



EMPLOYMENT TRIBUNALS

Claimant: Mrs D Jalalli

Respondents: The Commissioner of Police of the Metropolis (1)
Secretary of State for the Home Department (2)

Heard via CVP (London Central)

**On: 13, 14, 15 June 2022
16 June 2022 (in chambers)**

**Before: Employment Judge Davidson
Ms C Ihnatowicz
Mr F Benson**

Representation

Claimant: Mr D Leach, Counsel
First Respondent: Mr A Hodge, Counsel
Second Respondent: Ms C Darwin, Counsel

RESERVED JUDGMENT

The unanimous decision of the tribunal is as follows:

- 1. The claimant's claim of indirect sex discrimination in relation to the first respondent's failure to pay her for actual time worked up to 40 hours succeeds against the first respondent.**
- 2. The claimant's claim of indirect sex discrimination in relation to the first respondent's failure to implement a process for claiming pay for additional hours worked succeeds against the first respondent.**
- 3. The claimant's claim of part-time workers discrimination for not being able to claim for additional time worked of less than 30 minutes succeeds against the first respondent.**
- 4. The claimant's remaining claims fail and are hereby dismissed.**
- 5. A remedy hearing will be listed to deal with remedy issues.**

REASONS

Issues

The agreed issues for the hearing are as follows:

Claim 1: Alleged failure to pay the claimant for actual time worked (up to 40 hours)

Indirect sex discrimination (s.19) [vs the first respondent only]

1. The Claimant contends that the Police Regulations 2003 (and attendant Home Office Determinations) (together, “the PR 2003”) provide for the claimant to be paid an hourly rate for all time actually worked: Reg.24/Annex F (part 11). If that is correct, has the first respondent indirectly discriminated against the Claimant by not paying her accordingly? the first respondent disputes C’s construction; the second respondent does not.

1.1 The PCP relied upon is paying by reference to “contracted hours” or “normal periods of duty” only (ie 40 hours for Full-Time Inspectors and “determined hours” for Part- Time Inspectors).

1.2 Was that PCP applied by the first respondent? the first respondent does not dispute the PCP or its application.

1.3 If so, did that PCP put female Inspectors at a particular disadvantage in comparison with male Inspectors?

1.4 If so, can the PCP be objectively justified? The Claimant contends that in circumstances where the PCP was contrary to the terms of the PR 2003, no legitimate aim will be available. the first respondent has not alleged a legitimate aim.

PTW Regulations 2000 [vs the first respondent only]

2. Alternatively, if the PR 2003 provided for the claimant to be paid an hourly rate for all time actually worked, has the first respondent treated the claimant less favourably than a comparable full time worker by not paying her accordingly (thereby subjecting her to a detriment (reg.5(1)(b)) on the ground that she is a part time worker)?

2.1 If so, can that less favourable treatment be objectively justified (reg.5(2))? The Claimant contends that in circumstances where the treatment is contrary to the terms of the PR 2003, justification on objective grounds will not be available. the first respondent has not alleged any objective grounds.

Equality of terms (s.66) [vs the first respondent and the second respondent]

3. Alternatively, insofar as the PR 2003 do not/did not provide for the claimant to be paid an hourly rate for all time actually worked:

3.1 The alleged term is paying Part-Time Inspectors by reference to determined hours only (ie their “contracted” hours).

3.2 Is that term less favourable to the claimant than a corresponding term of the actual comparators (the Claimant alleges the corresponding term to be payment of Full-Time Inspectors by reference to 40 hours, being their “contracted” hours)? The Claimant contends that it is less favourable, because additional hours worked by her (above her determined hours, up to 40 hours) will not be paid, whereas a Full-Time Inspector will be paid for all hours worked up to 40 hours).

3.3 If so, is there a material factor defence?

(i) Is the difference between C’s terms and those of her comparators because of a material factor (the fact she works part-time) reliance on which does not involve treating the claimant less favourably because of her sex; or

(ii) Does the factor put women doing work equal to C’s at a particular disadvantage in comparison with men doing work equal to C’s?

(iii) If it does, is the factor a proportionate means of achieving a legitimate aim?

3.4 If not (and if there has been a contravention of s.66 of the Equality Act 2010), was the Claimant subjected to a detriment as a result (s.111(5)(b))?

3.5 If so, did the second respondent instruct the first respondent and/or cause the first respondent and/or induce the first respondent to contravene s.66 of the Equality Act 2010 as so alleged contrary to s.111 EqA 2010 by promulgating and/or requiring compliance with the PR 2003?

3.6 Alternatively, is the second respondent liable as principal to the first respondent’s agent (s.109 EqA 2010)?

Time limits

3.7 Is the claim against the first respondent out of time? Has there been conduct extending over a period/a series of similar acts or failures, ending on a date that is in time? If not, Would it be just and equitable to extend time?

