Case No: 2202639/2022

EMPLOYMENT TRIBUNALS

Claimant: Mrs P Carnell

Respondent: Butterworths Ltd

Heard at: London Central

On: 31 March, 3 – 6 April 2023
12 April 2023
(in chambers)

Before: Employment Judge H Grewal
Mr D Kendall and Mr S Hearn

Representation

Claimant: Ms C Mallin-Martin, Counsel

Respondent: Mr A Edge, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1 The Tribunal does not have jurisdiction to consider the complaints of direct sex discrimination about any acts or failures to act that occurred before 4 December 2021;

2 The complaints of direct sex discrimination about acts that occurred after 4 December 2021, harassment related to sex and victimisation are not well-founded; and

3 The Claimant's work was not like the work of her comparators and the sex equality clause in section 66 of the Equality Act 2010 has no effect on the terms of her employment.

REASONS

1 In a claim form presented on 6 May 2022 the Claimant complained of sex discrimination, equal pay (breach of the equality clause) and pregnancy/maternity discrimination. Early Conciliation ("EC") was commenced on 3 March 2022 and the EC certificate was granted on 13 April 2022.

The Issues

2 On the first day of the hearing the parties produced a list of issues which was largely agreed. The issues were clarified at the start of the hearing and were further refined at the close of evidence, It was agreed that the issues that we had to determine were as follows.

Direct sex discrimination

2.1 Whether the following acts occurred and, if they did, whether they amount to direct sex discrimination:

(a) The Respondent did not award the Claimant a pay rise between 1 February 2020 and 1 June 2021 (The Claimant's case was that the Respondent discriminated against her as an applicant prior to 1 October 2020 and as an employee after that date);

(b) The Respondent required the Claimant to produce documentation of her achievements since being promoted to gain a pay rise in 2021;

(c) Sam Wilkin's statements to the Claimant on 9 December 2021 which included:

(i) "You should be taking annual leave if your children are sick or if you lose childcare";

(ii) "Checking an edit on your phone is unacceptable";

(iii) "You must be at your desk between 9 and 5.30 every day";

(iv) "You should be at your desk at all times, that's what's expected of you";

(v) "Having to take time off ad hoc to look after your children is unacceptable";

(vi) Comparing the Claimant's work in 2021 to her work before maternity leave and connecting his data with the arrival of her second child;

(vii) "You seemed to have been able to cope after having your first child. I don't remember that being a problem. But you don't seem as able to cope having had your second";

(viii) "Your kids are sick a lot.. And when does it get better?";

(ix) Asking the Claimant whether she thought working as a mother of two was "sustainable" without getting a full-time nanny;

(x) "Do you think you can still do your job – since having your second child?";

(xi) "Do you think your priorities have changed, since having your second child?";

(xii) Saying he couldn't allow other colleagues time away from their desk to pursue other "hobbies" so he couldn't allow the Claimant time to look after her children.

(d) Sam Wilkin gave the Claimant a performance rating of "requires improvement" in her January 2022 review.

The Claimant relied on a hypothetical comparator for all of the above and, in addition, Nicholas Hirst as a comparator for 2.1(c) and Matthew Newman as a comparator for 2.1(c)(iv).

Harassment related to sex

2.2 In the alternative, whether Sam Wilkin's comments on 9 December 2021 (at 2.1(c) above) amount to harassment related to sex.

Victimisation

2.3 Whether the following communications by the Claimant amounted to protected acts:

(a) The Claimant's enquiries in March 2021 of HR about gender pay and benchmarking;

(b) The Claimant talking about equal pay in a telephone call with Lewis Crofts and Sam Wilkin on 28 April 2021;

(c) The email to Mandeep Heer on 9 December 2021;

(d) The Claimant's call with Lewis Croft and Bruce McFarlane on 16 December 2021;

(e) The email to Mandeep Heer on 16 December 2021; and

(f) The Claimant's grievance on 18 January 2022.

2.4 Whether the following acts occurred and, if so, whether they amounted to a detriment:

(a) On 9 December 2021 Sam Wilkin raised comments about the Claimant's performance and imposed new and more stringent requirements on her;

(b) On 16 December 2021 Lewis Crofts made repeated comments to the effect that the Claimant might wish to leave;

(c) On 16 December 2021 Lewis Crofts made repeated comments painting the Claimant as a troublemaker by referring to previous calls earlier in the year in relation to the Claimant's pay rise;

(d) In January 2022 Sam Wilkin gave the Claimant a rating of "requires improvement" for her 2021 performance review.

2.5 Whether the Claimant was subjected to any of the detriments at 2.4 because she had done any of the protected acts at 2.3.

Jurisdiction

2.6 Whether the Tribunal has jurisdiction to consider complaints about any acts or failures to act that occurred before 4 December 2021.

Equal Pay

2.7 Whether from 1 October 2020 the Claimant's work was like the work of Martin Coyle (Senior Correspondent in the UK), Nicholas Hirst (Senior Correspondent in Brussels) and Ezra Zekaria (Senior Correspondent in the UK);

2.8 If it was, whether the Respondent has shown that the difference between her terms and their terms was because of a material factor which does not involve direct or indirect sex discrimination. The Respondent relied on the following material factors:

(a) Market rates, including:

(i) The geographical location of the role in question;
(ii) Skills shortages within the Respondent; and
(iii) The Respondent's decision that the Claimant's employment in Wales be "cost neutral" with her previous engagement.

(b) Prior experience and skill set of the comparators, including their potential to develop and contribute to the Respondent's business;

(c) Individual performance;

(d) Geographical location (in respect of Mr Hirst); and

(e) Length of service/receipt of annual pay rises.

The Law

3 Section 13(1) of the Equality Act 2010 ("EA 2010") provides,

> "*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".*

Sex is a protected characteristics (section 4 EA 2010). On a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case (section 23(1) EA 2010).

4 Section 39 EA 2010 provides,

"*(1) An employer (A) must not discriminate against a person (B) –*
(a) In the arrangements A makes for deciding to whom to offer employment;
(b) As to the terms on which A offers B employment;
(c) By not offering B employment.

(2) An employer (A) must not discriminate against an employee of A's (B) –
…

(b) by subjecting B to any other detriment
…

(6) Subsection (1)(b), so far as relating to sex or pregnancy and maternity does not apply to a term that relates to pay –
(a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or
(b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18."

5 Section 136 EA 2010 provides that 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 unless A shows that A did not contravene the provision.

6 In **Igen Ltd v Wong [2005] IRLR 258** the Court of Appeal gave guidance on what is required under section 136 to shift the burden to the Respondent. It said,

"*(1) … it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful… These are referred to below as "such facts."*
(2) If the claimant does not prove such facts he or she will fail.
(3) It is important to bear in mind in deciding whether the claimant has provided such facts that it is unusual to find direct evidence of sex discrimination. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.
(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.
(5) It is important to bear in mind the word 'could' [in section 136] *At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage the tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.*

…

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining such facts … This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has provided an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not the ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of facts."

7 In **Madarassy v Nomura International plc [2007] IRLR 247** Mummery LJ stated,

"*The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. 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.*

"Could conclude" … must mean that "a reasonable tribunal could properly conclude" from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory" absence of an adequate explanation" at this stage … the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like …; and available evidence of the reasons for the differential treatment."

8 In **The Law Society v Bahl [2003] IRLR 640** Elias J restated the principles to be applied in establishing direct discrimination as follows,

"*First, the onus lies on the claimant to establish discrimination in accordance with the normal standard of proof.*

Second, the discrimination need not be conscious; sometimes a person may discriminate on these grounds as a result of inbuilt and unrecognised prejudice of which he or she is unaware.

Third, the discriminatory reason for the conduct need not be the sole or even the principal reason for the discrimination; it is enough that it is a contributing cause in the sense of a 'significant influence' …

Fourth, in determining whether there has been direct discrimination, it is necessary in all save the most obvious cases for the tribunal to discover what was in the mind of the alleged discriminator. Since there will generally be no direct evidence on this point, the tribunal will have to make appropriate inferences from the primary facts which it finds …

Fifth, in deciding whether there is discrimination, the tribunal must consider the totality of the facts … Where there is a finding of less favourable treatment, a tribunal may infer that discrimination was on the proscribed grounds if there is no explanation for the treatment or if the explanation proffered is rejected …

Sixth, it is clear from the structure of the statutory provisions that the need to identify a detriment is in addition to finding less favourable treatment on the prohibited ground … The test for establishing detriment is in general easily met. It was defined by Lord Hope in the Shamoon case as follows … Is the treatment 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".

9 Section 26 EA 2010 provides,

"*(1) A person (A) harasses another (B) if –*

(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of –
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

…

(4) In deciding whether conduct has the effect referred to in subsection (!)(b), each of the following must be taken into account –
(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect.

10 Section 27 EA 2010 provides,

> "*(1) A person (A) victimises another person (B) if A subjects B to a detriment because –*
> *(a) B does a protected act, or*
> *(b) A believes that B has done, or may do, a protected act.*
>
> *(2) Each of the following is a protected act –*
> *(a) bringing proceedings under this Act;*
> *(b) giving evidence or information in connection with proceedings under this Act;*
> *(c) doing any other thing for the purposes of or in connection with this Act;*
> *(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

11 Section 77 EA 2010 provides,

> "…
>
> *(3) A disclosure is a relevant pay disclosure if made for the purpose of enabling the person who makes it, or the person to whom it is made, to find out whether or to what extent there is, in relation to the work in question, a connection between pay and having (or not having) a particular protected characteristic.*
>
> *(4) The following are to be treated as protected acts for the purposes of the relevant victimisation provision* [section 27 EA 2010] –
> *(a) seeking a disclosure that would be a relevant pay disclosure;*
> *(b) making or seeking to make a relevant pay disclosure;*
> *(c) receiving information disclosed in a relevant pay disclosure."*

12 Section 123 EA 2010 provides,

> "*(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of –*
> *(a) the period of 3 months starting with the date of the act to which the complaint relates, or*
> *(b) such other period as the tribunal thinks just and equitable.*
>
> *…*
> *(3) For the purposes of this section –*
> *(a) conduct extending over a period is to be treated as done at the end of that period;*
> *(b) failure to do something is to be treated as occurring when the person in question decided on it.*
>
> *(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –*
> *(a) when P does an act inconsistent with doing it, or*
> *(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."*

Section 140B EA 2010 provides for extension of time limits to facilitate Early Conciliation before the start of proceedings.

13 Section 65 of the Equality Act 2010 ("EA 2010") provides,

> *"(1) … A's work is equal to that of B if it is –*
> *(a) like B's work,*
> *(b) rated as equivalent to B's work, or*
> *(c) of equal value to B's work.*
>
> *(2) A's work is like B's work if –*
> *(a) A's work and B's work are the same or broadly similar, and*
> *(b) such differences as there are between their work are not of practical importance in relation to the terms of their work.*
>
> *(3) So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to –*
> *(a) the frequency with which differences between their work occur in practice, and*
> *(b) the nature and extent of the differences".*

14 In **Capper Pass Ltd v Lawton [1977] ICR 83** Phillips J stated,

> "*the definition required the industrial tribunal to bring to the solution of the question, whether work is of a broadly similar nature, a broad judgment. Because, in such cases, there will be such differences of one sort or another it would be possible in almost every case, by too pedantic a approach, to say that the work was not of a like nature despite the similarity of what was done and the similar kinds of skill and knowledge required to do it. That would be wrong. The intention, we think, is clearly that the industrial tribunal should not be required to undertake too minute an examination, or be constrained to find that work is not like work merely because of insubstantial differences."*

15 In **Shields v E Coombs (Holdings) Ltd [1978] ICR 1159** Bridge LJ stated that, in considering the differences in the work carried out by the claimant and the comparator,

> "*it has been emphasised in a number of cases that a difference between duties which the man and woman whose work is being compared are under a contractual obligation to perform is not a relevant difference unless it results in an actual difference in what is done in practice. It is by comparing their observed activities not their notional paper obligations that the relevant differences are to be ascertained."*

In the same case Orr LJ stated,

> "*The subsection by its terms required that, in comparing her work with his, regard should be had to the frequency with which any such differences occur in practice as well as the nature and extent of the differences, and it is abundantly clear, in my judgment, that the comparison which the subsection requires to be made is not between the respective contractual obligations but between the things done and the frequency with which they are done"*

16 In **Eaton Ltd v Nuttall [1977] ICR 272** the EAT held that when considering whether people were engaged in like work the Tribunal should look at not only what they do but also the circumstances in which they do it and that responsibility was a factor was a factor properly to be taken into account. It held that in that case the tribunal had misdirected itself in disregarding the fact that a mistake by the claimant would have less serious consequences than one by her male comparator.

