 and an EC Certificate was issued on 29/1/20. Any act prior to **29/1/20** is out of time, unless it forms part of a continuing act that continues after 29/1/20.
Allegations which are based on acts which occurred prior to 29/1/20 are shaded in grey.

Rs' position on continuing acts is set out in the third column. Allegations (1) to (95) are divided by C into six groups. Alongside the heading for each group, Rs set out a summary of the position in respect of that group in bold block capitals. Rs then set out their position in respect of each allegation.

In outline:

1. All allegations from (1) to (92) are outside the primary time limit. Allegations (93)-(95) are in time.

2. All of the allegations of sexual harassment and maternity discrimination are out of time. Even if they formed part of a continuing act, the last allegation under each claim is outside the primary time period.

3. The majority of the allegations of direct sex discrimination and victimisation are out of time. A small number of allegations are said specifically in the LOI to have been continuing acts. Some are not pleaded in the POC as such. None are arguably continuing acts. Taking the allegations as a whole, C herself breaks them into six groups. All of the allegations in groups (1)-(5) are out of time. Even if the allegations in each group were a continuing act, the last allegation in each group is out of time. The only group containing in time allegations is group 6: redundancy. It is accepted that the allegations relating to the redundancy from December 2019 (but not earlier) are either in time ((93)-(95)) or arguably form part of a continuing act with an in time act (89)-(92)).

4. In relation to each out of time claim, Rs submit it would not be just and equitable to extend time.

Extracted from the List of Issues	**EJ Hodgson's observations as of 20 May 2021**
LIABILITY	
CLAIMS UNDER THE EQUALITY ACT 2010	
VICTIMISATION – SECTION 27 EQUALITY ACT	
1. The Claimant did a protected act within the meaning of section 27(2)(a) of the Equality Act by bringing her first claim. There is no dispute about that.	-
2. Was the Claimant subjected to detriments by the First Respondent because she did so. The Claimant alleges that she was subjected to the following alleged detriments:	-
[1] OSTRACISING AND ALIENATING THE CLAIMANT	The allegations appear to be grouped under various headings – "ostracising and alienating the claimant" is

Extracted from the List of Issues		**EJ Hodgson's observations as of 20 May 2021**
		one of those headings. The headings fall under category three as bare allegations and cannot proceed as allegations in their own right.
(1)	No handover provided to C following her return to work in **April 2018** (para 9). C repeatedly asked for this e.g. email to AL 03/08/18, but none was provided, ongoing to her dismissal.	Category two. It is only clear to the extent there is reference to the claimant's email. I would only allow this to proceed on the basis of that email only as the implied reference to other requests is wholly unparticularised and would require an amendment.
(2)	Failing to integrate the Claimant back into the team, excluding the Claimant, failing to communicate the C's return to work. Examples are provided in C's email of 03/08/18 such as not being given access to a mailbox, not being provided with feedback on a Benchmark Regulation project; not included by JD in correspondence re a complaint in Aug 2018. This was ongoing until dismissal (para 10).	This is a mixture of all the categories. The first sentence is a bare allegation and cannot proceed at all as it does not set out any specific detrimental treatment. The reference to "not being given access to a mailbox" can proceed as an allegation, albeit this is a category two allegation and fails to set out whether any request was made or refused.. The reference to "not being provided with feedback on a benchmark regulation project" can proceed as an allegation, albeit this is a category two allegation and fails to set out when or how the feedback should have been provided. The reference to "not included by JD in correspondence re-a complaint in August 2018" can proceed as an allegation, albeit this is a category two allegation and the claimant should set out the correspondence in question.
(3)	On **1 February 2018**, Jaisreet Bajwa refused to allow the Claimant to sit a few desks away from Jon Dyos and Julia Burch [§13 POC].	Category one.
(4)	On returning to work on **10 April 2018**, the Claimant was moved C is unsure if decision made by HR or Antony Lowther to a different floor to sit in an office alone and away from the team and the wider business that she supported [§14 POC].	Category one.
(5)	On **27 April 2018**, the Claimant was moved by Antony Lowther or Jaisreet Bajwa to an empty bank of desks and made to sit on her own [§15 POC].	Category one.