Claim 2: Failure to pay the claimant for additional hours worked above 40 hours in a single week

Equality of Terms (s.66) [vs the first respondent and the second respondent]

4. On an ongoing basis, the Claimant is only paid for additional hours worked up to 40 in any given week. For example, if the Claimant works 45 hours in one week, but only 30 hours the next, over those two weeks she will have worked 75 hours (less than 40 per week on average). But, she will still not be paid for 5 hours worked in the first week.

4.1 The relevant term is Part 11 of Annex F, pursuant to which pay for additional hours is paid “up to a maximum of 40 hours per week”.

4.2 Is that term less favourable to the claimant than a corresponding term of the actual comparators (payment of Full-Time Inspectors by reference to 40 hours per week)? The Claimant contends that it is, because on an annualised basis there will be many hours worked below the maximum 40 per week for which she is not paid. Whereas Full-Time Inspectors will be paid for all hours up to 40 per week.

4.3 If so, is there a material factor defence?

(i) Is the difference between C’s terms and those of her comparators because of a material factor (the fact she works part-time) reliance on which does not involve treating the claimant less favourably because of her sex; or

(ii) Does the factor put women doing work equal to C’s at a particular disadvantage in comparison with men doing work equal to C’s?

(iii) If it does, is the factor a proportionate means of achieving a legitimate aim?

4.4 If not (and if there has been a contravention of s.66 of the Equality Act 2010), was the Claimant subjected to a detriment as a result (s.111(5)(b))?

4.5 If so, did the second respondent instruct the first respondent and/or cause the first respondent and/or induce the first respondent to contravene s.66 of the Equality Act 2010 contrary to s.111 EqA 2010, by promulgating and/or requiring compliance with the PR 2003?

4.6 Alternatively, is the second respondent liable as principal to the first respondent’s agent (s.109 EqA 2010)?

Indirect sex discrimination [vs the first respondent only]

5. This claim is only pursued against the first respondent insofar as the correct construction of Part 11 of Annex F does *not* restrict/has *not* restricted the assessment of additional hours to a maximum of 40 in any given single week. On that footing, the first respondent would not be applying the PR 2003 correctly and will be indirectly discriminating against female Part-Time Inspectors.

5.1 The PCP is a practice of paying for no more than 40 hours worked in any given single week. the first respondent does not dispute that PCP or its application.

5.2 Does that PCP put female Inspectors at a particular disadvantage in comparison with male Inspectors?

5.3 If so, can the PCP be objectively justified? The Claimant contends that in circumstances where the PCP is/was contrary to the terms of the PR 2003, no legitimate aim will be available. the first respondent has not alleged a legitimate aim.

PTW Regulations 2000 [vs the first respondent only]

6. Alternatively, if Part 11 of Annex F does not restrict/has not restricted the assessment of additional hours to a maximum of 40 in any given single week, has the first respondent treated the claimant less favourably than a comparable full time worker by not paying her accordingly (thereby subjecting her to a detriment (reg.5(1)(b)) on the ground that she is a part time worker)?

6.1 If so, can that less favourable treatment be objectively justified (reg.5(2))? The Claimant contends that in circumstances where the treatment is contrary to the terms of the PR 2003, justification on objective grounds will not be available. the first respondent has not alleged any objective grounds.

Claim 3: Calculating C's annual leave entitlement and holiday pay by reference to determined hours (GoC §14 and 15)

Equality of Terms [vs the first respondent and the second respondent]

7 Is the relevant "term" less favourable to the claimant than a corresponding term of the actual comparators?

7.1 The relevant term is of calculating the Claimant's leave entitlement (ie the number of days due) by reference to determined hours. the second respondent does not dispute the existence of that term. Is that term less favourable to the claimant than a corresponding term of the actual comparators (ie the Full-Time annual leave entitlement of 30 x 8 hour days at 20 years' service)? The Claimant contends that it is, because a Full-Time Inspector accrues annual leave during all time worked up to 40 hours per week, whereas Part-Time Inspectors do not.

7.2 If so, is there a material factor defence?

(i) Is the difference between C's terms and those of her comparators because of a material factor (the fact she works part-time) reliance on which does not involve treating the claimant less favourably because of her sex; or

(ii) Does the factor put women doing work equal to C's at a particular disadvantage in comparison with men doing work equal to C's?

(iii) If it does, is the factor a proportionate means of achieving a legitimate aim?

7.3 If not (and if there has been a contravention of s.66 of the Equality Act 2010), was the Claimant subjected to a detriment as a result (s.111(5)(b))?