17 Section 66 EA 2010 provides,

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

18 Section 69 EA 2010 provides,

> "*(1) The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which –*
> *(a) does not involve treating A less favourably because of A's sex than the responsible person treats B, and*
> *(b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.*
>
> *(2) A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.*
> *…*
> *(6) For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's case."*

19 In **Glasgow City Council v Marshall [2000] ICR 196** Lord Nicholls of Birkenhead, with whom all the other Law Lords agreed, set out what was required to establish the material factor defence under section 1(3) of the Equal Pay Act 1970 (which was to the same effect as section 69 EA 2010). He said, at page 202,

> "*The scheme of the Act is that a rebuttable presumption of sex discrimination arises once the gender-based comparison shows that a woman, doing like work or work rated as equivalent or work of equal value to that of a man, is being paid or treated less favourably than the man. The variation between her contract and the man's contract is presumed to be due to the difference of sex. The burden passes to the employer to show that the explanation for the variation is not tainted with sex. In order to discharge the burden the employer must satisfy the tribunal on several matters. First, that the proffered explanation, or reason, is genuine, and not a sham or pretence. Second, that the less favourable treatment is due to this reason. The factor relied upon must be the cause of the disparity. In this regard, and in this sense, the factor must be a "material" factor, that is, a significant and relevant factor. Third, that*

the reason is not "the difference of sex". This phrase is apt to embrace any form of sex discrimination, whether direct or indirect, Fourth, the factor relied upon is or, in a case falling within section [65(1)(c) EA 2010] *may be, a "material" difference, that is, a significant and relevant difference, between the woman's case and the man's case.*

When section 1 is thus analysed, it is apparent that an employer who satisfies the third of these requirements is under no obligation to prove a "good" reason for the pay disparity. In order to fulfil the third requirement he must prove the absence of sex discrimination, direct or indirect. If there is any evidence of sex discrimination, such as evidence that the difference in pay has a disparately adverse impact on women, the employer will be called upon to satisfy the tribunal that the difference in pay is objectively justifiable. But if the employer proves the absence of sex discrimination he is not obliged to justify the pay disparity."

20 In **Newcastle upon Tyne Hospitals NHS Foundation Trust v Armstrong and others [2010] ICR 674** Underhill P said at paragraph 19,

"*In considering a defence under section1(3) it is necessary for a tribunal to first to identify the employer's "explanation" for the differential complained of (a preferable phrase to the conventional but clumsy terminology of a "material factor" to which the differential is "due") and then to consider whether the explanation involves sex discrimination, applying the well known principles which underlie both the relevant United Kingdom legislation and the jurisprudence of the European Court of Justice."*

21 In **BMC Software Ltd v Shaikh** [**2019] ICR** Underhill LJ said,

"*It is important not to overlook … that the burden is on the employer to prove (by sufficiently cogent and particularised evidence) that the factor relied on explains the difference in pay complained of… If an employer is going to seek to justify a pay disparity based on a factor such as the comparator's promotion or superior "merit" or "market forces" it needs to be able to explain with particularity what those factors mean and how they were assessed and how they apply in the circumstances of the case. It is evident from the tribunal's findings that BMC was simply unable to do that because of its chaotic and wholly non-transparent "employment systems". The equal pay risks in having non-transparent systems is a commonplace of equal pay law."*

22 Tribunals considering an equal pay claim are obliged to take into account any part of the EHRC Code of Practice on Equal Pay that appears relevant to the proceedings. Paragraph 102 of the Code provides,

"*Transparency means that pay and benefit systems should be capable of being understood by everyone (employers, workers and their trade unions). It should be clear to individuals how each element of their pay contributes to their total earnings in a pay period.*

Where the pay structure is not transparent and a woman is able to show some indication of sex discrimination in her pay, the employer carries the burden of proving that the pay system does not discriminate."

23 In **Enderby v Frenchay Health Authority [1994] ICR 112** the ECJ held that where significant statistics disclose an appreciable difference in pay between two jobs of equal value, one of which is carried out almost exclusively by women and the other predominantly by men, article 119 of the Treaty requires the employer to show that the difference is based on objectively justified factors unrelated to any discrimination on grounds of sex. The state of the market, which might lead an employer to increase the pay of a particular job in order to attract candidate, might constitute an objectively justified economic ground. If the court was able to determine precisely what proportion of the increase in pay was attributable to the market forces, the pay differential would be objectively justified to the extent of that proportion.

The Evidence

24 The Claimant gave evidence in support of her claim. The following witnesses gave evidence on behalf of the Respondent (the positions given are those that they held at the material time) – Lewis Crofts (MLex Editor in Chief), Sam Wilkin (MLex Brussels Managing Editor, from January 2021 Europe Managing Editor), Robert McLeod (co-Founder of MLex and CEO until 2017 and Chairman since then), Mark Gilmore (Vice President for Global Reward, RELX) and Mandeep Heer (HR Business Partner at the Respondent). The documentary evidence in the case comprised just under 700 pages. Having considered all the oral and documentary evidence the Tribunal made the following findings of fact.

Finding of Fact

25 In 2005 Robert McLeod and Duncan Lumsden founded MLex in Brussels. It was an online news agency covering EU regulation and provided specialist legal news in the areas of antitrust and competition and trade. Antitrust and competition was Mr McLeod's area of expertise and trade was Mr Lumsden's area of expertise. Over the years the business expanded to cover new geographies and other fields of journalism, including financial crime, energy, data privacy security. Its aim has always been to provide market insight, analysis and commentary on regulatory risk. The different coverage areas at MLex are known as "Beats". The term "Beat" is also used to describe the specific subject or topic in which a journalist specialises and which is the focus of his/her articles. The Beats vary in size and the level of interest they generate. The ones that generate more interest generally are larger and have more journalists working on them.

26 MLex operates by using a subscription model. Its customers pay an annual subscription fee that allows them access to all the articles and content that it publishes across the various Beats. The subscribers are businesses and include law firms, public bodies (including regulators and courts), corporations and advisory bodies. MLex also sends its subscribers breaking news as email updates (instant alerts) and Daily Wrap-ups (an end of day compendium of the news published).

27 For the purposes of these proceedings MLex asked its IT department to prepare a "usage" report showing its readership and engagement figures for the period January

2022-January 2023. They produced figures in a number of different areas. There were figures to show the number of users who had clicked “view latest content” for Antitrust (which includes Competition), Mergers and Acquisitions and Trade. The number of clicks for each of them were as follows – Antitrust 29,234 clicks, Mergers and Acquisitions 6.568 clicks and Trade 2,121 clicks. There were figures for the Areas of Interest (“AOI”) tagged on the articles that had been viewed. The AOI tags were as follows – Antitrust 489,420, Mergers and Acquisitions 204,127, Data Privacy and Security 180,841, Trade 42,972 and Financial Crime 23,395. The final set of figures showed the number of instant alerts and Daily Wrap-up alerts sent and opened across three Beats. The figures were as follows – Antitrust 4,449,102 instant alerts sent (1,659,725 opened) and 2,369,996 Daily Wrap-up alerts sent (725,890 opened), Mergers and Acquisitions 1,798,646 instant alerts sent (709,439 opened) and 2,009,312 Daily Wrap-up alerts sent (580,897 opened), Trade 564,635 instant alerts sent (206.231 opened) and 1,135,864 Daily Wrap-up alerts sent (302,738 opened). These figures were generally reflective of the trends and numbers over the years. The areas that are of more interest to its subscribers are of greater value to MLex and more resources are allocated to them.

28 The Claimant joined MLex in Brussels in 2008 as an intern having just finished a postgraduate journalism course at Cardiff University. After three months she started working for MLex as a journalist. At that time all the journalists at MLex were engaged as contractors/freelancers. The Claimant invoiced MLex for her services. In 2020 the amount she billed was €7,073 per month. Between 2008 and 2020 the Claimant lived and worked in Brussels. Between 2008 and 2012 she worked on energy and climate change regulation and from 2012 she worked on the Trade beat. As the Claimant was not an employee, she did not receive sick pay, medical insurance and statutory or contractual annual pay increases.

29 Lewis Crofts started working for MLex in 2007. He was also engaged as a contractor. He was Chief Correspondent working on the Antitrust beat and was responsible for collecting and writing stories mainly about EU competition law.

30 In 2015 MLex was acquired by LexisNexis, a global business which provides legal, regulatory and business information and analytics to businesses. Lexis Nexis is part of the RELX group of companies. The Respondent is the legal entity that employs Lexis Nexis employees working in the UK.

31 At the time of the acquisition by Lexis Nexis the Claimant was given the option to become an employee or to continue as a contractor. She chose the latter. At about that time she set up a company which invoiced MLex for her services. Some time in 2015 the Claimant was made Chief Correspondent. She covered the trade beat in Europe and her responsibilities were reporting on trade measures, import and export duties, prohibitions and tariff quotas. Her role entailed seeking, making and meeting with contacts, researching stories, attending conferences and briefings including at the EU Council building, in the European Parliament and at the European Commission, sometimes attending court hearings, writing stories and sending instant alerts and Daily Wrap-up alerts. Her days varied and she did one or more of the above activities on any given day.

32 MLex had a documented typical career structure. This showed that after three to eight years a Correspondent could be promoted to Senior Correspondent. A Senior Correspondent was expected to lead a distinct area of coverage with minimum

oversight from Chief Correspondent and Editors and to lead collaborative efforts with other reporters. Further progress was to Chief Correspondent and Global Chief Correspondent. The structure chart noted that this brought management responsibility and was optional. A Chief Correspondent was expected to take charge of a large beat or a cluster of beats with responsibility for the output of other reporters as well as his/her own and to plan and organise the team's coverage and offer guidance to other reporters. A Global Chief Correspondent was expected to lead MLex's efforts on an important beat that spanned many jusrisdictions and to oversee coverage from around the world and to take charge of producing global stories that transcended borders. When the Claimant was made Chief Correspondent she did not have any management responsibilities and was not responsible for the output of other reporters as there were no other reporters on the Trade beat.

33 Prior to the acquisition, MLex had been planning to launch a new Anti-Bribery beat to report on anti-bribery news and criminal trials and were looking for a journalist to launch and run that beat. Mr McLeoad and Mr Crofts looked for the right journalist for the role. As they were launching a new product and were unfamiliar with the area themselves they wanted an established journalist in the field (someone who would be recognised by the subscribers as "a big name.") They decided that the best person for the job was Martin Coyle, who had 20 years' experience and worked for Complinet (who were part of Thomson Reuters). Complinet was one of the leaders in anti-bribery news at the time and a direct rival of Lexis Nexis. Mr McLeod approached Mr Coyle and discussed the matter with him and negotiated a pay package. Mr McLeod recognised that he was asking Mr Coyle to leave an established business and was asking him to come and start a new business for them which might or might not succeed. He was prepared to pay what he needed to get him.

34 On 23 September 2015 Mr Coyle signed an employment contract with the Respondent to work as a Senior Correspondent in London at a base salary of £75,000 a year and a 10% bonus. He reported to the Managing Editor in London. Lexis Nexis employees working in London received a 15% uplift to their salary. They also received contractual annual pay increases every year. Prior to 2021 there was an annual percentage increase that was applied to all employees in the same way regardless of performance. After 2021 employees received an annual pay increase that reflected their performance ratings. A central part of Mr Coyle's role is detailed reporting of complex criminal trials in London.

