EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mrs K Furlong	AND	The Insolvency Service

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bristol **ON** 8 to 10 February 2023

EMPLOYMENT JUDGE J Bax
MEMBERS Mr K Ghotbi Ravandi
Ms C Lloyd-Jennings

Representation

For the Claimant: **Mrs K Furlong (in person)**
For the Respondent: **Mr A Tinnion (counsel)**

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that the claim of indirect sex discrimination is dismissed.

REASONS

1. In this case the Claimant, Mrs Furlong, brought a claim of indirect sex discrimination.

Procedural matters

2. The Claimant presented her claim on 8 February 2022. She notified ACAS of the dispute on 31 December 2021 and the certificate was issued on 8 February 2022.

3. On 24 October 2022, Employment Judge Midgley conducted a Telephone Case Management Preliminary Hearing, at which it was confirmed that the claim consisted of an allegation of indirect discrimination on the basis of a single provision, criterion or practice, namely "a requirement that all Insolvency Investigator Programme ("ISIP") learners must complete the ISIP course within two years.

4. The Respondent accepted the PCP was applied to the Claimant, when she started her employment.

5. The Respondent said that the two years could be extended. It was accepted that the PCP was applied to persons with whom the Claimant did not have the same protected characteristic.

6. The Respondent accepted in its amended Grounds of Resistance that women are more likely to work part time than men and that women bear the greater burden of childcare responsibilities. It denied that the PCP put females at a particular disadvantage.

7. The Respondent relied upon a defence of justification with stated aims of:

    a. ensuring that all ISIP learners, including those working part-time, are encouraged to complete the ISIP course as soon as they are able to do so, and become fully operational in their role with a full caseload.
    b. Enabling the effective and timely accomplishment of the investigatory functions of the Respondent.

8. On 6 February 2023, the Respondent wrote to the Tribunal informing it that there was a jurisdictional issue in relation to time, namely that the Respondent says that the PCP ended in March 2020. All learners were informed of an automatic extension in April 2020 and later a one-year extension to the programme was agreed for the claimant and all other ISIP learners. It was therefore said that the Claimant had three months from April 2020 have presented her claim in time.

9. At the start of the hearing the issues were discussed. The Respondent accepted that it had the alleged PCP, but disputed that it was applied to the Claimant the whole time and says it ceased to be applied from March 2020. Whether the PCP caused group and personal disadvantage was disputed. The Respondent maintained its defence of justification. It was also necessary to consider whether the claim was brought in time and if not whether it was just and equitable to extend time.

The evidence

10. We heard from the Claimant, and from Mrs Parker-Smith (ISIP assessor and the Claimant's line manager), Mrs Sutton (Capability Manager and Capability Lead) and Mr Crook (Capability specialist in IT skills) on behalf of the Respondent. We were provided with a bundle of 443 pages, any reference in square brackets within these reasons is a reference to a page in the bundle.

11. We were satisfied that all witness were truthful and tried to assist the Tribunal as much as possible.

The facts

12. There was little conflict on the evidence. We found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

13. The Claimant commenced employment with the Respondent on 20 May 2019 as an L2 investigator, initially on a fixed term contract in the Official Receiver Service ("ORS"). Shortly after starting employment it was announced that fixed term employees would be offered permanent positions, which the Claimant accepted. On 27 June 2019 the Claimant was appointed to a permanent L2 Trainee Investigator role, which required participation in the Insolvency Service Investigator Programme ("ISIP").

14. The Claimant worked 3 days a week (22 hours 12 minutes per week) on a part-time basis.

15. ORS team cases largely related to compulsory company liquidations, personal bankruptcy and bankruptcy investigation work. The Claimant's role, as a trainee, involved speaking to/interviewing insolvent individuals or representatives of insolvent companies, establishing the cause of insolvency, identifying assets, identifying potential misconduct, liaising with stakeholders, reporting on the insolvency and realising assets for the benefit of creditors. She might also have to draft bankruptcy restriction reports and make criminal referral reports. ORS had no control over the timing or number of cases which came in from UK courts. All incoming cases had to be actioned and the number of cases an individual received in a week could vary depending on incoming case numbers and staff resource. We accepted that every attempt was made not to allocate a case to someone who was on leave or on a non-working day.

16. There were two other relevant teams, IES and Live. IES dealt with investigation and enforcement work and was fed on an allocated basis. Live dealt with live companies which needed to be wound up, but had not been.

Training and policies

17. The letter confirming the Claimant's permanent appointment said she was required to study for and pass the ISIP within 24 months of starting the programme. She was informed if she fell below the required standard and did not demonstrate sufficient improvement she would be withdrawn from the programme and a decision maker would determine whether she should be dismissed.

18. The Respondent's Part-Time Working for Trainees Policy and ISIP General Programme Polices, relevant to the Claimant, provided:

    (a) "Due to the nature of the Insolvency Service Investigator Programme (ISIP) learners are required to work a minimum of 21.5 hours per week to enable adequate exposure to casework to facilitate the assessment of suitable evidence to demonstrate competence.

    It is acknowledged that on a reduced case loading it may be more difficult for someone working part time hours to demonstrate the full range of knowledge and skills required and as such it is imperative that a plan is drawn up with the line manager assessor at the earliest opportunity to address this potential issue.

    Because learners join the programme with varying levels of prior experience, some learners will take less time to complete the programme and require fewer cases to demonstrate competency at the required level. Accordingly, working part-time does not in itself give rise to an automatic right to an extension of time to complete the programme. <u>However, if there is clear evidence in the progress review forms that a learner has not had exposure to a sufficient volume, or breadth of case-work to demonstrate competence during the 2 years on the programme due to circumstances beyond their control, then that will be grounds for an application for extra time</u>." (Our emphasis) [p346]

    (b) Under the heading, 'Workplace Adjustments & Exceptional Circumstances', "Learners are required to successfully complete the ISIP programme through the compilation of a portfolio of evidence within 2 years of commencing the able to complete their portfolio earlier.

    Learners who experience factors outside of their control which they consider to be having an impact on their ability to develop in the role and progress through the programme should raise this with their assessor at the first opportunity. <u>Any such issues, whether work-related or in their personal lives, should be discussed and the impacts and actions to mitigate them/support to be provided by the Insolvency Service recorded in the Progress Review form</u>. (Our emphasis)

> Where these circumstances persist for any length of time and it becomes apparent that they may have an impact on the individual's ability to complete the programme within the 2 years or within a reasonable timeframe in accordance with their experience levels, they may submit a request to the TCL Team for an extension of time to complete the programme. [p347-348]"

(c) Part time trainees were entitled to a full day study allowance.

The training programme

19. The policy for extension in relation to training programmes had been in existence since 1998. The first two versions of the course were delivered in-house with accreditation through Nottingham Trent University. The third version was externally accredited. The relevant version started in June 2019.

20. The previous versions of the courses had centralised exams and assessments, whereas the 2019 version was undertaken by way of workplace assessment with local line managers. The previous training courses ran for three years and was provided for L1, L2 and L3 investigators. L1 investigators would complete the course in one year. L2 investigators would undertake the first year and have to successfully complete the L1 part before continuing to a second year and undertake the L2 part. L3 investigators would need to complete the first two years and then undertake the third year. We accepted that under the old scheme, the Claimant would have been on a two-year course.