Extracted from the List of Issues		**EJ Hodgson's observations as of 20 May 2021**
(6)	The Claimant was not warned/informed or consulted by Jon Dyos about Ms Burch's promotion on **1 April 2018** [§16 POC].	On balance, I find this is a category two matter, albeit there is an argument that it is a bare allegation. It fails to set out what is meant by "warned/informed or consulted" and it fails to identify the date that any such communication should have taken place. The claims shoud be clarified.
(7)	Mr Jacob advised the Claimant to communicate via email with Jon Dyos because any altercations with Jon Dyos could lead to her dismissal [§18 POC].	Category two. The claimant should set out the date.
(8)	On **18 May 2018**, Devkee Trivedi requested an Out of Office message be set up for Mr Dyos but excluded the Claimant from the list of persons to be contacted [§19 POC].	Category two. The claimant should identify the list
(9)	The Claimant was not consulted about the appointment of Rachel Tippetts on **4 June 2018**, following resignation of Julia Burch on **4 April 2018**. The Claimant alleges Human Resources or Jon Dyos or Antony Lowther ought to have consulted with her [§20 POC].	Category two. It is unclear whether the claimant says she should have been consulted on 4 June 2018, or whether that was the date of the appointment. The claimant should clarify.
(10)	**Between 25 June 2018 and 30 June 2019** the Claimant did not manage Ms Tippetts [§20 POC].	Category three. This is fundamentally unclear. It may be the claimant is saying she should have been Ms Tippetts' line manager. If so, she should clarify.
(11)	In **July 2018** the Claimant was told [by a colleague in confidence C needs to identify who she says this was] that Ms Tippetts was in charge of the EMC business as opposed to the Claimant **[**C to clarify whether it is her case that this was true, ie. that she was in charge of EMC, or merely that some individual(s) said this] [§20 POC]	Category three. There is no discernible allegation and this cannot proceed.
(12)	On **25 June 2018**, the Claimant's reporting line was changed to Antony Lowther [§21 POC]	Category one.
(13)	On **28 June 2018**, Antony Lowther failed to respond to the Claimant's concern that Ms Tippetts seniority was far above that of Ms Burch and was more akin to her own whereas she (the Claimant) should have been more senior to that of the person replacing Ms Burch [§22 POC].	Category three. This appears to be a bare allegation. The claimant needs to set out what is meant by "failed to respond to the claimant's concern. In particular she must identify the nature of that concern. Until that is done, this allegation should not proceed.
(14)	On **28 June 2018**, Ms Tippetts' reporting line was changed to the Claimant in circumstances where that was a sham [§23 POC].	Category one - on the basis that the allegation is that Ms Tippetts started to report to the claimant. However, the reference to "that was a sham" is an argument about evidence and is not an allegation itself.
(15)	Mr Lowther did not address the Claimant's request on **25 June 2018** for Ms Tippetts to sit near her until **14 August 2018** [§23 POC].	Category one.

Extracted from the List of Issues		**EJ Hodgson's observations as of 20 May 2021**
(16)	Ms Tippetts was not moved to an adjoining desk to the Claimant until **1 September 2018** [§23 POC].	Category two. The claimant should state the date Ms Tippetts should have been moved.
(17)	On **18 July 2018**, removing the Claimant as deputy to the Head of Markets and appointing Kevin Whittern in her place as deputy which C presumes was done by JD as the deputy Head of Markets Compliance [§24 POC].	Category one.
(18)	**[number now not used]**	I presume this is not pursued.
(19)	On **15 August 2018**, Mr Lowther telling the Claimant that the real reason for her revised reporting line was that Mr Dyos and Mr Whittern were "searing" from the judgment of the Tribunal in the first claim and threatening to resign if the Claimant remained in the team [§25 POC].	Category one.
(20)	The Claimant was not invited to attend a UKSPA call on or about **31 January 2019** [§26 POC].	Category two. The claimant fails to set out when she should have been invited and how.
(21)	Mr Norris failed to acknowledge the Claimant's request to be added to the distribution list for the UKSPA [§26 POC].	Category two/three. The nature of the claimant's request is not set out. Was it oral? Was it in writing? It should be specified. The alleged failure (the omission?) is not clear.
(22)	The Claimant was not included [C is unaware who made the decision but presumes it was Antony Lowther] in a 3 day training session in Frankfurt on Dodd Frank in the week commencing **3 June 2019** [§27 POC]	Category one.
(23)	On **18 June 2019** Mr Lowther denied knowledge of this event, which C believes is not true given his position and the fact that he would have had to authorise this training for KW and GA [§27 POC]]	Category two. The allegation appears to be against Mr Lowther but is fundamentally unclear. What are the circumstances of the alleged lie? Did he put it in writing? Was it oral, if so what did he say.
(24)	The Claimant was not included [C doesn't know who made the decision but assumes it was Antony Lowther] in a 3 day training session on International Markets Compliance week commencing **17 June 2019** [§27 POC]	Category one.
(25)	On or around **25 June 2019** Mr Lowther lied to the Claimant by denying knowledge of the 3 day training session on International Markets Compliance [§27 POC].	Category two. The allegation appears to be against Mr Lowther but it is unclear. What are the circumstances of the alleged lie. Did he put it in writing? Was it oral, if so what did he say.
(26)	From **30 June 2019 to 17 January 2020**, the Claimant was left to sit on her own [§28 POC].	Category one. (I am presuming the parties agree where the claimant sat.)
(27)	On **13 September 2019** Mr Lowther said to the Claimant: "We've carried on this dance quite well, don't you think?" [§29 POC].	Category one.