7.4 If so, did the second respondent instruct the first respondent and/or cause the first respondent and/or induce the first respondent to contravene s.66 of the Equality Act 2010 contrary to s.111 EqA 2010 by promulgating and/or requiring compliance with the PR 2003?

7.5 Alternatively, is the second respondent liable as principal to the first respondent's agent (s.109 EqA 2010)?

Indirect sex discrimination [vs the first respondent only]

8. This claim is only pursued against the first respondent insofar as the correct construction of the PR 2003 does *not* have/has *not* had the effect that C's annual leave entitlement and pay should be calculated by reference to determined hours. Has the first respondent indirectly discriminated against the Claimant by nevertheless proceeding on that footing?

8.1 The PCP is a practice of calculating annual leave entitlement and pay by reference to "contracted hours" or "normal periods of duty" (ie 40 hours per week for Full-Time Inspectors and "determined hours" for Part-Time Inspectors). the first respondent does not dispute the PCP or its application.

8.2 Does that PCP put female Inspectors at a particular disadvantage in comparison with male Inspectors?

8.3 If so, can the PCP be objectively justified? The Claimant contends that in circumstances where the PCP is/was contrary to the terms of the PR 2003, no legitimate aim will be available. the first respondent has not alleged a legitimate aim.

PTW Regulations 2000 [vs the first respondent only]

9. Alternatively, if the correct construction of the PR 2003 does *not* have/has *not* had the effect that the claimant annual leave entitlement and pay should be calculated by reference to determined hours, has the first respondent treated the claimant less favourably than a comparable full time worker by adopting that practice (thereby subjecting her to a detriment (reg.5(1)(b)) on the ground that she is a part time worker)?

9.1 If so, can that less favourable treatment be objectively justified (reg.5(2))? The Claimant contends that in circumstances where the

treatment is contrary to the terms of the PR 2003, justification on objective grounds will not be available. the first respondent has not alleged any objective grounds.

Claim 4: [withdrawn]

Claim 5: Calculating C's LW and LA by reference to determined hours

10. Part 10 of Annex F creates a fixed supplement to the hourly rate applicable to Part-Time Inspectors, to reflect London Weighting, being $6/12520 \times \text{£}1,827$, multiplied by the relevant number of hours.

10.1 To like effect, Annex U (para.3) converts London Allowance into an hourly rate supplement via the same formula.

10.2 These matters are pursued primarily as remedy points flowing from Claim 1: if all hours worked are paid, it will follow that additional sums will be due in respect of London Weighting and London Allowance.

Indirect sex discrimination [vs the first respondent only]

11. The PCP(s) is/are the practice of paying LW and LA by reference to "contracted" hours or "normal periods of duty" only.

11.1 Was/is that PCP applied by the first respondent? the first respondent does not dispute the PCP or its application.

11.2 If so, does that PCP put female Inspectors at a particular disadvantage in comparison with male Inspectors? The Claimant contends that Part-Time Inspectors are more likely to be female, and Full-Time Inspectors are more likely to be male: female Inspectors are more likely to work some hours (up to a maximum of 40 per week) in respect of which LW and LA will not be paid.

11.3 If so, can the PCP be objectively justified? The Claimant contends that in circumstances where the PCP is/was contrary to the terms of the PR 2003, no legitimate aim will be available. the first respondent has not alleged a legitimate aim.

PTW Regulations 2000 [vs the first respondent only]

12. Alternatively, has the first respondent treated the claimant less favourably than a comparable full time worker by paying her LW and LA by reference to her "determined hours" (thereby subjecting her to a detriment (reg.5(1)(b)) on the ground that she is a part time worker)?

12.1 If so, can that less favourable treatment be objectively justified (reg.5(2))? The Claimant contends that in circumstances where the treatment is contrary to the terms of the PR 2003, justification on objective grounds will not be available. the first respondent has not alleged any objective grounds.

Claim 6: the first respondent's failure to implement a process whereby the claimant was able to record and/or claim pay for additional time/hours worked

Indirect sex discrimination [vs the first respondent only]

13. The PCP is a practice of not recording additional hours worked by Inspectors over and above their "contracted" hours or "normal periods of duty" (40 hours for Full-Time Inspectors; "determined hours" for Part-Time Inspectors).

13.1 Was/is that PCP applied by the first respondent? the first respondent does not dispute the PCP or its application.

13.2 If so, does that PCP put female Inspectors at a particular disadvantage in comparison with male Inspectors? The Claimant contends that Part-Time Inspectors are more likely to be female, and Full-Time Inspectors are more likely to be male: without a mechanism for recording/claiming for additional hours over and above "determined hours", female Inspectors are more likely to work some hours (up to a maximum of 40 per week) that are unpaid, because Full-Time Inspectors will be paid for all hours up to 40 per week.

