



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms S A Morrison

v

Coram Children's Legal Centre

Heard at: London Central (by video)

On: 3-4, 7-8 and 24 February 2022

Before: Employment Judge E Burns

Ms M Pilfold

Mr S Soskin

Representation

For the Claimant: Ruth Kennedy, Counsel

For the Respondent: Korarele Sonaike, Counsel

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:

- (1) The Claimant's claims of direct sex discrimination fail and are dismissed;
- (2) The Claimant's claim of indirect sex discrimination also fails and is dismissed.

REASONS

THE ISSUES

1. This is a claim arising from the Claimant's employment with the Respondent from 7 to 24 October 2019.
2. The issues to be determined at the hearing were as follows:

Direct Sex Discrimination

- 2.1 Was the Claimant treated less favourably because of her sex in the following matters?

By this, the Claimant meant (i) because she was a woman and/or (ii) because she might become / was intending to become pregnant in the near future. The Claimant said this included assumptions made about how she might react in the future if she became pregnant and stereotypes held over how women in such situations might react. It also included the Respondent's concerns about the rights she would have.

- 2.1.1 Dismissing the Claimant
- 2.1.2 Dismissing the Claimant with immediate effect (and only pay in lieu of notice)
- 2.1.3 Failing to advise the Claimant of the consequences of deciding not to travel to Nigeria were before her employment was terminated.
- 2.1.4 The Director suggesting to the Claimant that she should go away and have children and return to this type of work afterwards.
- 2.1.5 When the Claimant said after her dismissal that she hadn't said she would not travel to Nigeria, the Director saying that did not matter, her mind was made up and the decision to terminate her contract was final.
- 2.1.6 By sharing within the team and with HR without the Claimant's consent, very personal and sensitive information about the Claimant.
- 2.1.7 Three days after the Claimant raised that she was in a position to become pregnant, removing her from the mission which she had specifically said she was pleased about being on (Kazakhstan) and swapping her to a mission which she had specifically said made things more complicated for her from a health perspective (Nigeria).
- 2.1.8 The Respondent's general approach (as set out by the other issues in this list) which made the Claimant feel guilty about the prospect of becoming pregnant and for having raised the health risks associated with becoming pregnant.

The Respondent denied direct sex discrimination. It accepted that the Claimant was dismissed with a payment in lieu of notice, but said that the reason for dismissal was because the Claimant was not prepared to travel to countries where Malaria or Zika virus were present.

Indirect Sex Discrimination

- 2.2 Was a provision, criterion or practice applied to all employees by the Respondent such that employees in the role the Claimant was in were

expected to undertake international travel where and when requested by the Respondent without discussion?

The Respondent denied having such PCP.

- 2.3 Was such a provision, criterion or practice applied to the Claimant by the Respondent?
- 2.4 Did the provision, criterion or practice put, or would it put, women of childbearing age at a particular disadvantage when compared with men of childbearing age?

The Claimant argued that:

- (a) women would need to raise the question of flexibility in relation to international travel to Malaria and Zika infected regions more than men
 - (b) women would have to consider delaying getting pregnant if going to a Malaria/Zika country that month
 - (c) women would put themselves and/or foetus at risk of harm if they were pregnant and travelled to a Zika virus or Malaria country
 - (d) women would have to consider taking less effective anti-malarial medication in case pregnant in order to minimise potential damage to the foetus
 - (e) in taking less effective anti-malarial medication women would expose themselves to increased risk of harm.
- 2.5 Did the provision, criterion or practice put, or would it have put, the Claimant at that disadvantage?
- (a) the Claimant says that her contract of employment was terminated (with payment in lieu of notice) because she raised the question of flexibility in relation to international travel;
 - (b) the Claimant says that, had her contract not been terminated the particular disadvantages at paragraphs 2.4 (b) to (e) would have applied to her.
- 2.6 If so, can the Respondent show the provision, criterion or practice was a proportionate means of achieving a legitimate aim?

The Respondent said that if there was such a PCP, it was objectively justified. The Respondent needed the Claimant to travel to the countries in which the Respondent had committed to undertake work.

The Claimant said this should have included the possibility of proportionate alternative measures, e.g. as suggested in paragraph 73 of her ET1 or looking at future missions to which she was assigned on a country by

country basis have been a reasonable approach, as initially suggested by the Claimant's line manager.

THE HEARING

3. The hearing was a remote hearing. From a technical perspective, there were very few minor connection difficulties. When such difficulties arose, we paused temporality and they quickly resolved themselves.
4. The Claimant and her husband, John Hunter-Wilson gave evidence. She also provided two written statements from Georgina Scully and Sagar Patel, the evidence within which was accepted.
5. For the Respondent we heard evidence from:
 - Ms Awaz Raoof, Head of Law and Programmes for Coram International; the Claimant's former line manager
 - Ms Ruth Barnes – former head of International Programmes for Coram International; she was Ms Raoff's line manager at the material times
 - Professor Dame Carolyn Hamilton, Director of the Coram International – with her agreement, we refer to this witness as Professor Hamilton in this judgment rather than use her full title.
6. The tribunal ensured that each of the witnesses, who were all in different locations, had access to the relevant written materials which were unmarked. We were satisfied that none of the witnesses were being coached or assisted by any unseen third party while giving their evidence.
7. There was an agreed hearing bundle of 427 pages, which included some additional documents which were admitted into evidence during the course of the hearing with the agreement of the parties. We read the evidence in the bundle to which we were referred and refer to the page numbers of key documents that we relied upon when reaching our decision below.
8. There was insufficient time in the hearing slot to enable the Tribunal Panel to deliberate and reach a decision. An additional chambers day was therefore arranged. Employment Judge E Burns apologies to the parties of the length of time it has taken to send them this reserved judgment. This was due to a combination of illness and workload pressures.

FINDINGS OF FACT

9. Having considered all the evidence, we find the following facts on a balance of probabilities.
10. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.

Background

11. The Respondent is a registered, UK charity which works in the United Kingdom and around the world to protect and promote the rights of children through the reform of law, policy and practice, and through the provision of direct legal assistance to young people, parents and professionals. The Respondent is part of a large group of charities. HR support is provided to the charities in the group centrally.
12. Coram International is a division of the Respondent. It is a research institution and consultancy team that works around the world to protect and promote children's rights. It is commissioned by third parties to undertake research or provide legal technical expertise in the area of children's rights. Coram International obtains its work by putting bids in for projects. Successful bids lead to contracts. The time from bid to contract award varies from between two and twelve months. Unicef has always been the main commissioner of its work, but is not the sole commissioner.
13. Coram International is awarded two types of contracts: general contracts which are not person specific and consultant specific contracts. Consultant specific contracts are generally only awarded to individuals with many years of experience working in the area. For each general project, a Coram International Contract Lead is assigned. A change to the Contract Lead has to be agreed with the commission (usually Unicef) which is not a straightforward administrative process.
14. At the time, the Claimant was employed by the Respondent in the Coram International division, the team, in addition to the Claimant, consisted of the following:
 - The Director, Professor Hamilton who had technical legal expertise and travelled extensively to carry out project work
 - Ms Raoff who also had technical legal expertise and who also travelled extensively on project work
 - Ms Barnes whose role was mainly office based in the UK, meaning she did not travel very often. She had technical legal experience.
 - Elizabeth Yarrow who was a research manager who specialised in research rather than having technical legal capability (she was on maternity leave at the time of Claimant's employment)
 - Cara Apland who was based in Nepal due to her husband having a job based there. She was a senior researcher with a similar level of experience as Ms Yarrow and Ms Barnes, but as a researcher rather than a lawyer
 - Kirsten Anderston who was based in Australia. Ms Anderson had some limited legal experience.
 - Yorrn Ardent whose role involved operational activities which supported research projects
 - Sophie Hedges, who was a mixed method researcher
 - Rosalie Lord, who was a relatively inexperienced research assistant
 - Charlie Kabange, who was a temporary employee providing maternity leave cover for Ms Yarrow

- Two administrators

15. By way of background information, it is relevant to note that all of the above employees were women. Eight of them were aged under 40. Three of them had had children while employed in the Coram International Team.

Travel

16. As almost all of work of Coram International is concerned with overseas projects, all members of the team, with the exception of the two administrators and Ms Barnes were required to undertake regular international travel in order to undertake missions in the field.

17. The Respondent estimated that at the time the Claimant was employed, up to around 30% of the working time of her role and others who travelled would be spent on field missions with travel being required most months of the year. The missions varied in length from between one to three weeks.

