



EMPLOYMENT TRIBUNALS

Claimant: Mrs. H. Valley

Respondent: SSCP Spring Bidco Limited
t/a Outcomes First Group Limited

Heard at: Manchester

On: 17, 18, 20 April 2023
and 28 June 2023
(in chambers on 29 and 30 June
2023)

Before: Judge Callan
Ms. S. Howarth
Mr. I. Taylor

REPRESENTATION:

Claimant: Represented by her husband on 17 and 18 April 2023 and in person thereafter.

Respondent: Ms. J. Connolly, counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The correct name of the respondent is SSCP Spring Bidco Limited t/a Outcomes First Group Limited.

Maternity Discrimination

2. The claimant's claim that the respondent, in breach of section 18 of the Equality Act 2010 ("the EqA 2010"), subjected her to unfavourable treatment because of maternity is unfounded and the claim is dismissed.

Harassment

3. The claimant's claim that the respondent subjected her to harassment related to sex in breach of section 26 of the EqA Act 2010 fails and is dismissed.

Indirect Discrimination

4. The claimant's claim that the respondent subjected her to indirect discrimination in breach of sections 19 and 39 of the EqA 2010 fails and is dismissed. The claimant failed to establish facts from which the Tribunal could conclude that there was a greater disadvantage to women in respect of the PCP which was a requirement to return to work in the office after 3 pm on two days per week rather than to work from home. Further, the respondent established a legitimate aim for the requirement and the means adopted was proportionate.

Victimisation

5. The claimant's claim that the respondent victimised her in breach of section 27 of the EqA 2010 fails and is dismissed. The respondent did not subject her to detriments because she had raised a grievance. She did not establish that her entering into ACAS Early Conciliation qualified as a further protected act, but even if it was a protected act, she was not subjected to detriments because she had done so.

Unfair Dismissal

6. The claimant's claim that the respondent dismissed her unfairly fails and is dismissed. The respondent dismissed her for a fair reason (redundancy) following a fair procedure.

Wrongful Dismissal

7. The claimant's dismissal was not in breach of her contract of employment. She requested early release from her contractual notice and the respondent agreed. Her claim was misconceived and is dismissed.

REASONS

Introduction

8. The claimant was employed by the respondent from 16 November 2015 as a Finance Manager in their residential care division. In June 2018 she was appointed Financial and Systems Accountant and in May 2020 she was appointed Group Finance Manager.

9. The claimant commenced maternity leave in January 2021. Her child was born on 25 January 2021. She returned from maternity leave on 7 February 2022. She commenced sick leave on 1 March 2022 and did not return to work prior to her dismissal. She raised a grievance on 16 March 2022 which she relied upon as one of the protected acts for the purpose of her victimisation claim.
10. On 9 August 2022 the respondent confirmed to the claimant that her role was redundant. As the claimant declined to accept alternative work offered, the respondent confirmed the redundancy payment and notice period due to her. On 18 August 2022, the claimant requested that her termination date be brought forward to 19 August 2022. The respondent confirmed that she could be released from her notice period and her termination date was 19 August 2022. She was dismissed by reason of redundancy and claimed her dismissal was unfair.
11. On 19 August 2022, the claimant was offered employment with a new employer and commenced that employment on 30 August 2022.
12. The claimant had entered early conciliation on 12 April 2022 and the EC Certificate was issued on 23 May 2022. She relied upon entering early conciliation as a protected act. She submitted her claim on 22 June 2022. Her complaints were of maternity and sex discrimination dating back to her return from her first maternity leave in December 2017. She was a litigant in person in these proceedings. Subsequently, her claim of unfair dismissal was added.
13. The hearing took place in person. It had been listed for a 3-day final hearing on 17, 18 and 20 April 2023. The claimant gave evidence on her own behalf and her former colleague, Jessica Keane, gave evidence in support. The respondent's witnesses were Helen Lecky, Director of Financial Controls who was the former line manager of the claimant. We also heard from Melissa O'Brien who was employed as a Human Resources Business Partner by the respondent. She had been employed from 23 May 2022 but had an involvement in this matter in that she conducted a grievance investigation after the claimant had appealed her grievance outcome. She also, along with Helen Lecky, interviewed the claimant and Jacqui Wood for the role of Senior Management Accountant on 9 June 2022. She also attended the meeting on 13 June 2022 with the claimant and Helen Lecky when the options in respect of roles available to the claimant were discussed.
14. On the morning of 17 April 2023 we were handed a chronology of key events which was not agreed but the claimant agreed it later in the day. We were later provided with a chronological list of factual allegations (attached at Annex 2) which cross referred to the list of issues (attached at Annex 1).
15. A discussion took place of the causes of action being pursued in the case. There were two recordings of meetings, one from 15 December 2021 and the other from 13 June 2022 which had been transcribed and the transcripts were agreed. The claimant's witness statement ran to 221 paragraphs over 34 pages and the respondent's main witness, Helen Lecky's statement, ran to 49 paragraphs over

14 pages and the witness Melissa O'Brien's statement ran to 18 paragraphs over 6 pages. Jessica Keane's statement consisted of just over one page of close typed text.

16. It was clarified that the claimant was not claiming discrimination in respect of acts which took place in December 2017 and that material was background. Ms Connolly, for the respondent, invited the Tribunal to treat that material as background and not as material from which inferences could be drawn. Attention was drawn to the agreed list of issues at pages 108-111 in the documents. The Tribunal were also provided with a bundle of documents which was numbered up to page 781.
17. The Tribunal having taken time to read the statements over the course of the morning took evidence from the claimant which commenced at 2.15 pm on the first day.

The Issues

18. The issues the Tribunal was to decide were identified in the Case Management Orders dated 1 September 2022. Subsequently, an agreed list of issues was drafted by the parties and dated 30 December 2022 (Annex 1).

Preliminary Matters

Correction of the respondent's name in proceedings

19. The respondent had changed its name to SSCP Spring Bidco Limited t/a Outcomes First Group Limited. By consent, the respondent's name in these proceedings was corrected to that.

Findings of Fact

Background

20. The respondent provides specialist services to a wide range of organisations servicing children and adults with additional needs including education and care services. The respondent provides care to children, young people, and adults with autism, learning difficulties, challenging behaviour, and other conditions at various places across the UK. The nature of the respondent's business activities in the area in which the claimant was employed was largely a financial function.
21. The claimant was a qualified accountant working as a Group Finance Manager within the respondent's Group Finance Team. Helen Lecky was her Line Manager at the time of the relevant events.
22. The claimant, prior November 2020, had a good working relationship with Helen Lecky. Helen Lecky had encouraged the claimant to join the Group and enabled her to work with statutory accounts and tax issues which the claimant enjoyed doing.

23. The claimant worked part-time (30 hours per week). The respondent's full-time hours were 37.5 hours per week.

Opportunities to apply for vacancies (allegations 1-5)

24. All vacant roles in the respondent's organisation were advertised by email prior to mid-2021 and on its "engage portal" thereafter. Vacancies were also advertised on the respondent's website to which the claimant had access. Whilst on maternity leave, the claimant had retained her company laptop, and her login credentials were still valid. The respondent's website was public, and the claimant could refer to it to see details of vacancies which were posted there using her own devices. There came a time the claimant's work laptop was malfunctioning and she brought it into the workplace for the respondent's IT staff to fix (around 4 November 2021). The Tribunal were not informed of when the laptop began to malfunction. It was not the practice of Helen Lecky to make employees aware of vacancies, whether they were at work or absent for any reason. The claimant had not requested her to do so. In any event the vacancies in other divisions such as the Education and Fostering Divisions, were outside of Helen Lecky's area and she would not necessarily have been aware of them.
25. There were a number of positions which were filled during the period that the claimant was on maternity leave in 2021/2022. One was for the post of Senior Finance Manager- Adult Care and Education. This post was advertised on or about 12 February 2021. This was within one month of the claimant commencing maternity leave. Simon Howard was appointed. Helen Lecky was not aware of the role, and it was not her responsibility to recruit someone for it. It was an HR function to deal with recruitment, not Helen Lecky.
26. A vacancy for the Head of Reporting/Finance Manager – Fostering became vacant and was filled in April 2021. The vacancy was advertised on 27 November 2020 which was before the claimant commenced maternity leave.
27. In October 2021 the post of Finance Manager – Education was advertised. The claimant had not been informed of the engage portal which was, by this time, the main source of information about vacancies. However, she was informed of the engage portal and this vacancy by Jessica Keane on 14 October 2021.
28. On 17 November 2021, the claimant emailed Helen Lecky to commence her back to work plan and said that she was happy to explore other options if her proposed plans of returning to work full time, or her flexible working request were difficult to accommodate.