21. When devising the June 2019 ISIP and when it was in operation, the Respondent was technically insolvent as an agency and the directors asked for the timescale of ISIP to be reduced. Experience had shown that the third year of the previous programme largely consisted of consolidating learning and there was not an option to complete the programme early. The duration of the programme was reduced to 2 years with an option for people to finish early if they met the required standard. We accepted that ISIP learners were on a reduced caseload and that they had significant supervision and training during the training period and this prevented them from becoming fully operational until they had completed the programme. Learners were unable to be promoted until they had completed the programme and many learners had been complaining that they were ready to complete the course and progress in their careers but were unable to do so because of the programme structure.

22. We accepted that a shorter period of time meant that trainees became fully operational earlier, which meant that they would receive a full caseload and

have a reduced amount of supervision sooner. We accepted that this helped with the caseload of the Respondent and that is assisted in reducing the cost to the business as a consequence.

23. We also accepted that when recruiting for an investigator, the Respondent was recruiting for an investigative mindset. People from very different working backgrounds applied and ranged from former police officers to a magician. Some people had significant investigative experience, whereas others had none. There were also people who are working full-time and part-time. Some learners completed the course within one year.

24. ISIP was developed following a 70/20/10 learning model. This meant that 70% of learning was acquired though practical application on the job. 20% was through self-directed study and peer to peer learning and 10% was though formal classroom training. The classroom learning was front loaded so that the classes were attended within the first 8 months. The focus was then on evidence logs which were required to demonstrate work met the required standard. The evidence was obtained by day to day work, such as interviewing bankrupts, administering estates and investigating misconduct claims. The work was allocated by the line manager who ensured that learners were allocated cases which would enable them to meet and evidence the competencies.

25. All learners had a 20% reduction in caseload and part-time learners had a pro-rated reduction in comparison to full-time learners. When the 2019 ISIP was designed, it was estimated that a 15% reduction in caseload was required in the first year and a 5% reduction in the second year, in order to allow for the learning and supervision. However it was concluded that 20% reduction should give sufficient time for everyone. We accepted Mrs Sutton's evidence, that the statistics from previous courses were looked at and there was nothing to indicate a pattern as to whether full-time or part-time learners passed or needed extensions. We accepted that Mrs Sutton thought there was sufficient time in two years for a part-time learner to complete the course and that the current L2 and L3's are 50% men and 50% women and that if there had been an issue it would have shown up within the last 25 years.

26. When designing the ISIP Mrs Sutton reviewed results from employees undertaking the previous programme, including those who had sought extensions. It was considered that full and part time learners should be able to complete the ISIP within 2 years. It was acknowledged that some learners would require more than two years to complete the programme and therefore the facility for extension of time was included.

27. Consideration was also given as to whether the ISIP should be pro-rated for part-time learners. The ORS director thought that if part-time workers

were automatically given an extended deadline, they might work towards that deadline rather than to what they are actually capable of, whereas the Respondent needed its investigators to become fully operational with a full caseload sooner if they were able.

28. The Claimant suggested that it would not have affected the business if the deadline was automatically extended for part-time learners. We accepted that the Respondent needed investigators to be fully operational as soon as possible and therefore did not accept the Claimant's suggestion.

29. The ISIP course was designed to be fully flexible and tailored to the needs of the individual learner. There was an initial meeting with the line manager to agree an initial development plan and when a learner was part-time the action plan needed to show how consideration of how they would be exposed to sufficient appropriate casework in order to demonstrate the competencies to meet the programme requirements.

30. There were 100 different competencies which had to be met and each learner needed to demonstrate that they had met most of them more than once. We accepted that some competencies, e.g. running a case file, should be on every case file and should be met more than once, whereas others were rarer and could be met only once.

31. The competencies were demonstrated in a portfolio of logs. The example given to new learners was 10 pages long and it showed how to demonstrate how the competency was met including that hyperlinks to documents should be provided. We accepted that the first log the Claimant did took about 15 hours. We accepted that it generally took about 6 logs on specific cases to meet all of the competencies and that generally it would take about half a day for a log to be written. We accepted Ms Parker-Smith's evidence that there was space on the programme to undertake the writing up and the time was managed in part by the learner who could seek to spend time writing up or undertaking casework to gain experience and it was their choice when they did it.

32. Learners also were required to complete Q&As with their line managers in relation procedural and other work related matters. This involved reading and revising before attending a verbal session with the line manager. At the session, scenarios were discussed with the line manager to ensure that the material had been read and understood. This was not an open book type session and the information had to be remembered. We accepted the Claimant's evidence that the Conduct of Court Proceedings Q&A was 56 pages long and when she did the Q&A she could not remember part of it and was asked to revisit that section and conduct that part again with Ms Parker-Smith.

33. Learners were required to attend 10 masterclasses which were 30 to 60 minutes long during working hours.

34. The learners attended 6 weekly progress reviews with their assessor . The Respondent considered they were vital to discuss and review performance against action plans and to review development and see what needed to be planned for the next 6 weeks. They were recorded on progress review forms and included what had gone well and challenges faced. Because the ISIP was workplace assessed, the 6 weekly reviews were a support mechanism to ensure the learners received regular feedback and had opportunity to raise concerns and so that any concerns can be dealt with promptly. Non-learners had quarterly reviews. A traffic light system was used: green for on track, amber for some improvement needed and red for improvement needed. The learners needed to show that they had progressed.

35. We accepted that supervising learners was very intensive and took a large amount of time and resources from their assessors. Further that the reduced caseload meant that there was additional pressure and cost to the Respondent. We also accepted that because of the cost of the training the Respondent had a vested interest in the learners succeeding.

36. Mrs Parker-Smith accepted that ISIP was difficult for full time and part time learners. We accepted that full-time learners had a higher case load around which they needed to fit in the ISIP work. For part-time learners there was more juggling of the case load and the manager needed to be mindful of the cases allocated to ensure that they would have adequate evidence of the competencies. We accepted Mrs Parker-Smith's evidence that there was no requirement to undertake work outside of normal working hours, however she thought it was likely most learners did some additional reading outside of normal hours if an exam was coming up. We accepted that learners were not assessed on the basis of volume of work, but a range of work. Learners were not compared with each other and the line managers ensured that a suitable range was provided.

Extensions

37. We accepted Mrs Sutton's evidence that whilst the policy said that being part-time did not give rise to an automatic extension to complete the programme, if there was evidence in the review forms that a learner had not been exposed to sufficient volume or breadth of casework to demonstrate the competencies due to circumstances beyond their control it was a ground for extra time. The Claimant suggested that the process of applying for extension was onerous and that the part-time learner had to set out how they had tried to mitigate the situation and explain why the extension was required. We accepted that the Claimant had misunderstood what was required. The manager was required to note challenges and issues arising

at each six weekly review meeting and set out in the review the steps to support the learner and actions to mitigate the situation which the respondent was undertaking in order to assist them. The application to extend was assessed on the basis of the review records. All applications for an extension of time made by learners had been granted. Further we accepted that the Respondent would grant an application for an extension by a part-time learner when they were saying that they had insufficient time to complete the ISIP within their normal working hours. Such extensions would be granted so that the part-time learner had at least the same number of working days as a full-time learner to complete the course.