18. We heard evidence from the Respondent, that was not challenged by the Claimant, that it was sometimes possible for there to be flexibility regarding the dates of missions, including moving them to accommodate the personal situations of the employees involved. However, this very much depended on the circumstances. For about half of all missions, no flexibility was able to be offered because of the requirements of the partners involved and/or the logistics of the mission itself. In some cases, travel arrangements would need to be made with little advance notice and or last minute changes would be made.

19. At the time that the Claimant was employed, Coram International had projects in the countries set out in the table below. It is relevant to note in which countries Malaria and Zika virus were present at the time.

Country	Malaria (requiring antimalarials)	Zika Virus
Armenia	No	No
Azerbaijan	No	No
Belize	No	Yes
Bulgaria	No	No
Fiji	No	Yes
Indonesia	Yes	Yes
Kazakhstan	No	No
Libya	No	No
Malaysia	Yes	Yes
Maldives	No	Yes
Montenegro	No	No
Myanmar	Yes	Yes
Nigeria	Yes	Yes
Philippines	Yes	Yes
Thailand	Yes	Yes
UK	No	No
Zambia	Yes	No

Recruitment of the Claimant

20. The Respondent identified a need for an additional International Research Officer and advertised the role in July 2019. The advert for the role included the following:

“Please note that this post will involve international travel for up to three months per year.” (52A)

21. The requirement to travel was also set out in the job description which included as one of the eight duties of the role:

“Undertaking international and national travel missions to conduct field research including interviews and focus groups with children and young people; (the International Research Officer is expected to travel abroad as part of the role)” (236).

22. The person specification for the role also asked for *“Flexibility and willingness to travel (the post is expected to travel short international missions to a range of overseas countries)”* as an essential requirement (237).

23. The Claimant was interviewed twice for the role, once on 3 September 2019 and again on 18 September 2019, by a panel consisting of Ms Raof, Ms Barnes and Professor Hamilton.

24. At both interviews the Claimant was asked about her willingness to travel. The Claimant explained that the opportunity to travel was one of the main draws of the role. She had previously worked abroad. She confirmed that she was happy with the amount of travel proposed and the fact that it might need to take place at relatively short notice. She did not raise any concerns about travel.

25. Professor Hamilton explained to the Claimant that she may be required to travel to areas of the world that were considered to be unsafe, but where the Respondent’s partner organisation was advising that appropriate security measures were in place. The Claimant confirmed that she was happy with this. We find that this discussion included reference to specific locations, including Nigeria. All three of the Respondent’s witnesses recalled this. Although the Claimant could not recall specific mention of Nigeria, she accepted it was possible that it was mentioned. We note that the discussion of safety only considered security issues and not health issues.

26. The Claimant had looked at the Respondent’s website and seen listed there around fifty countries where the Respondent had undertaken projects in all parts of the world. She did not, however, know in which countries the Respondent was currently working nor to which countries she would be assigned. Although some locations were mentioned at the interview, she did not know where she was likely to be assigned.

27. Although the Claimant lacked formal research qualifications or experience, she was an attractive candidate because she was a lawyer with relevant experience. A key deciding factor which led to the Respondent deciding to offer the role to the Claimant was because she had experience of working abroad and was willing to travel.
28. At the time of the recruitment exercise, the Respondent was finding that it was requiring certain of its employees to travel more than usual. This was in part because Elizabeth Yarrow was absent on maternity leave, even though someone had been engaged to cover her maternity leave. The Respondent suspected (based on conversations that Ms Barnes had had with Ms Yarrow rather than any stereotypical assumptions) that Ms Yarrow would ask to limit her travel on her return from maternity leave. It was therefore keen to employ someone who was able to travel in the long term.
29. The other reason why it was so important to the Respondent to have someone who could travel, was because it was particularly busy having secured some new projects commissioned and funded by the Chubb Legal Fund. This was not specifically discussed with the Claimant at interview, but emails between Ms Raof, Ms Barnes and Professor Hamilton sent during the recruitment process show that they were already thinking of the projects where she could assist. This included the Chubb projects (which were based in Nigeria, Indonesia and Malaysia) as well as projects in Belize, Cambodia and the Maldives (58, 59, 63).
30. The Claimant was offered the role and agreed a start date of 7 October 2019.

Claimant's Desire to Have a Family

31. Prior to the recruitment exercise, the Claimant and her husband had decided that they wanted to start trying for a baby. This was in around July 2019.
32. The Claimant told us that around ten days or so before her employment start date, it occurred her that she might be required to travel to a region where the Zika virus was present and this might have an impact on her ability to conceive safely. She undertook some initial research into the position, but did not say anything to the Respondent at this point in time.

Claimant's First Week

33. On the Claimant's first day, 7 October 2019, she was told that she would be assigned to a new project, being led by Ms Raof, based in Kazakhstan, with travel planned there in late November/early December. Coram International had been awarded the Kazakhstan project by Unicef on 30 September 2019. The Respondent's success in obtaining this project was specifically due to Ms Raof's expertise and experience working in that geographical area. The Claimant was excited about the mission and the travel dates were later confirmed as 30 November to 7 December 2019.
34. On the Friday of that week, 11 October 2019, the Claimant had lunch with Ms Raof. Ms Raof spoke at the lunch about the three projects that were

being funded by the Chubb Legal Fund. She explained that they were smaller, projects which were different to the main work of the Respondent funded by Unicef. Ms Raof told the Claimant that she thought the Projects would be good ways of introducing the Claimant to the work of Coram International. Ms Raof also told the Claimant that she was to be assigned to a project in Zambia and would be required to travel there in around mid-November 2019.

35. At the lunch, Ms Raof encouraged the Claimant to speak up about which projects she was interested in. This led the Claimant to believe, albeit incorrectly, that there was more of an opportunity for her to influence where she might be assigned than was realistic. Ms Raof had been trying to encourage the Claimant to think about topics that interested her and how she could develop this during her career with the Respondent.

Claimant's Second Week

36. The Claimant told us that on **Monday 14 October 2019** she began to wonder if taking antimalarial tablets might be unsafe in pregnancy. The topic of taking such tablets had cropped up as part of a general informal conversation with her colleagues, which resonated when she learned that she would be travelling to Zambia. The Claimant googled the health risks associated with taking antimalarial tablets and also emailed her husband.
37. The email exchange between the Claimant and her husband on 14 October 2019 was one of several email exchanges that took place between the Claimant and her husband during the following ten days that were contained in the bundle. The exchanges provide an insight into how the Claimant and her husband's views developed over the course of the week and into the early part of the following week. We have not therefore treated the email exchanges as their entire conversation.
38. The Claimant was due to have a supervision meeting with Ms Raof the following day. She and her husband discussed on email whether she ought to tell her line manger that she was trying to conceive. They formed the view that she should speak about this. The Claimant anticipated that keeping her concerns (about taking antimalarials while trying to conceive) secret would cause her a good deal of stress that she ideally wanted to avoid. She also anticipated that she might have to discuss her choice of antimalarial with her colleagues and so she might as well be open and honest about everything (115).
39. The Claimant arranged to speak to a travel doctor that evening. By the end of 14 October 2019, following the Claimant's medical appointment, she and had established the following in relation to Malaria:
 - Being pregnant increases the risk of contracting Malaria
 - Malaria when pregnant is likely to be more severe
 - Malaria when pregnant can also cause miscarriage and still birth

- Some antimalarials are considered safer for pregnant women than others, but it is preferable to avoid taking antimalarials when trying to conceive and while pregnant, especially in early pregnancy
 - Different antimalarials have different levels of effectiveness depending on the region
40. One of the concerns that the Claimant developed was in relation to timings. She formed the view that she wanted to try and ensure, where possible, that she did not conceive while taking antimalarials. Another timing concern was the implications of the two week delay between conception and being aware she was pregnant. She felt she wanted to avoid taking antimalarials during this period and would not want to be present in a country with Malaria during this period in case she was pregnant and did not know it.
41. The Claimant also did some initial research about pregnancy and Zika virus. She established that contracting Zika virus when pregnant carries a high risk of foetal abnormalities and there is risk to the mother as well. The recommendation was to avoid Zika virus countries in the early stages of pregnancy and to delay conception on return. It is not in dispute that the recommendation is that women should delay conceiving for two months after returning from a Zika virus country and that men should delay conceiving for three months.
42. The following morning, **Tuesday 15 October 2019**, before the supervision meeting, Ms Raof asked the Claimant to confirm dates for travel to Zambia. The Claimant confirmed that she could travel to Zambia in the week commencing 11 November 2019. The email exchanges between her and her husband confirm them establishing in their own minds that travel on this date would enable the Claimant to take antimalarials and be confident that they would not still be in her body when she was next due to ovulate on return from travel (29 November 2019) (118). Although not articulated in the emails, they had also decided not to try and conceive in October in order that she would not be pregnant when she travelled to Zambia.
43. At the supervision meeting that afternoon, the Claimant told Ms Raof that she and her husband were trying to start a family and that she was concerned that travel to certain countries would be difficult for her. She explained that she had taken medical advice and the concerns arose in respect of geographical areas where Malaria and/or Zika virus were present. She gave as an example, that travel to Nigeria would be particularly challenging because both were present. She said that although Malaria was present in Zambia, she was happy to proceed with the mission there, but generally would prefer to be assigned to projects in Europe and Central Asia. The Claimant specifically referred to Nigeria giving it as an example of a country which would present difficulties. The Claimant mentioned Nigeria purely because it was one of the countries on the project board list in the office that she knew had Malaria. The Claimant remained unaware of all of the countries where the Respondent was working at that time.
44. There is a dispute between the parties as to what was said at the meeting. Neither the Claimant nor Ms Raof made a full contemporaneous note. Both

agree that Ms Raof's reaction at the meeting was to be supportive of the Claimant and that the Claimant did not ask Ms Raof to keep what was said during the discussion confidential.