Discretionary bonus payment (allegation 7)

29. On or about 13 November 2021 the respondent paid a discretionary bonus to a number of its employees. This was outside its normal bonus scheme (the claimant was not a beneficiary of that scheme). The additional

bonus/recognition payment which the claimant complains about was paid to central leaders and a decision was made by the respondent's executive in respect of who was to receive it.

30. At the time of the payment, the claimant was on additional maternity leave. Jacqui Wood, the claimant's maternity cover received the payment on the basis that her work had saved the organisation money.
31. The decision as to who would receive the payment was made by Mr Janet, the respondent's Chief Finance Officer. In November 2021, he decided to pay a recognition/bonus payment to those who worked in central services and who had gone beyond what was expected of them during Covid in respect of particular projects or process improvements. The payment was paid to reward such work done in the financial year 1 September 2020 – 31 August 2021.
32. There were other Finance Managers in a similar position to the claimant who did not receive the payment including Mr Connaught, Miss Waka, and Mr Cooper.
33. The claimant worked for 5 months in the year 1 September 2020 – 31 August 2021 prior to going on maternity leave on 26 January 2021 and she did not receive the payment. The Group Marketing Director received the payment and she had been on maternity leave between 28 June 2021 and 30 September 2021. Of the 69 staff members in the Finance Team at the time of the discretionary payment, only 15 received it. The claimant did not identify any exceptional performance on her part which she says would have merited the payment to be made to her.
34. Jacqui Wood received the discretionary payment as during the period she had picked up several new projects and had improved efficiencies within the Finance Department. It was therefore decided she merited a payment of the bonus. The claimant accepted Mr Janet was aware of her work in the relevant period.

Flexible work request and work times (allegation 8)

35. Whilst at the offices on 4 November 2021, the claimant had a brief chat with Helen Lecky and informed her of her plans to make a flexible working request for her return to work. The claimant explained that her eldest child was now at school and so he would need to be picked up at the end of the school day. Jessica Keane heard the claimant mention that due to her son's school day finishing at 2.30 pm the claimant was hoping she could take her lunch hour at that time in order to pick him up. Her husband would then take over child-care responsibilities.
36. At this time the respondent was operating a hybrid attendance at the offices, that is, employees worked from home for 3 days per week but were expected to attend the offices on Mondays and Thursdays which were termed "anchor days." In respect of the flexible working request the claimant was proposing that

on anchor days she would delay her lunch break until 2.15 pm to pick up her child from school.

37. Helen Lecky made it clear that she would be expected to return to the office at 3 pm or make alternative arrangements on the anchor days for collection of her child from school. The claimant set out her initial proposals in an email to Helen Lecky dated 17 November 2021 (page 184). Her request included an intention to work full time and to alter her hours to accommodate the school pick up. Helen Lecky responded to the claimant the same day and attached the respondent's flexible working policy. She advised the claimant that she should submit a formal request under the policy. Helen Lecky indicated she was not sure whether the request to go from part time to full time hours fell under a flexible working request but she suggested that the claimant cover it in the same letter so it could be considered at the same time.
38. On 30 November 2021 Helen Lecky received the formal flexible working request from the claimant in which the claimant said she was looking to return to work full time and to change her core hours from 8 am to 4.30 pm with an hour break between 2 pm and 3 pm to allow her to pick up her son from school (page 180).
39. Helen Lecky responded to the claimant on 9 December 2021 and invited her to meet to discuss the request. Helen Lecky was supported by an HR staff member and that person sent the letter out to the claimant on Helen Lecky's behalf.
40. At the meeting held on 15 December 2021 Helen Lecky discussed the claimant's request with her (pages 189-195). Helen Lecky had been advised by HR that the claimant needed to take a break after 4.5 hours at work. This was discussed in the meeting and the claimant suggested she took a 15-minute break earlier in the day and then a 45-minute late lunch to pick up her son.
41. Helen Lecky told the claimant that the team was working in a hybrid fashion with the two anchor days in the office. She asked the claimant whether she was proposing to return to the office after picking up her son or to work from home. The claimant confirmed she was planning to log on from home as otherwise she would not be back at the office until 3.15pm. The claimant said that this was because of having to take account of travel to and from the office to the school.
42. Ms Lecky had her concerns about this proposal as it would reduce the time that the claimant would have face-to-face with her colleagues. Helen Lecky explained that the respondent had found that remote working had caused some problems in that some issues were not being picked up and it was more difficult to mentor, train, and support more junior colleagues and give full support to the executive team. The anchor days were therefore proposed in order to resolve problems and fix processes. It also would provide an opportunity for the Finance Team to work collaboratively and to be able to discuss matters between themselves. The respondent took the view that there was a real business need for two anchor days each week. The claimant suggested that she could make

alternative pick up arrangements for one or two days per week to ensure she could attend the anchor days and it was agreed that on finance anchor days she would return to the office following her break unless she decided to make alternative arrangements for her child on those days. It was confirmed that the new working arrangements would commence from February 2022 when it was anticipated the claimant would return from her maternity leave and be reviewed after 3 months from the date of her return. The outcome letter dated 13 January 2022 contained some mutually agreed “tweaks” to the claimant’s hours to reflect her suggestion that she take a 15 minute break before 12.15 pm and take her longer break at 2.15 pm (pages 215-216). The claimant accepted the offer on 18 January 2022 and did not suggest that she was unhappy with the arrangement.

Failure to invite the claimant to the Christmas party 2021 (allegation 9)

43. There was a belated Christmas party for 2020 to be held via Zoom. Jessica Keane messaged the claimant on 15 February 2021 and said that she had prompted Helen Lecky to invite the claimant. The claimant was not given an invitation. Staff who attended the event were able to claim £10 on expenses for food and drink.
44. On 17 December 2021, the 2021 Christmas party was held at the Roxy Ballroom in Manchester. The respondent gave £20 vouchers to the staff who attended. The claimant was not invited. Helen Lecky did not mention the party to the claimant despite the claimant having been in contact with her two days beforehand for a flexible working request meeting. The claimant raised the issue as part of her grievance which she brought on 16 March 2022. As part of the outcome the claimant was paid the £20 voucher.
45. Helen Lecky was not involved in organising the Christmas event in 2021. Vicky Bull took the lead in organising it.
46. On 4 November 2021 the claimant attended the office leave her laptop with IT as it was malfunctioning. She had an informal chat with Helen Lecky at which Jessica Keane was present. Jessica Keane was in contact with the claimant and she had alerted the claimant of the earlier belated Christmas celebration. It is more likely than not that the claimant heard about the event from her friend Jessica, but she did not raise the matter with Vicky Bull or Helen Lecky.

Full time work request and alleged lack of support by Ms Lecky to consider other full time roles (allegations 6 and 10)

47. The claimant submitted a request to Helen Lecky on 30 November 2021 as part of her flexible work request to change to her working hours from part time (30 hours per week) to full time (37.5 hours per week).
48. The proposal to return to work full time was discussed on 15 December 2021. However, at the time the respondent was experiencing accounts payable issues and Ms Lecky’s proposal to address them was to include extra resources (see below). This had an impact on Ms Lecky’s budget and therefore she was not in

a position to increase the claimant's role to full time immediately. She indicated that it would be likely that there would be an opportunity to increase the claimant to full time hours later in the new financial year in September 2022 when the budgets were re-allocated.

49. On 17 November 2021 the claimant had emailed Helen Lecky stating she was happy to explore options within the business if her proposals of working full time were difficult to accommodate. In fact, Helen Lecky discussed with the claimant the full time job of Group Finance Manager – P&P (see below) on 19 January 2022 but this was not of interest to the claimant. The claimant did not identify which other full time posts Helen Lecky failed to consider her for.

Dissuasion from applying for Group Finance Manager, Projects, and Procedures post and misleading HR that she was not interested in the Group Finance Manager – Projects and Processes (P&P) (allegations 11, 12 and 13)

50. The respondent experienced problems at the time with accounts payable. Helen Lecky decided that the best way of dealing with the problem was to undertake a process review and recruit an additional resource with responsibility for that area. Helen Lecky gave a presentation to the Operational Board a paper on this in January 2022 the slides for which was provided to the Tribunal (pages 198-202). The new role dealing with accounts payable (Group Finance Manager – P&P) was discussed with the claimant during a pre-return discussion on 19 January 2022. Helen Lecky explained the nature of the role, the fact that it was full-time, and she asked the claimant if the claimant wished to be considered for it. The claimant said she was not interested. This was confirmed to HR. Helen Lecky suggested that in any event the job description should be sent to the claimant but there was an oversight, and it was not sent. The claimant did not ask for the job description for this role or indicate that she wished to apply for the job. The post was advertised on the engage portal. It was intended that this role would sit alongside the claimant's post in the organisation's structure rather than replace it.
51. The work generated by WP Associates Limited acquisition was limited and mainly administrative in nature. The acquisition of WP Associates Limited had taken place whilst the claimant was on maternity leave and thus it had not been part of her role prior to her taking leave. Helen Lecky was attempting to ensure the claimant was not overloaded on her return but had the claimant expressed the desire to undertake that work, it would have been allocated to her. In the meeting on 19 January 2022 Helen Lecky told the claimant she proposed that the claimant would be the Group Finance Manager - Systems and Reporting (S&R). It was also proposed that there would be the post of Group Finance Manager – Projects and Procedures. The claimant had difficulty sleeping and spoke to her GP on 26 January 2022. She told the Tribunal that she was feeling very stressed at that time.
52. The post of Group Finance Manager – P&P included accounts payable taken from Vicky Bull and two Cost Centres (IT and Clinical) taken from the claimant's former role. It also included finance lead on key projects. The claimant's allegation was that Helen Lecky had already allocated it to Jacqui Wood as part

of a plan to retain her. The claimant said in evidence that the two Costs Centres formed about 25% of her work. Helen Lecky, whose evidence we preferred, had analysed the work, and assessed that it formed approximately 13% of the work.