Extracted from the List of Issues	**EJ Hodgson's observations as of 20 May 2021**
(28) On **13 September 2019** Mr Lowther accused the Claimant of furthering her own agenda [§30 POC].	Category one. (Provided the words used were essentially the same as alleged.)
(29) On **24 November 2019**, Mr Lowther told the Claimant that she had been unduly aggressive in the compliance staff feedback forum [§30 POC].	Category one. (Albeit something may have gone wrong with the date.)
(30) On **6 December 2019**, the Claimant's comments in relation to a risk assessment were excluded by Eric Piasiecki [§31 POC]	Category two. The source, content, and nature of the claimant's comments is missing and must be included if this allegation is to proceed.
[2] SHAM/ABSENT APPRAISAL & LATE OR REDUCED BONUS PAYMENTS	
(31) On **2 March 2018**, Mr Dyos conducted a sham appraisal which included factual errors [to be identified] [§32 POC].	Category three. This is a bare allegation which cannot proceed. It would be possible for the claimant to allege there were factual errors. In which case it would be necessary to state what those errors were. As it stands, this is nothing more than a bare allegation and cannot proceed.
(32) **Between 2 March 2019 and 13 April 2019** Mr Dyos failed to respond to the Claimant's email attempts to discuss the appraisal [§32 POC].	Category two. This allegation cannot proceed unless the claimant identifies the specific emails to which she says she received no response.
(33) The Claimant's bonus payment was withheld [C is unaware who made this decision, but it was communicated by Jaisreet Bajwa] until **15 May 2018** [§33 POC].	Category two. It appears that it is alleged there was a specific decision to withhold a bonus payment. By implication, this was communicated to the claimant. This allegation cannot proceed absent the claimant stating what was communicated and how and when.
(34) In **March 2018**, Mr Lowther failed to conduct a talent development discussion for the Claimant [§34 POC].	Category one
(35) Mr Lowther failed to provide the Claimant with any objectives for 2018 [§36 POC] until **November 2018** (normally, these would be provided by March 2018).	Category one

Extracted from the List of Issues	EJ Hodgson's observations as of 20 May 2021
(36) Mr Lowther failed **from 1 January 2019 up to C's dismissal** to discuss or complete C's appraisal on her 2018 objectives [§36 POC].	Category one
(37) Mr Lowther failed **from 1 January 2019 to 31 December 2019**, to provide the Claimant with any objectives for 2019 [§36 POC].	Category one
(38) On **16 March 2019**, the Claimant was paid a bonus reduced by 50% from the previous year [§37 POC].	Category one
(39) In **January 2020** Mr Lowther sought to arrange an appraisal appointment in respect of 2019 with the Claimant despite not having given her any 2019 objectives [§37 POC]. [Typo in previous version sent to tribunal – paragraph reference should be §36 POC]	Category two. The claimant should state how and when Mr Lowther sought to arrange the appraisal appointment. If it was in writing, the relevant document or email should be identified.
[3] FAILURE TO MEANINGFULLY PROMOTE OR DEVELOP THE CLAIMANT TO AN APPROPRIATE LEVEL	Category three. This appears to be a general heading and is a bare assertion. It cannot proceed as an allegation in its own right.
(40) On **15 August 2018**, Mr Lowther told the Claimant that she could not be promoted within her own role [§39 POC].	Category one. (On the assumption that this was not in writing.)
(41) On **8 October 2018**, Mr Lowther told the Claimant that she could not be promoted within her own role [§39 POC].	Category one. (On the assumption that this was not in writing.)
(42) Failing to promote the Claimant to Director level or Head of Markets or equivalent L3 role **at any time after she returned to work and ongoing to dismissal** [§40 POC].	Category two/three. This is probably a bare allegation. There are two possibilities. First, the claimant made some form of application which was refused. Second, she made no application, but had an expectation of promotion. The claimant must set out the detail and