45. The two key areas of dispute are whether Ms Raof told the Claimant at this meeting that it would not be practically possible to assign her only to projects in Europe and Central Asia. Ms Raof told us she said this, but the Claimant does not accept this. It is not necessary for us to decide which version of the evidence we prefer because it is not in dispute that the following day, Ms Raof told the Claimant that the Respondent could not assign her just to projects in Europe and Central Asia.
46. The other area of dispute is what the Claimant said she would do in relation to Zambia. The Claimant's evidence was that she was committed to the Zambia project as a whole and not simply the mission in November and she believed she made this clear to Ms Raof. Ms Raof came away from the meeting believing the Claimant to be saying that although she was prepared to travel to Zambia in November, she would not wish to return here. We find it likely that both are telling us the truth and there was a misunderstanding, because the Claimant was not as clear as she thinks she was.
47. Following the discussion, Ms Raof spoke to Ms Barnes to get her advice on what to do. Ms Barnes told Ms Raof that she should speak to HR. Ms Raof did this on **Wednesday 16 October 2019**. Ms Raof did not speak to Professor Hamilton at this stage.
48. The Respondent's HR adviser, Tim Aylett told Ms Raof that until such time as the Claimant became pregnant, the Respondent could require her to travel to any location it wished. He described the Claimant's decision to try to get pregnant as a lifestyle choice.
49. Following her meeting with HR, Ms Raof met the Claimant again. She explained that she wanted to ensure that she had not given the Claimant misinformation the previous day. Ms Raof shared with the Claimant that she had spoken to HR. She told the Claimant that until such time as she became pregnant, the Claimant would be required to travel to the countries where she was assigned projects and, if she refused to do so, she would not be fulfilling the requirements of her role. Ms Raof added, however, that once she became pregnant, the Respondent would adjust the requirement for travel where it presented a risk.
50. The Claimant emailed her husband following the meeting saying:

"So I just had another chat with Awaz.

She said she had spoken to HR and Ruth to check what the deal would be (apparently this will go no further). In summary, if I was pregnant, then I would be able to have a say about where I travelled to. However, if I am not pregnant, then I don't have a choice. I guess with the Malaria thing that is not so much of an issue as it would mean taking a break from trying for that

month? However the issue would be for Zika (given the fact that they advise you to wait before trying) although perhaps there is less risk?

But she said that basically, given that travel is a fundamental part of the job, I wouldn't be able to ... have a say pre-pregnancy about where I went... So if I said I wasn't happy to go somewhere, that would be as an issue." (125)

51. Ms Raof reported back to Ms Barnes after the meeting. She and Ms Barnes decided that they needed to share what the Claimant had told them with Professor Hamilton.
52. Professor Hamilton was out of the office that day with a heavy cold. She did, however, exchange emails with Ms Raof about the Claimant. The discussion was nothing to do with the Claimant's desire to start a family, but was instead concerned with her performance. Professor Hamilton commented that the Claimant's work, as well as that of two other employees, would need to speed up. Ms Raof replied that she felt it was apparent to her that the Claimant needed a lot of direction (123). Professor Hamilton replied to say that she would sit down with the Claimant the following afternoon and added, *"I thought she could hit the ground running, but she cannot...."* (121)
53. Professor Hamilton returned to the office the following day, on **Thursday 17 October 2019**. As was common, Professor Hamilton met with Ms Raof and Ms Barnes first thing that morning to discuss current assignments and the allocation of staff. Professor Hamilton explained that she needed assistance on one of the projects she was working on in Nigeria as it was a large project. This was a project that required someone with technical legal expertise to travel to Nigeria for two weeks in December 2021. Having reviewed the available resource, Professor Hamilton and Ms Raof and Ms Barnes decided that the only person who would be able to do this was the Claimant. The only other person who had capacity at that time was Ms Lord The work was not suitable for her, however, because of the requirement for someone with legal skills. The consequence of this decision was that the Claimant would cease to be assigned to the Kazakhstan project and would be assigned to a project in Nigeria instead.
54. At the same meeting, Ms Raof and Ms Barnes informed Professor Hamilton that the Claimant was trying to get pregnant and had raised a concern about travel to certain countries. They told Professor Hamilton that they had taken advice from HR, what that advice was and recounted the conversation that Ms Raof had had with the Claimant the previous day. Professor Hamilton wanted to understand the HR advice herself and so all three met with the HR adviser later that day. The HR adviser confirmed the advice he had given to Ms Raof previously.
55. The Respondent decided to prepare personal objectives for the Claimant which referenced the planned travel to Zambia and included the Nigeria trip. It did not consider it necessary to have a further conversation with the Claimant reiterating its position about the requirement on her to travel

because they considered Ms Raof had made the position clear to her the previous day.

56. Ms Raof chose not to speak to the Claimant to tell her in person that she would cease to be assigned to the Kazakhstan project and would be assigned to a project in Nigeria instead. Ms Raof communicated this by emailing the personal objectives to the Claimant the following morning **on Friday 18 October 2019** at 10:57 am with a cover email. In the email (141) she said:

"I have put together your objectives for the next 3 months. I think that it will be helpful for you to see where we envisage you developing over the next few months.

Please have a look and we can talk about it when we speak later today about the Zambia agenda.

You'll notice that Kazakhstan isn't included. Carolyn really needs your input on Nigeria given your legal background. It also connects nicely to one of the Chubb projects, which I mentioned over lunch and which you are likely to be involved with when it kicks off. We can discuss this in more detail later day."

57. Professor Hamilton, Ms Raof and Ms Barnes were present in the office when the Claimant received the email and heard her sigh quite loudly on receipt. We know this because when Ms Raof forwarded the email to Professor Hamilton, she replied saying:

"I heard her sigh as she read it. But then why take this job?" (142)

Professor Hamilton left the office shortly after this, as she had a hospital appointment.

58. Ms Raof met the Claimant that afternoon. Although the meeting had been arranged to go through the plans for the Zambia trip, the Respondent used it as an opportunity to deal with the objectives as well.
59. On receipt of the email, the Claimant was immediately concerned about the proposed trip to Nigeria. Although dates had not been finalised for it, she, not unreasonably, assumed it would be taking place in the first two weeks of December 2019. She worked out this would mean that she would not be able to try to get pregnant at the end of November 2019. The reason for this was because she would not know if she was pregnant until mid-December 2019. She would not want to risk being pregnant at the time she travelled to Nigeria as this would mean (a) she would have to take antimalarials when pregnant and (b) she was at risk of contracting Zika virus while in the early stages of pregnancy. The Claimant was also conscious that a trip to Nigeria in the first half of December 2019 meant she would have to refrain from trying to get pregnant for two months after returning. The earliest opportunity to try to conceive would therefore be February 2020.

60. The Claimant did not communicate all of this to Ms Raoof but did say that she had concerns about the proposed trip to Nigeria. The outcome of the meeting was that the Claimant wanted more time to consider the trip to Nigeria before she signed-off the objective that referred to it. She asked if she could speak to Ms Barnes about how she was able to combine travel and having children before reaching a final decision. The Claimant was aware that Ms Barnes had started her employment with Coram International in the role of International Researcher before progressing. She also knew that Ms Barnes had three children. Ms Raoof agreed that she could do this and a meeting was arranged between the Claimant and Ms Barnes on the following Monday.

61. The Claimant formed the view, based on what Ms Raoof said at the meeting that if she decided not to travel to Nigeria, the Respondent would not support this position. She said this in an email to her husband after the meeting as follows:

“Hey, it did not go well.