35 On 27 March 2017 Ezra Simon Zekaria started work for MLex as a Senior Correspondent in its UK Competition Litigation beat. As the name implies, his role was to cover litigation related to Competition taking place in the UK. As he was based and worked in London, he was employed by the Respondent. He was employed on a starting salary of £60,000. His role required him to be in court almost every day and to report on court hearings and decisions.

36 Sam Wilkin started work for MLex in July 2017 as a Senior Editor working across all the Beats. He was based in Brussels and was employed by the Belgian entity of Lexis Nexis, LexisNexis BV.

37 In 2017 Mr McLeod stepped down as Editor in Chief of MLex and Mr Crofts became the Editor in Chief. He remained engaged as a contractor.

38 When Mr Crofts took over the Editor in Chief role MLex needed to find someone to fill his old role of Chief Correspondent to cover EU competition law in Brussels. At that time Nicholas Hirst was working for Politico, which was about to launch a rival product to one that MLex had, with Mr Hirst as the lead name. Mr Hirst was very experienced in the area – he had previously work for PaRR (a direct rival of MLex) where he had helped to launch their competition law offering and had then gone on to European Voice. Mr Crofts and Bruce McFarlane saw Mr Hirst as the right person to hire for the role because EU competition law was a key area for their subscribers and they wanted to secure a big name for it, he was very experienced in the area and had worked for reputable organisations and they wanted to draw him away from launching a rival product. Mr Crofts and Mr McFarlane interviewed Mr Hirst. They wanted to make a strong offer because they did not want lengthy back-and-forth negotiations. They did not know what he earned at Politico but they knew the market rate for established journalists. They made him an offer of €100,000 and made it clear that it was not open to negotiation. Mr Hirst accepted the offer.

39 Mr Hirst commenced employment with Lexis Nexis BVBA (the Belgian employing legal entity) in Brussels as a Senior Correspondent on 19 February 2018. He reported to Mr McFarlane, the Brussels Managing Director. As a Lexis Nexis employee he received annual pay increases. Mr Hirst was responsible for managing and organising a team of six to seven journalists based across Europe. He held daily calls with his team.

40 Joanna Sopinska joined the Trade beat as a Senior Correspondent in 2017 and Kathryn Lucero joined it as a Senior Reporter in 2018. Ms Sopinska was based in Brussels and Ms Lucero in Washington DC.

41 The Claimant had her first child in April 2018. She was on maternity leave for six months from April to October 2018. On her return from maternity leave the Claimant worked four days a week until the summer of 2019, when she returned to full-time working.

42 In January 2019 Mr Wilkin became the Brussels Managing Editor.

43 In 2019 RELX introduced a Job Architecture, produced by Willis Towers Watson, to harmonise pay levels across the various divisions in RELX. The job architecture categorises roles by Job Family Group (jobs that involve work in the same occupational area, for example, Finance and Accounting, Human Resources, Marketing), Job Family (specific occupational areas within a job family group), Management level and a Job Profile (which includes all the key components of the job including Job Family Group, Job Family and Management level). Each job profile has a job code and job title assigned to it. The job title is not the same at the business title given to the position which an employee holds. RELX also obtains market data from a variety of sources and creates market pay ranges for every job profile. The pay range has a minimum pay, the median pay and the maximum pay. The job architecture provides the framework and starting point for salary consideration, but it is not the sole basis for deciding salary. Other factors go into it, such as performance, experience, what is needed to attract and retain individuals in roles,

44 In 2019 the Claimant had discussion with Duncan Lumsden about her career progression within MLex. He said that unless she was interested in moving to an

editorial role there was not much scope left for career progression. The Claimant said that she was not interested in moving to an editorial role and they discussed the possibility of her working towards a Global Chief Correspondent role. Mr Lumsden said that if she could demonstrate that she was doing such a role, she could be promoted to that down the line. As Chief Correspondent the Claimant was responsible for organising the work of the Trade team. She set up weekly calls with Ms Sopinska and Ms Lucero. She also contacted the Asia and Australia desks when there were global trade stories. The Trade desk did not have any reporters working in Asia or Australia.

45 In September 2019 the Claimant told Mr Crofts and Mr Lumsden that she was pregnant and that she and her husband were thinking of moving back to the UK (in Wales) to be closer to their family and asked whether she could continue her role from there. As the Claimant's role was closely tied with EU trade law, it made sense for the role to be based in Brussels as the regulatory activity, press events, conferences and sources were based there and the EU courts were located in Luxembourg. However, thy wanted to try to accommodate the Claimant and they agreed that they would look into the possibility of her working remotely from Wales, reporting to the London office and travelling to and from Brussels as required.

46 Mr Lumsden left MLex towards the end of 2019. Prior to his leaving he decided that the Claimant should be given the Global Chief Correspondent title. Although she was not leading an important beat that spanned many jurisdictions, it was felt that the title could be justified as she led a team of two, one of whom was based in Washington. She was due to visit Washington for a week in January 2020 to support Ms Lucero. Mr Wilkin became the Claimant's manager at that time. Mr Wilkin had a performance review with the Claimant in January or February 2020. As she was a contractor, it was an informal review and was not recorded. At that meeting he told her that she was being given the Global Chief Correspondent title, but as the company had had a difficult year it could not give her a pay increase at that time but things might change the following year.

47 Mr Crofts was prepared to support the Claimant's relocation to Wales provided that it was cost neutral to MLex. On 20 January he sent an email to HR at the Respondent. He said that they paid the Claimant €84,876 a year. That equated to £74,453. He had been advised that the add on costs of the Claimant acquiring employee status would mean reducing that by 16%, which would get a basic salary of £64,183. He thought that travel costs would be in the region of €3,000 a year. In order for the move to be costs neutral those factors would have to be taken into account. He was asked to provide further information which he did on 27 January. He said that she was on a freelance service contract in Belgium and her company billed MLex a gross amount for her services. She would continue to work on that basis until mid-March when she would leave to have her baby. She would start work again for MLex from Wales on 1 October 2020. Her job title would remain the same, which he said was Chief Correspondent. He asked them what her new package would be taking into account (a) the transfer from euros to pounds (b) the transfer from freelance to employee and (c) the reduction in her package to cover travel expenditure to ensure that the move was cost neutral for MLex. Mr Abbott (from Reward) responded that the benchmark for a senior reporter in the UK was £66,000 and he thought that taking in account the cost neutral requirement and the benefits of holiday and sick pay, £64,000 would be the right number. That was then reduced by £1600 to take into account the travel costs.

48 Before the Claimant went on maternity leave it was agreed that when she returned from maternity leave she would be employed by the Respondent in the UK at an annual salary of £62,400 and that she would report to Karen Friar, MLex Managing Editor in London.

49 On 21 February the Claimant sent an email to Messrs Crofts and Wilkin and Ms Friar. She said,

> "*Thanks again for the meeting this week going through the details on how life will look after maternity leave.*
>
> *Something I wanted to air that I've been thinking about since then and get your thoughts/assurances on. I'm very happy that I was promoted to Global Chief and with the tight financial year MLex recently had, I understand why it wasn't possible to reflect the change in my pay during my performance review this year.*
>
> *Sam and I already talked about this during my performance review, and he assured me that when finances pick back up then it would be reflected in my pay. But I'm coming back to work, and under a new manager, at roughly the same time that pay reviews are considered (I assume), which is sort of rubbish timing for me.*
>
> *What I mean is, it seems a bit weird for someone to tell their new manager that hey, I've not been working for six months and you don't know me that well, but I'm definitely due a pay rise!*
>
> *At the same time, I'm worried this might be forgotten because of this bad timing. I don't know exactly what assurances I'm asking for right now, given there's very little that anyone could even promise in theory. But I guess I'm asking that this situation is noted and that it won't be forgotten in the transition."*

Ms Friar responded and thanked the Claimant for flagging it and said that it would be borne in mind. Messrs Crofts and Wilkin did not respond.

50 The Claimant went on maternity leave on 15 March 2020 and moved to Chepstow in Wales in April.

51 On 1 October 2020 the Claimant commenced employment with the Respondent as a Global Chief Correspondent, Trade at a salary of £62,400 p.a. She reported to Karen Friar, MLex Managing Editor, London. The Claimant was entitled to 33 days' paid annual leave and was enrolled into the Group pension plan. The Claimant's contract provided

> "*During your employment you agree to:*
>
> - *Unless you are off work due to illness, devote the whole of your time, attention and skill during your working hours to performing your duties under this Contract."*

The contract also provided,

> "*Salaries are reviewed annually in March, but we are under no obligation to increase your salary as part of this review. Should we do so any increase in the first year of employment will be pro-rated to reflect your length of service. Employees who join on or after 1st October will not be eligible to have their salaries reviewed in the following March but will be eligible thereafter."*

The Claimant made a request for flexible working and that was accepted. It was agreed that for the first two months she would work three days a week (Monday-Wednesday) and would be paid £37,440 p.a. and that for the next six months (1 December 2020 to 31 May 2021) she would work four days a week (Monday-Thursday) and would be paid £49,920 p.a. Her working hours were from 9 a.m. to 6 p.m. with one hour for lunch.

52 In October 2020 Mr Zekaria's salary was £63,672.48 p.a. Mr Coyle's salary was £80,386.51 p.a. and Mr Hirst's salary was €105,254.93. In January 2021 Mr Zekaria's salary was increased to £63,922.48. It was not clear what the reason for that very small increase was.

53 At the end of 2020 the London Managing Editor and Brussels Managing Editor roles were merged into the Europe Managing Editor role. Karen Friar was made redundant and Mr Wilkin was appointed Europe Managing Editor and became the Claimant's line manager.

54 Around the end of 2020/beginning of January 2021 the Claimant raised with Mr Wilkin and Mr Crofts the question of whether she would receive a pay rise. She was informed that because of the pressures of the Coronavirus pandemic Lexis Nexis would not be awarding any pay rises the following March. On 24 February 2021 Mr Abbott sent an email to all Lexis Nexis UK employees in which he said,

> "*With the economic impact of the pandemic expected to continue into this year, we have made the difficult decision not to pay Annual Salary Review (ASR) and Merit Increases in 2021 for local and global roles aligned to LNUK."*

In January Mr Crofts, having got the agreement of Bruce Macfarlane (Managing Director of MLex), sent to HR justification for exceptional increases to be made to seven employees in March 2021. The employees were spread across the world – two in the US, one in Australia, one in Hong Kong, two in Brussels and one in London. The increase for the employee in London was justified on the basis that he had stepped up to become Deputy Managing Editor after the Managing Editor position was made redundant and had taken on more responsibility as a result. He had become the most senior Editor in London and worked closely with the six or seven reporters who worked across different beats in London. Mr Crofts explained in his email that the exceptional increases recommended for the others were driven overwhelmingly by retention concerns. He mentioned a particular rival that had been expanding aggressively and had approached their employees in Hong Kong, the US an Europe. He continued,

> "*they have all been with us for some time and have turned into valued journalists. We have invested time and training in them and they would be difficult to replace. If we had to do so, we would inevitably have to replace at greater cost to MLex. This is particularly applicable to the roles which cover*

> *mergers and data-protection, where we have established expertise in this area that we cannot afford to lose. They are all at risk of being tempted by offers elsewhere, and we need to ensure that they feel that the next step in their career is remaining with MLex."*

The increases, which were between 3 and 5.71%, were approved, and those seven employees were the only ones worldwide, who received a salary increase in March 2021. The Claimant's comparators did not receive pay increases. One of the seven who did receive a pay rise was Natalie McNelis.

55 In February 2021 the Respondent sent its employees an email about the difficulties caused by the lockdown, such as home-schooling, and the need for flexibility to deal with that. In respect of home-schooling they encouraged employees to discuss flexibility with their line manager to adjust their working hours so that they could better support home-schooling. They also said that some employees had used their leave which had helped them to ease the pressure. They urged employees to discuss their individual needs with their line managers.