38. We accepted that extensions were normally sought nearer to the end of the programme, on the basis that it was easier to identify what needed to be covered and the time that it would take. We also accepted the Respondent's evidence that there could not be an automatic extension in the event that a learner had not been undertaking sufficient work during the working day or had not been taking on board repeated feedback.

General situation

39. The Claimant's case was that part-time learners were more likely to be women and that women were more likely to bear the brunt of childcare responsibility. The part-time learner working three days a week had a 60% of the working time of a full-time learner. This meant that if a day was taken for study and learning the part-time worker would only have two days to gain experience whereas the full-time worker would have four days. Further that the full-time worker had more time in which to undertake learning and writing of logs in order to pass the ISIP. The Claimant considered that the time to complete the ISIP should have been greater for part-time learners in order that they can complete it in the same number of working days. We accepted that part-time learners had fewer working days in the two year period than full-time learners.

40. We accepted that part-time workers had a reduced caseload based on their hours and that although they might undertake fewer cases the line managers ensured that they undertook a sufficient variety.

41. Between June 2019 and January 2023, 245 learners enrolled on the ISIP course, comprising of 227 full-timer and 18 part-time learners. 83 have competed the programme of which 81 were full time and 2 part-time.

42. 68 learners received a red or amber rating at some stage: of which 61 were full time and 7 part time. 1 part time learner received a red rating and the others were amber.

43. 63 learners resigned before completing the ISIP of which 59 were full time and 4 were part-time. We accepted that the majority of those who resigned were working within ORS. We accepted the Respondent's evidence that there were more learners in ORS than the other teams. We accepted that people resigned for a variety of reasons and very few stated that the ISIP was the reason, although Mr Crook fairly accepted people might not have wanted to reveal that was the reason.

44. Since the 2019 ISIP started there had been 14 applications for an extension of time of 11 were full time learners and 3 part time. All were granted. Of the part-time workers two applications were in relation to illness and the third was because the worker had changed from full time to part-time, however there was no information as to when the change had occurred or the circumstances of the individual.

45. The Claimant said that part-time learners had to work harder to complete the course in the same time as full time learners. She relied on her own experience as set out below. The Claimant fairly said that she did not know any of the other part-time learners and whether they experienced the same issues that she did. We accepted Mrs Sutton's evidence that successfully completing the ISIP was not dependent upon volume of work. There was no evidence that other part-time learners were undertaking significant work outside of their normal working hours.

46. We accepted Mrs Parker-Smith's evidence that learners could ask for time off from their case load to write cases up. We accepted that learners requested such time and it was granted. We also accepted that learners did not use study time each week.

47. in April 2020, the requirement to complete the ISIP within two years was suspended. In June 2020, the 2 year ISIP training period was extended by one year for all learners, due to the impact of covid 19. We accepted that this was because some learners might not be able to undertake any or little work on ISIP during the lockdown situation and the requirement to work from home.

The Claimant's personal situation

48. The Claimant started the ISIP on 30 September 2019 and was initially due to complete the programme by 30 September 2021. Mrs Parker-Smith was the Claimant's line manager and assessor

49. The Claimant was assessed as being green in all of her 6 weekly reviews and we accepted that this suggested she was on track to complete the ISIP.

50. We accepted that if the Claimant could not use her study day allowance and she undertook revision and log writing in her own time.

51. We accepted Mrs Parker Smith's evidence that the Claimant was diligent, and meticulous, the quality of her work was good and that she worked hard. The Claimant regularly undertook more research and provided greater detail that was required of her.

52. The Claimant completed 3 evidence logs before her resignation, the first of which took 15 hours to write. We also accepted that the other two logs took a significant amount of time to write.

53. On 7 October 2019, the Claimant had an initial meeting with Ms Parker-Smith. The Claimant confirmed that she had read and understood the ISIP policies and guidance. It was agreed she would be allocated 1 to 2 cases a week except when she was on full study weeks, because of the need to have weekly case review meetings and part time hours. Ms Parker-Smith agreed to look for relevant cases to ensure the Claimant got exposed to the right cases for evidence of meeting the competencies.

54. On 14 November 2019, the Claimant attended a progress review meeting with Mrs Parker-Smith. The Claimant said that she had felt a bit overloaded with work due to having many training days. She said she had spent three hours in her hotel room writing up a case to overcome it. She said she felt she had no time to write up cases. Mrs Parker-Smith noted that it was inevitable that part-time hours and the need to attend training courses at the early stage of the programme were going to impact upon the Claimant's timeliness and that they would monitor it. They were unable to control the number of incoming cases. It was hoped matters would settle down once initial training courses had concluded.

55. At the progress review meeting on 18 February 2020 Mrs Parker-Smith noted that the Claimant needed have more confidence in her abilities and try to refrain from seeing all the negatives rather than the progress in her work. She had seen only negative matters after dealing with a difficult person. She had also had a crisis of confidence at the interview skills training.

56. At the Progress review meeting on 26 March 2020. It was confirmed that all staff would be working from home from 27 March 2020 due to Covid 19. The Claimant had started working from home the previous week. Due to uncertainty development targets were not set. The Claimant accepted in cross examination that she was not having difficulties with ISIP up to this time. It was identified the Claimant needed to build resilience when dealing with complaining customers.

57. In April 2020 the Claimant and all other learners were told that the requirement to complete ISIP was suspended. At this time an end date to the suspension had not been given due to the uncertainty of the national situation regarding the Covid 19 lockdown.

58. At the progress review meeting on14 May 2020, it was recorded the Claimant was finding lockdown challenging. She and her husband were both working from home and were having to share childcare for a two year old. The Claimant had attempted to maintain her full hours by working half days over six days, however Mrs Parker-Smith considered it was having a negative impact on the claimant's well-being and suggested she dropped the Saturdays. The Claimant said spreading the work over six days made her lose focus and she could not get as much done and she was only working about 18 hours a week. She was unable to attend masterclasses because they were scheduled in the mornings. In cross-examination the Claimant accepted the difficulties were due to Covid-19 restrictions. We accepted that the Claimant was struggling at this time.

59. On 5 June 2020 the Claimant attended a Q&A session on inspections with Mrs Parker-Smith. The Claimant was encouraged to make some progress with the ISIP whilst the time was suspended. This was because there were a reduced number of cases coming through and it meant there was more time to undertake work on ISIP.

60. In June 2020 all learners on the ISIP were given a one year extension to complete the programme. The Claimant accepted in cross examination that three years ought to have been sufficient for all part-time and full-time learners. This meant that the Claimant had three years to complete ISIP, i.e. by 30 September 2022.