She got a bit angry and said that I was recruited to travel and that they had been clear in the job description and interview. She said I could speak to Ruth but that she would say the same. She said that Liz (someone who is maternity leave went to Liberia when she is pregnant). She said that ultimately the decision would be left with Carolyn but that she felt sure that she would say the same too.

I thought that it would be useful to speak to Ruth anyway to see how she dealt with it. She said I could if I wanted, but didn't really see the point.

She said that it wasn't a problem now because I wasn't pregnant. But if the situation changes and she said that we are only talking about three months away.

I mentioned about the fact that Malaria tablets etc. and she said that people are expected to go to these countries.

She asked me what I wanted to do and whether I would sign off on the objective (to go to Nigeria). I asked if, given it was a Friday, I could speak to Ruth early next week.

It was all quite hostile, tbh. I don't get the impression Ruth will be sympathetic but I had nothing else to say and it meant I could wait until after the weekend by saying that.

We then moved on to speak about the Zambia trip which went fine. But like I said, she was quite annoyed and did not give... The impression in any way that I would be supported if I chose not to travel (151).

62. The Claimant also prepared a note of the meeting, but it says much the same thing (146 -147)

63. Ms Raof emailed Professor Hamilton, Ms Barnes and TA later the same day with her view of how the meeting had gone. Ms Raof said:

“Her initial reaction was that the plan is not ideal, given the mission to Nigeria. She said that she thinks it would be beneficial to speak to Ruth to see how she has dealt with the travel when planning a family. She explained that she is concerned about taking ant-Malaria tablets when pregnant, though she confirmed she is not currently pregnant. She acknowledged she would have the same concerns with several other African countries.

I reiterated my discussion with Sally Ann from earlier in the week that it was clear from the outset that international travel to areas such as Nigeria would be a core part of the International Research Officer role, and that if she is not pregnant, I would have thought that this mission would not be an issue.

....

Overall she was not willing to sign the objectives and wanted to have the weekend, and then speak to Ruth on Monday. I explained that would therefore share the objectives with Ruth and then she could arrange to speak with Ruth next week.” (156-157)

64. Two email exchanges ensued. One was an email exchange between Professor Hamilton and Ms Raof in which Ms Raof highlighted that the Claimant’s concerns about Nigeria would also apply to the majority of the places where the Respondent worked. She added that one of the main reasons for selecting the Claimant for the role was to help with the Chubb work which was in Indonesia and Nigeria. She also noted that the Claimant had not raised any concerns about international travel when this was highlighted with her at interview. Professor Hamilton responded saying: *“Yes indeed - we have been taken for a complete ride!” (134)*
65. The second was an email change seeking advice from HR. It culminated in an email from Professor Hamilton which said: *“We have no work for somebody who will not travel. Let’s see how we get on with her tomorrow. It just seems to me that she came into the job with the intention of not fulfilling the job spec.” (155)*

The Weekend

66. Over the weekend, the Claimant contacted two friends. The first, Georgina Scully was a friend from university who was from Zimbabwe. The Claimant was aware she had recently had a child and wondered if Ms Scully’s experience might be helpful. The areas Ms Scully had travelled to while pregnant did not have a Malaria or Zika virus risk so she was unable to assist personally. Ms Scully said she would speak to family members to see if anyone she knew had more helpful experience.
67. The Claimant and her husband also spoke to Sagar Patel, another friend who was a GP. He confirmed that travelling to a Zika virus area in the early stages of pregnancy was not recommended. He told the Claimant and her husband that he understood there were blood and other tests that could be

carried out on return from a Zika virus area, to establish exposure and potentially reduce the waiting time before trying to conceive, but he did not know a great deal about them. He offered to see if he could find out more about the available tests.

Monday 21 October 2019

68. On Monday 21 October 2019, the Claimant met Ms Barnes and asked her about her experience working for the Respondent and getting pregnant. The Claimant was very distressed during the meeting.
69. Ms Barnes told the Claimant that she understood the difficulty the Claimant was in and empathised with her. She explained, however, that she did not think it would be possible to avoid the trip to Nigeria. It became apparent that the person the Claimant needed to speak to about the issue was Professor Hamilton as she was the ultimate decision maker with regard to the assignment of projects. Professor Hamilton was not in the office that day, but was due to return the following morning and therefore Ms Barnes directed the Claimant to speak to Professor Hamilton.
70. Ms Barnes summarised the discussion she had with the Claimant at the meeting in an email which she later sent to Ms Raof and Professor Hamilton. She informed them that the Claimant had been very upset at the meeting and was devastated at the situation she was in. Ms Barnes said the following:
- “ - *After discussing the risk, we got to a point where it seemed there were two options: not going to Nigeria, or going and then not being able to try to conceive for five months. She was clear that she doesn't want to take the slight risk but she also said that waiting isn't a good idea for them.*
...
- *I was careful not to steer either way and made very clear to her that this is for her to choose. I reiterated that the trip is part of what is expected of her for the rest of the year.*
- *She asked what would happen if she refused. I said that would be refusing a piece of work, and that would involve you, Carolyn, but I told her that would not be good at all and she nodded.”*

Ms Barnes concluded her email saying: *“Happy to talk further but I am particularly conscious that she is incredible upset about it all and I wouldn't be surprised if she decides to move on.”*

71. Professor Hamilton responded to the email saying: *“I have to say I don't have sympathy for her because she took this job on knowing she could not fulfil the tasks”* (page 158)

Tuesday 22 October 2019

72. A meeting with Professor Hamilton was arranged for the following day. It did not take place until late morning. After speaking to Ms Barnes and while she

was waiting for the meeting to take place, the Claimant exchanged several emails with her husband.

73. Based on those exchanges and what she told us when giving her evidence we find that the Claimant believed that if she refused to travel to Nigeria her ongoing employment would be at risk. She had not made a final decision about Nigeria, however, and wanted to speak to Professor Hamilton before she did.
74. The Claimant's husband was not convinced that the Claimant would lose her job and he encouraged her to ask for some flexibility. His view was that if Ruth had managed to travel and have children it ought to be possible for the Claimant to be able to do the same and that it ought to be possible to find a compromise whereby there was a "*month here and there*" where the Claimant was restricted from conceiving, but otherwise was able to do so. (166) He concluded his email exchange with the Claimant just before the meeting saying: "*Good luck my love. Main thing is to find out the situation and then you have every right to take a bit of time to make a decision.*" (181)
75. Both the Claimant and her husband told us that they potentially envisaged situations where the Claimant might be able to travel to a Zika virus country, but not have to postpone trying to conceive. They were waiting to find out more about the blood tests that their friend Dr Patel had mentioned to them. In addition, they envisaged that if the trip was to a location where the Claimant had spent most of her time indoors and had not have contact with mosquitos, they might have been prepared to take a more robust attitude to the risk.
76. Professor Hamilton was accompanied by Ms Raooof at the meeting. The Claimant created a note of the meeting later that same day (191). Ms Raooof also made a note (213), but she did not do this until the following day, after she had seen an email the Claimant subsequently sent to HR complaining about the meeting. We have based our findings of what was said in the meeting on the notes and the evidence of the witnesses.
77. Professor Hamilton began the meeting by asking the Claimant to explain her position. The Claimant explained that she had taken medical advice about the risks associated for a woman trying to conceive to countries where Zika virus and Malaria are present and been advised to discuss the position with her employer. She said she had been happy to travel to Zambia and Kazakhstan because they were non Zika virus countries, but the assignment to Nigeria made things more difficult for her because of the presence of Zika virus.
78. The Claimant did not say she was not prepared to travel to Nigeria. The Claimant mentioned that her concern about travelling to Nigeria was that it meant that she would have to delay trying to conceive. She did not mention, however, her concern about travelling in the two weeks after possible conception or suggest that she could travel to Nigeria if the trip was timed differently.