13.3 If so, can the PCP be objectively justified? The Claimant contends that in circumstances where the PCP is contrary to the first respondent's ability to comply with the provisions of Part 11 of Annex F, no legitimate aim will be available. the first respondent has not alleged a legitimate aim.

Claim 7: the claimant being required to work a minimum of 30 additional minutes before she is able to claim and be paid for additional time worked

PTW Regulations 2000 [vs the first respondent only]

14. In requiring the claimant to work a minimum of 30 additional minutes before being able to claim and be paid for additional time worked (up to a maximum working time of 40 hours per week), has the first respondent subjected the claimant to a detriment for the purposes of reg.5(1)(b)?

14.1 If so, does that detriment constitute less favourable treatment of the claimant in comparison with a comparable full-time worker, on the ground that the claimant is a part-time worker? The Claimant contends that it does, given that the requirement is imposed because she works part-time and given that a comparable full-time worker will automatically be paid for all time worked up to 40 hours.

14.2 If it does constitute such less favourable treatment, is that treatment justified on objective grounds? the first respondent has not alleged any objective grounds

Claim 8: [withdrawn]

Evidence

1. The tribunal heard from the claimant on her own behalf, from Frances Holland (Senior Payroll Lead) and Helen Birley (Inspector) on behalf of the first respondent and from Peter Spreadbury (Deputy Director for Police Workforce) on behalf of the second respondent.
2. There was a bundle of documents running to 1869 pages (including two pages added at the start of the hearing).

Facts

3. The facts were generally not in dispute. The facts which are relevant to our findings are as follows.
4. The first respondent is the police service for London. The second respondent is responsible for making regulations that make provision relating to the leave, pay and allowances of members of police forces, including the first respondent.
5. Relevant provisions include the following:

Annex F Part 11

The hourly rate of pay of a part-time member shall be calculated by multiplying by 6/12520 the appropriate annual rate of pay. Without prejudice to the provisions of Annex G (Overtime) and Annex H (Public Holidays and Rest Days), a part-time member up to and including the rank of Chief Superintendent shall be paid at the hourly rate in respect of each hour of duty, up to a maximum of 40 hours per week.

6. In 1994, Inspectors negotiated an additional increase to their basic pay on the basis that they would give up the right to claim for overtime hours. There is an expectation that Inspectors will work without additional pay on occasions. Police Officers and Police Sergeants are still able to claim overtime for any additional hours worked.
7. A full-time inspector works for 40 hours per week, or 2080 hours per year. The full-time inspector is paid for that number of hours and is not paid for any hours worked over and above that.
8. Part-time inspectors work 'determined hours' as agreed. Any entitlements (pay, holiday and allowances) are based pro-rata on their weekly determined hours as a proportion of 40 hours per week.

9. No overtime is payable over and above 40 hours per week. Any hours worked about this cap are taken as 'managed time' (time off in lieu). This applies to full-time and part-time inspectors.
10. Part-time inspectors are able to claim additional pay for additional hours worked above their determined hours subject to the cap of 40 hours per week. This means that a part-time inspector who works more than 40 hours in a week will only be paid for 40 hours in that week. Any additional time is taken as 'managed time'. The part-time inspector cannot allocate the hours above 40 to a different week when she is working less than 40 hours.
11. Holiday entitlement is based on determined hours and is not increased by additional hours worked, even if these are paid.
12. Holiday pay does reflect additional paid hours and is shown on the payslip as 'Bear Scotland pay', which is an additional amount paid quarterly, depending on the relevant additional hours.
13. Part-time Inspectors are entitled to be paid for the first 30 minutes of overtime, and the 'Queen's half-hour' which applies to Police Constables and Police Sergeants does not apply to them.
14. Within the first respondent, the relative number of part-time and full-time inspectors, broken down by sex is as follows:
 - 2016: 0.11% (male); 6.57% (female) (93.33% of part-time Inspectors were female)
 - 2017: 0.4% (male); 9.3% (female) (84.21% were female)
 - 2018: 0.19% (male); 7.69% (female) (91.67% were female)
 - 2019: 0.21% (male); 6.42% (female) (89.47% were female)
 - 2020: 0.22% (male); 7.28% (female) (90.48% were female)
 - 2021: 1.05% (male); 5.54% (female) (60.72% were female)
15. The claimant joined the Dorset police force on 11 August 1997. She joined the first respondent on 18 March 2005. She was promoted to the rank of inspector in September 2006.
16. On 21 June 2010 the claimant returned to work after maternity leave and subsequently changed her hours to work on a part-time basis. She remained employed on a part-time basis until 14 June 2021 when she reverted to full-time work.
17. Her determined hours over that period (including a second maternity leave in 2015) were as follows:

29 hours per week (21st June 2010 to 30th January 2011);
35 hours per week (31st January 2011 to 4th September 2016);
33 hours per week (5th September 2016 to 1st December 2019);
22.5 hours per week (2nd December 2019 to 13th September 2020);
27 hours per week (14 September 2020 to 13th June 2021).