61. At the progress review meeting on 18 June 2020 it was recorded that the Claimant was struggling with balancing childcare and work. She had reduced her time to 15 hours a week. It was noted that in a normal week she would work 132 hours over a six-week period compared to 225 hours for a full-time worker, but her availability had dropped to 90 hours. This needed to be appreciated in relation to progress and case loading. The Claimant was told that the two-year training period would be extended. The Claimant thought that the six weekly meetings were taking up a disproportionate amount of time, however. Mrs Parker-Smith said they were vital to monitor progress and ensure correct workflow and that learners were not overloaded, which we accepted. The meetings also enabled regular contact to be maintained whilst learners were having to work from home. It was also explained to the Claimant that she appeared to be doing more work than was expected, in that she was undertaking written work research which was in excess of what was actually required. The Claimant was meticulous and she often conducted work in a manner which was too

thorough and would complain that she did not have time to complete it. The Claimant accepted in cross examination that at this time any material disadvantage was largely, if not entirely, caused by Covid 19.

62. At the progress review meeting on 6 August 2020, it is recorded that the Claimant had undertaken a court work Q&A. She had not been able to recall all of the information and it had been agreed that she would look at the discrete area and it would be revisited in another session. We accepted that the Claimant was undertaking the learning in her own time.

63. At the progress review meeting 10 September 2020 it was recorded that the Claimant had challenges with her limited working week of 15 hours, which, combined with childcare demands in her remaining hours, had a huge impact on her ability to work/progress with ISIP. And she was encouraged to complete as much as she could. Claimant told not to worry and the training period had been extended.

64. In September 2020 the Claimant and Parker-Smith had a discussion about an occupational health referral and stress. The Claimant did not want a referral at this stage because she thought it was unnecessary.

65. On 5 October 2020, Ms Parker-Smith had an audit meeting with Mr Reilly (Claimant's second internal quality assessor), she raised concerns about Claimant's suitability, due to becoming upset by emotional back stories. Mrs Parker-Smith had some frank discussions the Claimant about this. She also raised that the Claimant was struggling with childcare and was working 15 hours a week, which was below the minimum required for the programme.

66. On 9 October 2020, Ms Parker-Smith suggested to the Claimant that she looked at the ISIP policies to see what she needed to do to ask for an extension if it was required. She reminded the Claimant that the 2 year time frame applied to both full time and part time employees and working part time did not give rise to an automatic extension. The Claimant said that the policy said if there was clear evidence in the progress review forms that a learner had not had exposure to a sufficient volume breadth of casework, due circumstances beyond their control, then that would be grounds for application for extra time. The Claimant thought this was demonstrated in the reviews.

67. At the assessor meeting on 15 October 2020, Ms Parker-Smith confirmed to Mr Reilly, that the Claimant remained on track to complete the ISIP, but it had been a struggle because of lockdown restrictions and working from home with a young child, which had resulted in her reducing her hours. She was also using the extension as a means of providing breathing space while she managed difficult personal circumstances.

68. The difficulties with undertaking additional learning and staying on top of her work continued during this period.

69. On 2 December 2020 the Claimant went off sick with mixed anxiety and depression. An occupational health referral was arranged. Mrs Parker-Smith confirmed in an email, dated 18 December 2020, that the Covid lockdown had had a significant detrimental impact on the Claimant. The Claimant returned to work on 4 January 2021.

70. On 14 January 2021, in a case review meeting, Ms Parker-Smith noted that the Claimant's progress had been affected by her mental health. No assessment tasks were to set in order to relieve pressure on the Claimant. The Claimant agreed to increase her hours on a staged basis back to the full 22.12 hours.

71. the occupational health report was sent on 21 January 2021 and confirmed that the Claimant was working remotely and had a diagnosis of depression and anxiety. The Claimant had reported that she had no work related issues, but her health was affecting her work. The Claimant confirmed in cross examination that this was the case. It was recommended that the Claimant had some time off from studying and assessments, whilst her cognitive symptoms persisted and that this was a temporary issue. The Claimant in cross-examination did not say that her mental health issues were caused by ISIP, although she thought it might not have helped.

72. On 9 February 2021 the Claimant returned to full hours. Mrs Parker Smith told her that if she felt her mood was deteriorating or that the work/ISIP was becoming stressful to let her know as soon as possible so changes could be made.

73. At the progress review meeting on 25 February 2021, it was recorded that the Claimant was back to her full part time hours. She was still struggling with juggling the day job, childcare and the qualification and was struggling with her mental health. The Claimant said she was struggling to set aside time for ISIP and it was suggested she set aside a few hours a week. It was also asked if she wanted any case work relief, which she said she did not. It was agreed the Claimant would remain on the case rota but would say if she felt overwhelmed.

74. At the progress review meeting 30 March 2020, the Claimant said that spending anytime on ISIP during her working week was a challenge and she understood she was entitled to a day a week for study but it was not viable. It was again suggested she took half a day a week to do it.

75. In the review on 20 May 2021 the claimant raised ,as challenges that she faced, concern about spending time on ISIP in her 3 day week and she had

only managed half a day in the 6 week period. She said she had difficulty in finding time during her own time to revise for the Q&A when she had to look after her daughter due to covid. We accepted that the Claimant had never been told, or that it was suggested, that she should work in her own time. We accepted that the Claimant did undertake work in her own time.

76. In the Claimant's review dated 27 September 2021, she said that due to two weeks leave and urgent investigation work she had struggled to keep on top of case work.

77. On 30 September 2021 the original 2 year time period elapsed. There was no consequence for the Claimant.

78. On 7 October 2021, Ms Parker-Smith asked the Claimant if she wanted to attend an inspection of a trading entity, which needed to be closed down, which would occur that afternoon or possibly the next day. We accepted that the type of inspection rarely came up and sometimes they did not occur for a couple of years. Mrs Parker-Smith was assessing another full time learner, who had entered the programme after the Claimant. We accepted that Mrs Parker-Smith wanted the Claimant to have first refusal for the investigation. She was told that she was being given 'first dibs'. The Claimant said she could do it that day but not the next because it was a non-working day. The Claimant was told that at some point she will be told to go on an inspection and when the Claimant said it could not be on a non-working day, Mrs Parker-Smith said that was correct and she was not asking her to do so. We accepted that this was not an attempt to pressurise the Claimant, but was raised because the opportunity rarely arose.

79. On 11 October 2021, the Claimant telephoned Ms Parker-Smith saying she intended to resign. The Claimant said that her reasons were after attending an ISIP cohort meeting she thought pressures were different in different parts of the business for learners and staff and in ORS the demands were unpredictable. Changes in the Southampton office had been unsettling. She felt underpaid and considered the pay differential with L3s was not justified. The job and ISIP was not conducive to part time hours and having a young child. The claimant made no mention of indirect discrimination and we accepted that the concept had not crossed her mind at this stage.

80. In the week before she resigned, the Claimant had a meeting with Ms Trimby and Mrs Parker-Smith. The Claimant did not refer to this meeting in her witness statement or any document and did not refer to it in her oral evidence. She questioned Mrs Parker-Smith about saying she was unsympathetic about work being done outside of hours when training. Mrs Parker-Smith could not recall the discussion. No positive evidence was adduced that it occurred and we were not satisfied that it did.

81. Mrs Parker-Smith tried to dissuade the Claimant from resigning and looked for alternative roles. The Claimant orally resigned to Mrs Parker- Smith on 12 October 2021, giving a months' notice. The Claimant was asked by HR to put her reasons in writing.