79. In response to the Claimant's summary, Professor Hamilton told the Claimant that she had decided to terminate her employment with a week's notice. Professor Hamilton told the Claimant that she did not have to work her notice period and could leave that day. Professor Hamilton did not seek to explore the Claimant's concerns or ask her any questions about them.
80. The reason Professor Hamilton gave the Claimant was that travel was a core part of her role and that had been made clear to the Claimant at interview. Professor Hamilton had therefore decided that the Claimant's circumstances meant that the role was not a good fit for her and she was not a good fit for the role.
81. In the discussions that took place subsequently:
- the Claimant became upset
 - the Claimant said she would travel to Nigeria if it meant she could keep her job, but Professor Hamilton was not prepared to change her mind. She said this was because she envisaged that the problem would arise repeatedly and with other travel destinations. Professor Hamilton told the Tribunal that she did not think the Claimant was in a 'rationale state of mind' when she offered to go to Nigeria.
 - Professor Hamilton said that she would make the same decision if the Claimant was a man
 - Professor Hamilton told the Claimant that she should go away and have her children and then return to this type of work. When explaining this remark during the hearing, Professor Hamilton told the Tribunal that she had said this in an attempt to resolve the Claimant's upset. She referred to being a mother of three daughters and a step-daughter and said this remark was her being "mumsy"

Subsequent Events

82. As the Claimant had not received a letter confirming the termination of her employment, she emailed HR to ask about it the following morning (209)
83. HR replied by on 24 October 2019. The cover email said the following:
- "Thank you for your email. Coram International have made HR aware of the termination of your contract. My understanding is that this relates to you requesting not to travel to certain countries with the risk of Zika virus. Travel is a key component of the role of International Research Officer, and many of the countries visited have the possibility of the Zika virus."* (214)
84. Attached was a letter which said:
- "During the meeting [on 22 October] you confirmed that you did not wish to travel to Nigeria and or other Zika or Malaria infected countries. You stated*

that the reason for this this was because you wish to conceive, and travelling to such countries may have an impact on this.

This requirement to travel was covered during the interview process and you assured the interviewers that you were happy to travel to the range of countries where Coram International works, including Nigeria. You were asked specifically whether there were any restrictions on your ability to travel and you replied that there were not. Had you indicated that there were restrictions, it would have had a significant impact on our decision making process, as it constitutes a core element of the role. The requirement to travel is detailed in the both the employment contract and the job description.

As there is insufficient work outside of the countries to which you have now advised us that you are not prepared to travel to, it has become clear that you are unable to fulfil the requirements of the job and it is therefore with regret that a decision was taken to terminate your employment.” (215)

85. The email was forwarded to Professor Hamilton who replied saying, “*Thanks Andrew – even though, as explained, it does not contain the reasons behind the dismissal!*” (216). Professor Hamilton was unable to give a satisfactory explanation of what she meant by this comment when giving her evidence. She could not recall what she meant and when she tried to work it out, her answer did not make sense.
86. The Claimant’s employment was terminated on 24 October 2021. She was paid in lieu of her entitlement to a week’s notice.
87. Following the Claimant’s termination of employment, the Respondent began a new recruitment campaign to replace her. It reviewed the job description and advert and changed some of the wording to emphasise the need for international travel. Pending that recruitment, it engaged external consultants to help it complete some of the work it had envisaged the Claimant doing and also turned down the opportunity to bid for some additional projects.

THE LAW

Unlawful Discrimination in the Workplace

88. Section 39(2) of the Equality Act 2010 prohibits an employer discriminating against an employees by dismissing her or by subjecting her to a detriment. The prohibition is against direct and indirect discrimination.
89. When considering whether conduct amounts to a detriment, the test to be applied is whether the treatment is of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. An unjustified sense of grievance cannot amount to “detriment” (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IC337).

Direct Sex Discrimination

90. Section 13 of the Equality Act 2010 provides that 'A person (A) discriminates against another (B) if, *because of* a protected characteristic, A treats B less favourably than A treats or would treat others'.
91. Where the protected characteristic is sex and the Claimant is a woman, section 13 envisages a comparison between the treatment of the Claimant and a male comparator.
92. In this case, where no such man actually existed, we are required to consider the position of a hypothetical comparator. Under section 23(1) of the Equality Act, there must be no material differences between the Claimant's circumstances and those of the hypothetical comparator.
93. In some circumstances a woman pursuing a claim of direct discrimination does not have to identify a male comparator. This arises where the woman has suffered discrimination because of pregnancy or because she has sought to exercise rights relating to breastfeeding and or maternity leave. It does not arise in the current case, however, because the Claimant was not pregnant.
94. Before the Tribunal can find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant's sex is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence. Allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach *Qureshi v London Borough of Newham* [1991] IRLR 264, EAT. We must "*see both the wood and the trees*": *Fraser v University of Leicester* UKEAT/0155/13 at paragraph 79.
95. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment (*Nagarajan v London Regional Transport* [1999] IRLR 572, HL).
96. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of sex. However, in some cases, such as this one where there is only a hypothetical comparator, these questions can often only be answered by considering the 'reason why' the Claimant was treated as she was.
97. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. It envisages a two-stage process. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which the tribunal could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful

discrimination. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities.

98. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd v Wong* [2005] EWCA Civ 142; [2005] IRLR 258 and we have followed those as well as the direction of the court of appeal in the *Madarassy* case. The decision of the Court of Appeal in *Efobi v Royal Mail Group Ltd* [2019] ICR 750 confirms the guidance in these cases applies under the Equality Act 2010.
99. The Court of Appeal in *Madarassy*, states:

'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.' (56)
100. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant's sex. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.
101. The burden of proof provisions exist because of the difficulties claimant's can have proving discrimination has occurred when it is not overt. As noted in the cases of *Hewage v GHB* [2012] ICR 1054 and *Martin v Devonshires Solicitors* [2011] ICR 352, they will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they may have little to offer where we in a position to make positive findings on the evidence one way or the other. However, if this approach is adopted, it is important that the Tribunal does not fall into the error of looking only for the principal reason for the treatment, but properly analyses whether discrimination was to any extent an effective cause of the reason for the treatment.
102. Ultimately the tribunal's focus "*must at all times be the question whether or not [we] can properly and fairly infer... discrimination.*": *Laing v Manchester City Council*, EAT at paragraph 75.

Indirect Discrimination

103. The reference to discrimination in section 39(2) of the Equality Act 2010 includes indirect discrimination as defined in section 19.
104. Subsection 19(1) of the Equality Act 2010 provides that:

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

105. Subsection 19(2) provides that for the purposes of subsection 19(1), a PCP 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
- (a) A cannot show it to be a proportionate means of achieving a legitimate aim.
106. The burden of proof is on the Claimant initially under section 136(1) Equality Act 2010 to establish facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent has acted unlawfully. In an indirect discrimination case, this means that the Claimant must prove that the application of the PCP causes the group that shares the protected characteristic particular disadvantage in comparison to others and that the Claimant was herself put at that disadvantage. The burden then passes to the Respondent under s 136(3) to show that the treatment was justified.
107. In establishing whether a PCP places persons of a protected characteristic at a particular disadvantage, the starting point is to look at the impact on people within a defined "pool for comparison". The pool will depend on the nature of the PCP being tested and should be one which suitably tests the particular discrimination complained of (*Grundy v British Airways plc* [2008] IRLR 74. The EHRC Employment Code provides useful guidance on this question. A strict statistical analysis of the relative proportions of advantaged and disadvantaged people in the pool is not always required. Tribunals are permitted to take a more flexible approach.
108. The comparative exercise that the tribunal has to carry out has to be based upon groups that are — absent the particular protected characteristic — in the same or not materially different circumstances.
109. In *Essop v Home Office* [2017] UKSC 27, [2017] 1 WLR 1343 the Supreme Court held that section 19 did not require a Claimant alleging indirect discrimination to prove the reason why a PCP put the affected group at a disadvantage. The causal link that must be established is between the PCP and the disadvantage. In some cases however, it will be obvious why the causal link arises.
110. The Claimant must also establish that she is actually put to the disadvantage and not that it just exists theoretically.
111. A Respondent must normally produce cogent evidence of justification: see *Hockenjos v Secretary of State for Social Security* [2004] EWCA Civ 1749,

[2005] IRLR 471. What needs to be justified is the rule itself (*Homer v Chief Constable of West Yorkshire Police* [2012] UKSC 15, [2012] ICR 704). The Tribunal must focus on the proportionality of having a rule at all, rather than the question of reasonableness of applying the rule to the particular Claimant (*The City of Oxford Bus Services Limited t/a Oxford Bus Company v Mr L Harvey* UKEAT/0171/18/JOJ).

112. In *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 38, [2014] AC 700 the Supreme Court (see Lord Reed at para 74, with whom the other members of the Court agreed on this issue: see Lord Sumption, para 20) reviewed the domestic and European case law and reformulated the justification test as follows: (1) whether the objective of the PCP (the alleged legitimate aim) is sufficiently important to justify the limitation of a protected right, (2) whether the PCP is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether the impact of the right's infringement is disproportionate to the likely benefit of the PCP. (We have adjusted the language used by the Supreme Court to fit with that used in the EqA 2010.)
113. In other cases, the question of whether a particular aim is legitimate has been expressed as being whether it 'corresponds to a real need' of the employer: see *Bilka-Kaufhaus GmbH v Weber von Hartz* (case 170/84) [1984] IRLR 317. While a tribunal must take account of the reasonable needs of a Respondent's business, it is for the tribunal to assess for itself both whether or not an aim is legitimate, and whether it is proportionate. It is not a 'range of reasonable responses' test: *Hardy and Hansons plc v Lax* [2005] IRLR 726, followed in *MacCulloch v Imperial Chemical Industries plc* [2008] ICR 1334 at paragraphs 10-12.