53. Helen Lecky informed the claimant of the Group Finance Manager – P&P post and that it would manage the accounts payable aspects of work as well as the carer payments team. Helen Lecky also discussed with the claimant that the role would be responsible for the IT and clinical Cost Centres which had previously been part of the claimant's work. The claimant was therefore aware of the nature of the role and its various aspects. She said she was not interested in it, and she did not apply for it. In cross-examination the claimant confirmed she was not interested in the role, and she said to Helen Lecky that she did not think that the role sounded like it suited her. The claimant was happy to return to the role of Group Finance Manager – S&R. Helen Lecky in evidence said that Jacqui Wood was interested in the Group Finance Manager – P&P role. The role was advertised on 2 February 2022. The claimant did not ask for the job description and did not apply.
54. The Tribunal accept that the claimant was not sent the job description and Jacqui Wood was appointed to the Group Finance Manager – P&P role. However, to succeed in a claim of discrimination because she had taken maternity leave or harassment related to her sex, the claimant would have to establish that the decision maker was influenced by her having taken maternity leave or for reasons related to her sex. Although Jacqui Wood had been maternity cover for the claimant, for reasons discussed below we are not satisfied that the legal causation test has been established.

Forced to take annual leave to delay return to work and comment by HL on 31/01/22. (allegations 14, 15 and 16)

55. There was some confusion in respect of the claimant's return to work from maternity leave date. Prior to her taking maternity leave, HR had confirmed to her that her last day of additional maternity leave would be 5 February 2021, that is with the return date of 7 February 2022. The claimant had indicated to Helen Lecky that she was looking for the flexible working request that she had made on 15 December 2021 to apply from her return to work which she thought would be 1 February 2022. Helen Lecky asked the claimant at the meeting whether she wished to use some of her accrued holiday at the end of her maternity leave period and the claimant said this would be dependent on how much leave she had accrued. Helen Lecky was to provide that information to her.
56. On 18 January 2022 the claimant still had not received the notification of the outstanding holiday that she had. She needed that information to finalise her return-to-work date and therefore Helen Lecky understood that it was the claimant's intention to use some of her accrued leave to delay her actual return to work date. Once she had obtained the information, Helen Lecky sent it to the claimant and requested that she inform Helen Lecky what date she planned to return. On 31 January 2022 the claimant informed Helen Lecky that she intended to return the next day that is 1 February 2022 (page 236). The claimant indicated she would return to work for two days before taking a day's leave.

Helen Lecky was surprised by this as she had thought the claimant was intending to use some of her leave and to return at a date later in February.

57. Helen Lecky telephoned the claimant to discuss her return-to-work date as she was surprised the claimant was suggesting her return would be the next day. She explained that the proposed return of the following day would mean that neither she nor Jacqui Wood would be available to provide a handover. Helen Lecky therefore suggested that it might be sensible for the claimant to take some holiday and return to work the following Monday instead, that is on 7 February 2022. Helen Lecky said she was not trying to be awkward and was pleased that the claimant was coming back sooner than she had anticipated. Helen Lecky's evidence was that she thought it sensible for the claimant to return to work at a time when she could welcome her into the office properly and handle the handover from the maternity cover to the claimant in good order. The claimant agreed to defer her start date to the following week, that is commencing 7 February 2022.
58. As to the comments "I wouldn't know what to do with you" and "no-one will be in the office", the Tribunal do not find that the former comment was made, or was made using those words and that the latter comment was neutral. We do not find it reasonable that these words, objectively evaluated, would have the proscribed effect alleged by the claimant for the purposes of section 26 (harassment).
59. The Tribunal found that it was a mutually agreed proposal that the claimant return to work on 7 February 2022 and was not an insistence on the part of Helen Lecky: it was not unfavourable treatment. It was for good operational reasons that the suggestion was made. Had the claimant been insistent in respect of returning to work on 1 February 2022, she could have done so. As part of the grievance outcome, the claimant was credited with two days' holiday that she had used to defer her return-to-work date to 7 February. We do not find that this was unwanted conduct for the purposes of section 26 harassment or that it would be, objectively, reasonable for the conduct to have the proscribed effect.

Claimant's return to work and treatment from 07/02/2022 to 01/03/2022. (allegations 17, 18, 19, 20, 21, 22, 23, 24 and 25)

60. The treatment complained of included a meeting on 9/02/2022; being allegedly ignored by Helen Lecky on 14/02/2022 during a meeting and in a conversation regarding Valentines Day on the same day; scheduling a meeting on 14/02/2022 at a time when the claimant would be picking up her son from school; reallocation of duties which were of a lower level; dilution of the claimant's responsibilities by awarding them to Jacqui Wood to retain her; retention of Jacqui Wood; and not being allocated work the claimant had been undertaking prior to her maternity leave including work for a new organisation (WP Associates Ltd.).

61. As to allegations of Helen Lecky having been rude to the claimant, the Tribunal found that the evidence was not persuasive. In particular the allegation that the claimant makes in respect of Helen Lecky being offensive because she was implying that processes and reporting of accounts were better during the claimant's maternity leave than they were when she was present were not made out. We accepted Helen Lecky's explanation that new processes and systems had been put in place which resulted in reconciliation processes being "slicker". This was work which had commenced before the claimant took her maternity leave and was independent of the fact that the claimant was on maternity leave. The Tribunal accept that this was not meant as a comment as to the performance of the claimant personally or harassment related to the claimant's sex.
62. The claimant's roles and responsibilities included business partnering and accounting for her pre-existing Cost Centres and running month end which remained unchanged for a major part of the role. The claimant's workload was not at a lower level when she returned to work. The claimant's complaint that she was being required to undertake more administrative tasks was a matter that was identified before she took her maternity leave, and the upshot was that the respondent decided that additional cover for systems work, and ad hoc support was needed. Helen Lecky recruited a Finance Systems Administrator who started just after the claimant went on her maternity leave, but she moved to another role before the claimant returned from maternity leave. When that vacancy arose Helen Lecky decided to have a more experienced Capital Accountant to work specifically on property timesheets and who would report to the claimant. The respondent was planning to recruit for that role when the claimant returned from maternity leave
63. When the claimant returned to work on 7 February 2022 Helen Lecky was conducting interviews during the course of the morning. However, she ensured that Jacqui Wood was available to provide a hand over to the claimant and Helen Lecky ensured a full meeting was diarised for Wednesday which was the claimant's next working day, Wednesday 9 February, to catch up and make sure she was being supported in her return to work. No concerns were raised by the claimant on 9 February 2022.
64. The claimant complains of a number of what she describes as negative acts by Helen Lecky. She alleges that she was ignored by Helen Lecky on 14 February 2022 and cold shouldered in respect of a conversation about Valentine's Day. Further, on the same date, the claimant says that a meeting was scheduled which was for 2:30 pm which was a time which fell within the claimant's agreed lunch hour when she was scheduled to pick up her son from school. Helen Lecky told us that she had mistakenly scheduled the meeting on the Friday before 14 February and had simply overlooked the significance of the day of the week and the time of the meeting. Basically, she had forgotten it was an anchor day when the claimant would be leaving the office to go and pick up her son at 2:15pm and therefore the 2:30pm time clashed with that arrangement. We accept the evidence of Helen Lecky that it was a simple error, and it was not as the claimant was suggesting an attempt to derail the claimant's return to work arrangements. It was open to the claimant to decline the meeting request

and/or to contact Helen Lecky to arrange a different time. The meeting in all probability would simply have been rescheduled.