18. The parties reviewed the claimant's determined hours on a regular basis and, where appropriate, the determined hours were increased or decreased. This was a relatively simple process and the claimant's determined hours were varied on a number of occasions as set out above.

19. The schedule of loss shows the amounts claimed by the claimant in respect of each claim as follows. The figures are not disputed by either respondent.

20. The monetary amounts claimed by the claimant are as follows:

- a. Claim 1 £5269.92
- b. Claim 2 £80.98
- c. Claim 3 £1,142,48
- d. Claim 7 £91.15

21. In November 2019, the claimant attempted to claim for additional hours worked above her determined hours up to the cap of 40 hours per week. She received no assistance from her line manager, DCI Hussain, who commented that he worked additional hours without pay. When she asked for advice from HR and payroll, nobody was able to tell her how this could be claimed. It transpired that there was a Form PS27 on the intranet. It is not disputed that the claimant was not aware of this and it was not brought to her attention at the time, despite her making enquiries of HR and the Network of Women (a group within the first respondent set up to support women). It is accepted that the normal HR system did not have a function to process such claims.

22. A new payment portal was introduced on 25 September 2020 enabling part-time Inspectors to claim additional hours up to 40 in any week.

23. It has now transpired that there is a computer glitch which prevents claims of less than 30 minutes being claimed through this payment portal. The first respondent was not aware of this until these proceedings and has stated that this will be corrected as from August 2022.

24. The claimant relies on full-time inspectors as her comparators.

Law

The relevant statutory provisions are as follows:

Indirect discrimination

Section 19 of the Equality Act provides as follows:

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
 - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
 - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
 - (c) it puts, or would put, B at that disadvantage, and
 - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

Less favourable treatment of part-time workers

Regulation 5 of the Part Time Workers Regulations provides as follows:

- (1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker—
 - (a) as regards the terms of his contract; or
 - (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.
- (2) The right conferred by paragraph (1) applies only if—
 - (a) the treatment is on the ground that the worker is a part-time worker, and
 - (b) the treatment is not justified on objective grounds.
- (3) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker the pro rata principle shall be applied unless it is inappropriate.

Equality of Terms

Section 66 of the Equality Act 2010 (Sex equality clause) provides as follows:

- (1) If the terms of A's work do not (by whatever means) include a sex equality clause, they are to be treated as including one.
- (2) A sex equality clause is a provision that has the following effect—
 - (a) if a term of A's is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable;
 - (b) if A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.

Section 69 of the Equality Act 2010 (Defence of material factor) provides as follows:

- (1) The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which—
 - (a) does not involve treating A less favourably because of A's sex than the responsible person treats B, and

(b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.

(2) A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.

(3) For the purposes of subsection (1), the long-term objective of reducing inequality between men's and women's terms of work is always to be regarded as a legitimate aim.

(6) For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's.

Determination of the issues

Claim 1: Alleged failure to pay the claimant for actual time worked (up to 40 hours)

25. We find that the claimant is entitled to be paid for any time over and above her determined hours subject to a cap of 40 hours per week. Although the first respondent's pleaded case appears to dispute this, the witness evidence and documentary evidence accepts that the claimant is entitled to be paid for these hours. The second respondent accepts that the claimant is entitled to be paid for these hours.

26. The amounts claimed on the schedule of loss under this heading are not disputed. Frances Holland's evidence is that the claimant has been paid for all the amounts she has claimed. This was not challenged. It would seem, therefore, that the amounts being claimed by the claimant in these proceedings have not been claimed by her within the first respondent's internal systems.

27. We find that the claimant attempted to claim these sums in November 2019. She received no assistance from her line manager, DCI Hussain, who commented that he worked additional hours without pay. Despite approaching those who ought to have been able to assist, such as HR, she was not told how this could be done. We infer from this that making such claims must have been a relatively rare occurrence. The first respondent's failure to pay her does not seem to be because they disputed her entitlement, but because of a lack of access to that entitlement.

28. The claimant accepts that she has been able to claim these payments since 25 September 2020, when the PSOS system allowed for these claims to be processed as part of the HR system.

Section 19 – indirect discrimination

29. Although it is not entirely clear, we understand the PCP relied on by the claimant is that the first respondent pays by reference to 'contracted hours' or 'normal periods of duty' only which amounts to 40 hours for full-time inspectors and determined hours for part time inspectors. These amount are paid to the inspectors automatically. However, any additional hours must be claimed separately and are not paid automatically.