ANALYSIS AND CONCLUSIONS

Direct Sex Discrimination

Introduction

114. The Claimant's main claim concerned the decision to dismiss her. In addition to pursuing a claim for a directly discriminatory dismissal, she also included claims for detriments.
115. We have been mindful, when considering the detriment claims of the requirement that our approach should not be fragmented and so as well as looking at the detriment claims individually, we have also considered the overall picture. We have also taken the facts relevant to the detriment claims into account in making our decision on the dismissal.
116. In this section, we deal first with most of the detriment claims chronologically, including those that arose pre and post dismissal and then turn to the dismissal. The only exception to this is the detriment at 2.1.5 in the list of issues. This is because, in our judgment it was inextricably linked with the decision to dismissal such that we could not analyse it separately. Because our analysis process was not fragmented, we cross-referred to the

different detriment claims and the dismissal when undertaking our consideration.

Approach

117. Before turning to consider the detriments, we first note the approach we have taken to the question of the correct comparator.
118. The Claimant is relying on a hypothetical comparator because Coram International did not employ any men and so no potential actual comparator existed.
119. Our analysis process has included considering how the Respondent would have treated a male employee in the same circumstances as the Claimant. The material circumstances we have determined are relevant in this case are being employed in a researcher role at the time of trying to conceive a baby safely in the context of a heterosexual conception through intercourse. Although the position of men and women when it comes to pregnancy are very different, because of the Zika virus considerations, a male employee in the same material circumstance would have had similar, albeit not exactly the same, concerns about travel and safe conception making the hypothetical comparison less difficult conceptually.
120. We have, however, also considered more generally why the Respondent behaved as it did towards the Claimant. This has included considering whether the Respondent's conduct was influenced by its knowledge that the Claimant was planning to become pregnant in the near future. We have considered the possibility that it made inherently discriminatory and stereotypical assumptions about her based on this.

Sharing within the team and with HR, without the Claimant's consent, very personal and sensitive information about the Claimant. (2.1.6)

121. The first detriment allegation is that Ms Raof shared the Claimant's information with Ms Barnes, HR and Professor Hamilton, without the Claimant's consent.
122. It is not in dispute that Ms Raof spoke to Ms Barnes, HR and Professor Hamilton about the Claimant plans to start a family without seeking the Claimant's express consent. It is also not in dispute that the information was very personal and sensitive.
123. The Claimant accepts that she did not ask Ms Raof to keep the information the Claimant shared with her confidential. She told us that she expected Ms Raof to appreciate she was speaking to her in confidence.
124. We consider, given the sensitivity of the information the Claimant shared, that it would have been courteous for Ms Raof to inform the Claimant that she felt she needed to speak to HR, her own line manager and then later Professor Hamilton about their conversation. This is the only criticism we make of her action in this regard, however. In our judgment, it was entirely appropriate for Ms Raof to escalate the matter and seek guidance from HR

and more senior members of staff as the Claimant had told her something that had the potential to impact on her ability to perform her role as International Research Officer. The situation the Claimant was presenting to her was not something that Ms Raof had any previous experience of dealing with.

125. There was no evidence before us that Ms Raof would have acted any differently if a male employee had told her that he was trying to conceive and therefore had concerns about having to travel. Had the Respondent employed any men in relevant roles, it is entirely conceivable that this would happen in relation to travel to a Zika virus country. We consider Ms Raof would have acted in the same way as she did when the Claimant spoke to her. We conclude that the Claimant has not established a *prima facie* case of direct discrimination in relation to this detriment and therefore her claim fails because she has not shown less favourable treatment because of sex.
126. In addition, in our judgment, Claimant's complaint about Ms Raof's actions is an unjustified sense of grievance and her claim therefore also fails because she has not established that she suffered a detriment for the purposes of section 39 (2)(d). We say this because of our judgment that it was entirely proper for Ms Raof to need to seek advice from HR and her superiors about their conversation and the Claimant should have anticipated this.

Three days after the Claimant raised that she was in a position to become pregnant, removing her from the mission which she had specifically said she was pleased about being on (Kazakhstan) and swapping her to a mission which she had specifically said made things more complicated for her from a health perspective (Nigeria). (2.1.7)

127. It is not in dispute that the Claimant spoke to Ms Raof on Tuesday 15 October 2019 and told her that she trying to start a family and that three days later, on Friday 18 October 2019, her missions were swapped.
128. This is not, in our judgment, an unjustified grievance by the Claimant, the swapping of her missions put her in a difficult position.
129. We have given careful consideration as to why the Respondent took this action. This has included whether the reason for the swap had anything whatsoever to do with the conversation the Claimant had had with Ms Raof and if so, was the swap therefore because of the Claimant's sex.
130. The Claimant's case is that aware of her concern about travel to Nigeria, the Respondent deliberately swapped her projects around. She suggests this was designed to force the situation or possibly to force her into resigning.
131. Professor Hamilton was responsible for making the decision that the Claimant should be swapped. Although the timing of the swap decision, coming so soon after she had spoken to Ms Raof is suspicious, our factual finding was that Professor Hamilton did not know about that conversation when she suggested the Claimant be swapped to the Nigeria project. The

suggestion was made at the meeting held on Thursday 17 October 2019 with Ms Raof and Ms Barnes before she learned that the Claimant had spoken to Ms Raof. It was only in the course of the discussion about the swap, that Ms Raof and Ms Barnes shared with Professor Hamilton the information about the Claimant's conversation with Ms Raof. Following learning about the Claimant's situation, however, Professor Hamilton did not change her decision about the reassignment.

132. Looked at through the lens of the shifting burden of proof, the Claimant has in relation to this detriment, established a prima facie case, such that the burden is shifted on to the Respondent. In our judgment, the Respondent has met that burden and demonstrated that the reason for assigning the Claimant to the Nigerian project and nothing whatsoever to do with her sex.
133. There was a good very strong operational reason for Professor Hamilton to require the Claimant be assigned to assist her with the Nigeria work. This was because the Claimant had the capacity and the requisite legal expertise to do the work.
134. We have found it rather odd that rather than speak to the Claimant in person about the reassignment, the Respondent opted to do this via the mechanism of producing personal objectives sent by email. Our conclusion, however, is that this was a clumsy way to proceed rather than designed to deliberately upset the Claimant or orchestrate her resignation. We have reached this conclusion because Professor Hamilton later demonstrated that she was prepared to and did dismiss the Claimant directly rather than seek to manipulate her into resigning. As Professor Hamilton told us when giving evidence, as far as she was concerned Ms Raof had informed the Claimant that she was required to travel where assigned on Wednesday 16 October 2019 and there was no need to repeat that clear message. The approach taken by the Respondent therefore does not lead us to infer any directly discriminatory intent by it.

Failing to advise the Claimant of what the consequences of deciding not to travel to Nigeria were before her employment was terminated (2.1.3)

135. We found, as a matter of fact, that the Respondent did not formally confirm to the Claimant what the consequences of her deciding not to travel to Nigeria would be, before it terminated her employment. Both Ms Raof and Ms Barnes told the Claimant that if she refused to travel to Nigeria, this would be treated as a serious matter. However, because any decision needed to be taken by Professor Hamilton, neither of them went as far as explicitly saying to the Claimant that a decision not to travel to Nigeria would result in her dismissal.
136. We considered, however, that the Claimant had a sufficiently clear understanding from her conversations with Ms Raof and Ms Barnes such that she was aware that the consequence of refusing to travel to Nigeria would be the termination of her employment. This allegation was not therefore proved on the facts.

137. We note that at the meeting on 22 October 2019, Professor Hamilton also did not tell the Claimant that if she refused to travel to Nigeria she would be dismissed. Professor Hamilton did not wait to find out if the Claimant was refusing to travel to Nigeria before she dismissed her. She cursorily listened to the Claimant outlining her concerns about travel and then, because the Claimant had not said she would be travelling to Nigeria, immediately moved to dismiss her. We have considered this further below.