82. The written reasons were sent on 9 November 2021 and the Claimant referred to working time differential with full time learners, there was more pressure on ORS staff and pay. The Claimant's employment with the Respondent ended on 11 November 2021. She also raised a complaint on 9 November 2021 that the requirement to complete the ISIP within 2 years was indirect sex discrimination

83. The complaint was acknowledged on 23 November 2021. On 7 December 2021, Ms Dyson informed the Claimant that she was the decision maker, that she would be contacted by an investigator and as a former employee there was not a right to an appeal. The Claimant replied that 20 days had passed, that she needed to bring a claim in the Tribunal by 11 January 2022 and asked for a response by 24 December 2021.

84. The Claimant was interviewed by the investigator, Mr O-Brien, on 9 December 2021. The investigation was concluded on 20 December 2021. The Claimant was sent the investigation report on 13 January 2022 and invited to a meeting with Ms Dyson on 20 January 2022. The Claimant received the outcome letter on 8 February 2022, 13 days after the meeting, whereas the policy said it should be sent within 5.

Time

85. We accepted the Claimant's evidence that it was not until early 2021 that it dawned on her that part time and full time workers having to complete the ISIP within the same timescale was unfair. She was aware sex discrimination was unlawful, however it had not crossed her mind what happened could be discriminatory until she gave her written reasons for resigning. She had not done any research into the law until November 2021 and had not sought any legal advice. The Claimant was not a member of a trade union.

The Law

Indirect Discrimination

86. We considered and applied the test in s. 19 of the Act:

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

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

87. We approached the case by applying the test recommended to us in Igen-v-Wong [2005] EWCA Civ 142 to the Equality Act's provisions concerning the burden of proof, s. 136 (2) and (3) which are as follows;
"*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
(3) But subsection (2) does not apply if A shows that A did not contravene the provision…"

88. The Claimant needs to identify the provisions, criteria or practices ("PCPs") relied upon, that it put people with whom the Claimant shared the protected characteristic a particular disadvantage and that it put the Clamant to that disadvantage.

89. We first considered whether there were provisions, criteria or practices ('PCPs'). The Court of Appeal in Allonby v Accrington and Rossendale College [2001] IRLR 364, held that it is for a claimant to identify the requirement or condition (and now, by analogy the PCP) which she seeks to impugn. Sedley LJ went on to say that if a claimant can realistically identify a requirement or condition supporting her case, it is 'nothing to the point' that her employer can with equal cogency derive from the same facts, a different and unobjectionable requirement or condition. We also bore in mind the statement in the Statutory Code of Practice that the phrase PCP should be construed widely and took into account the guidance in Ishola v Transport for London [2020] EWCA Civ 112.

90. We then turned to the question of disadvantage under s. 19 (2)(b) and (c). That required us to ask two questions; first, whether people with the Claimant's characteristics were exposed to a particular disadvantage as a result of the PCP and, secondly, whether the Claimant herself was exposed to that disadvantage. The word 'disadvantage', as it is used in s. 19, sets a relatively low threshold. We bore in mind, in particular, the Equality and Human Rights Commission's Code of Practice from 2011 (paragraph 4.9) and that disadvantage is similar to detriment. Where the effect amounts to

a disadvantage, the question whether it amounts to a particular disadvantage that is liable to be experienced by women as opposed to men arises.

91. In Essop v Home Office (UK Border Agency) [2017] ICR 640, Baroness Hale identified the salient features of indirect discrimination:

(i) There is no requirement for the Claimant to show why the PCP puts one group sharing a particular protected characteristic at a particular disadvantage when compared with others. It is enough that it does (para 24)
(ii) Direct Discrimination requires a causal link between the less favourable treatment and the protected characteristic. Indirect discrimination does not. Instead it requires a causal link between the PCP and the particular disadvantage suffered by the group and the individual (para 25)
(iii) The reasons why one group may find it harder to comply with the PCP than others are many and various (para 26)
(iv) There is no requirement that the PCP in question put every member of the group sharing the particular characteristic at a disadvantage (para 27)
(v) It is commonplace for disparate impact, or particular disadvantage, to be established on the basis of statistical evidence. Statistical evidence is designed to show correlations between particular variables and particular outcomes and to assess the significance of those correlations. But a correlation is not the same as a causal link. (para 28)
(vi) It is always open to a Respondent to show that the PCP is justified (para 29)

92. To determine whether a PCP puts people sharing the characteristic at a particular disadvantage with those not sharing it, a logically relevant pool must be chosen. The pool chosen should be that which suitably tests the particular discrimination complained of (Grundy v British Airways plc [2008] IRLR 74). Baroness Hale in Essop said at paragraphs 40 and 41:

"40. …In relation to the indirect discrimination claim in Allonby v Accrington and Rossendale College [2001] ICR 1189, para 18, he observed that identifying the pool was not a matter of discretion or of fact-finding but of logic. Giving permission to appeal to the Court of Appeal in this case, he observed that

> *"There is no formula for identifying indirect discrimination pools, but there are some guiding principles. Amongst these is the principle that the pool should not be so drawn as to incorporate the disputed condition."*

41. Consistently with these observations, the Statutory Code of Practice (2011), prepared by the Equality and Human Rights Commission under section 14 of the Equality Act 2006, at para 4.18, advises that:

> *"In general, the pool should consist of the group which the provision, criterion or practice affects (or would affect) either positively or negatively, while excluding workers who are not affected by it, either positively or negatively."*

In other words, all the workers affected by the PCP in question should be considered. Then the comparison can be made between the impact of the PCP on the group with the relevant protected characteristic and its impact upon the group without it. This makes sense. It also matches the language of section 19(2)(b) which requires that "it"—ie the PCP in question—puts or would put persons with whom B shares the characteristic at a particular disadvantage compared with persons with whom B does not share it. There is no warrant for including only some of the persons affected by the PCP for comparison purposes. In general, therefore, identifying the PCP will also identify the pool for comparison."

93. Those who have no interest in the advantage or disadvantage of which the complaint is made should not be in the pool (Rutherford v Secretary of State for Trade and Industry [2006] ICR 785). The pool must consist of persons whose circumstances are the same, but not materially different from the Claimant.

94. A Claimant does not have to show a particular threshold of disparate impact to establish that a PCP has a disproportionate adverse effect (Hextall v Chief Constable of Leicestershire Police [2018] IRLR 605).

95. Childcare disparity is well known in the context of indirect discrimination claims and is something of which judicial notice can be taken (Dobson v North Cumbria Integrated Care NHS Foundation Trust & Ors UKEAT/0220/19/LA)

Justification

96. in assessing the legitimate aim defence, the Tribunal must consider fully whether (i) there is a legitimate aim which the respondent is acting in pursuance of, and (ii) whether the treatment in question amounts to a proportionate means of achieving that aim (McCullough v ICI Plc [2008] IRLR 846).