30. The claimant is female and the PCP applies to her and to male inspectors.
31. We find that this requirement to have to claim pay for additional hours worked (prior to September 2020) put part-time inspectors at a particular disadvantage. Full-time inspectors did not have to claim for the hours worked up to 40 per week.
32. We find that the statistics of male and female part-time and full-time inspectors shows that female inspectors are more likely to be part-time and are therefore more likely to be disadvantaged. We understand that the claimant worked part-time when she had small children so that she could undertake childcare responsibilities. We take judicial notice that women are more likely to have childcare responsibilities and to work part-time.
33. The PCP put the claimant to the disadvantage. She has not been paid for hours worked prior to September 2020. In the period from 5 September 2016 to 31 August 2020, this amounted to £5269.92.
34. The first respondent has not put forward any legitimate aim for the PCP.
35. It is not clear to us why these amounts are still outstanding as the first respondent accepts that they are payable and the claimant is now aware of the process for doing so. The fact that she has not claimed these amounts despite being aware of how to do so is not a disadvantage due to her sex. However, we find that the first respondent's processes made it more difficult for a part-time inspector to claim their entitlement to pay than a full-time inspector and we take into account the underlying position which is that she has to make a claim to be paid.
36. This claim succeeds.
37. We go on to find that the indirect discrimination was not intentional. The first respondent allowed claims for additional pay to be made on form PS27 but did not publicise this well enough. This was because these payments were claimed infrequently. If someone who was aware of form PS27 had been asked the question in November 2019, the payments would have been claimed and paid. We find that there was no deliberate intention to withhold knowledge of form PS27. It was unfortunate that those whom the claimant asked, who should have known and whom she was entitled to expect would know about it, were themselves unaware.

Part Time Worker Regulations 2000 [vs first respondent only]

38. We find that the claimant was entitled to be paid an hourly rate for all time actually worked up to 40 hours per week. Therefore, the claimant has been treated the same as a full-time worker in that regard.
39. This claim fails.

Equality of terms (s.66) [vs the first respondent and the second respondent]

40. We find that the part-time inspectors are entitled to be paid for the hours they work (up to 40 per week). This puts them in the same position as full-time inspectors as regards entitlement to pay up to 40 hours per week.

41. We therefore find that the claimant was not employed on less favourable terms than her male comparator.

42. This claim fails.

Claim 2: Failure to pay the claimant for additional hours worked above 40 hours in a single week

43. The claimant accepts that a full-time inspector is not paid for hours above 40 in any week. However, she alleges that the rule puts her at a disadvantage because she is paid for fewer hours in total if two or more weeks are aggregated in a situation where she only works above 40 hours in one of the weeks. Given that she is entitled to be paid for the difference between her determined hours and 40 hours each week, she contends that the hours in excess of 40 in one week could be allocated to a different week where she worked less than 40 hours so that she would be paid for all the hours she works.

44. She argues that the comparison with full-time inspectors should not be made on a week-by-week basis but on an annual basis. If she works for more than her determined hours but less than 2080 hours in a year, and this includes hours which were in excess of 40 in a particular week, she will be paid less for her annual total hours (pro-rated) than a full-time inspector. Although the full-time inspector is not paid for the hours in excess of 40, he can take managed time, so he ends up being paid for 40 hours every week. The respondent points out that the claimant can also take 'managed time' and will be paid for the additional hours over 40 in that way. We note that the claimant was able to take the 3.6 hours she is claimant as managed time, in which case she would have been paid for those hours.

45. The claimant accepts that full-time inspectors end up doing unpaid overtime, and this was the 'quid pro quo' of the historic increase in salary. However, her argument is that she should not be required to do any unpaid overtime until she has reached 2080 hours a year, which is the position that full-time inspectors are in.

Indirect sex discrimination [vs the first respondent only]

46. It is accepted that the PCP is the practice of paying for no more than 40 hours worked in any given single week. We find that this does not put female inspectors at a particular disadvantage in comparison with male inspectors as they both have the opportunity to take excess hours over 40 as 'managed time'. The part-time inspector can work for fewer hours than her determined hours in another week and she will still be paid for the notional determined

hours in that week, even though she has worked fewer hours. This is the same system as is operated for full-time inspectors.

47. We find that, simply because the part-time arrangement could allow the part-time inspector not to have to take managed time, there is no reason why the managed time provision should not be used. We do not accept that the claimant should be allowed to claim additional money instead of taking managed hours.