65. The claimant attended the meeting on 14 February 2022. The allegation by the claimant that Helen Lecky ignored her is not accepted by the Tribunal. Helen Lecky said in evidence that it was her purpose to have both Jacqui Wood and the claimant present at the same time to ensure that they were together when matters were discussed.
66. The claimant experienced some childcare issues shortly after her return to work and took holiday at short notice within the first three weeks in order to deal with this. There were no issues in respect of those requests, and we formed the view that Helen Lecky was in fact supportive of the claimant on her return.
67. The allegation that Helen Lecky blanked the claimant during a conversation about Valentine's Day plans is not made out on the evidence. Helen Lecky did not recall the conversation. The Tribunal determined that on the balance of probabilities the claimant, as a result of the appointment for the meeting being put in at 2:30 pm on a day when she needed to pick up her son, she was somewhat sensitive in respect of how she perceived she was being treated. Her description in her statement of the discussion taking place about Valentine's Day did not amount in our view to her being deliberately snubbed. It seems that on the claimant's case there was a conversation taking place with Jacqui Wood and Vicky Bull being present as well as the claimant and Helen Lecky. The claimant describes it as Helen Lecky making no effort to include her in the conversation or any conversation for that matter. The conversation recorded by the claimant in her statement was simply a question of the group by Helen Lecky as to whether any of them had received any flowers as it was Valentine's Day. It was not in the Tribunal's view sufficient evidence to show that the claimant was being deliberately snubbed as the question was one which appears to have been directed generally towards the people present in the room.
68. As to changing the claimant's responsibilities and reports, the Tribunal found that these arrangements had been discussed with the claimant prior to her return to work. The creation of the Group Finance Manager – P&P, resulted in two of the claimant's twelve Cost Centres being transferred to the Finance Manager – P&P role. The claimant's role was wider than responsibility for Costs Centres and she had responsibility for ad hoc projects, inter-company reconciliations, fixed assets registers, statutory accounts, management accounts, etc. The Tribunal on the evidence provided accepted that the IT and Clinical Cost Centres were in the region of 13% of the claimant's role at the time she commenced her maternity leave.
69. While the claimant was on maternity leave, the respondent had acquired WP Associates which was a company which had the potential to impact on the Clinical Cost Centre work. A new Costs Centre (Resourcing) therefore had been added. The creation of the new role of Group Finance Manager – P&P was an opportunity to ensure a sustainable capacity for the Costs Centres to provide an improved service and to ensure that the deadlines for month end

reporting of could still be met given the increasing responsibilities that the Finance Management Group were encountering.

70. The respondent was going through significant growth at this time, and we were told that was at the rate of about 10% per annum. It was understood that that was probably 10% turnover although it was not made explicit. A number of Finance Managers covered Costs Centres and operational sites in the area for which they were responsible. As the respondent grew, changes were introduced in terms of the responsibilities of various managers in order to ensure equitable distribution. The claimant accepted this in cross-examination. The Tribunal accepted that the IT & Clinical Costs Centres were probably the least attractive of the Cost Centres roles as they had no Board Executive Partner and were transactional in nature. The Clinical Cost Centre had an unknown future in terms of its development. In any case Helen Lecky discussed this with the claimant in a phone call on 19 January 2022 and told her of the intention to transfer the IT and Clinical Cost Centres to the new role. The claimant did not raise an issue about that and said subsequently in the grievance process in the spring of 2022 that she understood what was taking place and that she was not concerned about it. Helen Lecky had reasonably been entitled to understand from 19 January 2022 that the claimant had no issues with what was being proposed.
71. The Tribunal were aware that in any event the claimant's colleague Vicky Bull was similarly going through a change in her responsibilities as a result of the developments, in particular the creation of the Group Finance Manager – P&P role. Miss Connolly invited us to consider the position of Vicky Bull in this respect in order to determine whether or not the changes which were introduced were in fact due to the claimant being on maternity leave. We are persuaded that the changes in Vicky Bull's role, on the balance of probabilities, indicate that in fact there was a wider business need for the changes and those were unconnected with the claimant's maternity leave. The Tribunal rejected the claimant's suggestion that there was a conspiracy or, at the very least, an improper plan to retain Jacqui Wood. We rejected the contention that the retention of Jacqui Wood was because of the claimant having taken maternity leave or related to her sex, and thus we reject that this was an act of unlawful discrimination.
72. As a general observation the Tribunal formed the view that the claimant was somewhat sensitive to changes on her return to work. Given that she worked for 7 working days until she took sick leave from which she never returned before her dismissal, we were of the opinion she had developed a negative view of the respondent and, in particular, Helen Lecky. This was based on the fact that we believe the claimant was disappointed in her working time not being increased to full time hours and/or her arrangements on anchor days not being to her liking, having been asked to return to the office after picking up her son from school.
73. For these reasons we are of the view that the claimant's claims of unlawful discrimination are not made out as the causation was not on prohibited grounds,

that is, because of her having taken maternity leave or related to her sex for the purposes of harassment as the case may be.

Failure to contact the claimant during her sickness absence to check on her health. (allegation 26)

74. The claimant commenced her sick leave on 1 March 2022 and in her evidence, she said that it was because of the treatment that she had received from Helen Lecky in respect of her return from maternity leave. Helen Lecky did not contact the claimant either by phone calls or text messages to check on how she was faring during her sick leave. However, the claimant was allocated a Welfare Officer, and the HR team tasked Alison Bennett with maintaining contact. Helen Lecky said in evidence that she did not contact the claimant because she had been told by HR that the claimant did not wish to speak to her. On the balance of probabilities and given the claimant's apparent adversity to Helen Lecky, the Tribunal decided that the claimant did not wish to have contact with Helen Lecky as she believed Helen Lecky was favouritising Jacqui Wood. In comparison to her treatment, the claimant relies upon evidence in respect of Helen Lecky's treatment of Jessica Keane when Jessica Keane was upset on 21 May 2021 and Helen Lecky attempted to contact her and texted her to ask how she was. The claimant relies on that evidence as supporting her contention that she was not contacted by Helen Lecky as an act of harassment related to her sex.
75. The Tribunal does not accept there was an alleged failure by Helen Lecky. Nor was it related to the claimant's sex or that it was reasonable for her to take the view that a proscribed working environment had been created for the purposes of section 26 unlawful harassment.
76. Shortly after commencing her sick leave, the claimant lodged a grievance on 16 March 2022, and she relies on the raising of the grievance as a protected act in respect of her victimisation claim.

Failures in handling of claimant's grievance (allegation 27)

77. The grievance was set out at pages 261-273 of the bundle. Jo Denye held a grievance meeting with the claimant on 6 April 2022 (pages 281-314). The claimant was supported by her trade union representative. The grievance outcome was provided on 4 May 2022 (pages 403-407) and the claimant lodged an appeal against the grievance outcome on 10 May 2022 (pages 408-419). A meeting to hear the appeal was held on 8 June 2022, reconvened on 15 June 2022 and the outcome given on 24 June 2022 (pages 648-653). The manager hearing the appeal was Craig Ribbons, Regional Director. Again, the claimant was represented by her trade union.
78. The claimant dealt with her complaint in respect of the grievance at paragraphs 148-151 of her statement. The claimant alleges that the respondent lacked impartiality in handling her grievance. She formed the view that the statement from Jo Denye, the Manager appointed to be the Grievance Officer, indicated that there was collaboration in the grievance. The claimant says that on 25 April 2022 Jo Denye contacted Helen Lecky and said, "we are nearly there with

it now” and from this the claimant inferred that the investigation was collaborative, and that Jo Denye was siding with Helen Lecky. For this reason, she alleges there was bias in the grievance process. From the statement on 25 April 2022 (page 351), the Tribunal found Jo Denye (who held the position of Marketing Director) was simply asking Helen Lecky for further information in respect of two complaints that the claimant had raised, the first being duty of care – June 2020-January 2021, and the second being sex/maternity discrimination in December 2021 regarding the full-time hours request. Jo Denye closed the email with “thanks for your ongoing support on this, we are nearly there with it now.” The Tribunal could not infer that this disclosed collaboration or bias on the part of Jo Denye and was simply a request for further information so that she could deal with two matters raised by the claimant in her grievance.

79. The claimant also raised an email from Jo Denye to Helen Lecky dated 13 April 2022 at page 328 as evidence of bias towards Helen Lecky. The Tribunal found that, without more, the words “I wouldn’t worry too much about the KIT days they are not at all mandatory and it’s not the responsibility of the line manager alone to arrange or grant them” could not bear the inference that Jo Denye was biased against the claimant.
80. Similarly, the words “Great to see you today at the townhall, I hope you’re well” on 25 April 2022 (page 353) did not indicate bias or collusion.
81. The Tribunal has heard limited evidence in regard to this allegation. The claimant alleges that the handling of the grievance constituted harassment contrary to section 26 of the EqA 2010. She relied upon what she perceived to be a lack of impartiality or bias and/or collaborative approach as the foundation of her complaint that the handling of the grievance was an act of harassment.
82. As set out in our findings above, the Tribunal did not find that the complaints that the claimant makes about the handling of the grievance in respect of lack of impartiality or bias are made out on the facts. Given that the claimant must establish that the alleged proscribed conduct was related to her sex, we cannot find in this regard that the allegation in respect of the grievance as an act of harassment related to her sex. Her claim that it was is therefore dismissed.