Extracted from the List of Issues		EJ Hodgson's observations as of 20 May 2021
		absent that detail, this allegation is not one that can be responded to meaningfully or understood by the tribunal should not be allowed to proceed. I observe, if it is the claimant's case that she made a specific application for a specific post, the resolution of that is likely to require significant evidence and this would be a major claim based on new facts. It is likely that such an allegation should not proceed, even if consented to by the respondents, absent formal application to amend and adjudicationi by the tribunal.
(43)	The Claimant was not provided with objectives for 2018 by Mr Lowther until **30 November 2018** [§41 POC].	Category one.
(44)	Mr Lowther failed to appraise the Claimant **in 2018** [§41 POC].	Category one.
(45)	Mr Lowther failed to provide the Claimant with a development or training **plan in 2018 or 2019** [§41 POC]. [2019 not pleaded in §41 POC]	Category one.
(46)	On **1 April 2019**, the Claimant was given a new corporate title of director but [C is unaware who made the decision] this was not a promotion and did not change the Claimant's ComMap level with the consequence that her base salary did not increase [§42 POC].	Category two. The claimant should identify how the new title was communicated to her.
(47)	Mr Lowther failed to inform the Claimant about her change of title before she was invited to celebratory drinks on **21 March 2019** [§42 POC].	Category two. The claimant should state when and how Mr Lowther should have informed her.
(48)	Mr Lowther failed to respond to the Claimant's email asking why he had not told her about her change of title [§42 POC].	Category two. The claimant must identify her email.
(49)	In **April 2019** there was a there was a restructure of the model for calculating bonuses in order to give the (false) illusion that the Claimant had been promoted [§43 POC].	Category three. This appears to be a bare allegation or some form of argument. It is possible that the claimant is saying that the entirety of the restructure of bonus calculations was an act of discrimination against her. If so, she should say so. If there is some aspect of the restructure to which the claimant is referring, that must be set out. I doubt that this allegation can proceed without formal amendment.
(50)	In **July 2019**, the Claimant was not given the opportunity to apply for responsibility for Institutional Compliance or Corporate compliance as she was not informed about it [§44 POC].	Category three. This is a bare allegation. It is not possible to understand what is meant by "not given the opportunity." This allegation cannot proceed as it is not capable of being understood.
(51)	In **July 2019**, the Claimant was not given responsibility for Institutional Compliance or Corporate compliance [§44 POC].	Category two. The claimant fails to identify the nature of the responsibility that should have given it to her. It would appear to be an omission, but it may be an act.

Extracted from the List of Issues	**EJ Hodgson's observations as of 20 May 2021**
	It is simply unclear and it cannot proceed without clarification.
[4] ALLOCATING THE CLAIMANT'S TASKS TO OTHER STAFF TO MINIMISE AND SABOTAGE HER ROLE	Category three. This appears to be a general heading and is a bare assertion. It cannot proceed as an allegation in its own right.
(52) On **10 April 2018**, work being done by Ms Burch was not (re)allocated to the Claimant [§46 POC].	Category three. This is a bare allegation. The claimant fails to identify the nature of the work undertaken by Ms Burch which should have been allocated to her. She fails to identify who should have reallocated it. It cannot proceed without clarification and probably would require formal amendment (as would the other similar allegations set out below).
(53) On **1 May 2018**, work being done by Ms Burch was allocated to Mr Antonino [§46 POC].	Category three. This is a bare allegation. Again there is a failure to identify the nature of the work. Moreover, it may add nothing to the allegation above, but it is not possible to say as it is fundamentally unclear. It cannot proceed without clarification.
(54) On **29 May 2018** work being done by Mr Antonino was allocated to Ms Tippetts [§46 POC].	Category three. This is a bare allegation. Again there is a failure to identify the nature of the work. Moreover, it may add nothing to the allegation above, but it is not possible to say as it is fundamentally unclear. It cannot proceed without clarification.
(55) On **1 May 2018**, Jon Dyos failed to consult with the Claimant about the allocation of work to Mr Antonino [§46 POC].	Category two. Although the nature of work remains unclear. The allegation appears to be a failure to consult and the nature of this allegation appears to be different to those immediately above.
(56) On **21 May 2018**, Jon Dyos replied to an email for a matter for which the Claimant had responsibility [§48 POC].	Category two. The claimant should identify the email to which Mr Dyas replied. Absent that detail, this allegation cannot be understood.
(57) From **April/May 2018** Mr Dyos began taking over commodities tasks which the Claimant would ordinarily do [§48 POC].	Category three. This is a bare allegation. The claimant must identify the commodities tasks in question.
(58) On **25 June 2018**, Mr Lowther devised a new structure for the team which failed to delineate the Claimant's role prior to maternity leave and Mr Dyos' role [§49 POC].	Category three. It is not possible to identify the essence of this allegation. It may be possible to understand it of the claimant describes the nature of her role, if any, appearing in the new structure as against the nature of the role she says should have been 'delineated.' It cannot proceed absent such clarification.
(59) On **25 June 2018**, Mr Lowther removed the Claimant from the Markets Advisory team [§49 POC].	Category two. The claimant should state how she was removed (i.e., if it was oral or in writing, and what were the words used).