97. In Hensman v Ministry of Defence UKEAT 0067/14/DM, Singh J held that when assessing proportionality, while an Employment Tribunal must reach its own judgment, that must in turn be based upon a fair and detailed

analysis of the working practices and business considerations involved, having particular regard to the business needs of the employer. Proportionality in this context meant 'reasonably necessary and appropriate' and the issue required us to objectively balance the measure that was taken against the needs of a respondent based upon an analysis of its working practices and wider business considerations (per Pill LJ in Hensman-v-MoD UKEAT/0067/14/DM at paragraphs 42-3) (see also Hampson v Department of Education and Science [1989] ICR 179. Just because a different, less discriminatory measure might have been adopted which may have achieved the same aim, did not necessarily render it impossible to justify the step that *was* taken, but it was factor to have been considered (Homer-v-West Yorkshire Police [2012] IRLR 601 at paragraph 25 and Kapenova-v-Department of Health [2014] ICR 884, EAT). It is for the tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter (Hardys & Hansons Plc v Lax [2005] IRLR 726 CA).

98. The test of proportionality is an objective one.

99. A leading authority on issues of justification and proportionality is Homer v Chief Constable of West Yorkshire Police [2012] ICR 704 in which Lady Hale, at paragraph 20, quoted extensively from the decision of Mummery LJ in R (Elias) v Secretary of State for Defence [2006] 1WLR 3213

> *20. As Mummery LJ explained in R (Elias) v Secretary of State for Defence [2006] 1 WLR 3213 para 151:*
> *"the objective of the measure in question must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end. So it is necessary to weigh the need against the seriousness of the detriment to the disadvantaged group."*
>
> *He went on, at para 165, to commend the three-stage test for determining proportionality derived from de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing [1999] 1 AC 69 , 80:*
> *"First, is the objective sufficiently important to justify limiting a fundamental right? Secondly, is the measure rationally connected to the objective? Thirdly, are the means chosen no more than is necessary to accomplish the objective?"*
>
> *As the Court of Appeal held in Hardy & Hansons plc v Lax [2005] ICR 1565 , paras 31, 32, it is not enough that a reasonable employer might think the criterion justified. The tribunal itself has to weigh the real needs of the undertaking, against the discriminatory effects of the*

requirement.

100. Lady Hale, at paragraph 19, also made reference to the decision of the ECJ in Bilka-Kaufhaus GmbH v Weber von Hartz in which the ECJ held that a discriminatory practice might be regarded as objectively justified on economic grounds if a national court finds that the measures chosen by [the employer] respond to a real need on the part of the undertaking, are appropriate with a view to achieving the objectives pursued, and are necessary to that end.

> *"19. The approach to the justification of what would otherwise be indirect discrimination is well settled. A provision, criterion or practice is justified if the employer can show that it is a proportionate means of achieving a legitimate aim. The range of aims which can justify indirect discrimination on any ground is wider than the aims which can, in the case of age discrimination, justify direct discrimination. It is not limited to the social policy or other objectives derived from articles 6(1), 4(1) and 2(5) of the Directive, but can encompass a real need on the part of the employer's business: Bilka-Kaufhaus GmbH v Weber von Hartz (Case 170/84) [1987] ICR 110 ."*

101. At paragraph 24 Lady Hale said

> *"24. Part of the assessment of whether the criterion can be justified entails a comparison of the impact of that criterion upon the affected group as against the importance of the aim to the employer."*

102. Pill LJ's comments in Hardy & Hansons plc v Lax [2005] IRLR 726 in relation to the Sex Discrimination Act 1975 at paragraph 32 also provide assistance in that the statute:

> *"Section 1(2)(b)(ii) [of the Sex Discrimination Act 1975] requires the employer to show that the proposal is justifiable irrespective of the sex of the person to whom it is applied. It must be objectively justifiable (Barry v Midland Bank plc [1999] ICR 859) and I accept that the word "necessary" used in Bilka-Kaufaus [1987] ICR 110 is to be qualified by the word "reasonably". That qualification does not, however, permit the margin of discretion or range of reasonable responses for which the appellants contend. The presence of the word "reasonably" reflects the presence and applicability of the principle of proportionality. The employer does not have to demonstrate that no other proposal is possible. The employer has to show that the proposal, in this case for a full-time appointment, is justified objectively notwithstanding its discriminatory effect. The principle of proportionality requires the tribunal to take into account the reasonable needs of the business. But it has to make its own judgment, upon a fair and*

detailed analysis of the working practices and business considerations involved, as to whether the proposal is reasonably necessary…"

And further at paragraph 33

"The statute requires the employment tribunal to make judgments upon systems of work, their feasibility or otherwise, the practical problems which may or may not arise from job sharing in a particular business, and the economic impact, in a competitive world, which the restrictions impose upon the employer's freedom of action."

103. If a respondent relied upon the rationale for a policy or practice, it had to justify the manner in which it was applied to a claimant in order to meet the defence in the section (Buchanan-v-Commissioner of Police for the Metropolis UKEAT/0112/16).

104. A tribunal will err if it fails to take into account the business considerations of the employer (see Hensman v Ministry of Defence), but the tribunal must make its own assessment on the basis of the evidence then before it.

105. In The City of Oxford Bus Services Ltd trading as Oxford Bus Company v Mr L Harvey UKEAT/0171/18/JOJ: (in the context of section 19(2) EqA) - when carrying out the requisite assessment there was a distinction between justifying the application of the rule to a particular individual, and justifying the rule in the particular circumstances of the business (SC decisions of both Homer and Seldon applied). In the present case, the ET's focus had been on the application of the PCP to the claimant; it had failed to carry out the requisite assessment of that PCP in the circumstances of the business (see Hardys & Hansons plc v Lax [2005] ICR 1565 CA).

Time

106. Under section 123 of the Equality Act 2010 a complaint of discrimination may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates (s. 123 (1)(a)). For the purposes of interpreting this section, conduct extending over a period is to be treated as done at the end of the period (s. 123 (3)(a)) and this provision covers the maintenance of a continuing policy or state of affairs, as well as a continuing course of discriminatory conduct.

107. It is generally regarded that there are 3 types of claim that fall to be analysed through the prism of s. 123;

(i) Claims involving one off acts of discrimination, in which, even if there have been continuing effects, time starts to run at the date of the act itself;

(ii) Claims involving a discriminatory rule or policy which cause certain decisions to be made from time to time. In such a case, there is generally a sufficient link between the decisions to enable them to be joined as a course of conduct (e.g. Barclays Bank-v-Kapur [1991] IRLR 136);
(iii) A series of discriminatory acts. It is not always easy to discern the line between a continuing policy and a discriminatory act which caused continuing effects. In Hendricks-v-Metropolitan Police Commissioner [2002] EWCA Civ 1686, the Court of Appeal established that the correct test was whether the acts complained of were linked such that there was evidence of a continuing discriminatory state of affairs. One relevant feature, but not conclusive feature was whether or not the acts were said to have been perpetrated by the same person (Aziz-v-FDA [2010] EWCA Civ 304 and CLFIS (UK) Ltd-v-Reynolds [2015] IRLR 562 (CA)).

108. It is clear from the following comments of Auld LJ in Robertson v Bexley Community Service IRLR 434 CA that there is no presumption that a tribunal should exercise its discretion to extend time, and the onus is on the claimant in this regard: "It is also important to note that time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of discretion is the exception rather than the rule". These comments have been supported in Department of Constitutional Affairs v Jones [2008] IRLR 128 EAT and Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 CA. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law does not require exceptional circumstances: it requires that an extension of time should be just and equitable (Pathan v South London Islamic Centre EAT 0312/13).