Restructuring commenced 16 May 2022 - failure to offer Head of Revenue or Senior Management Accountant role. (allegation 28)

83. The claimant alleges that this is an act of discrimination contrary to section 18 maternity leave or section 27 victimisation.
84. The respondent accepts that the raising of the grievance is a protected act for the purposes of section 27. By the time of these events the claimant had entered into early conciliation on 12 April 2022. The respondent does not accept that that act of entering into early conciliation constitutes a protected act. The rationale for this is that it was not clear whether the early conciliation related to a complaint of discrimination. However, we find on the evidence that the alleged

discriminators, Helen Lecky and/or Melissa O'Brien, were unaware of the ACAS early conciliation notification in any event. The upshot is, therefore, that the alleged victimisation must arise in consequence of her raising her grievance in mid-March 2022.

85. The respondent asserts that its plans to overhaul its finance function was to ensure that the activities were in line with the increased size of the business. The Tribunal were provided with the new structure and the rationale for it at pages 366-377. There was consultation regarding the proposal given by Mr Janet on 16 May 2022. The claimant was contacted in advance to inform her that there was an important announcement and to ask her if she wished to attend or organise a 1-1 with Helen Lecky to be briefed afterwards. The claimant asked if she could be sent a recording of the announcement, and this was done the following day, that is on 17 May 2022.
86. On 20 May 2022, the claimant was sent a letter formally confirming the commencement of a consultation period and telling her that her role was at risk of redundancy (page 422). In the covering email which accompanied the letter was assurance from HR that the respondent believed that there was suitable alternative employment for her and their hope that she would be retained within the new structure.
87. HR made attempts to arrange 1-1 consultation with the claimant to be held with Helen Lecky. However, the claimant requested that the respondent forward to her the recommendation and as a result HR requested Helen Lecky to put together the script that she would have shared with the claimant had they met. This was provided at pages 717-718, together with the relevant job descriptions at pages 435, 378-400.
88. A total of 8 vacancies were provided on 24 May 2022. HR had confirmed to the claimant that the senior roles would attract additional salary of £5,000 pa. The claimant asked that the roles for the highest salary would be her first and second preferences due to the responsibilities required. There was no clearly defined list provided to the claimant to aid her decision-making and she was confused about the process.
89. All employees were asked to indicate their first and second choices for the roles available in the proposed new structure. Where preferences were considered to be directly comparable to existing roles, there was a skills match exercise undertaken and as far as possible employees were assigned to their first or second choices. Where the employee's preference was not comparable to their existing role, for example, because it was more senior, a skills and experience assessment along with an interview was conducted. The claimant was informed of that process by HR.
90. The claimant indicated her first choices were the role of Senior Management Accountant for which she was required to interview. HR considered whether it was possible to conduct selection by way of a skills audit as the claimant requested but concluded that they could not do so. The claimant agreed to

participate in an interview with a number of adjustments in place, including the respondent sending to her interview questions prior to the interview.

91. Melissa O'Brien supported Helen Lecky in interviewing Jacqui Wood and the claimant for the post of Senior Management Accountant and they kept their own record of scores for each candidate. The scores were reviewed at the end and both of the interviewers scored Jacqui Wood more highly. Jacqui Wood was selected for the post as she was found to be the most suitable candidate. The claimant in cross-examination accepted that she had not interviewed well for this post.
92. The claimant received no further update with regard to her second preference of Head of Revenue, and the claimant says that the respondent resorted immediately to offering her what she perceived to be a demoted position of Management Accountant. A meeting was held on 13 June 2022 with the claimant, Helen Lecky, and Melissa O'Brien in attendance (pages 630-639). This was held by Teams and during the call the claimant was told by Melissa O'Brien that the Management Accountant role was considered a good skill set match with her present role and that she could develop from that role by gaining exposure to other areas and thereby progress. During the meeting the claimant asked about her second preference which was the Head of Revenue position and was told by Helen Lecky that "there was one person that applied for that, who was the Senior Finance Manager, so he was already at a higher level, which is why we did not invite you to put in an interview for that role." Helen Lecky said that that person could be auto matched into the role from his current role of Senior Finance Manager which was an inaccuracy: she had meant that he was a skills and experience match which qualified him for an interview.
93. The claimant did not question Helen Lecky about this role of Senior Finance Manager. The claimant discovered later that a promotion had taken place in March 2021 whilst she was on maternity leave. The claimant challenged that the post holder was in fact in a senior position since her contention was that she was senior as there were no layers of management between herself and Helen Lecky who was Director of Financial Controls and no other Finance Manager, other than Jacqui Wood, reported into a Director. Helen Lecky reported to the Chief Financial Officer. The claimant was therefore surprised to learn that the post holder in the role of Senior Finance Manager was senior to her.
94. The claimant was disappointed not to have been offered the opportunity of interviewing for the post of Head of Revenue. The claimant pointed out that on 31 May 2022 HR had written to her and said, "an interview would also be required for the Head of Revenue post as again this is not a directly comparable role." (page 477). From this the claimant inferred that Helen Lecky had an agenda of demoting her.
95. Helen Lecky told the Tribunal that in her view the Head of Revenue role was at least a Senior Management role having performed a skills matching exercise. From that exercise she decided that the holder of the post of Senior Finance Manager was in a comparable role to the Head of Revenue post. The Tribunal

finds that this was the reason why he was appointed and not the claimant. He was a closer match and operated at a more senior role to that of the claimant.

96. At the meeting on 13 June 2022 Helen Lecky also told the claimant that she would put a development plan in place to help the claimant develop and realise her ambitions. Helen Lecky told the claimant that she saw no reason why the claimant could not move up to the Senior Management Accountant role from the role that she was currently being offered.
97. The claimant was offered the role of Management Accountant on the same terms and conditions as her Group Finance Manager role. Helen Lecky was willing to appoint the claimant to that role either full time or part time whichever the claimant preferred. Given that the claimant says that she was discriminated against by being refused the offer of coming back to work on full time hours in her former role of Group Finance Manager, we find that Helen Lecky had in no way discriminated against the claimant in making the said offer and was willing to offer full-time hours if possible.
98. The claimant was not offered a more senior role because candidates who were better qualified than her were appointed. Jacqui Wood was offered the post of Senior Management Accountant following an interview in which she had performed better than the claimant. It was not because of the claimant having taken maternity leave nor because of her doing protected acts.
99. The claimant contends that there was collusion between Helen Lecky, Mr Janet, and individuals in the respondent's HR department. The Tribunal found that the various acts the claimant relies upon neither individually nor viewed overall constituted collusion in the way that she sets out in her statement. The Tribunal accepts that the reorganisation resulted in all Group Finance Manager roles ceasing to exist and this was the result of alterations in how the Finance Department was to work which the respondent was pursuing.
100. The idea of reorganising the respondent's finance arrangements was discussed in January 2022, but there was no predetermination that Jacqui Wood would be appointed to the role of Senior Management Accountant nor was the role or job title "Management Accountant" used to ensure that Jacqui Wood was appointed in view of her previous experience. In any event, this act if it is framed as an act of victimisation pre-dated the claimant's protected act of raising her grievance on 16 March 2022.
101. In respect of the role which she was offered and refused, that is Management Accountant, we find that Helen Lecky was willing to appoint the claimant to that role either full time or part time whichever the claimant preferred. Given that the claimant says that she was discriminated against by being refused the offer of coming back to work on full time hours in her former role of Group Finance

Manager, we find that Helen Lecky had in no way discriminated against the claimant in making the said offer.

Offer of a post reporting to Jacqui Wood which was an alleged demotion. (allegation 29)

102. The claimant alleged that this was an act of unlawful victimisation.
103. On 10 June 2022 the claimant was offered the post of Management Accountant – Education and Care which would have reported to the Senior Management Accountant post holder. The claimant by this stage was disillusioned. Her case was that the interview process for the Senior Management Accountant role was a farce. She alleges that the post offered represented demotion for her. She believed there was collusion/conspiracy in attempting to get Jacqui Wood into the Senior Management Accountant role. The claimant, in her statement, took umbrage that she was not given the chance to interview for the Head of Revenue position.
104. The claimant was offered the Management Accountant – Education and Care role because it closely matched her skills and experience. The claimant would have retained the same pay and conditions and the evidence indicated that she would be working at about the same level of seniority and demands as she had prior to the reorganisation. It was a suitable role for her in the redesigned structure.
105. The claimant was not subjected to victimisation, that is detriment because she had made a protected act. The Tribunal examined the causative link between the protected act and the alleged less than favourable treatment and concluded that there was a bona fide reorganisation taking place. The decision to offer the claimant the post of Management Accountant was not motivated either wholly or in part because of the fact that she had made the alleged protected acts.
106. The claimant did not identify any other role to which she should have been appointed (other than the two senior posts discussed above). We can understand that the claimant was disappointed not to have been appointed to a more senior role, but we cannot find that it was a detriment because she had raised her grievance. (We do not accept that the later act on 12 April 2022 has been proven by the claimant to be a protected act). There is no credible evidence to support the claimant's allegation that she had been subjected to unlawful discrimination in this regard.