Extracted from the List of Issues	**EJ Hodgson's observations as of 20 May 2021**
(60) On **25 June 2018**, Mr Lowther removed the Claimant's exclusive responsibilities for EMC [§49 POC].	Category three. It is not possible to identify identify this allegation sufficiently. It appears to be a bare assertion. It is necessary for the claimant to identify the responsibilities. Thereafter, she should identify how and when Mr Lowther is alleged to have removed them.
(61) On **25 June 2018**, Mr Lowther informed the Claimant that she would be reporting to him[§49 POC].	Category two. The claimant should identify how Mr Lowther informed her (was it oral or in writing).
(62) **Between July 2018 and 8 November 2018**, the Claimant was excluded from discussions between Commerzbank and Société Générale about which employees would be transferred from Commerzbank to Société Générale [§50 POC].	Category three. This is a bare allegation. It is unclear what is meant by "excluded." If it is the claimant's case that there were specific discussions from which we she was excluded, each discussion must be identified, as must the mode of exclusion. If it is simply the claimant's case that there were discussions but she was not invited to any, she should say so.
(63) In **July 2018**, the Claimant was not given an opportunity to attend commodities training [§51 POC].	Category three. This is a bare allegation. What is meant by "not given an opportunity" is unclear. There is a failure to identify the commodities training. The claimant should identify the training in question. She should explain what is meant by not given an opportunity.
(64) In **July 2018**, Mr Dyos organised for Mr Whittern and Mr Antonio to attend commodities training in order to justify having less need for the Claimant's skillsets [§51 POC].	Category three. This is a mix of bare allegation and argument. This may be an extension of the allegations made above the same comments apply.
(65) Terminating the C's role as deputy to Head of Markets on **18 July 2018** [§52 POC].	Category two. The claimant should identify who she says terminated her role, and how that termination was effected.
(66) Between **20 July 2018 and 3 August 2018** Paul Lewis failed to provide the Claimant with promotion criteria for her current role and the First Respondent denied its existence in Sep/Oct 2018 at the remedy hearing of the first claims [§53 POC]	Category two/three. It is not possible to adequately understand this allegation. It appears to have two parts. The first part should be clarified. What should have been provided and what is the nature of failure? The second part is unclear. It appears it may be a reference to something which took place in the remedies hearing. Full details must be given. The allegation cannot proceed absent that detail.
(67) [number no longer used]	I presume this is not pursued
(68) On **23 August and 6 September 2018** the Claimant was included on a risk assessment email alongside Mr Whittern, indicating that he had unofficially been given this title [§54 POC].	Category two. The allegation appears to be including the claimant in an email. The email must be identified. The reference to "unofficially been given this title" appears to be an argument about evidence which forms no part of the specific allegation.
(69) On **10 September 2018**, the Claimant's responsibilities as Mr Dyos' back up for new product processes was removed [§55 POC].	Category two. The claimant does not identify the relevant responsibilities. She does not identify how those responsibilities were removed.
(70) On **8 November 2018**, the Claimant was not included in the list of transferees in the TUPE agreement between Commerzbank and Société Générale and at no stage was included in any of the later amended lists [§56 POC]. [Blue text not pleaded in §56 POC]	Category one.

Extracted from the List of Issues	**EJ Hodgson's observations as of 20 May 2021**
(71) On **23 November 2018**, Mr Walsh's responsibilities were not given to the Claimant but given to Victoria Lewis and Jon Dyos to enlarge their roles [§57 POC]	Category three. Although a date is given, this is, in essence, a bare allegation. The responsibilities in question are not set out. How those responsibilities were given to Ms Lewis and Mr Dyos is not set out. It is unclear how this is said to be detrimental act. It may be the claimant is asserting she should have received some responsibilities. However, she fails to say that.
[5] GRIEVANCE PROCESS	
(72) Mr Lowther failed adequately to resolve the Claimant's complaints of **3 August 2018** [C to provide details] [§61 POC]	Category three. This is a bare allegation. It is not possible to understand what is meant by "adequately to resolve."
(73) **On 17 August 2018,** the Claimant's grievance was dismissed by Daniel Oakes [§60 POC].	Category one.
(74) **On 17 August 2018**, the dismissal of the Claimant's grievance by Daniel Oakes was scathing of her [C to detail in what respects] [§60 POC].	Category two. This allegation cannot proceed without the claimant specifically identifying those comments which are said to be "scathing."
(75) Mr Lowther failed to respond to the Claimant's complaints of **5 September 2018** about his failure to provide her with 2018 objectives [§61 POC]	Category two. The claimant fails to set out the nature her complaints. (Were they oral or in writing – any email must be identified.) The date of the failure should be specified.
(76) On **11 September 2018**, the Claimant's "grievance appeal" was dismissed by Paul Lewis [§64 POC].	Category one.
(77) On **11 September 2018**, Paul Lewis refused to provide the Claimant with investigatory meeting notes [§64 POC]	Category two. The nature of the refusal must be identified.
(78) On or around **18 October 2018**, Mr Lowther failed to respond to the Claimant's email detailing complaints from April to October 2018 [§65 POC].	Category two. The claimant should identify the relevant email.
(79) On **26 November 2018**, HR (or whoever dealt with the request, the Claimant does not know) failed to provide the Claimant with a proper response to her DSAR [§66 POC].	Category three. This is a bare allegation. It is not possible to understand what is meant by "a proper response." If it is said there was a response, the claimant should state the manner in which it was inadequate. The response should be specified.
(80) On **29 November 2018**, Mr Lowther told the Claimant that he hoped that she recognised	Category one.