109. Per Langstaff J in Abertawe Bro Morgannwg University Local Health Board v Morgan UKEAT/0305/13 before the Employment Tribunal will extend time under section 123(1)(b) it will expect a claimant to be able to explain firstly why the initial time period was not met and secondly why, after that initial time period expired, the claim was not brought earlier than it was.

110. However, As Sedley LJ stated in Chief Constable of Lincolnshire Police v Caston at paragraphs 31 and 32: “In particular, there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. This has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing ET proceedings, and Auld LJ is not to be read as having said in Robertson that it either had or should. He

was drawing attention to the fact that the limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them. Whether a claimant has succeeded in doing so in any one case is not a question of either policy or law: it is a question of fact sound judgement, to be answered case-by-case by the tribunal of first instance which is empowered to answer it."

111. In exercising its discretion, tribunals may have regard to the checklist contained in S.33 of the Limitation Act 1980 (as modified by the EAT in British Coal Corporation v Keeble and ors [1997] IRLR 336). S.33 deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice that each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case.

112. In Department of Constitutional Affairs v Jones [2008] IRLR 128, the Court of Appeal emphasised that these factors are a 'valuable reminder' of what may be taken into account, but their relevance depends on the facts of the individual cases, and tribunals do not need to consider all the factors in each and every case. In Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23, the Court of Appeal did not regard it as healthy to use the checklist as a starting point and that rigid adherence to a checklist can lead to a mechanistic approach to what is meant to a very broad general discretion. The best approach is to assess all factors in the particular case which it considers relevant to whether it is just and equitable to extend time including in particular the length of and reasons for the delay. If the Tribunal checks those factors against the list in Keeble, it is well and good, but it was not recommended as taking it as the framework for its thinking.

113. The EAT in Miller v Ministry of Justice UKEAT0003/15, observed that there were two types of prejudice including forensic prejudice a Respondent may suffer if the limitation period is extended by many months or years, caused by fading memories, loss of documents and losing touch with witnesses. It was further said that "*if there is forensic prejudice to a Respondent, that will be "crucially relevant" in the exercise of discretion, telling against an extension of time. It may well be decisive*.''

114. A tribunal considering whether it is just and equitable to extend time is liable to err if it focuses solely on whether the claimant ought to have submitted his or her claim in time. Tribunals must weigh up the relative prejudice that extending time would cause to the respondent on the one hand and to the claimant on the other: Pathan v South London Islamic Centre EAT 0312/13 and also Szmidt v AC Produce Imports Ltd UKEAT 0291/14.

115. No one factor is determinative of the question as to how the Tribunal ought to exercise its wide discretion in deciding whether or not to extend time. However, a claimant's failure to put forward any explanation for delay does not obviate the need to go on to consider the balance of prejudice

Conclusions

Provision Criterion or Practice

116. The Respondent accepted that it had the provision, criterion or practice that all Insolvency Service Investigator Programme learners were required to complete it within 2 years. The Respondent accepted that the PCP was applied to the Claimant between September 2019 and March 2020. It also accepted that the PCP was applied to all learners.

117. The Respondent disputed that the PCP was applied to the Claimant from March 2020. The Claimant accepted that after the extension had been granted to all learners, the time to complete the programme became three years. The claim had been brought on the basis of a requirement of two years. In closing submissions the Claimant said that she had queried with the Respondent before the case management hearing whether she needed to amend the claim to include a PCP taking into account the covid-19 extension and had been persuaded it was unnecessary. The Claimant argued that the disadvantage continued for her because she could only undertake very little ISIP work during the covid-19 restrictions and the situation for her had not changed. The Claimant did not seek to amend her claim.

118. We accepted the Respondent's submission that the requirement to complete ISIP within 2 years ended when the 1 year extension was granted and after March 2020 the PCP was no longer applied to the Claimant. We did accept that there continued to be requirement to complete the ISIP in the same timescale as full-time learners.

Disadvantage

119. It was agreed between the parties that the correct pool for assessing whether there was particular disadvantage to women was all learners undertaking the ISIP. The logical pool to determine whether the PCP caused particular disadvantage was all of those learners who were undertaking the ISIP, the Claimant's case was that part-time learners had fewer working days a year than full-time learners to complete the ISIP and therefore it was necessary to include all workers within the pool. We concluded that to restrict the pool would mean that the PCP could not be properly tested.

120. The Respondent accepted that more women work part-time than men and that women bear the greater responsibility of childcare.

121. It was necessary for the PCP to put women and the Claimant to a particular disadvantage. The Claimant was unable to give any evidence as to how other part-time learners were able to manage their work during normal working hours. She relied upon her own experience and that more women work part time and have childcare responsibilities and sought to infer that there was group disadvantage. For that reason we considered the alleged personal disadvantage first.

122. It was important that the learners undertaking the ISIP came from very different backgrounds in terms of previous work and investigative experience. Although there was some core learning the learning programme from the outset was tailored to the learner's experience and development. The progress reviews considered how the learner had performed in the previous six weeks, how they were coping, whether the workload needed to be managed for the next 6 weeks, whether they were overloaded and the standard of work.

123. We accepted that the Claimant was very diligent, conscientious and worked hard. We also accepted that the Claimant tended to undertake much more research than was necessary and also included much more detail than was necessary when she provided reports. We concluded that the Claimant was doing more work than was actually required of her and it was taking longer than was strictly necessary.

124. The essence of the Claimant's case was that full-time learners had 4 days a week in order to gain experience, in addition to their study day, whereas she only had 2 days and this meant she could not undertake her additional learning and writing up within normal working hours. The learning model involved on the job learning. We accepted that if someone works more days that they will undertake more work. However line managers, in particular Mrs Parker-Smith, were required to ensure that part-time workers were given a sufficient breadth of work to gain the necessary experience. The Claimant equated days work with gaining experience, however we did not accept that meant that the full-time workers had additional time. All learners had fewer cases than those who had completed the programme and part-time workers had a pro-rata reduction of those which full-time workers were allocated. The cases were carefully allocated so that sufficient experience could be evidenced. The effect was likely to be that full-time learners would work on many more of the common type cases than part-time workers and that whilst working on the greater caseload they would not be undertaking ISIP work.

125. The Claimant was unable to undertake her casework and ISIP learning and log work in her contracted hours. We accepted that this meant she tried to keep up by working in her own time and that this was difficult because of her childcare responsibilities, however there was no requirement to do this by the Respondent. We accepted that having to undertake work in her own time was to the Claimant's disadvantage and it put her under additional pressure and stress which was a further disadvantage.

126. It was notable that when the Claimant raised that she was doing ISIP work in her own time she was offered casework relief, which she declined. We accepted that this was part of the careful management of the programme.

127. She was also referred to the extension provisions in October 2020 and the Claimant considered that there was sufficient material in the review logs to demonstrate it was justified. It was notable that a ground for extension was that a part-time worker had not been given sufficient exposure during the 2 year period and that the Claimant and Mrs Parker-Smith considered that there was sufficient evidence. The Claimant, in submissions said she did not realise how easy it would be to get an extension and had felt under pressure to complete the programme within 2 years.