56 On 4 March 2021 the Claimant sent an email to Omaira Amirkhan in HR on behalf of herself and Natalie McNelis in which she said,

> "*We wondered if you could help us in confidence. We would like to ask a question to MLex management about gender equality, but it's a sensitive topic and don't want to be singled out. Is there a way of submitting a request anonymously, or could we do it indirectly via you, for example?"*

Ms Amirkhan arranged to speak to them to discuss the matter and they spoke on the telephone on 9 March. The Claimant said that they had concerns about the gender pay gap at MLex and referred to a Lexis Nexis report about it. Following the meeting, Ms Amirkhan asked the Claimant to send her the documents to which she had referred. The Claimant sent her a link which was supposed to be to a Lexis Nexis gender gap report but it was not.

57 On 9 March 2021 the Claimant sent Mandeep Heer in HR an email in which she said she wanted to know where her pay sat within the benchmarks for Chief Correspondents and Global Chief Correspondents. She said that she had been promoted to Global Chief Correspondent over two years earlier and had been promised a pay rise to reflect that but had been continuously told thereafter that there was no budget for it. She said that she was finding it very demotivating. She asked Ms Heer to treat it with confidence as she wanted to be the one to raise it with her managers when the time was right.

58 Ms Heer checked the Claimant's pay code in the Job Architecture and looked at where her salary lay among those who had the same job code and worked in the same geographical location as the Claimant. The job code that the Claimant had been given when she became an employee of the Respondent was EDT799. It was not clear why or by whom she had been given that pay code. Ms Heer did not check whether the pay code was correct. Mr Zekaria had the same job code as the Claimant and worked in London. The median market pay rate for EDT 799 in the UK was £42,797. Ms Heer responded on 22 March that she had conducted some informal internal and external benchmarking for her role and could confirm that her salary was within the benchmark. She said that as far as the issue of being promised

a pay rise was concerned, she should raise that with her manager. The Claimant queried whether that meant that she was being paid at the salary level for Global Chief Correspondent and more than the top level for Chief Correspondents. Ms Heer responded that the benchmarking was done with roles that matched her job code rather than her business title and that they did not share specific details of the benchmarking with employees as there were a number of considerations to take into account.

59 At a quarterly catch up meeting with Mr Wilkin on 6 April 2021 the Claimant told him that she was feeling disgruntled about not having received a pay rise since her promotion. On 21 April the Claimant sent Mr Crofts and Mr Wilkin an email. She said that she had raised the issue of her outstanding pay rise with Mr Wilkin a couple of weeks earlier and that the issue was beginning to have an impact on her motivation levels. She said that when she had discussed career progression with Mr Lumsden he had suggested the role of Global Chief Correspondent and had said that if she could prove herself over the coming year, it would become official in the next budget with a pay rise to match the promotion. She had worked hard to prove herself in the role and the following year Mr Wilkin had confirmed that she was officially promoted to Global Chief Correspondent but that there was not the budget to give her a pay rise but that that would be amended in the next autumn when pay rises were awarded. She had raised the issue with Mr Crofts in December 2020 and he had told her that nobody was receiving pay rises that year. She had since learnt that some people had received pay rises. The Claimant also referred to the Lexis Nexis gender pay gap report of that year which had shown a "*substantial gap of pay between male and female colleagues"* and that she felt that her situation "*high job title, low pay"* contributed to the "*problem data."*

60 Mr Crofts responded within and hour and a half of receiving her email. He asked her to give him a couple of days to look into to it and to get all the relevant information and suggested that they then talked through it. On 27 April Mr Crofts sent the Claimant an email. He said,

> "*We have taken a look at the numbers and found your salary does currently fall within the LNUK benchmark for people of your seniority. I think HR informed you of this as well. Nevertheless, we would like to take a closer look at this with regard to the specifics of your role and experience. We will look purely at what the role entails, without regard to current performance or any conclusions you may have drawn from conversations with Duncan in the past.*
>
> *We should sit down in the next few days to thoroughly review your role and responsibilities, and what this translates to in terms of a fair salary. I will send a MS Teams invite.*
>
> *It's important to note that there are many factors besides job title that go into calculating a salary. These include length of service with the company, personal experience and skills (and their scarcity on the job market), geographical location, and, for more senior grades such as yours, the size of your team."*

61 A meeting took place on MS Teams between Messrs Crofts and Wilkin and the Claimant on 28 April 2021. Mr Crofts told the Claimant that it would be very helpful to them if she prepared a document setting out the specifics of her role and

responsibilities as Global Chief Correspondent in Trade which they could use in their discussions with HR and Reward to ensure that she was being adequately remunerated. The Claimant repeated that she had been promised a pay rise on her promotion to Global Chief Correspondent. Mr Crofts responded that he had looked into that matter and there was a divergence of views as to that (i.e. whether she had been promised a pay rise). The Claimant asked him whether he was questioning the fact that she had been promoted and Mr Crofts responded that he was not and it was accepted that she was Global Chief Correspondent. Following that meeting the Claimant sent them a copy of the email that she had sent to them and Karen Friar about the pay rise on 21 February 2020. She said,

> "*I must admit, I am concerned to hear from our conversation today that you thought there exists a divergence of views over whether I was awaiting a due payrise. I am highlighting this email as I think it is useful in this scenario, so we're not relying solely on memory."*

Mr Crofts responded,

> "*We have a record of this email as well and remember you sending it.*
>
> *As I explained on the call, the way forward for us is to set out the role and responsibilities, as they currently stand and where they are to go in the future, and then for us to ensure it is remunerated appropriately."*

62 On 4 May 2021 the Claimant sent Messrs Crofts and Wilkin a one page document setting out the work that she did as Global Chief Correspondent and her plans for the future. **165** She said that beyond the typical reporting her role included international travel as needed, global team co-ordination and product growth. The only international travel that she said that she had done was the one week trip to the US in January 2020. The global team co-ordination consisted of weekly meetings with Ms Lucero and Ms Sopinska and some meetings with MLex staff in Asia. She said that she had mentored reporters in bureaux globally. It is not clear to what that referred. She said that she had built a case for the group to develop global sanctions coverage but for a variety of reasons that had not been possible. She had driven work on the US Special report on Biden's win and had delivered podcasts in the trade team and across other beats.

63 On receipt of that document, Mr Crofts had discussions with Mr Wilikin, Mr Macfarlane and Ms Heer and it was decided to increase the Claimant's pay. Ms Heer prepared a Request for Salary change form as part of the Respondent's Quarterly Salary Review ("QSR") process. Some of the information on the form came from the Respondent's records, other information such as the internal comparators and the comments made on the form came from discussions that Ms Heer had with the managers. The form stated that the Claimant's previous performance appraisal rating had been "Meets Expectations". The Claimant had not had a performance review in December 2020. She had only been in her role for three months and there had been a change of line manager around that time. The key reason given for seeking the increase was "Market Alignment". The Claimant's business title (Global Chief Correspondent), job code (EDT779) and job title were all set out on the form. It was suggested that her pay be increased from 1 June 2021 to £67,500 p.a (which would equate to £54,000 for working four days a week). Seven internal comparators were considered. They were all Senior Correspondents and their base salaries ranged

from £45,000 p.a. to €88.645 p.a. (the highest paid was Natalie McNelis, a Senior Reporter in Mr Hirst's team). The average base salary of the seven was £67,434. One of them was Joanna Sopinska who was paid €76,028 In the comments section it was noted,

> "*Poppy is currently below the market and needs to be aligned with the market internally and externally. Trade reporting has picked up over the years and Poppy moved from a contractor to a perm employee with MLEX around 12 months ago. We are at risk of retaining Poppy should her salary not be aligned to those in her teams and her peers. Bringing her in at 54k will close the gap in the external market. She is one of a few Global Chief Correspondents in the Editorial team which hold additional responsibility and therefore some of the Senior Correspondent roles are not suitable comparators, they are added as reference. Poppy should have had a review at the latter part of 2020, however line manager changes resulted in a delay.*
>
> *In terms of her responsibilities, and the value of her team's coverage to the company, this should put her somewhat below most Chief Correspondents (whose teams are often bigger) and other Global Chief Correspondents, but above most Senior Correspondents. While comparisons are often imperfect, it is instructive to look at Joanna Sopinska, who is an office-based Senior Correspondent on the same team. Joanna is on 76,030 euros a year; Poppy's full-time equivalent salary is currently 72,430 euros."*

64 Ms Heer sent the form to Mr Abbott on 18 May 2021. Mr Abbott informed Ms Heer on 25 May that it had been approved. On 31 May Mr Wilkin sent the Claimant an email that from 1 June her salary would be increased to £54,000 for a four day working week and that the full-time equivalent was £67,500. The Claimant responded,

> "*Many, many thanks. I really appreciate it and the time you have taken over this."*

65 On 18 June 2021 the Claimant's request for flexible working to continue work four days a week (Monday to Thursday) was approved. Mr Wilkin had quarterly catch up meetings with the Claimant on 5 July and 20 September 2021. No notes were kept of these meetings. In the July meeting the Claimant recognised that her performance had been affected by her feeling demotivated because she had not received a pay rise, but she felt that she ahd turned a corner and that things were beginning to get better. Mr Wilkin discussed the Claimant's work in general terms but did not raise any specific concerns about her performance at either of those meetings.

66 Around 21 October 2021 the Claimant tested positive for Covid and felt very unwell. On 3 November the Claimant sent an email to Ms Heer. She said that she was still feeling unwell and tired. She said that she had initially arranged to take annual leave on 25 and 26 October but that was before she tested positive for Covid. She had then asked Mr Wilkin whether she could change that to sick leave and his view had been that if one fell ill on annual leave that was still recorded as annual leave. She asked M sheer whether that was correct. She said that she was still on sick leave and continued that Mr Wilkin had been "*very understanding about the situation"* and had asked her to enter the days when she was unwell as sickness absence on Workday (the Respondent's HR recording system). Ms Heer advised

her that annual leave could be changed to sickness absence and told her to take her time to recover and not to rush back to work too soon.

67 On 30 November (Tuesday) the Claimant sent Mr Wilkin an email that she was feeling much better. However, there had been ten confirmed cases of Covid in the creche which her daughters, aged one and three years, attended and they had closed for the rest of the week because of staff shortages. She said that she might have to take holiday for the rest of the week. She concluded by saying,

> "*All I can say is I'm very sorry for all this. Covid has impacted us so much in the last month or two and I'm so grateful for your continued patience and understanding."*

Mr Wilkin responded,

> "*Thanks for the update and it's wonderful to hear you're getting better, that's the most important thing. It seems like everything is hitting you at once at the moment. I'm sure you'll be glad of a Christmas break! No pressure."*

68 On 23 November Ms Heer sent an email to managers about the performance reviews that had to be conducted at the end of the year. She reminded them that it was time to reflect on the performance of their teams against their objectives. She set out the timetable which was that employees had to do their evaluations by 3 December, calibrations would be held with the leadership team on 6 December and managers had to have their ratings by then and that manager evaluations had to be completed by 7 January 2022. Around this time Mr Wilkin discussed with Mr Crofts concerns that he had had with the Claimant's performance over the year. Mr Crofts told him that he needed to raise them with her before the performance review.

69 On 9 December 2021 (Thursday) at around 8 a.m. the Claimant sent Mr Wilkin and Ben O'Neill (Deputy Managing Editor, London) the following message,

> "*Morning both! It's my turn to have both kids today, which severely limits what I can do. Liddy should sleep late morning/lunchtime so I might be lucky and get a couple of hours in then. I'll check via my phone when I can.*
>
> *Another covid case was confirmed at the creche a couple of days ago. We're hoping to send them back in next week, but it depends on whether there are more cases.*
>
> *I have next Monday and Tuesday as holiday, just fyi."*

Mr Wilkin responded,

> "*Morning, sorry not sure I understand, are you taking today as a leave day?*
> *If not then it's not really acceptable to 'get a couple of hours in'.*
> *Let's chat in a bit."*

The Claimant answered,

> "*I can take today as leave, but I'm assuming Joanna is off today so we'd be left without any cover.*

If that's not acceptable, may I ask what other working parents of young children at home during the pandemic are doing? What's their secret? I'm really trying my best."