Extracted from the List of Issues		EJ Hodgson's observations as of 20 May 2021
	that he had tried to be a good manager [§67 POC].	
(81)	On **4 April 2019**, Mr Lowther failed to take any action against Mr Dyos following his discussion with the Claimant in which the Claimant said that Mr Dyos had lied to her with respect to her position as deputy head of markets following her maternity leave [§68 POC].	Category two. It is arguable this is a bare allegation. However, I understand it to mean Mr Lowther should have taken some disciplinary action, but did not do so.
(82)	Prior to **16 August 2019**, Antony Lowther had failed to inform Rupi Christophers-Johal or the wider business or make them aware of the Claimant's responsibility for EMC business [§69 POC].	Category three. This allegation is so uncertain it should be viewed as a bare allegation. It is possible that this has something to do with information which should have been provided from one respondent to another. If it is to proceed, the detail must be given. However, it is too uncertain at present to be seen as an allegation which may proceed.
[6] REDUNDANCY		
(83)	The Claimant was not invited to a collective consultation meeting in December 2018 [§72 POC].	Category two. The date of the collective consultation meeting must be identified.
(84)	The Claimant was deliberately excluded [by whom] from [what] TUPE discussions in January 2019 which the Claimant believes was at the behest of HR and senior management [who] in the compliance team [§73 POC].	Category three. The claimant should identify whether she has specific discussions in mind. She must identify who it is alleged deliberately excluded her and how that occurred.
(85)	[number no longer used]	I presume this is not pursued.
(86)	In July 2019, the Claimant was dissuaded from applying for a Compliance Officer role in the Markets Compliance department [§78 POC].	Category three. This allegation lacks any meaningful content. Who persuaded her, when, and how?
(87)	On or around 1 July 2019, the Claimant was not given the opportunity to apply for the role of acting Head of Eastern & Western Europe [§78 POC].	Category three. What is meant by "not given the opportunity to apply" can only be guessed at. It is a bare allegation and there is no meaningful particularisation. It cannot proceed.
(88)	On or around 1 July 2019, the Claimant was not given the role of acting Head of Eastern & Western Europe [§78 POC].	Category two/ three. This is a bare allegation. It is unclear whether the claimant applied for a position, or whether she is alleging she should have been appointed in some other manner. The claimant must set out her it cannot proceed as it currently stands. This would require an applicaction to amend.

Extracted from the List of Issues		**EJ Hodgson's observations as of 20 May 2021**
(89)	On **6 December 2019** Antony Lowther failed to inform the Claimant that she would shortly be put through a redundancy process [§79 POC].	Category one.
(90)	On **6 December 2019**, Mr Lowther sought to dissuade the Claimant from applying for a Quality Assurance role in the Financial Crime team [§80 POC].	Category two. The claimant must give detail of what is said to be Mr Lowther's actions which "sought to dissuade" her from applying.
(91)	Between **December 2019 and 31 March 2020**, the Claimant was not given the opportunity to apply for the Quality Assurance role (or any other available role) in the Financial Crime team [§80 POC].	Category three. This is a bare allegation. What is meant by "given the opportunity to apply" can only be guessed at.
(92)	Between **December 2019 and 31 March 2020** the Claimant was discounted from the Quality Assurance role by Bastian Buhlmann because she had brought the first claims [§81 POC].	Category three. This is a bare allegation. What is meant by "discounted from" can only be guessed at.
(93)	The Claimant was put on notice of redundancy on **31 January [should be 29 January] 2020** [§75 POC].	Category one.
(94)	HR (it is assumed by the Claimant) failed to pause the consultation process from **21 February 2020** following an Occupational Health report indicating that the Claimant was not fit to participate [§76 POC].	Category two. The claimant should identify what is said to be the consultation process which should have been paused.
(95)	Dismissing the Claimant on **31 March 2020** [§80 POC].	Category one.
3.	The acts complained of are not accepted as detriments or as an accurate statement of events by R1.	
SEX DISCRIMINATION – S.13 EQUALITY ACT		
4.	Was the Claimant treated less favourably and subjected to detriments by the First Respondent because of her sex.	
5.	The Claimant alleges that she was subjected to the following such detriments:	
(1)	the acts set out at §2(1), (17), (19), (29), (38), (42), (65), (68), (80), (81), (86), (87), (88), (90), (91), (92) and (95) above were acts of sex discrimination;	I believe I have considered these matters above.
(2)	Ridiculing the Claimant, for instance JD, JB and KW laughed about how she had 'hung around for 2 hours' after her waters broke. C was advised of this by a colleague on	Category two. It is not clear when the alleged ridiculing of the claimant took place. The date should be identified as far as is practicable. The claimant should identify the colleague who made the allegation.