Misleading email on 16 June 2022 stating claimant had accepted alternative role. (allegation 30)

107. This is a complaint of harassment relating to an email to employees which was provided at page 642 and showed the claimant as having been appointed to the Management Accountant role. The claimant had not accepted that role and was offended to find that an email was sent out stating that she was taking up the post. The claimant considered the role of Management Accountant was a

demotion for her as she would be reporting to Jacqui Wood, her maternity cover, which she found humiliating, offensive, and degrading. The claimant raised her concerns in respect of the email on 27 July 2022 (page 660).

108. The respondent's position was there was a need to communicate with the wider team to end uncertainty and to provide clarity as to the structure which was to be put in place following the reorganisation.
109. Helen Lecky in evidence said that it became imperative to inform employees of the reorganisation outcome to end uncertainty. She decided therefore that as she had not heard from the claimant by the afternoon of 16 June 2022, she should notify employees of the end of the consultation process and its outcome. She included confirmation of the role that the claimant had been matched to and forwarded it to her to keep her in the loop. It was not until 27 July 2022 that the claimant confirmed in writing that she did not wish to accept the role of Management Accountant and the reasons why she did not consider it suitable alternative employment (659-600).
110. The Tribunal do not accept that there is the basis of a claim that the email was related to the claimant's sex and the Tribunal views the email as being neutral in that it identifies the role that the respondent had determined was suitable for the claimant. The claimant had not communicated her decision in respect of the role at that point and the Tribunal form the view that in the circumstances the email does not amount to, objectively speaking, humiliating conduct.
111. The Tribunal accepted that had the respondent not included the claimant then this would have been a more serious omission. It was not fair to the wider group of employees not to communicate the outcome of the reorganisation. The claimant's feelings of being demoted we find were based on what she perceived as being work being taken from her, and the fact that she would be reporting to her maternity leave cover.
112. The evidence did not support a finding that the email was related to the claimant's sex. Even if it were, objectively judged, it is not credible to find that it was an act which created a proscribed environment for the claimant.

Time limits and extension of time

113. The Tribunal deal with this matter for the sake of completion
114. The claimant entered into ACAS Early Conciliation on 12 April 2022 so that acts complained of arising on or before 12 January 2022 are, on face, out of time. The claimant's statement did not explicitly deal with the basis for an extension of time. The Tribunal was aware that the claimant was off sick from work with a stress related illness from 1 March 2022 but was in a position to raise her grievance on 16 March 2022. There was little evidence to explain why she was unable to enter into Early Conciliation prior to 12 April 2022 or to support an extension of time for any acts prior to 13 January 2022.

115. The Tribunal finds that there were no acts which together formed conduct extending over a period. We find that there were separate acts which were not connected, but they do not amount to a course of conduct extending over a period.
116. In respect of determining whether a just and equitable discretion afforded to the Tribunal should be exercised in the claimant's favour, the burden being on the claimant to provide evidence whereby that discretion can be exercised, we find that there is no such evidence to support the exercise of our discretion in respect of allowing the claims to be within time. The claimant was supported by her trade union, and we find that she, in accordance with the balance of probabilities, had access to advice to assist her in the presentation of a claim in time had she wished. The exercise of discretion is an exception rather than the rule and we decline to do so. In any event, as we did not find there had been acts of discrimination, the Tribunal did not need to consider the issues of time limits but have done so for the sake of completeness.

Dismissal of claimant on grounds of redundancy. (allegation 31)

117. The Tribunal accept that the reorganisation the respondent undertook was genuine and the redundancies which flowed from it were also genuine. We reject any contention that the dismissal was an act of victimisation, that is it was because the claimant had raised her grievance on 16 March 2022.
118. The claimant's complaint of unfair dismissal centres upon her assertion that she had not been offered suitable alternative employment. In respect of the provisions under section 98(4) ERA, the range of reasonable responses is the correct legal test to be applied. The Tribunal accept that the approach taken by the respondent in filling the vacancies created by the reorganisation, that is by interviewing candidates, was within the range of reasonable responses given that the roles were generally new roles in a new structure, which differed to some degree from the candidates' previous roles. The Tribunal therefore find that the selection process adopted by the respondent fell within the range of reasonable responses.
119. The claimant was offered alternative employment. The refusal of alternative employment brought her employment to an end. She did not identify a post which she said was suitable alternative employment which she should have been appointed to other than the posts which have been discussed above. We have made our findings in respect of those posts and find that the respondent dealt with those vacancies and the filling of them fairly and reasonably. Therefore, the claimant was fairly selected for redundancy and her employment was due to come to an end on 31 August 2022.
120. In the interim the claimant had found new employment with a different employer. On 18 August 2022 she asked the respondent for her employment to be terminated with immediate effect. The respondent confirmed that it would release her from her notice period and the effective date of termination was therefore 19 August 2022.

121. On 19 August 2022 the claimant was offered new employment with a new employer, and she commenced that employment on 30 August 2022. The Tribunal find that she was not unfairly dismissed and her claim for unfair dismissal fails. Given the claimant's notice was shortened by agreement, her wrongful dismissal claim also fails.

Relevant Law

Equality Act 2010

Maternity discrimination contrary to section 18 EqA 2010

122. The claimant's complaints in respect of maternity discrimination engages section 18 (3) and (4) EqA 2010 as they are complaints that she was treated unfavourably during her maternity leave. Sections 18(3) and (4) state:

“(3) A person A discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

(4) person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.”

123. Section 18(7) provides that:

“Section 13 [direct discrimination], so far as relating to sex discrimination, does not apply to treatment of a woman in so far as –

- (a) [pregnancy discrimination], or
- (b) it is for a reason mentioned in subsection (3) or (4).”

124. Section 18(7) only excludes from section 13 unfavourable treatment which falls within section 18. Thus, where there is unfavourable treatment which falls within subsection 18(3) or (4), section 13 cannot also be relied upon. If the treatment is not within section 18, section 13 may apply.

125. Section 39(2)(d) prohibits discrimination by an employer against an employee by subjecting them to any other detriment not listed in section 39(2)(a)- (c).

126. There is no requirement for a comparison in cases of maternity discrimination as the requirement is only for unfavourable treatment.

127. In deciding what was the cause of the detriment, the Tribunal must ask what was the effective cause, or the real and efficient cause of the act complained of? It is the thought processes of the decision maker which are to be considered in determining the cause and where the unfavourable treatment is not inherently discriminatory, it will be on the prohibited ground if the fact that the claimant was on or had taken maternity leave had a significant influence (conscious or subconscious) on the mind or mental processes of the decision maker. Ms

Connolly cited the House of Lords case of **Nagarajan v London Regional Transport** [1999] IRLR 572 in support of this proposition.

128. Ms. Connolly also submitted that the ultimate question for the Tribunal is the reason why any act or failure to act occurred. She relied upon **Amnesty International v Ahmed** [2009] ICR 1450 at paragraph 37 for the proposition that the test of whether an act or omission is because of pregnancy or maternity leave is not a but for test. She also relied on the Court of Appeal decision in **Chief Constable of Greater Manchester v Bailey** [2017] EWCA Civ 425 which emphasised that a “but for” causative link does not mean that the act complained of was “because of” the protected characteristic in the relevant sense.

Indirect discrimination contrary to section 19 EqA 2010.

129. Section 19(1) EqA 2010 provides that:

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

130. Section 19(2) sets out four elements of an indirect discrimination complaint:

“(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if –

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

131. The following principles apply:

- (a) In applying the burden of proof in indirect discrimination cases, the claimant would have to prove facts from which the Tribunal could conclude that discrimination may have occurred in the following respects:
 - (i) There was a provision, criterion, or practice (PCP) which was applied generally;
 - (ii) That it disadvantaged those sharing the claimant’s protected characteristic in comparison to a comparator group who do not;

- (iii) There was a particular disadvantage to the claimant; and
- (iv) Which gave rise to a detriment to the claimant.