They arranged to talk at 10 a.m.

70 During the call Mr Wilkin told the Claimant that the general expectation was that all employees should be at their desk during the working day unless they were out doing work-related things. The same applied to her and it was unacceptable for her to take time off ad hoc to look after her children. The Claimant asked what she was expected to do if childcare issues arose such as by the closure of the creche. Mr Wilkin said that for childcare situations that were long-term and foreseeable she was expected to make arrangements to cover them, such as by taking annual leave. He was prepared to be flexible for urgent and unforeseen matters but felt that the Claimant was often taking time off informally and was away from her desk to deal with matters that could have been foreseen. He said that she could not routinely take a couple of hours off to look after her children during the working day any more than other colleagues could take a couple of hours off to pursue some hobby. Mr Wilkin asked her whether she had thought of having a nanny as an alternative to the creche. The Claimant said that her children were often sick and Mr Wilkin agreed that that appeared to be the case. The Claimant asked what she was supposed to do in such a situation, and Mr Wilkin said that he did not have all the answers and they should discuss the matter with Ms Heer. He asked her whether she felt that her current situation and working hours were sustainable. Mr Wilkin also told the Claimant that he would be doing performance reviews soon and that her performance was not where it should be. He said that her story output that year had been lower than it had been two years earlier and was lower than what was expected from a senior reporter such as her. The Claimant had produced 92 stories in 2021 – 78 "insights" and 14 "comments". "Insights" are news stories and typically take a few hours to produce. Mr Wilkin expected a senior reporter to produce one a day on average. "Comments" are analytical pieces which might take a few days or even longer to prepare. Mr Wilkin expected a senior reporter to produce on average one comment a week. Mr Wilkin told the Claimant that that was what he expected. The Claimant said that it was unfair to compare her work from two years before with her work during a pandemic with two small children. He also told the Claimant that checking an edit on a phone, which the Claimant had done on occasion, was not acceptable. That was a reference to reporters checking any changes that editors had made to their stories to ensure that they were happy with the edits and the editors had not introduced any factual errors. Checking them on the phone was only allowed if there was some good reasons for the reporter being away from his/her desk for the simple reason that it was easier to miss errors on the phone and added a layer of work for the editors who had to copy the content to and from an email. The call lasted between 30 and 60 minutes.

71 At the time of the call Mr Wilkin had the numbers for the Claimant's story output and knew that it was lower than that of other senior reporters, but did not have the precise numbers for the output of the other senior reporters. That evidence was produced for the hearing. Taking into account that the Claimant was working 80% her figure of 92 was increased to 115. We set out below the number of stories produced by other Chief and Senior Correspondents (the first two were Chief Correspondents, all the others were Senior Correspondents):

Nicholas Hirst – 323
Matthew Newman – 279
Natalie McNelis – 210
Joanna Sopinska – 134
Fiona Maxwell – 287
Martin Coyle – 220
Ezra (Simon) Zekaria – 178
Victoria Ibitoye – 122
Jakub Krupa – 146

72 Soon after the call the Claimant sent Ms Heer an email **193 the** subject of which was "Support for working parents during a Covid crisis." The Claimant said that she had just had a call with Mr Wilkin and wanted clarity on the situation. She explained the problems that they had had with the creche during that week and the previous week. She said that her ethos during that period had been to work whenever she was able, for example, if the children were sleeping or someone else was able to take them. She had, by hook or by crook, been at her desk most hours that week and had taken calls with contacts and continued research in the evening to make up for it. She said that the conversation had gotten "*rather heated"* with Mr Wilkin saying that she was still contractually obliged to work 8 hours a day during working hours and having to take time off ad hoc to look after her children was unacceptable. She asked Ms Heer what she was expected to do in the situation in which she found herself and what other parents were doing when they had their children home from school during the pandemic and what they did when their children were sick. She continued,

> "*Sam also compared my work this year to my work from two years ago – before I'd had my second child. He asked me whether I thought me working as a mother of two was sustainable, or whether I felt differently now I was a mother of two. Is that even something he's allowed to ask? My answer was that I remained committed, and that it was unfair to compare my work then to my work during a pandemic with two small children. His response was that that was the problem."*

73 In the afternoon Mr Wilkin also sent Ms Heer an email. He said that he had had a chat with the Claimant that morning as he was concerned that lines were getting blurred between paid leave, sick leave and needing to care for children, which as he understood could only justify absence in the case of an emergency. He said that the Claimant had a different view and said that she was not always able to work her contracted hours because of Covid-related complications relating to her childcare arrangements. He suggested that the three of them had a discussion so that they could understand how accommodating the company could be. Mr Wilkin also sent Messrs Macfarlane and Crofts an email about the conversation that he had had with the Claimant that day.

74 Me Heer responded to the Claimant's email the same day. In respect of support for employees she said,

> "*The business continues to support employees during the pandemic, whether that is flexible working, time off or adjustments in the way in which we work. There is a clear balance which needs to be made in the needs of the business and individual requests and in most cases teams are able to, for a short*

period, come to an arrangement. If there is a requirement for medium/long-term adjustments to be made then these need to be discussed with your line manager as there may or may not be scope to accommodate."

She said that there were a number of options available (all of which had to be logged on Workday – the Respondent's system for recording absences) – taking annual leave, taking unpaid leave, working flexibly and taking sick leave if she was unwell. She offered to facilitate a conversation between the Claimant and her line manager if the Claimant thought that would be helpful. She also said that she would ask Messrs Macfarlane and Crofts to look into the concerns she had raised about some of the comments made by Mr Wilkin and that they would revert to her once they had done that.

75 On 13 December Messrs Macfarlane and Crofts discussed with Mr Wilkin certain matters in the Claimant's email which Ms Heer had highlighted. They reported back to Ms Heer what Mr Wilkin had said about those matters. He said that he had not brought up the Claimant's children or them being sick, she had brought that up. He said that he had said that the expectation was that the Claimant should work 7-8 hours a day mostly during working hours and that she should be available during working hours. He had said that he would be flexible wherever possible but being unreachable during working hours could not become a regular thing. He had not brought up her being a mother and whether her working as a mother of two was sustainable. He had said that her work was less good than it had been two years earlier (which was before she left Brussels). He had asked her whether she was struggling to work at the same level as before and whether that was a sustainable situation.

76 Having sought advice from Ms Heer, on 16 December Messrs Macfarlane and Crofts had a meeting on MS Teams with the Claimant to discuss the concerns that she had raised. The Claimant covertly recorded that meeting and we had a full transcript and the recording of the meeting.Mr Crofts opened the conversation by saying that they wanted her to be happy and engaged and supported with them and that he thought they needed to get some clarity on what could be done to balance the Claimant's home needs and the Respondent's business needs, and that Ms Heer was probably the best person to provide that clarity. He said that they were proposing to set up a meeting between Ms Heer, the Claimant and Mr Wilkin so that she could provide clarity to both of them about the options that were available to deal with various situations. He said that they had discussed her email to Ms Heer with Mr Wilkin and there were different views about what had been said, communicated and implied and he did not think that it was beneficial for them to go through a "he said she said" on that. The Claimant said that she understood what he had said but she did want to talk about the conversation that she had had with Mr Wilkin because it "*was discriminatory, undeniably discriminatory"* and she had had sleepless nights and had questioned her role as a mother and as a worker because of it. She said that Mr Wilkin had asked her whether she could do her job having had a second child, whether it was sustainable to work without a full time nanny, whether her priorities had changed since having a second child, her kids were sick a lot, She said that he then seemed to conduct an impromptu performance review without her prior knowledge and compared the number stories that she had produced that year to the number she had produced after the birth of her first child. She said that she had tried to explain to him how difficult it had been with Covid and having the two children at home, and the conversation had ended with him saying that whether the children

were ill or she had lost childcare, she had to be at her desk or take annual leave. She said that his comments had shown his discriminatory attitude toward her as a person and as working mother in the pandemic. Mr Macfarlane apologised for the upset that she obviously felt and asked her whether she saw a way of resolving it and what the future might be like. The Claimant responded that something needed to be done because she could not imagine working under Mr Wilkin because her trust in him had gone. The Claimant said that the main problem was that he saw her as "*a working mum"* and he was making her feel *Inadequate and intimidated."* Mr Crofts asked her, with the strength of feelings that she was expressing, what, if anything, she saw as a way of resolving issues in the next one to three months. The Claimant said that she did not have "*a definite answer"* but.

> "*bottom line, I just want to be able to do my job and when my kids are sick or have creche … I will do my job as much as I can, you know, and I work in the evenings and make up for it, but yes there will be times that I have to check an edit on the phone and to be told that that was unacceptable was just, that blindsided me. You know, I need to know that I have the support of my manager and they trust me when I say I am doing al I can. Rather than telling me I have to take annual leave. Because first of all that is going to use up all my annual leave, possibly even by February."*

The meeting concluded with Messrs Macfarlane and Crofts saying that maybe they should all take time to work out what the best resolution would be and to have a discussion with Ms Heer about clarifying what was possible.

77 Following that meeting Ms Heer spoke with the Claimant and sent her an email to confirm what they had discussed. The agreed that a meeting would be set up in January with Mr Wilkin to discuss/explore some working practices. Ms Heer also gave the Claimant information about the Employee Assistance Programme and asked her to review the grievance policy is she wanted to have her concerns about Mr Wilkin investigated formally.

78 The Claimant responded to that email on the same day. She said that while it was important to address the issue of what was available to working parents during the Covid pandemic, the main issue for her was discriminatory questioning that had been carried out by Mr Wilkin.

79 The Claimant completed her ratings and comments for her 2021 performance appraisal in late November 2021. The Claimant had the following four objectives:

(a) Build and maintain a strong network of sources, paying particular attention to maintaining Brussels contact while also developing new contacts in London;
(b) Ensure the trade team works together to cover all relevant stories and find areas to work together in different regions for wider ranging stories. Encourage more collaboration and communication between offices;
(c) Help less experienced reporters to improve all aspects of their work. Provide helpful feedback, both positive and constructive; and
(d) Provide timely and accurate coverage of news on my beat while finding opportunities to write for and work with other beats.

In addition there was a comment on behaviours. Mr Wilkin entered his ratings and comments after that prior to the calibration which took place on 4 January 2022.

80 The Claimant gave herself a rating of "outstanding performance" for (a) and Mr Wilkin gave her a rating of "successful performance". They agreed that she had successfully maintained her Brussels contacts which had been shown by a steady stream of trade defence scoops. The Claimant accepted that building her network in London had been a challenge but said that she had successfully secured some "*excellent and very valuable contacts"* but gave no details of them. Mr Wilkin said that he looked forward to seeing her network in London develop further but recognised that these things took time. They both gave her a rating of "successful performance" for (c). They both acknowledged that it had been difficult to do that while working remotely but Mr Wilkin recognised that she had helped a new joiner in Brussels settle into the trade beat. The Claimant gave herself a rating of "very strong performance" for (b) and (d). Mr Wilkin gave her a rating of "performance requires improvement" for both of them. In respect of (b) Mr Wilkin said,

> "*Communication between the EU and US teams has occasionally faltered, and would likely have benefited from a more rigorous schedule of calls and planning. While there have been some stories out of Asia and Australia, there was a scope for Poppy to take on a stronger leadership role in this respect to really lift our global coverage. The lack of cross-border joint bylines across the trade team, or podcasts, shows that there is room for improvement."*

In respect of (d) Mr Wilkin stated that the Claimant's productivity had fallen that year to a level below what he expected from a senior member of the team. He then set out the number of Insights and Comments she had produced that year (see paragraph 70 above). He continued,

> "*While story numbers aren't the most important metric, I would expect a chief correspondent to be more active in digging out stories and conjuring up comments even at slower moments in the news cycle."*

81 The Claimant gave herself an overall evaluation of "very strong performance" and her comments in support of that rating were,

> "*This year has been a bumpy year. As a highly driven person, I was surprised by my lower-than-usual morale early in the year, but through open conversation and solutions with management, this quickly improved. I was then pleased with the results of my work, getting some great scoops for trade defense, especially on the Covid-linked suspension reviews, for which I received some excellent feedback from readers. The last couple of months have been challenging, having contracted Covid and suffering a very slow recovery, as well as other challenges being thrown in, such as losing childcare due to creche closures from the continued pandemic."*

Mr Wilkin gave her an overall evaluation of "performance requires improvement". He agreed that it had indeed been a bumpy year and continued,

> "*Poppy's performance has slipped to a level below the (very high) expectations of a chief correspondent. While I understand the difficulties of recovering from Covid and other personal challenges throughout the year,*

Poppy appears at other times not to have been fully engaged with work and this had had an impact on both her personal productivity and on the leadership of her global trade team. We had a good conversation midway through the year about how to tackle this, and Poppy's work subsequently improved somewhat. I hope we can have further constructive discussions in the coming months about how to get back on track as we emerge from the pandemic."