48. If we are wrong about this, we find that there is an objective justification in preferring part-time inspectors to take managed time, rather than further paid overtime in that it levels out the hours worked by the part-time inspector. If the part-time inspector regularly needs to work more hours, this should be addressed via a change in determined hours, not by frequently paying for additional hours.

49. We also note that the claimant (and part-time inspectors) receive the same salary (pro-rated) as full-time inspectors. Built in to this higher salary is an expectation of some unpaid overtime. We heard that full-time inspectors regularly work without pay, particularly if they are unable to take their managed hours. It would be unfair on full-time inspectors if part-time inspectors were never expected to do any unpaid overtime, despite receiving the rate of pay to reflect this expectation.

50. This claim fails

Part Time Worker Regulations 2000 [vs first respondent only]

51. We find that the claimant has not been treated less favourably than a comparable full-time worker.

52. This claim fails.

Equality of terms (s.66) [vs the first respondent and the second respondent]

53. We note that female part-time inspectors are treated the same as male part-time inspectors and that female full-time inspectors are treated the same as male full-time inspectors.

54. We find that that the claimant is not employed on less favourable terms than the male comparators and that part-time inspectors are not employed on less favourable terms than full-time inspectors. Both groups cannot be paid for more than 40 hours in a week. If either group works more than 40 hours in a week, they can take managed time, which means they are paid for those hours by way of receiving normal contractual pay in another week in which they work fewer than their contracted hours.

55. The claimant's terms of employment are identical to those of her male comparators. Following the authority in *Mc Neil v HMRC* EAT [2018] IRLR 398 Court of Appeal [2019] IRLR 915 and *Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank Plc* [2018] EWHC 2839, the tribunal must look

at the relevant terms and not sub-divide these or lump them together with other terms. The terms of the part-time inspectors and the full-time inspectors are the same. This is what the tribunal must look at, not the overall effect of the application of the term.

56. If we are wrong about this, we find that there is material factor defence and the material factor (part-time status) is a proportionate means of achieving a legitimate aim.

57. All inspectors receive a rate of pay which has been increased after negotiations on the basis that there will be a level of unpaid overtime. We consider that part-time workers should not be exempt from this obligation. Having reviewed the amount claimed by the respondent under this heading (£80.98 for 3.6 hours of work) and the evidence of Helen Birley that she regularly works unpaid overtime, as do her full-time colleagues, we find that this amounts to a material factor defence.

58. This claim fails.

Claim 3: Calculating C's annual leave entitlement and holiday pay by reference to determined hours (GoC §14 and 15)

59. The claimant had determined hours and we find that it is appropriate to base her annual leave entitlement on her determined hours. This is the usual way that annual leave for part-time workers is dealt with, in our experience.

60. The few additional hours worked by the claimant does not, in our view, bring her into the category of an employee who works irregular hours, which would justify accruing holiday on an hour by hour basis.

61. If the claimant is working overtime hours on a regular basis, her determined hours should be amended so that her annual leave entitlement reflects her regular working hours. As we understand it, the additional time worked by the claimant was at her request, not at the request of the respondent and was not compulsory.

62. A full-time employee who works more than their contracted hours does not have their annual leave entitlement increased.

63. As regards her holiday pay, this does reflect additional earnings for additional hours in accordance with the National Agreement. This is shown in the payslips as 'Bear Scotland payment' and is paid quarterly according to the additional hours worked. We understand that this claim is not being pursued.

Indirect sex discrimination [vs the first respondent only]

64. The PCP is a practice of calculating annual leave entitlement by reference to "contracted hours" or "normal periods of duty" (40 hours per week for Full-

Time Inspectors and “determined hours” for Part-Time Inspectors). The first respondent does not dispute the PCP or its application.

65. To the extent that part-time workers work any additional hours, there is a disadvantage in that not all the part-time worker’s hours will be used for the pro-rata calculation of holiday entitlement.

66. We find that the PCP can be objectively justified. Calculating part-timers’ holiday entitlement is done on a pro-rata basis. From a practical point of view, calculating this on the determined hours is the most certain method. If part-time inspectors were to be treated in the same way as variable hours workers, with a 12.07% accrual each hour, they would have to accept that they would not accrue leave during any period of, for example, unpaid leave. There would be an additional administrative burden and greater uncertainty.

67. Looking at the claimant’s schedule of loss, until September 2020, the additional leave she claims would accrue ranges from 0.1 hours to 8.6 hours. For some reason this increases to 19,5 hours in the period 14 September 2020 to 28 May 2021. The average is about 6 hours a year. We are unaware whether any downward adjustment would be needed to take account of, for example, unpaid leave or unauthorised absence. If this is the extent of the disadvantage, we find it disproportionate to depart from the normal method of pro-rating holiday for part-time workers, based on their part-time contracted hours.