Only then is the respondent required to justify the PCP

132. Ms. Connolly made submissions in respect of group disadvantage and child-care responsibility and referred the Tribunal to **Dobson v North Cumbria Integrated Care NHS Foundation Trust** [2021] ICR 1699, EAT. From this case the following can be established:
- (1) Judicial notice can be taken of the fact that women are more likely to bear the greater burden of childcare responsibilities than men;
 - (2) Taking judicial notice of that disparity in childcare responsibility does not necessarily mean that a group disadvantage is made out. That will depend on the interrelationship between the general position that is the result of the childcare disparity and the particular PCP in question. While a requirement to work particular hours such as nights or changeable hours at the behest of the employer may mean women are more likely to find it difficult to comply than men, other arrangements might not necessarily be so, and it would be open to the Tribunal to find group disadvantage is not made out.
133. The Tribunal was also referred to the case of **Sinclair Roche & Temperley and ors v Heard** [2004] IRLR 763, EAT where it was held that such a generalisation may not apply to male and female solicitors or men and women working in high-powered roles in the City, for example. She also referred to **Hacking and Paterson v Wilson** EATS 0054/09 for the proposition that it is a matter of choice for some women and increasing numbers of men and women seek flexible working arrangements for a range of reasons (more than one job, work/life balance, educational interests).
134. As for a “legitimate aim”, Ms Connolly referred to the EHRC Employment Code which advises at 4.28 that for an aim to be legitimate it must be “legal, should not be discriminatory in itself, and it must represent a real, objective consideration”.
135. In respect of a proportionate means of achieving a legitimate aim, Ms. Connolly referred to paragraphs 4.30 to 4.32 of the EHRC Code which sets out that there is a balancing exercise between the discriminatory effect of the treatment as against the reasons for applying it.
136. As for objective justification, Ms. Connolly referred to the Supreme Court case of **Chief Constable of West Yorkshire Police v Homer** [2012] IRLR 590 and the Court of Appeal case of **Hardy & Hansons plc v Lax** [2005] ICR 1566 which together established the following:

- (1) The first task is to identify the respondent's aims and determine whether they are legitimate (a question of fact). A legitimate aim can encompass a real need on the part of a business (**Homer**).
- (2) The second issue is whether a particular measure or the treatment complained of is capable of achieving the aims (**Homer**).
- (3) The final issue is whether the measure or treatment of the claimant is 'reasonably' necessary to achieve those aims. This requires the Tribunal to balance the discriminatory effect against the aims being pursued (**Homer**).
- (4) This is an objective assessment by the Tribunal and is not an assessment of the reasonableness of the respondent's decision-making at the time (**Homer**).
- (5) The respondent does not have to show that there are no other means of achieving their aims. They simply have to show that the means used are objectively justified notwithstanding their discriminatory effect (**Hardy & Hansons**).

Harassment contrary to section 26 EqA 2010

137. Section 26 EqA 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.
- (2) –
- (3) –
- (4) In deciding whether conduct has the effect referred to in subsection (1)(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.

138. The test is part objective and part subjective. The Tribunal must objectively evaluate the claimant's subjective perception to determine if it was reasonable for her to have considered her dignity to be violated or that it created an intimidating, hostile, degrading, humiliating, or offensive environment.
139. In the Court of Appeal case of **Grant v HM Land Registry** [2011] IRLR 748 it was held that:
- “Tribunals must not cheapen the significance of the words “intimidating, hostile, degrading, humiliating, or offensive environment”. They are important to control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”
140. In the case of **Richmond Pharmacology v Dhaliwal** [2009] IRLR 336, the EAT held:
- “We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”
141. Ms. Connolly in her submissions reminded the Tribunal that the provisions of section 26(5) meant that the protected characteristics of pregnancy or maternity are not protected characteristics for the purpose of harassment under section 26. It was understood that the claimant's harassment complaints related to her sex. Ms. Connolly made the suggestion that the Tribunal consider section 18 before or in parallel with the claims under section 26.

Victimisation contrary to section 27 EqA 2010

142. Section 27 EqA 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.”
143. The first matter is to identify whether the claimant has performed a protected act, or whether the respondent believed that she had done or may do so. It is then for the Tribunal to decide whether the respondent subjected the claimant to a detriment. If so, the question is whether that detriment was because the claimant had performed the protected act or the respondent believed that the claimant had done or may do so. In evaluating the latter question, the Tribunal must consider whether the protected act (or the relevant belief) had a material or significant influence on the detrimental treatment and in doing so, must apply the burden of proof. If the claimant proves facts from which the Tribunal could reasonably conclude that her protected act had a material influence on the detrimental treatment, the claimant would succeed unless the respondent can establish a non-discriminatory reason for that treatment. There is no need for a comparator.
144. In establishing the causative link between the protected act and the less favourable treatment, the Tribunal must understand why the employer acted in the way that is said to amount to victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as they did because of the protected act. It is enough if the unlawful motive was of sufficient weight in the decision-making process to be treated as a cause, not the sole cause, and it is not necessary to show that the discriminator was consciously prejudiced against the claimant because she had done a protected act (**O’Donoghue v Redcar & Cleveland Borough Council** [2001] IRLR 615).
145. Ms. Connolly in her submissions relied upon the same analysis of the mental processes of the decision makers as laid out above under section 18 maternity discrimination.
146. The claimant relied upon her grievance of 16 March 2022 and the entering into ACAS Early Conciliation on 12 April 2022 as protected acts and the respondent accepted that the grievance was a protected act but not the notification to ACAS for the purpose of early conciliation. The latter was not accepted to be a protected act as it was unclear whether it related to complaints of discrimination under the EqA. In any event, neither Ms. Lecky nor Ms. O’Brien were aware of the notification.

Burden of proof

147. Section 136 EqA 2010 in respect of the burden of proof provides as follows:
- “(1) This section applies to any proceedings relating to a contravention of this Act.

- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
 - (3) But subsection (2) does not apply if A shows that A did not contravene the provision.”
148. Guidance on operation of the burden of proof has been provided by the Court of Appeal in **Igen v Wong** [2005] IRLR 258 and in **Madarassy v Nomura International plc** [2007] IRLR 246. In short, the claimant must prove facts from which a Tribunal could, on the balance of probabilities and in the absence of an adequate explanation, conclude that the respondent had discriminated against her. If the claimant establishes such facts, then the respondent must prove that they did not commit the act because of a relevant protected characteristic. The Tribunal will need to consider the subjective reasons which caused the alleged discriminator to act as they did. If the claimant establishes the initial case, the respondent will have to show a non-discriminatory reason for the difference in treatment. The bare fact of a difference in status and a difference in treatment is insufficient, without more, to establish that the respondent had committed unlawful discrimination.
149. In her submissions, Ms. Connolly cited the case of **Hewage v Grampian Health Board** [2012] UKSC 37 in which the Supreme Court held that it is important not to make too much of the role of the burden of proof provisions. They have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.

Time limits – course of conduct

150. Section 123 EqA 2010 provides that the proceedings must be brought within three months of the act to which the complaint relates (subject to extensions of time for the ACAS Early Conciliation period to take place) or such other period as the Tribunal considers is just and equitable.
151. Conduct extending over a period is treated as done at the end of the period. A failure to do something is to be treated as occurring when the person in question decided on it.
152. In the case of **Hendricks v Metropolitan Police Comr** [2003] IRLR 96, EWCA, the Court of Appeal held that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for a claimant to establish the existence of some ‘policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken’. Rather what has to be proven by the claimant in order to establish ‘an act extending over a period’ is that (a) the incidents are linked to each other, and (b) that they are evidence of a ‘continuing discriminatory state of affairs.’ The focus of the enquiry should be on whether there was an ‘ongoing situation or continuing state of affairs’ as opposed to ‘a succession of unconnected or isolated specific acts’. It will be a relevant, but not a conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over

the period. An employer may be responsible for a state of affairs which involved a number of different individuals.

153. Ms. Connolly relied upon the case of **Greco v General Physics Ltd.** UAEAT/0114/16 (which in turn cited **Hendricks**) in support of the proposition that the relevant factors in determining whether there is a *prima facie* course of conduct extending over a period includes whether the same individuals are involved, whether the allegations concern the same subject matter, whether there is any connection alleged between the acts/omissions. Further, even if the acts are carried out by the same individual, that is not determinative of the issue as to whether they amount to a single course of conduct extending over a period.
154. A Tribunal has a discretion to extend time if it is just and equitable to do so, the onus being on the claimant to provide evidence that supports the Tribunal doing so, and ‘the exercise of discretion is the exception rather than the rule’ (**Robertson v Bexley Community Centre** [2003] IRLR 434, EWCA. In exercising its discretion, the Tribunal has to balance the prejudice to the claimant in being unable to pursue her claims, and the prejudice to the respondent in having to defend claims brought outside the time limit. Relevant factors include the length and reason for the delay, and this often involves considering the effect of delay on the cogency of the evidence. Other considerations will include promptness of the claimant acting once she knew of the facts giving rise to her claim, and whether she took steps taken to obtain advice.