82 Some of the objectives set for Messrs Coyle and Zekaria for 2021 were the same as those sets for the Claimant, others were different or varied in some respects. They both had the objective set out at paragraph 79(c) above. In addition, they had the following objectives:

(a) Provide timely and accurate coverage of news on your beat. Exercise news judgment to cover stories that MLex readers want and skip those they don't. Keep case files up to date;
(b) Build and maintain a strong network of sources on all aspects of your beat. Get exclusive stories and beat the competition on relevant major news events;
(c) Work with colleagues on your beat to ensure that everything gets covered, going outside your usual scope of coverage if needed. Work with colleagues on other beats and in other offices to unlock new stories and angles; and
(d) Ensure that you writing is clear, precise, well-structured and engaging. Use words to tell compelling stories, particularly in longer pieces and comments. Learn from feedback from senior reporters and editors.

Mr Hirst's objectives were different from the Claimant's objectives. They were :

(a) Better organise the team, so we have more teamwork, reporters are more versatile and we are able to train all our resources on the most high profile cases at specific moments;
(b) Continue to build high-level sources, in particular within the Commission; and
(c) Drive the debate in the competition community by better identifying priority stories at the EU and national level, and ensuring that we work on these as a team.

83 The calibration meeting took place on 4 January 2022. Notes are not taken and kept of calibration meetings. There was nothing in the documents before us to show when that meeting had take place. Messrs MacFarlane and Crofts and Ms Heer attended the meeting. Mr Wilkin would have had to explain and justify the ratings he had given and Ms Heer's evidence was that she would have raised with him questions about whether the Claimant's performance concerns had been raised with her in the course of the year.

84 As the Claimant had received a rating of "performance requires improvement" she did not receive a pay increase in March 2022. Mr Zekaria's performance rating was "successful performance" and his salary was increased in March 2022 to £65,392.72 Mr Hirst's overall evaluation was "outstanding performance" and his salary was increased to €110,058.76. Mr Coyle's performance rating was "successful performance" and his salary was increased to £90,458

85 On 4 January 2022 the Claimant was certified as unfit to work for two weeks because of "work related stress" and on 5 January the Claimant sent the certificate to the Respondent.

86 On 18 January 2022 the Claimant submitted a formal grievance "in relation to discriminatory treatment" from Mr Wilkin. The Claimant introduced the grievance by saying,

> "*I have experienced discrimination, followed by a lack of support and an increasing sense of being treated as a "trouble maker", when I have asked for fair and equal treatment. Due to Sam's attitude and aggression towards me, and the repeated suggestion from senior management that I leave, I am coming to feel forced out of a job that I love and have been dedicated to for over 13 years."*

She then set out the various points that she wanted to address. The first was Mr Wilkin's conduct on the call on 9 December which she said had been harassment and discrimination in relation to her status as a mother and a woman. She said that she had been treated less favourably than Mr Hirst who had not been required to take annual leave when his child had been sick or at home due to Covid school closures and he had not been reprimanded for working flexibly in order to accommodate his childcare commitments. The second matter was the call on 16 December when she said that Messrs Crofts and Macfarlane had failed to engage with her complaint or to seek to resolve it. She said that Mr Crofts had suggested that perhaps her trust in Mr Wilkin was "*so broken that I felt that I had to leave MLex".* Although she had said that she could no longer work under Mr Wilkin, they had not changed her line manager. The third matter was that there had been ongoing failure to contact or support her after that call. The fifth matter was equal pay/pay rise. She said that earlier in the year she had raised an issue about managers failing to fulfil the promise of a pay rise. She had also raised the issue of equal pay and had sought assurances of equality in MLex's pay structure. She believed that she had been treated differently to others in resect of the pay rise and that she had been seen as a trouble-maker after she raised those issues.

87 On 18 January the Claimant was certified as unfit to work for another four weeks because of "work related stress."

88 Philip Thornton, Head of Employment, Pensions and Immigration, was appointed to investigate the Claimant's grievance. He interviewed the Claimant on 8 February 2022. The Claimant was accompanied by Alan Rawlinson from the NUJ.

89 On 18 February the Claimant was certified as unfit to work for a further 28 days because of work related stress.

90 Between 21 February and 25 March 2022 Mr Thornton interviewed Messrs Wilkin, Crofts and Macfarlane, Ms Heer, Nicholas Hirst and Natalie McNelis. In his interview Mr Hirst said that the Claimant had contacted him on 9 December. She had been upset and had asked him how he had dealt with the combination of Covid and having young children and his relationship with Mr Wilkin in respect of that. Mr Hirst's two children were 2.5 and 5.5 years old at that time. They had a babysitter. He said that Mr Wilkin had been,

> "*supportive and understanding, He is very trusting throughout the crisis. He has set up daily calls… To make sure that everyone is OK. Problems arose during Covid lockdown. Creche in schools close because of outbreaks. Even when they are open, they are still sensitive about if one has symptoms then they will close."*

He was asked about how he had dealt with it when he had had such problems. He said,

> "*I would email the team and SW and be clear that I will pick up my daughter, be offline in perhaps 2 hours and will catch up on work in the evening. I don't think there was any pushback on that…*
>
> *The whole family had Covid in September 2020. I was not feeling well so I took a week of holiday. In Belgium you have medical leave. Technically, I could have taken medical leave to look after my family, but I took annual leave. Second time I had Covid, false positive, was a bit tricky. My wife was traveling. I was with my daughter. At that time, it was possible to make it work because we have a babysitter, my wife could go to creche, the news feed was quiet at the start of January. I worked less than my work hours…*
>
> *SW has not been micromanaging me, so I am not involved in this. He's been trusting. If you're struggling, you also have to let him know about that. I am grateful I can pick up my daughter at creche in such a short notice. It's a two-way street, but sometimes that is not possible."*

91 On 3 March 2022 the Claimant commenced Early Conciliation with ACAS. On 18 March 2022 she was signed off sick for a further four weeks for work related stress. Early Conciliation concluded on 13 April 2022.

92 The Claimant was sent the grievance outcome on 14 April 2022. It comprised 19 typed pages. In respect of each of the issues that he had to determine Mr Thornton set out the evidence that he had considered, his conclusions and his reasons for reaching those conclusions. Mr Thornton concluded that Mr Wilkin's conduct on 9 December 2021 had not been wholly appropriate, fair and in line with expected company practice. His reason for so concluding were that Company communication regarding the approach of managers to helping their reports to balance family duties during the pandemic with working duties required managers to show flexibility and have a conversation with any of their reports experiencing difficulty and discuss with them a plan to cope with the situation, at the meeting no flexibility was discussed and no plan was formulated and instead the Claimant had been told that the only options were to work normal hours or take annual leave if that were not possible. Furthermore, Mr Wilkin had used the meeting to raise with the Claimant his concerns about her diminished performance. He had not warned her that any such concerns were going to be raised and, in any event, it had been inappropriate to raise them in a meeting to discuss the Claimant's childcare difficulties because of Covid and how to balance those with her working duties. He upheld the Claimant's grievance on that point. He did not uphold the Claimant's grievance on any of the other issues. Mr Wilkin had treated the Claimant differently from Mr Hirst. The reason for that was that Mr Hirst had told Mr Wilkin that he would be away from work for two hours and that he would make up the time that evening. The Claimant had told Mr Wilkin that she "*might be lucky and get a couple of hours in"* that day, and had made no suggestion

that she would make up her remaining working hours at another time. He did not find that Mr Crofts and/or Mr Macfarlane failed to take the Claimant's situation and requests seriously on either 16 December 2021 or thereafter. He did not find that the Claimant had been treated less favourably than other employees in relation to her pay rise. He recommended that mediation be arranged between the Claimant and Mr Wilkin as there had been a severe breakdown in the relationship between them. He advised the Claimant of her right to appeal against his decision.

93 On 22 April 2022 the Claimant appealed the grievance outcome. On 8 May 2022 the Claimant presented her claim to the Employment Tribunal. The grievance appeal decision was sent to the Claimant on 7 July 2022. Other than in relation to one small issue (which is not relevant to the issues that the Tribunal has to determine) the grievance outcome was upheld.

94 The pay codes in the Jon Architecture were reviewed in July 2022. The Claimant was given the pay code EDT 110. The median market pay for that code was £66,300 and the maximum was £81,700. Mr Hirst was given the pay code EDT 109. The median and maximum market rates for that code were £54,000 and £67,500. Messrs Coyle and Zekaria were given the pay code EDT 108. The median and maximum market pay for that code were £49,100 and £61,300. The market rates increased in January 2023.

95 At the time of the hearing the Claimant was still employed by the Respondent. She had been absent sick since 4 January 2022.

Conclusions

96 Before dealing with the Claimant's specific complaints, we consider that it is important to note the following facts. Throughout the period between 2008 and the presentation of her claim in May 2022 the Claimant worked for MLex and the level of her pay was been determined by managers working for MLex. A number of changes took place during that period. In 2015 MLex was acquired by the Lexis Nexis Group. Between 2008 and April 2020 the Claimant provided her services to MLex, and to Lexis Nexis after the acquisition, as a contractor. Whether that relationship amounted to "employment" under the Equality Act 2010 was not an issue that we had to address. After 1 October 2020 she continued doing the same job but under a different legal relationship because of the change of location of her work place. If she worked in the UK, she had to be employed by the Lexis Nexis UK employing legal entity. All her comparators also worked for MLex; those who worked in the UK were employed by the same company as the Claimant. Mr Hirst, who worked in Brussels, was employed by the Belgian employing legal entity.

Not awarding the Claimant a pay rise between 1 February 2020 and 1 June 2021 and asking her to produce documentation to gain a pay rise (direct sex discrimination – 2.1(a) and (b))

97 The Claimant's counsel accepted in closing submissions that she could not pursue a claim against the Respondent in respect of any failure to pay her more between 1 February 2020 and 30 September 2020 because she was not employed by the Respondent during that period and was invoicing MLex for her services.

However, she argued that she could pursue a claim against the Respondent in respect of its failure to include a pay rise for her promotion in the terms that it offered her to start her employment on 1 October 2020. The discussions about what she would be offered took place in January and February 2020 and a decision was made at that time. The Claimant's case is that the Respondent discriminated against her by not including a pay rise for the promotion in the offer that it made to her and by not awarding her a pay rise thereafter between 1 October 2020 and 1 June 2021. The Respondent argued that the Claimant had not previously complained of a discriminatory offer, her complaint had been about the delay in awarding her a pay rise after her promotion to Global Chief Correspondent.