128. In terms of the group disadvantage this related to part-time women who would not be able to complete the day job and ISIP work within the working week. The Claimant needed to adduce some facts which tended to show that that group was put to the same disadvantage as she was. The Claimant was unable to give any evidence as to whether other part-time learners struggled to undertake their caseloads and the ISIP learning and writing up work within their normal hours. She also did not adduce any evidence about the situation for full-time learners. The Claimant being overly diligent and meticulous was a relevant consideration, in that she was doing more than necessary and that was the probable explanation for the difficulty she had with undertaking the work in normal hours.

129. In terms of the statistics it was common ground that they did not show that there was disadvantage to part-time workers or advantage to full-time workers. The raw data provided no context into the reasons why learners did not receive green ratings or why people resigned. In terms of applying for extensions the difference in the percentages of full-time and part-time applications were not of a vastly different magnitude. It was clear that two of the part-time applications had been in respect of health reasons. The part-time learner who had previously been full-time provided limited assistance because there was no context in terms of how long they had been full-time or the reasons why they had not had sufficient experience. It

was significant that the number of male and female L2 and L3s were about the same. We accepted the Respondent's position that this was something pointing away from a disadvantage to women.

130. We were not satisfied that the Claimant had adduced evidence which tended to show that part-time workers were unable to complete what they needed to do in their normal working hours. She was able to adduce evidence as to her own situation, however she undertook much more work than was necessary, which although is greatly to her credit and shows that she is a good worker, it demonstrated the need for there to be some evidence that part-time learners were experiencing a similar problem. The concessions that more women work part-time and have greater childcare responsibilities did not assist because there was not any evidence to show that part-time workers had the same problem as the Claimant.

131. In any event learners' work was carefully managed to ensure that the workload was manageable and that sufficient experience was gained. Reviews were held regularly in order to monitor progress and when someone was having difficulty. There was facility to have casework paused so that work on ISIP only matters could be undertaken, however the Claimant refused to take up the opportunity. Taking such opportunities would enable a learner to undertake the writing up within working hours.

132. Further an extension could be applied for. The PCP was not absolute. The policies specifically recognised that being a part-time learner and not being exposed to a sufficient variety of cases was grounds for an extension and this would take away any disadvantage for part-time learner.

133. We were not satisfied that the Claimant had discharged the initial burden of proof that women were put to the particular disadvantage the Claimant had. We considered that this was the same when the period to March 2020 was examined and also generally taking into account the covid-19 extension. Accordingly the claim was dismissed.

Justification

134. In the event we were wrong, in relation to disadvantage, we considered the defence of justification. The business aims or need relied upon were: (a) ensuring that all ISIP learners, including those working part-time, are encouraged to complete the ISIP course as soon as they are able to do so, and become fully operational in their role with a full caseload; and (b) Enabling the effective and timely accomplishment of the investigatory functions of the Respondent.

135. The Claimant accepted in closing submissions that it was probably a legitimate aim. It was relevant that the Respondent was in an insolvent

position and it had a significant case load. The Respondent required investigators to be trained as quickly as possible in order to start a full caseload and undertake the work required and provide its service. Previously there was not an option for learners to complete the programme early and it was L3s who had a 3 year programme and much of that third year was unnecessary. The introduction of the 2 year policy meant that a full case load would be achieved sooner. We accepted that the aim was to ensure that learners completed the programme sooner so that they could undertake a full caseload and provide an efficient service. The ability to have learners on a full caseload sooner meant that there was an effective cost reduction to the Respondent. We accepted that it was a legitimate business aim or need.

136. It was relevant that the 2 year policy was not absolute. Extensions could be applied for if a learner thought that they would not be able to meet the deadline. The Claimant submitted that because applications were generally not made until nearer the end of the period it did not relieve the pressure. We rejected that submission. Each learner regularly had reviews. The purpose of the review was to ensure not only that progress was being made but also that they were not being overwhelmed and they were coping. It was evident from the Claimant's reviews that Mrs Parker-Smith recorded what the Claimant was finding difficult and that she was managing her workload and even suggested relief from that workload so she could undertake ISIP work, however the Claimant did not accept the offer. This was something which identified issues early and were used to try and relieve difficulties. The Respondent recognised that each learner was different and tailormade their programmes. We accepted that until nearer the end of the 2 year period it would not be apparent how much longer would be required.

137. We accepted the evidence of Mrs Sutton that extensions were granted when a part-time learner would say that they had insufficient time to complete the ISIP in their normal working hours. The Claimant said she had not appreciated how easy it would be to obtain an extension and we had sympathy for her understanding on the basis that the policy said that being part-time in itself did not give rise to grounds for an extension. The policy, however recognised that part-time learners might find it more difficult to be exposed to sufficient work. Although the policy had the words 'exceptional circumstances' within it, that was consistent with there not being an automatic extension simply because someone was part-time. We accepted that the Respondent was alive to a potential difficulty experienced by part-time learners and ensured that there was a method of mitigating against it. It was notable that none of the applications for extensions which had been made were refused.

138. The Claimant suggested that applying for an extension was onerous, we rejected that submission. The policy set out that the Respondent was responsible for ensuring that support and mitigation was put in place for learners when they raised issues. The evidence for extensions was set out in the 6 weekly reviews and it was the assessors responsibility to record the evidence. We did not accept that such an application was particularly onerous for a learner. The provision of extensions and the identification of a possible need for a part-time learner mitigated against any disadvantage that they had.

139. The Claimant challenged that it was proportionate and reasonable on the basis that there were only 18 part-time learners and if they had been given the same number of working days to complete the programme there was little effect on the Respondent. We rejected that submission. The Respondent had a need to ensure learners were fully operational as soon as possible. We accepted that some learners were fully operational within a year. The Respondent had considered that 2 years was generally a sufficient amount of time for full and part time learners. It was relevant that the assessor carefully managed the part-time learners case load and had relevant supervision and there was the facility for an extension. Further that part-time learners had a lighter case load in any event. The same cost and business pressures would continue to apply for a much longer period and in the circumstances it would not have been reasonable to have a policy calculated on the basis of working days.

140. We were satisfied that the Respondent had established, in the event that group disadvantage existed, that the mitigations it put in place meant that the two year policy was a reasonable and proportionate means of achieving its legitimate aims.

Time limits

141. We also considered the question of time limits. We accepted that the Claimant had not realised that indirect discrimination might have occurred until November 2021. She did not think things were unfair until early 2021 and she did not take any advice. It was significant that the claim was based on documentary evidence and there was very little dispute of fact. The Respondent did not raise the issue of time until a few days before the final hearing. There was no suggestion that any evidence had been lost or that a witness could not attend. The Respondent's witnesses were able to give clear and detailed evidence. We did not accept that a delay between June 2020 and the date of presentation of the claim affected the cogency of the evidence. We also accepted that until someone realises a wrong might have been done that they would not know they needed to find a remedy. The explanation provided by the Claimant was reasonable and accepted. Other than losing a limitation defence, there was no prejudice to the Respondent.

In the circumstances, if the Claimant had succeeded in her claim, we would have considered she established it was just and equitable to extend time.

Employment Judge J Bax
Dated 22 February 2023

Judgment sent to Parties on 08 March 2023

For the Tribunal Office