Dismissing the Claimant with immediate effect (and only pay in lieu of notice) (2.1.2)

138. The Claimant asked us to decide whether its decision to dismiss her with a payment in lieu of notice, rather than keeping her on garden leave or allowing her to work her notice period constituted direct discrimination because of her sex.
139. The Claimant has suggested that the reason the Respondent did this was because it was aware that she was trying to get pregnant. She argued that it wanted to reduce the risk of her getting pregnant while she was still its employee by ending her employment as soon as possible.
140. We considered this allegation in isolation and in the context of an employer rushing to remove a woman who might get pregnant from its organisation.
141. When considering this allegation in isolation, our judgment was that the Claimant had not proved that she was treated less favourably because of sex. It is extremely common for employers to pay employees that are likely to be unhappy about the termination of their employment in lieu of notice. In this case, because the Claimant was in her first month of employment, she was only entitled to one week's notice. Given the small amount involved, it was proportionate for the Respondent, even though it was a charity, to pay her in lieu rather than keep her in the office where there would no doubt have been tension. Judged, in isolation, absent the pregnancy context, the treatment was not a detriment and there was no evidence that a male employee in the same circumstances would have been treated differently.
142. When considering this allegation in the context of an employer rushing to remove a woman who might get pregnant from its organisation, we took the view that it was potentially evidence that the Claimant had been treated less favourably because of her sex. Our decision, in relation to this detriment, was therefore interlinked with our decision on the reason for the Claimant's dismissal. If we had decided that the reason for the Claimant's dismissal, which was indeed very rapid, was because the Respondent wanted to end her employment *before* she became pregnant, we would have upheld this detriment claim. We did not, however, decide that was the reason for the dismissal and so we have not upheld this claim. We rely instead on our analysis in the paragraph above.

The Director suggesting to the Claimant that she should go away and have children and return to this type of work afterwards. (2.1.4)

143. Professor Hamilton admitted that she said this to the Claimant. She provided an explanation to the tribunal as to why she said it. That explanation was that she was being “mumsy” and trying to resolve the Claimant’s upset. It is not in dispute that the Claimant was in tears at the time Professor Hamilton made this comment.
144. The Claimant has asked us to treat this comment as one which betrays the true reason Professor Hamilton dismissed the Claimant, namely because she made stereotypical assumptions about what the Claimant would want and be able to do when she became pregnant and started having children. It is another detriment claim that is interlinked with the dismissal and we have considered it in that context below.
145. Having not found that this was the reason Professor Hamilton dismissed the Claimant, we have considered whether this comment nevertheless amounts to discrimination of the Claimant because of her sex.
146. Our factual finding is that when Professor Hamilton made the comment she was thinking of a time when the Claimant had safely conceived all of the children that she was planning to have and would therefore feel able to travel to the type of countries where the Respondent had projects.
147. She said this because she understood the Claimant felt she was unable to conceive safely in the way she wanted (i.e. without significant delay) and undertake the travel required by the role and not because she made any assumption about what a woman could or could not do. In our judgment, Professor Hamilton demonstrated through what she told us that she was on the whole, very supportive of women with children who wanted to work and did not think they should be required to limit their choice of work.
148. The Claimant was clearly very upset during the conversation and Professor Hamilton wanted to find a way to reassure her. We have given careful consideration as to whether Professor Hamilton would have made a similar reassuring comment to a hypothetical male comparator or only made the comment to the Claimant because she was a woman.
149. When giving her evidence, Professor Hamilton referred to herself as the mother of three daughters and a step-daughter. This was unprompted and was part of her explanation for what she said when the Claimant became upset and why she had refused to reconsider her decision to dismissal when the Claimant said she would travel to Nigeria (see further below). The Claimant has suggested we should infer sex discrimination by Professor Hamilton from this comment and we can see the force of this argument, but ultimately, we have not done so.
150. In our view, although Professor Hamilton had not been sympathetic with the Claimant’s position, we conclude that when the Claimant broke down, she was touched by her upset. In our judgment, all that Professor Hamilton’s reference to her daughters signalled was that when trying to deal with the Claimant’s upset, Professor Hamilton drew upon her experience of dealing with upset women which she had gained in her personal life as a mother of

daughters. Our conclusion is that had Professor Hamilton been dismissing a man that became upset, she would have sought to reassure him in a similar way and in doing so most probably would have drawn upon other personal experiences of dealing with upset men to assist her. We therefore do not find her conduct to be inherently sexist.

The Respondent's general approach (as set out by the other issues in this list) which made the Claimant feel guilty about the prospect of becoming pregnant and for having raised the health risks associated with becoming pregnant. (2.1.8)

151. This was an overarching allegation which touches upon the above detriments, but also captures some of the things that the Claimant says were said to her. We have considered whether the general approach taken by the Respondent was designed to make the Claimant feel guilty about being concerned about the health risks of becoming pregnant.
152. The Claimant makes no criticism of Ms Barnes. It is apparent that she found Ms Barnes to be very sympathetic to her when they spoke about the situation on Monday 21 October 2019.
153. The Claimant's own evidence was that when she first told Ms Raoof about her concerns Ms Raoof was supportive. She says she detected a change in her position after she had taken advice from HR and particularly in the meeting that she had with Ms Raoof on Friday 18 October 2019.
154. Based on the email the Claimant sent to her husband after the Wednesday meeting, Ms Raoof had said nothing to her that was not factual about the Respondent's position having clarified it with HR.
155. There is no doubt in our mind that Professor Hamilton was annoyed with the position that the organisation was in and blamed the Claimant This is revealed in the unguarded comments she made in the emails found above at paragraphs 58, 64, 65 and 71. In our judgment, the reason for her annoyance was not because the Claimant wanted to get pregnant safely. It was because she felt the Claimant had been told about the travel requirements of the role and ought not to have taken it if she was not prepared to undertake the travel required. Professor Hamilton did not speak with the Claimant directly, however, until the termination meeting on Tuesday 22 October 2019.
156. It was conceivable that Professor Hamilton's annoyance influenced Ms Raoof's behaviour at the Friday meeting with the Claimant, however, in our judgment the meeting was inevitably going to be difficult because the Claimant was being asked to make a choice that she did not want to make. As it was, she deferred having to make that choice by asking to speak to Ms Barnes the following week. Ms Raoof admitted when giving evidence that she was annoyed by this, feeling it was a tactic and that the Claimant was trying to escalate the matter to a more senior manager and going over her head as her line manager. In our judgment, the hostility that the Claimant felt at the meeting and referred to in her subsequent email to her husband,

was most likely because of this annoyance rather than any annoyance that Ms Raof felt with the Claimant's desire to get pregnant safely.

157. We therefore do not uphold this allegation on the facts.

Dismissing the Claimant (2.1.1) and When the Claimant said after her dismissal that she hadn't said she would not travel to Nigeria, the Director saying that did not matter, her mind was made up and the decision to terminate her contract was final. (2.1.5)

158. We turn now to the Respondent's decision to dismiss the Claimant. We have found that Professor Hamilton was the sole decision maker. She made her decision to dismiss the Claimant on Tuesday 22 October 2022, which was one week after the Claimant and informed her line manager that she was trying to get pregnant. This was not even five full working days later.

159. In our judgment, this alone constituted a fact which caused the burden of proof to shift to the Respondent. We also found that Professor Hamilton jumped very quickly to her decision to dismiss and did not wait to establish precisely what the Claimant was and was not prepared to do in relation to travel before effecting the termination.

160. In particular, Professor Hamilton assumed that the Claimant was only prepared to travel to Zambia on one mission when this is not what the Claimant had said and she assumed that the Claimant was refusing to travel to Nigeria when the Claimant had not confirmed her position. As explained further below, we consider Professor Hamilton genuinely believed at the time she made the decision to dismiss the Claimant that this was the Claimant's position. She formed this view based on what she had been told by Ms Raof and Ms Barnes about the Claimant's position, the Claimant's refusal to sign the objectives and the fact that, despite being made aware that she was likely to be dismissed, the Claimant had not said she would be prepared to travel to Nigeria at the start of the meeting.

161. We have also found, on the facts, that Professor Hamilton was not prepared to review her decision when at the meeting on 22 October 2019, the Claimant said she would go to Nigeria if it meant she could keep her job. In relation this matter, Professor Hamilton told us that the reason for this was because she felt that the Claimant was not in a "*rationale state of mind*" when she said this. Although it was a very patronising comment, we consider that her assessment was made genuinely and out of concern. The Claimant was very distressed when she made the comment. Professor Hamilton believed, based on the position the Claimant had presented to date that this was not what she wanted to do.

162. Having seen the Claimant's conversations on email with her husband, we consider she was likely correct to believe this. The Claimant did not want to lose her job, but she also did not want to delay conceiving for five months and in our judgment, had she been given the opportunity she wanted to consider her position overnight, it was more likely than not that she would

have decided that she could not fulfil the travel requirements of the role because she wanted to prioritise getting pregnant.