98 The first point to make about these complaints is that the first one was presented eight months after the time limit for presenting them had expired and the second one a little over nine months after the expiry of the time limit. They were both already out of time when the Claimant commenced Early Conciliation. Unless we find them to be part of a continuing act of sex discrimination that ended on or after 4 December 2021, we will not have jurisdiction to determine them unless we considered it just and equitable to do so. The only evidence given by the Claimant about time limits was,

> "*The Respondent says that my claims are out of time. It was genuinely never my plan or intention to bring a claim, to be in this position. I very much believed that my concerns would heard and resolved.*
>
> *I did not delay matters. Indeed, I ask for updates often and with increasing urgency…"*

The Claimant then gave references for when she had asked for updates – there were all after she had raised her grievance in January 2022. She gave no explanation of why she had not brought a claim about the failure to award her a pay rise between February 2020 and 1 June 2021 and the requirement to produce a document to get a pay rise earlier. It would appear from the evidence that she did not bring a claim about those matters within three months of 1 June 2021 because the matter had been resolved to her satisfaction. There was no suggestion that she could not have brought those claims earlier had she wanted to. In the Claimant's counsel's opening note she said that it would be just and equitable to hear those claims even if they were out of time because the balance of prejudice weighed in favour of allowing them to be determined. Counsel for the Respondent, in his closing submissions, said that this claims were significantly out of time and the Claimant had not provided any explanation as to why they had not been presented in time. He said that the Claimant knew everything she needed at the time to bring the claims. He said that the Respondent had plainly been prejudiced in having to defend such claims.

99 We considered whether it would be just and equitable to consider these two complaints If the later complaints are not found to be acts of sex discrimination or we concluded that these complaints were not part of a continuing act. We took into account the following factors. The delay is substantial – the claims are respectively eight and nine months out of time. There has been no explanation for the delay and on the facts of this case there could be no explanation. All the evidence indicated that the Claimant chose not to pursue them because the matter had been resolved to her satisfaction. An important issue in respect of the first complaint is what was said to the Claimant about a pay rise at the time of her promotion. There is no documentary evidence of it and the evidence of both parties as to precisely when it happened and

what was said was not very clear. There was a divergence of views as to what had been said when the Claimant first raised it in April 2021. Once the matter was resolved at the end of May 2021, no one gave it any further thought until it featured in the Claimant's grievance in January 2022 and her claim form in May 2022. The passage of time has not helped to improve memories and that would prejudice the Respondent's ability to defend the claim. Most of the Claimant's complaints about matters that she regarded as important and upsetting were presented in time and will be determined. The balance of prejudice weighed in favour of the Respondent. We concluded that in all the circumstances of the case it would not be just and equitable to consider these claim if they did not form part of a continuing act of sex discrimination.

100 If we had jurisdiction to determine the first claim, our conclusions would have been as follows. We have found that the Claimant was not given or promised a pay rise when she was given the title of Global Chief Correspondent. The Claimant's remuneration package for when she started being employed by the Respondent was calculated on the basis of her existing remuneration package with MLex. The evidence suggested that, although the Claimant would be employed by the Respondent, her pay would come from an MLex budget. MLex was prepared to support her move to the UK provided that it was costs neutral, i.e. did not cost it more. No pay rise was factored into those calculations because the Claimant had not been awarded a pay rise or been told that she would be given one in October 2020. In order for a complaint of direct sex discrimination to succeed, the Claimant would have to establish that a male contractor in Brussels who was moving to work to the UK and becoming an employee of the UK employing legal entity (the Respondent) in would have been treated differently. There was no evidence before us from which we could conclude that the Claimant was treated less favouably than a man would have been in similar circumstances. The MLex managers, who provided the relevant information, to the Respondent did not include a pay rise for the promotion in that information, because the Claimant had not been given or promised such a pay rise. It had nothing to do with the Claimant's gender.

101 We then considered whether the failure to award the Claimant a pay rise between 1 October 2020 and 1 June 2021 was an act of direct sex discrimination. It is clear from the email that the Claimant sent on 21 February 2020 that she expected her promotion and lack of pay rise to be taken into account when the performance and pay reviews were considered at the end of 2020. At the end of 2020 Lexis Nexis decided that due to the pressures of Coronavirus pandemic it would not be awarding the annual salary increases that were normally paid in March. Mr Crofts made a case for seven people working for MLex worldwide to be paid small increases. In the case of Mr O'Neill the justification advanced was that he had assumed additional responsibility by taking on the new Deputy Managing Editor role in London after the deletion of the London Manging Editor role. He had become the most senior editor in London working with six or seven reporters working across different beats in London. In light of the position that he held Mr Crofts felt that losing him would be very detrimental to the Respondent. Although Mr Crofts knew that the Claimant had asked questions about a pay rise and she had had a promotion some time ago he did not feel that her circumstances merited making an exceptional case for her to be given a pay rise in March 2021. Her role had not changed a great deal when she moved from being Chief Correspondent in a team of three to Global Chief Respondent in a team of three. One of the people in whose case Mr Crofts did make an exceptional case was Natalie McNelis, a female reporter. We concluded that the

individuals for whom he recommended pay rises were individuals whom he thought that the business might lose and could not afford to lose. He did not put the Claimant in that category. Hence, he did not exceptionally recommend a pay rise for her. Her gender did not play any part in it.

102 When the Claimant raised an issue of a pay rise in April 2021 she did so on two grounds – firstly, she had been promised that she would receive a pay rise on promotion and, secondly, she was paid less than what her role merited ("*high job title, low pay")* (paragraph 59 above). Mr Crofts did not accept the first but did not want to waste rime arguing about it. In respect of the second, they needed for a number of reasons to know the specifics of her role and responsibilities. An internal benchmarking exercise had shown that the Claimant was paid at the same level as those who had the same job code as her and worked in the same geographical location. Part of the problem might well have been that the Claimant had been placed in the wrong job code. More importantly, the business job title, in itself, gave no indication of whether the postholder was in charge of one beat or a cluster of beats, the size of the beat or the team, whether the postholder had any line management responsibility. All Chief Correspondents and Global Chief Correspondents did not have the same level of responsibility. As Mr Crofts explained to the Claimant in his email of 27 April 2021 (paragraph 60 above) there were many factors beside a job title that went into calculating a salary. In order to do a proper and fair evaluation of the Claimant's role, the Respondent needed to have that specific information. The Claimant was the person who was in the best position to set out in detail exactly what she did and demonstrate why her role merited before. We concluded that Mr Crofts asked the Claimant to provide that information in order to see whether a case could be made out for saying that she was not being remunerated fairly for the role that she actually carried out. There was no evidence from which we could conclude that, in doing so, he treated her less favourably than he would have treated a man in the same or similar circumstances or that he did so because of her gender.

<u>9 December 2021 (direct sex discrimination/harassment, victimisation – 2.1(c), 2.2, 2.4(a)</u>

103 The conversation of 9 December cannot be looked at in isolation but needs to be placed in context. For a period of seven weeks prior to that call, the Claimant had been unable to work because she had been unwell with Covid and the children's creche had closed. The Claimant had said that she would deal with the latter by taking annual leave. She felt that Mr Wilkin had been understanding and patient during that period (see paragraphs 66-67 above). The call on 9 December took place because on that day, which was a working day when the Claimant was not absent sick or on annual leave, she sent Mr Wilkin a message that she might, if she was lucky, get in a couple of hours' work and that she would check via her phone when she could. That may not have been what the Claimant intended to say but that was what her message said. She did not ask to talk to Mr Wilkin to discuss the problem and what the best solution might be. Mr Wilkin took the view that, notwithstanding the difficulties caused by Covid, it was not acceptable for an employee to say on a working day that she/he might work for only two hours. It was not an unreasonable view for a manager to take. He was also concerned because he felt that it was not an isolated incident and that the Claimant had often not available at her desk because she was dealing with childcare commitments. Mr Wilkin arranged to speak to the Claimant to tell her what was expected of staff and that what she had done that morning was not acceptable.

104 Our findings about what was said on the call are set out at paragraph 70 above. We found that Mr Wilkin dis not say some of the things which the Claimant alleged he had said and that he said others but not quite in the same way as reported by the Claimant. We have found that Mr Wilkin did not say what is alleged at paragraph 2.1(c)(vii), (x) and (xi) above. Many of the things that the Claimant alleged that he said are her interpretation of what he said. For example, Mr Wilkin did not ask her whether she thought that working as a mother of two was "sustainable" without getting a full-time nanny. He asked her whether she had thought of getting a nanny as an alternative to the creche. He also asked her later whether she thought that her current situation and working hours were sustainable. He compared her performance in 2021 with her performance with her performance before she went on maternity leave (in 2018/2019). The Claimant interpreted that as comparing her performance after the birth of her first child with her performance after the birth of her second child. It is likely that the exchange might have got a little heated as Mr Wilkin and the Claimant viewed matters differently. The Claimant's view was that it should be accepted that she was doing her best and would work as many hours as she could. She viewed it as a matter of trust. Mr Wilkin's position was that an employee could not unilaterally decide on any given working day how many hours and when she/he would work. He also accepted that he did not have all the possible solutions and that they should have a discussion with Ms Heer.

105 The Claimant's case is that in raising these matters with her he treated her less favourably than he treated Mr Hirst or would have treated another man in the same or similar circumstances. On the basis of what Mr Hirst said in the investigation of the Claimant's grievance, he took annual leave when he and his family had Covid. When he needed to pick his daughter from creche at short notice he would let Mr Wilkin and the team know in advance when he was going to be off line for a couple of hours and that he would catch up on the work that evening. That is very different from the Claimant telling Mr Wilkin that she would work two hours on a given day if that was possible and not saying anything about making up the lost time. There was no evidence before us from which we could infer that Mr Wilkin would have acted any differently if a man had done that. We concluded that Mr Wilkin would have treated anyone, male or female, who unilaterally decided how many hours and at what times they would work on a working day, because of childcare or any other commitments, in the same way. We also concluded that having a conversation with an employee about expected availability during working hours could not amount to a "detriment". Nor did it amount to harassment related to sex. As we have said before, the Claimant's gender was not the reason for the conversation taking place. Nor could it amount to harassment as defined in section 26 of the Equality Act 2010. We accept that the Claimant was having a difficult time and that she felt that Mr Wilkin was not being empathetic and that she was upset. The Claimant did not say in evidence that it had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for her. If she felt that it did, we would have concluded that it was not reasonable for it to have had that effect.

106 The Claimant also complained about victimisation in respect of this call. Her case was that Mr Wilkin subjected her to a detriment by raising comments about her performance and imposing more and stringent requirements on her and he did so because she had done protected acts. The Claimant 's case was that she had made enquiries of HR and in March 2021 about gender pay and benchmarking and that

she had talked about equal pay with Messrs Crofts and Wilkin on 28 April 2021 and that these were protected acts (2.3(a) and (b) above).

107 In her email to HR on 4 March 2019 the Claimant said that she and Ms McNelis wanted to ask management a question about gender equality and asked whether they could so anonymously or through HR. The Claimant then spoke to Ms Amirkhan on 9 March and told her that they had concerns about the gender gap at MLex and referred to the Lexis Nexis gender pay gap report (paragraph 56 above). The Claimant did not, in either of those communication, make or seek a disclosure that would enable either her or HR to find out whether or to what extent there was in relation to some work a connection between pay and a protected characteristic. The highest that we can put the first one is that she was inquiring about how she could seek such a disclosure anonymously. The second goes no further than saying that they were concerned that there might be a connection between pay and gender at MLex. We did not consider that either of those would amount to the Claimant seeking or making "a relevant pay disclosure" within the meaning of section 77 of the Equality Act 2010. In her mail to Ms Heer on 9 March 2021 (paragraph 57above) the Claimant queried where her pay sat within the benchmarks and complained about not having received a pay rise that she had been promised on promotion. She did not in any way relate that to her gender. That does not amount to either seeking or making a relevant pay disclosure under section 77 or a protected act under section 27 of the Equality Act 2010.

108 Our findings about what was said during the meeting on 28 April 2021 are set out at paragraph 61 (above). The Claimant did not say anything at that meeting about her level of pay or the failure to give her the pay rise that she had been promised had anything to do with her gender. She did not talk about equal pay in the sense of saying that she was being paid less than men were paid or because she was a woman.