68. This claim fails.

PTW Regulations 2000 [vs the first respondent only]

69. We find that if there is any less favourable treatment of the claimant by not increasing her holiday entitlement for each hour of additional work done, this is objectively justifiable. The method adopted by the respondent of pro-rating determined hours gives certainty and clarity and is the generally accepted method for doing so for fixed hours part-time workers.

70. This claim fails.

Equality of Terms [vs the first respondent and the second respondent]

71. The term in the part-time inspectors’ contract is the same as that in the full-time inspectors’ contract: annual leave accrues on the basis of contracted or determined hours.

72. This applies to male and female inspectors alike.

73. We find that the corresponding terms of the claimant and her male comparators are identical.

74. This claim fails.

Claim 5: Calculating C's LW and LA by reference to determined hours

75. The parties agree that this claim is a remedy point and should be taken into account in any award made to the claimant pursuant to these proceedings. The rate of pay in the Schedule of Loss includes the London Weighting and London Allowance figures.

76. There is no dispute in relation to this claim.

Claim 6: the first respondent's failure to implement a process whereby the claimant was able to record and/or claim pay for additional time/hours worked

Indirect sex discrimination [vs the first respondent only]

77. Before September 2020, there was a process for claiming pay for additional hours worked (Form PS27) but it was not well known about by the employees or the HR department. We infer from this that it was used infrequently.

78. As a result of the lack of awareness of this process, it became a frustrating process for the claimant to claim pay she knew she was entitled to receive.

79. We find that there was a PCP (until September 2020) of no accessible implemented process for recording additional hours worked by inspectors over and above their determined hours (part-time inspectors) or contracted hours (full-time inspectors).

80. We find that this put female inspectors at a particular disadvantage in comparison with male inspectors. We accept that part-time inspectors are more likely to be female. The part-time inspectors were unable to claim pay for hours worked up to 40 a week, for which they were entitled to be paid, and this put them at a disadvantage compared with full-time inspectors, mostly male, who were paid automatically for hours up to 40 a week.

81. We find that there is no objective justification for the PCP. We do not consider that the absence of an advertised process for claiming additional pay was deliberate, nevertheless, the claimant was subjected to a detriment.

82. This claim succeeds.

Claim 7: the claimant being required to work a minimum of 30 additional minutes before she is able to claim and be paid for additional time worked

PTW Regulations 2000 [vs the first respondent only]

83. Part-time inspectors are entitled to be paid for all time worked over her determined hours up to a maximum of 40 hours per week. Unlike Police Constables and Police Sergeants, they do not need to work for 30 minutes

extra before additional time becomes payable (known as the 'Queen's half hour'). They are entitled to claim for each minute of additional time worked. This is not disputed.

84. The claimant complains that the HR computer system used for claiming additional pay does not allow her to claim for periods of less than 30 minutes. The respondent did not appear to be aware of the defect in the system until reading the claimant's witness statement in these proceedings. It has been acknowledged by the respondent that there is a flaw in the system which prevents the claimant claiming pay for less than 30 minutes. Now that this has come to their attention, this will be rectified by August 2022 according to the respondent's witnesses.
85. This problem does not affect full-time inspectors as they are not required to claim for additional pay. They receive pay for 40 hours per week automatically. Part-time inspectors only receive pay for their determined hours automatically. Everything over and above that needs to be claimed.
86. Until the system is corrected, the claimant is not able to claim for additional hours if she works less than 30 minutes. This amounts to a detriment. It is less favourable treatment than a comparable full-time worker because she is unable to claim pay for that time worked, whereas a full-timer receives it automatically.
87. The first respondent has not asserted any objective grounds. This claim succeeds.

Time Issue

88. We find that Claim 1 succeeds but the PCP ceased to operate from September 2020 and no examples of less favourable treatment are relied on after that date. Similarly, Claim 6 is out of time.
89. We have found that Claim 7 succeeds and it is within time. We must therefore consider whether Claims 1 and 6 are to be treated as part of the same continuing act or whether they are stand-alone claims, in which case they would be out of time.
90. We find that all the claims must be considered as part of the same continuing act and that Claims 1 and 6 are within time.
91. If we are wrong about that, we use our discretion to extend time as it would be just and equitable to do so, in the light of our findings that these claims are well-founded.

Conclusion

92. Claim 1 (indirect discrimination), Claim 6 (indirect discrimination) and Claim 7 (Part-time Workers discrimination) succeed. The remaining claims fail and are dismissed.

93. A remedy hearing will be listed to deal with remedy issues.

London Central 23 June 2022

Employment Judge Davidson

JUDGMENT SENT TO THE PARTIES ON

24/06/2022.

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.