Extracted from the List of Issues			**EJ Hodgson's observations as of 20 May 2021**
		11/05/18 who told her that jokes were made about the subject (para 10).	
6.		The Claimant relies upon actual comparators of Frank Arnold, Chritopher Walker and Kevin Whittern [in respect of [complaints]. She also relies on a hypothetical comparator [C to identify comparator relied upon for each act] and a hypothetical comparator in respect of [complaints][C to identify characteristics of hypothetical comparator for each act].	I have no comment to make on this.
MATERNITY DISCRIMINATION			
7.		The Claimant alleges that she was subjected to the following such detriments by the First Respondent, namely the acts set out at §2(1), (2), (38), (52), (53) and (54).	I believe I have considered these matters above.
8.		If so, was this because the Claimant had exercised her right to ordinary or additional maternity leave?	
ALLEGED SEXUAL HARASSMENT			
9.		Was the Claimant subject to the following conduct by the First Respondent:	
	(1)	the conduct alleged at §§2(1), (17), (19), (29), (38), (42), (50), (51), (68), (80), (81), (86), (87), (88)	I believe I consider these matters above.
	(2)	being subjected to a background check by Human Resources in or around **October-December 2018** [§90 POC]	Category one.
	(3)	on **13 September 2019**, not being appointed to the role of Senior Project Manager in Global Markets [§87(b) POC].	Category three. The claimant fails to set out the basis on which she should have been appointed. Did she make an application. If not what was the nature of her right and the nature of the failure. Am amendment would be required.
10.		If so was the conduct:	
	(1)	unwanted	
	(2)	related to the Claimant's sex,	
	(3)	and did the conduct have the purpose or effect of violating her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.	
UNFAIR DISMISSAL			
Respondents' formulation			

Extracted from the List of Issues	**EJ Hodgson's observations as of 20 May 2021**
11. The First Respondent dismissed the Claimant on 31 March 2020.	
12. What was the First Respondent's reason, or principal reason for dismissal? Was the dismissal:	
a. On grounds that the Claimant had done a protected act; or	
b. On grounds of sex; or	
c. On grounds of maternity; or	
d. For reason of the TUPE transfer to the Second Respondent;	
e. For reason of redundancy; or	
f. For an economic or technical reason entailing changes in the workforce of either the First or Second Respondent ?	
13. If the dismissal was not automatically unfair pursuant to regulation 7 TUPE, was the dismissal fair in all the circumstances, contrary to s.98(4) ERA 1996?	
14. If the dismissal was unfair, should there be any reduction in compensatory award on grounds of *Polkey*?	
Claimant's formulation	I do not need to deal with the formulation of the issues as they relate unfair dismissal. That matter can be dealt with adequately at the final hearing.
15. Can the Respondent show that there was a potentially fair reason for dismissal? R1 alleges redundancy.	
16. Was a fair procedure followed?	
17. Was the dismissal fair, having regard to all of the circumstances and size of R1/R2?	
TUPE: FAILURE TO CONSULT	I need not comment in detail. The nature of the concession should be set out adequately in the amended responses. The responses should deal with the factual basis underpinning the contention that the transfer took place in October 2019, if that remains the position.
18. The First Respondent admits that it failed to comply with the consultation requirements of regulation 13 of the TUPE Regulations, contrary to regulation 15.	
19. The Respondents accept that, pursuant to regulation 15(9), they have joint and several liability in respect of any award of compensation made under regulation 15(8)(a).	
TUPE: TRANSFER OF LIABILITIES	I need not comment on this – see above.
20. The Respondents admit that the Claimant's employment transferred to the Second Respondent pursuant to the operation of TUPE.	
21. What was the date of the transfer?	
Respondents' version	