163. The Claimant has also highlighted some key features of Professor Hamilton's evidence that she said gave rise to the "inescapable inference" that the Claimant was dismissed because of her sex. This included the comments and decisions made by Professor Hamilton discussed above and Professor Hamilton's acknowledgement, when specifically asked that if the Claimant became pregnant the Respondent would have been legally obliged to accommodate her pregnancy and maternity leave, even if this meant that the financial burden on the Respondent would have resulted in a need for redundancies.
164. Our decision is that the Respondent has discharged the burden of proof and established that the reason for the Claimant's dismissal was not because the Claimant might get pregnant in the near future, and therefore cause the Respondent various "difficulties". Instead, the reason for the Claimant's dismissal was because it needed someone to travel straight away in the short and medium term to certain countries and believed that she was refusing to do this.
165. In reaching this conclusion we have relied heavily on the unguarded email exchanges between Professor Hamilton and Ms Barnes and Ms Raouf. In our judgment, had Professor Hamilton been worried about the Claimant becoming pregnant it is likely that she would have said as much in her unguarded emails, but she did not. Instead, the unguarded emails, particularly the ones she sent on 18 and 21 October 2019, confirm that Professor Hamilton's focus was on the immediate needs of the organisation for someone to travel.
166. We listened carefully to the evidence Professor Hamilton gave about what would have happened had the Claimant become pregnant. She acknowledged that the Respondent would have had legal obligations and confirmed that it would have fulfilled those as it had previously with other employees, even if this created difficulties. The Panel considered her evidence on this to be very "matter of fact". Professor Hamilton was not at all troubled by what would have needed to happen, if legally required. She noted that pregnancy and maternity leave are finite with predetermined timeframes, making them manageable, whereas the period during which the Claimant might be trying to get pregnant was indeterminate and might last for several years.
167. Having reached the conclusion that the Respondent's decision to dismiss the Claimant was because she could not meet the travel requirements of her role, we have considered whether the Respondent would have behaved differently if the Claimant had been a man. We have concluded that it would not.
168. In our judgment, the Respondent would have made the same decision to dismiss the hypothetical male comparator we have identified. Our conclusion that the Respondent's decision was driven by its immediate short

and medium term travel needs means that the Respondent's position would not have been any different faced with a male employee telling it that he was not prepared to travel to countries which would have a significant adverse impact on his ability to conceive safely.

169. For the reasons set above the claimant's direct sex discrimination claims fail.

Indirect Sex Discrimination

170. We then turned to the Claimant's claims of indirect sex discrimination. Our analysis and considerations followed the structure provided for us in section 19 of the Equality Act 2010.

Was there a provision, criterion or practice?

171. We first considered whether the Respondent had a provision, criterion or practice (PCP) in relation to travel at all, regardless of any possible discriminatory impact.
172. It was not in dispute that Coram International required its researchers to travel to and work in countries where it was commissioned to undertake mission. This included countries where Malaria and Zika virus were present.
173. The dispute before us focused on the extent to which that PCP was imposed without any flexibility. The Claimant invited us to find that the Respondent had a PCP such that the researchers "*were expected to undertake international travel where and when requested by the Respondent without discussion.*"
174. Our factual finding was that there was very little flexibility in relation to the countries to which individuals were required to travel. This was determined by the places where Coram International had live projects that needed to be worked on. Although Coram International could choose for which projects it submitted bids, the duration of the tender process meant that the programme of work was effectively determined around 12 months in advance and staff had to go where they were assigned.
175. We also found there was a small amount of flexibility in terms of travel dates in around 50% of projects. The flexibility available was minimal and only really extended to employees being able to bring forward or delay travel by a few weeks.
176. Based on these factual findings, we decided the Respondent had a PCP such that Coram International researchers were expected to undertake international travel where and when requested with *minimal* discussion. In practice, because there was little flexibility and minimal opportunity to make fundamental changes to the travel requirement (other than vary the date of travel in around 50% of missions), having any discussion about the travel would not lead, in the majority of cases, to the Respondent being able to make any changes.

Did the PCP cause women particular disadvantage when compared to men?

177. Having identified the relevant PCP, we then considered whether it caused or would have caused women particular disadvantage when compared to men.
178. Our starting point when considering this question was to identify the groups for comparison. They must be ones where there is no material difference in circumstances save for the particular protected characteristic.
179. The circumstances we determined were relevant in this case were trying to conceive a baby in the context of a heterosexual conception through intercourse. We therefore considered the effect of the application of the Respondent's PCP to women trying to conceive a baby in this way and compared this to the effect on the application of the PCP to men trying to conceive a baby in this way.
180. We learned, as a consequence of the evidence presented at this hearing, that both men and women trying to conceive would be advised not to do so for a set time period after visiting a Zika virus country. For men the time period is three months. For women, the time period is shorter, being only two months.
181. A woman, however, would in addition to the advice to avoid conception after returning from a Zika virus country, be advised to alter her behaviour before travel. This is because she would be advised not to visit a country with Zika virus while pregnant. If the trip were planned in the two weeks following her ovulation date, she would have to refrain from trying to conceive that month. A man due to go on the same trip would not have to refrain from trying to conceive before travel.
182. The consequence is that both men and women trying to conceive would effectively be caused the same disadvantage as a result of travel to a Zika Virus country by the PCP. They would both have to delay conceiving for three months where a trip was due to take place in the two weeks following ovulation.
183. If the trip coincided with ovulation, the disadvantage tipped in favour of men, however. Regardless of their sex, the woman and man would be away from their partner at the critical time and unable to try and conceive. The woman would be in a better position, however, as she would be able to try and conceive a month earlier on her return.
184. If the trip was in the two weeks preceding ovulation, the disadvantage also tipped in favour of men. The woman would not have been prevented from trying to conceive the previous month because she would not have had to worry about not knowing whether she was pregnant at the date of the trip. The result is that she would be in a better position than the man as, again, she would be able to try and conceive a month earlier on her return.
185. In the case of travel to a Malaria country, however, only women would be disadvantaged.

186. Again, we have learned as a result of the evidence presented to us during the hearing, that both men and women would be required to take anti-malarial tablets when travelling to a country where Malaria is present.
187. The woman would be advised not to try and conceive while taking the antimalarial medication or to take different antimalarial medication. If she did the former, as anti-malarial are taken before, during and after trips this would mean that she would need to refrain from trying to conceive for several weeks. If she did the latter, she would be taking medication that would be less effective and put herself at risk.
188. A man in the same circumstances would not be given any comparable advice and so would not have to refrain from trying to conceive, except while away on the actual trip, and would be able to take the most effective antimalarial medication.
189. In addition, a woman would be advised to avoid being exposed to Malaria while pregnant. In order to ensure this did not arise inadvertently, if a trip was planned for the two week period after her conception date, she would need to refrain from trying to conceive before travelling. This disadvantage would not arise for a man.
190. Our conclusion, based on the position with Malaria, was therefore that the Respondent's PCP did and would put, women at a particular disadvantage when compared with men.

Did or would the Claimant have suffered the particular disadvantage?

191. The Claimant would have suffered the particular disadvantage we have identified that arises as a result of the Respondent's PCP and only applies to women had she remained employed by the Respondent.

Was the PCP objectively justified?

192. We consider that the Respondent has objectively justified the PCP with the outcome that there was no unlawful discrimination of the Claimant.
193. The legitimate aim underlying of the PCP was Coram International's need for employees in the relevant roles to perform the work the organisation was established to do. As a charity, it was founded with a particular and extremely important aim, to protect and promote children's rights internationally. This inevitably resulted in a requirement for staff that would be able to travel internationally. Travel was a genuine and real need of this employer.
194. The organisation as a whole had very little choice in relation to determining where in the world it worked. Its work was commissioned by Unicef and other charitable foundations and ultimately it was these organisations that decided where they wanted to fund projects. Although Coram International could choose the projects for which it could bid, the length of time the

bidding process took meant this could only be built into its business model for the medium to long term future.

195. At the material time in this case, the projects Coram International had were fixed and underway and needed people to undertake them within a relatively short time scale. Having a PCP requiring its employees to travel with very little flexibility was necessary because it was such a small organisation and because it had so little control over travel arrangements, other than being able to make fairly minor adjustments to timings in a maximum of 50% of cases.
196. The table at paragraph 19 of this judgment, confirms that at the material time, in early October 2019, Coram International was working in very few countries where the Claimant considered she could travel and safely conceive. Although in her submissions she argued that the Respondent could have allocated her to different projects, the reality was that its limited human resources prevented this. Although it ended up doing so, using external consultants to cover the Claimant's work would not have been cost effective because the Respondent would have needed to pay her as well as the external consultants.
197. For this reason the claimant's indirect sex discrimination claim also fails.

Employment Judge E Burns
4 July 2022

Sent to the parties on:

04/07/2022.

For the Tribunals Office