109 We concluded that the Claimant had not done a protected act before 9 December 2021. It was not in dispute that at the meeting on 9 December 2021 Mr Wilkin raised with the Claimant certain concerns that he had about her performance. He talked about the level of her output, both in relation to other employees and to her previous output and checking edits on a telephone. Mr Wilkin raised those concerns because he genuinely had those concerns and he had been told that any concerns should be raised with the Claimant prior to him recording them on the performance appraisals. Mr Wilkin had not raised any specific concerns about performance at the quarterly meetings in July and September. He should not have raised them unexpectedly during the call on 9 December. He should have arranged a separate meeting with the Claimant for the purpose of discussing those performance concerns. We accept that Mr Wilkin did not manage the Claimant's decline in performance very well or in accordance with best practice. His raising those concerns at the meeting on 9 December was inappropriate but it had nothing to do with the Claimant's communications with HR in March 2021 or what she had said to him and Mr Crofts about her pay rise on 28 April 2021. Mr Crofts and Mr Wilkin had acted on that and had arranged for the Claimant to receive a pay rise.

110 We do not accept that Mr Wilkin imposed "new and more stringent requirements" on the Claimant at the meeting on 9 December. He did not set out any new requirements. He explained clearly what the expectations were for all employees, including the Claimant. If someone was unable to work for reasons that were long-

term and foreseeable, alternative arrangements should be made, such as taking annual leave. Other options could be explored with HR. If something unforeseen suddenly came up, he would be prepared to be flexible, but what he could not permit was for an employee on a regular basis choose the hours that he/she was able to work and to regularly take time off ad hoc to deal with other matters. That had always been the position and Mr Wilkin made that clear to the Claimant. He did not impose new or more stringent requirements.

16 December 2021 meeting (victimisation – 2.4(b) and (c))

111 For the purposes of these complaints the Claimant relied on the protected acts dealt with above at paragraphs 106-108 together with the email that she sent to Ms Heer on 9 December after the meeting on that day (paragraph 72 above). The subject of that email was "support for working parents during a Covid crisis" and the bulk of the email was about Mr Wilkin's unsympathetic response to her difficulties as a working parent during Covid. She did not say that he had taken that approach with her because she was a woman and that he would have treated a man in similar circumstances differently. She did complain about Mr Wilkin questioning whether her working as "a mother of two" was sustainable or whether she felt differently now that she was a "mother of two". Those complaints could be interpreted as complaints of sex discrimination on the basis that she was asked those questions because she was a woman with two young children and a man with young children would not have been asked those questions. We concluded that those complaints amounted to "protected acts."

112 We then considered whether the Claimant had been subjected to the detriments of which she complained. She said that Mr Crofts had made repeated comments to the effect that she might wish to leave and painting her as a troublemaker by referring to previous calls in the year in relation to the Claimant's pay rise. We have listened to the recording of that meeting and have read the transcript of it. We have summarised what was said at that meeting at paragraph 76. We did not find that he said anything which would show that he was painting her as a "troublemaker" because she had raised the issue of a pay rise earlier in the year. Mr Croft did not suggest to her that she might wish to leave. He started off by saying that they wanted her to be happy and engaged and supported with them and suggested a meeting with Ms Heer to get clarity on what could be done to balance the Claimant's home neds and the Respondent's business needs. He and Mr Mafarlane repeated that in the course of the meeting. It was only when the Claimant said things like that she could not imagine working under Mr Wilkin because her trust in his had gone, and he made her fell inadequate and intimidated that Mr Crofts asked her whether she saw any way of resolving the problem in the near future. We concluded that the Claimant was not subjected to the detriments of which she complained and that her managers at that meeting wanted to find a way of resolving issues so that she could continue working with the Respondent.

Performance rating of "requires improvement" in January 2022 – direct sex discrimination and victimisation – 2.1(d) and 2.4(d)

113 The Claimant relied on two new additional protected acts for this complaint – what she said in the meeting of 16 December 2021 and her email to Ms Heer on that date. In the meeting she referred to Mr Wilkin's conduct on 9 December as having been discriminatory and that his comments had shown a discriminatory attitude

towards her as a person and as a working mother in the pandemic. In the email she referred to the discriminatory questioning of her by Mr Wilkin. We concluded that those allegations amounted to protected acts.

114 Mr Wilkin had told Mr Crofts that he had concerns about the Claimant's performance before 9 December and Mr Crofts had told him that any such concerns should be raised with her prior to the performance review. Hence he raised them at that meeting. Those concerns predate and were raised with the Claimant before the protected acts that took place on 9 December or thereafter. Mr Wilkin probably gave his ratings and wrote his comments on the performance review after 16 December but it reflected views that he had had and had shared with Mr Crofts and the Claimant prior to 9 December. In those circumstances, it is difficult to see how the Claimant could argue that she was given the rating of "requires improvement " because she had done the protected acts on 9 and 16 December 2021. We have found that she did not do any protected acts before 9 December 2021.

115 It is also noteworthy that, regardless of the ratings the Claimant gave herself, she recognised in the comments that she made that she had not had a very good year. In her overall evaluation the Claimant recorded that it had been "*a bumpy year"* and that she had had "*lower than usual morale early in the year".* However, things had then improved and she had had some great scoops but last couple of months had been "*very challenging"* due to her having Covid and losing childcare. She appeared to recognise in those comments that her performance had been below par in the early and later parts of the year. She also appeared to recognise that building a network in London had been a challenge. It is also clear that Mr Wilkin was fair in the assessment that he made. He gave the Claimant credit where it was due – he agreed that she had successfully maintained her Brussels contacts and had had a steady stream of trade defence scoops and that she had helped a new joiner in Brussels settle into the trade beat. That having been said he genuinely believed that there had been shortcomings in her leadership of the team and in her productivity. The figures that he gave her on 9 December and later in the performance review of the number of insights and comments that she had produced in 2021 justify the view that he held. When he gave her those figures on 9 December, the Claimant's response was that it was unfair to compare her work from two years earlier with her work during a pandemic with two small children. All of the above indicates that the Claimant accepted that she had been less productive in 2021. The main difference between her and Mr Wilkin was that she felt that there was a good explanation for the decline in her performance at the start and the end of the year and hence it should not have any impact on her rating. Mr Wilkin accepted that she had had personal challenges at the end of the year but he felt that they were not sufficient to explain the decline in her performance over the year.

116 We concluded that Mr Wilkin gave the Claimant a "performance requires improvement" rating because he genuinely felt that there had been shortcomings in her performance in respect of her productivity and leadership. There was no evidence from which we could conclude that in giving her that rating he head treated her less favourably than he would have treated a man in similar circumstances or that her gender played any part in it. Nor did he give her that rating because she done protected acts on 9 and 16 December 2021. We accept that he had not managed her poor performance properly, in that, he had not highlighted the specific poor performance at the quarterly reviews and had not told the Claimant that she needed to improve on those respects. It may also have been a failure of the

calibration process not to have picked up on that. That, however, does not change the fact that she was not given that rating because she was a woman or because she had done protected acts.

Equal pay

Like work

117 In considering whether the Claimant and her comparators were engaged on like work, it is important to focus on what they did in their roles and the circumstances in which they did it, rather than the job codes or titles of their roles. It is also important to bear in mind that we are considering whether they did like work from 1 October 2020 until the presentation of the claim. The historical background might well become relevant to the consideration of the material factor defence, but it is not relevant to the issue of whether they did like work.

Nicholas Hirst

118 The Claimant and Mr Hirst had different specialist areas and they focused on and wrote about different areas – the Claimant's specialist area was trade and Mr Hirst's specialist area was competition/antitrust. The knowledge, expertise and experience required to work in their different specialist areas were different. The trade team was smaller than the competition team and produced fewer stories. The Claimant was responsible for organising the work of and supporting a team that had two reporters (one in Brussels and one in Washington). Mr Hirst organised and supported the work of a team of six or seven journalists based across Europe. The Claimant was expected to have weekly meetings with her team. Mr Hirst had daily calls with his team. It was clear to us that the work that they did was not the same or broadly similar.

119 As we concluded that they were not doing like work, it was not necessary for us to decide whether there was a material factor, not connected in any way with sex, that explained the difference in pay. On 1 October 2020 Mr Hirst was paid €105,000 p.a. The Claimant was paid £62,400 until 1 June 2021 and £67,500 thereafter. The Competition/Antitrust beat was of greater commercial value to MLex than the Trade beat – it was of the area that was of the greatest interest to its subscribers. It was a bigger beat and the chief correspondent in charge of it had to organise and oversee the work of a bigger team that produced more stories and alerts. Correspondents working in Competition were paid more than those working in Trade. Natalie McNelis, Senior Correspondent in Competition, was paid more than Joanna Sopinska, Senior Correspondent in Trade. Furthermore, MLex had wanted to recruit Mr Hirst, not only because he had considerable experience in the area, but also to take him away from a competitor that was about to launch a rival product which he would be leading. Those two factors led to him being made an offer of €100,000 per annum. As an employee, he then received annual increases. The Claimant worked in a smaller beat that was of less commercial value to MLex. She was not recruited in similar circumstances. She joined MLex as a graduate. She worked for MLex as a contractor and therefore was not entitled to contractual or statutory annual salary increases, although we accept that the amount that she was paid increased over the years.. If we had had to decide the issue, we would have concluded that the Respondent had established that there were material factors, untainted with sex discrimination, that explained the difference in pay.

Ezra Simon Zekaria

120 Mr Zekaria worked as a Senior Correspondent in the UK Competition Litigation Beat. As the name implies, his role was to cover litigation, related to Competition, taking place in the UK. His role required him to be in court almost every day and to report on court hearings and decisions. The Claimant might have attended court on occasion to cover a trade related story, but it was not the central, or a large, part of her role. From October 2020 to January 2022 she did not attend or report on any court hearings. Mr Zekaria was required to keep case files up to date. That was not a part of the Claimant's role. We concluded that the Claimant and Mr Zekaria did not do the same or broadly similar work.

121 If we had had to conclude the material factor defence, our conclusions would have been as follows. The Claimant was paid less than Mr Zekaria between 1 October 2020 and 1 June 2021. Her salary for that period was £62,400. His salary was £63,672.48 form 1 October to 31 December and £63,922.48 from 1 January. On 1 June 2021 the Claimant's salary was increased to £67,500. Mr Zekaria received annual increases from March 2017as an employee of the Respondent. The Claimant was not entitled to such contractual annual increases before 1 October 2020. Mr Zekaria worked in London and received a 15% uplift because of that. The Claimant did not work in the office in London, she worked from home in Chepstow and hence did not get that uplift. The Claimant's salary was reduced on 1 October 2020 to take into account the additional costs that would be incurred by MLex in relation to her travelling to Brussels. That was unique to the Claimant and did not apply to Mr Zekaria. If we had had to consider that issue, we would have concluded that those were material factors, they were not tainted with sex discrimination and they explained the very small difference between the Claimant and Mr Zekaria's pay over a very short period.

Martin Coyle

122 Mr Coyle was a Senior Correspondent who specialised in reporting on anti-bribery news and reporting on financial crime trials. The reporting of complex financial trials is a central part of his role. For the reasons set out at paragraph 120 above, it was something that the Claimant did from time to time, it was not a regular or important feature of her role. We concluded that the work they did was not the same of broadly similar.

123 If we had had to consider the material factor defence our conclusions would have been as follows. Form 1 October 2020 to March 2022 Mr Coyle was paid £80,386.51. MLex recruited Mr Coyle to start and establish a new Beat. In order to launch the new product, they needed a journalist who was established in the field. Mr Coyle had 20 years' experience in the field. He worked for a well-known, well-established competitor. In order to entice him to leave that and to take the risk of starting a new business for them, that might or might not work, they had to pay him what he wanted. Hence, in 2015 Mr Coyle was offered the role at a starting salary of £75,000 p.a. and a 10% bonus. The Claimant was not recruited in such circumstances. As an employee of the Respondent Mr Coyle received an annual

salary increase and a 15% uplift for working in London. We would have concluded that those were material factors, untainted with sex, that explained the difference in pay. We accept, as indeed did Mr McLeod, that the Financial Crime beat has not turned out to be of great interest to the subscribers.

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Employment Judge - Grewal

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Date: 21/06/2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

21/06/2023

FOR THE TRIBUNAL OFFICE