Extracted from the List of Issues	**EJ Hodgson's observations as of 20 May 2021**
22. In the event that the date of transfer was 1 October 2019 as contended by the Respondents (or any other date prior to the termination of the Claimant's employment):	
(1) The Respondents accept that any liabilities prior to the date of transfer are transferred from the First Respondent to the Second Respondent.	
(2) [R1: The Claimant's ~~pleaded case~~ position, communicated to the Tribunal on 28 January 2021, prefaced by the comment that this position was formulated prior to disclosure on TUPE and the forthcoming Preliminary Hearing scheduled for 18-21 May 2021, where matters of TUPE would be determined is that *"if there was a relevant transfer, the Claimant's claims would lie against Société Générale only, save for claims relating to a failure to consult"* Accordingly if there was a transfer, the Claimant asserts that R2 alone is liable for post-termination acts save for the failure to inform and consult].	
[R2: Is the First Respondent, or the Second Respondent liable for the post-transfer acts or omissions alleged by the Claimant to be unlawful? In either case, what is the basis of the alleged liability?]	
(3) Is the First Respondent, or the Second Respondent liable for dismissal? In either case, what is the basis of the alleged liability?	
23. If the date of the transfer was on or around 10 May 2020, or on any other date after the termination of the Claimant's employment:	
(1) If the dismissal was automatically unfair pursuant to regulation 7(1), the First Respondent's liabilities up to the date of dismissal transfer to the Second Respondent;	
(2) If the dismissal was not automatically unfair pursuant to regulation 7(1), no liabilities transfer to the Second Respondent.	
Claimant's version	
~~24. If the transfer was on 01/10/19, it is C's position that her employment automatically transferred to R2 on that date by operation of reg 4(1). It is accepted that R2 would be liable for pre-transfer acts. The issue then is:~~	
~~(a) Is R1 or R2 liable for post-transfer acts?~~	
~~(b) Is R1 or R2 liable for the dismissal?~~	
~~25. If the transfer was on or around 10/05/20, it is C's position that her employment transferred to R2 by operation of reg 4(1). This is due to the operation of reg 4(3), which makes it clear~~	

Extracted from the List of Issues	**EJ Hodgson's observations as of 20 May 2021**
~~that if someone *would* have been employed at the date of the transfer if were they not automatically unfair dismissed under reg 7(1), they transfer to the transferr. Thus the issue is:~~	
~~(a) Was C's dismissal automatically unfair pursuant to reg 7(1)?~~	
24 If the transfer was on 01/10/19, it is C's position that her employment automatically transferred to R2 on that date by operation of reg 4(1). It is accepted that R2 would be liable for pre-transfer acts. The issue then is in respect of post-transfer acts:	
a. Is R1 liable for such acts under s108 EQA ('relationships that have ended')?	
b. Alternatively is R2 liable under s109 EQA ('liability of employers and principals') on the basis that R1 was acting as their agent?	
25 If the transfer was on or around 10/05/20, it is C's position that her employment transferred to R2 by operation of reg 4(1). This is due to the operation of reg 4(3), which makes it clear that if someone *would* have been employed at the date of the transfer if were they not automatically unfair dismissed under reg 7(1), they transfer to the transferr. Thus the issue is thus:	
a. Was C's dismissal automatically unfair pursuant to reg 7(1)?	
JURISDICTION	I need say little about this. One purpose of identifying the issues is to facilitate any application either for a deposit order for a strikeout. It is necessary to identify what the allegations are before consideration can be given to strikeout and time issues. Further, any allegation that there is no reasonable prospect of arguing a continuing course of conduct will be assisted by a clear clarification of the issues.
26. Are the acts complained of out of time. In particular:	
(1) do any acts under the Equality Act 2010 prior to 29 January 2020 form part of an act extending over a period with an act in time and if not would it be just and equitable to extend time;	
(2) was it reasonably practicable for the Claimant to bring her claim in respect of the failure to consult (as set out at §11 above) within 3 months from the date of transfer, and if not, did she bring her claim	

Extracted from the List of Issues	**EJ Hodgson's observations as of 20 May 2021**
within a reasonable period thereafter.	
REMEDY	I need make no comment on this.
27. The Claimant seeks the following by way of remedy:	
(1) Compensation in respect of failure to inform/consult;	
(2) Declaration regarding the aforementioned claims;	
(3) Recommendations be made to the Respondents;	
(4) Financial compensation for unfair dismissal/automatic unfair dismissal and injury to feelings;	
(5) Aggravated damages;	
(6) Stigma/*Chagger* damages	
(7) Personal Injury for exacerbation stress and/or causation of PTSD by way of victimisation and/or discrimination;	
(8) Interest as to the discriminatory acts pleaded, interest on other financial losses and interest on unpaid awards arising from the Initial Claims	