Unfair dismissal

155. Section 98(1) and (2) of the Employment Rights Act 1996 (ERA) provides as follows:
- “(1) In determining for the purposes of this Part whether the dismissal is fair or unfair, it is for the employer to show –
- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it –
- ...
- (c) is that the employee was redundant.
156. Section 98(4) ERA provides as follows:

“Where the employer has fulfilled the requirement of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

(b) shall be determined in accordance with equity and the substantial merits of the case.”

157. It is for the employer to show the reason for dismissal and that it is a potentially fair one, such as redundancy: this is not a high threshold for a respondent.

158. For the reasons set out above we find that there was a redundancy situation caused by the reorganisation. This was a genuine redundancy situation. The respondent’s approach to filling the vacancies by skills matching where appropriate or interviewing where there was not such a match, we find that this was within the range of reasonable responses section 98(4) ERA. Given that the claimant had declined alternative employment, she was redundant, served with notice and was dismissed by reason of redundancy. We find the dismissal was fair.

Wrongful dismissal

159. The claimant alleges that her dismissal was wrongful in accordance with common law. She was given contractual notice to end her employment. She asked for the notice to be shortened and the respondent agreed to her request. Although she was dismissed, we find that there was an agreement as to the date that her employment would end and that being so, there is no basis on which to find for the claimant that she was wrongfully dismissed, and that claim is dismissed.

Discussion and Conclusions

160. The Tribunal has considered the allegations set out in Annex 2. The Tribunal has grouped them in accordance with the findings of fact set out above. The allegations have been carefully considered by the Tribunal. The following conclusions were reached on the balance of probabilities having considered the evidence before us and taking into account submissions made by both the claimant on her own behalf and Ms Connolly on behalf of the respondent.

Opportunities to apply for vacancies (allegations 1-5)

161. Complaints 1-4 were alleged to constitute harassment contrary to section 26 EqA 2010. Complaints 2-5 were also alleged maternity discrimination contrary to section 18.. The claimant’s case was that she was not notified of vacancies whilst on maternity leave for example the Senior Finance Manager – Education

in March 2021. This was advertised on or about 12 February 2021 and Simon Howard was appointed. Helen Lecky was not aware of the role, and it was not her responsibility to handle recruitment in any event. The Tribunal decided that good practice would indicate that the claimant should have been notified of relevant vacancies. Our view was that that was not an onerous step to take, particularly for an organisation of the size of the respondent and its resources which included sophisticated a HR department.

162. However, the claimant could access the weekly email list of vacancies which had been the primary mode of advertising vacancies up until the summer of 2021, and thereafter the engage portal was used and/or access the respondent's website where posts were advertised more generally. The evidence did not support finding that the respondent or Helen Lecky generally notified individuals of vacancies in any other way. The claimant accepted in her evidence that she could have accessed the vacancies advertised on the website when she was on maternity leave. The claimant was somewhat evasive in her oral evidence, for example, she would not accept that the respondent sent out vacancies by weekly email unless each and every email was produced to her. In this regard we prefer the evidence of Helen Lecky.
163. Having accepted that she could have accessed the advertisements for posts on the respondent's website, the claimant said in evidence that quite naturally she was very busy with 3 young children and did not access the website to look. We accept that she would have been busy with 3 young children, however, we do not make a finding that a failure to bring vacancies to her specific attention was related to her sex so as to found a claim of harassment. Nor do we find that it was unfavourable treatment contrary to section 18 because she was exercising or had exercised the right to ordinary or additional maternity leave. We find the reason why she was not informed of vacancies was that it was not the practice of the respondent to do so regardless of presence or absence from the workplace, or indeed the reason for the absence.
164. There were 3 vacancies that the claimant complained of in particular, 2 of which were not in Helen Lecky's department. The Head of Reporting/Finance Manager – Fostering Division was advertised prior to the claimant commencing maternity leave. It cannot, therefore, in the Tribunal's view have been a matter which breached section 18 since it pre-dated the claimant commencing maternity leave.
165. The claimant also complains of the respondent not identifying to her the vacancy of Finance Manager – Education. This was a vacancy which fell outside Helen Lecky's team. In any event, the claimant was, in fact, aware of this vacancy as Jessica Keane had told her of it by text message on 14 October 2021. She did not obtain details or engage or interrogate the respondent's website in order to apply for it. Given that particular post was on a fixed term contract and on a lower salary to that which she enjoyed, the Tribunal find that she would not have been interested in the post and the complaint is essentially without substance.

166. The third specific post which the claimant complains of not being informed about was that of Senior Finance Manager – Adult Care & Education, which was advertised in or about February 2021. Helen Lecky was not responsible for this post and just as in respect of any other vacancy, the claimant could have interrogated the respondent's website for vacancies and opportunities but did not do so.
167. As to ignoring her request to be informed of full-time or to support her in considering her for such roles, it is revealing that, in any event, the claimant was notified by Helen Lecky by telephone on 19 January 2022 in respect of the role of Group Finance Manager (Projects & Processes) which was a full time role.
168. Given that the claimant had access to the notification of vacancies either through emails up until the summer of 2021 and thereafter the engage portal, and the respondent's website, the Tribunal did not find that the claimant was subjected to unfavourable treatment whilst on maternity leave. She was not disadvantaged because she was on maternity leave. Nor do we find that it was related to her sex so as to find it was an act of harassment
169. The Tribunal finds that these allegations in respect of notification of vacancies during maternity leave are out of time. For the reasons set out above, the Tribunal are not persuaded that it would be just and equitable to extend time, nor do we find that there was a course of conduct, the end of which was in time and therefore, in any event, the Tribunal lacks jurisdiction in respect of these allegations.

Discretionary bonus payment (allegation 7)

170. The Tribunal found the evidence on this subject, particularly that given by Melissa O'Brien, as being muddled and confused. However, having found that to be so, the Tribunal noted that the Group Marketing Director, who had been on maternity for part of the financial year 1 September 2020 – 31 August 2021 was nevertheless paid the discretionary payment. Furthermore, there were a number of Finance Managers who did not receive it. We were informed that, in fact, only 15 out of a possible 69 people who could have been eligible for the payment did in fact receive it. The evidence was that the payment was to reward work done above and beyond during Covid which had exceeded expectations. We found it instructive that when the claimant gave evidence, she was not able to indicate any work that she had done in that financial year prior to going on maternity leave which would qualify for any particular merit or having gone above and beyond her duties.
171. The Tribunal were anxious to ascertain on what basis the claimant's maternity cover, Jacquie Wood, was given the payment. It was in respect of her having made financial savings and picking up new projects.
172. It emerged in evidence that the decision-maker for this act was Mr JL Janet. The claimant acknowledged in her evidence that Mr Janet was familiar with her

work and would have been in a position to evaluate whether or not she had done work which was above and beyond what was expected during the relevant period.

173. The Tribunal are satisfied that in the circumstances particularly as the claimant was not able to identify work or performance on her part which would have merited such a payment that the payment was not in contravention of the section 26 harassment or section 18 maternity related discrimination.

Flexible work request and work times (allegation 8)

174. The claimant relies upon this allegation as an act of harassment contrary to section 26 EqA 2010, alternatively, indirect sex discrimination contrary to section 19 EqA 2010.
175. To underpin her allegation that this was an act of harassment, the claimant said that Helen Lecky had been rude and cold towards her on 4 November 2021. The claimant did not explain in what way she says Helen Lecky was rude except that Helen Lecky referred to the needs of the business. The Tribunal found that the claimant had a very clear view that any refusal of her request to work flexible hours was because she had taken maternity leave and therefore contravened section 26 and/or section 19. The Tribunal found that the reason why the claimant was asked to return to the office after school pick up on Mondays and Thursdays was to promote effective team working and was not related to her sex.
176. In regard to section 19, the PCP which the claimant relies upon is that of attending the office on anchor days after 3:15 pm, that is, she would have been required to return to the office to be present until at least 4:30 pm having picked up her son from school and dropped him at home. The Tribunal accepts that this was potentially capable of constituting a PCP.
177. However, there was no evidence before the Tribunal upon which it could decide whether group disadvantage was established, that is, there was no evidence before us to determine the number of flexible working requests or the sex of those who made them in order to establish the rule to test the PCP. .Nor was there, given the nature of the PCP and its narrow scope which was the requirement to return to the office rather than to work from home, evidence that because of women's traditional burden of childcare responsibility more women than men were disadvantaged. For example, the claimant's husband we heard was working from home and it was suggested at one stage that he would take over childcare responsibilities once the claimant had brought her eldest child home. The difficulty for the claimant was not the childcare as such, it was the travel back to the office which was the disadvantage.
178. In any event, the Tribunal decided that the respondent had established that the arrangement, that is the PCP requiring the claimant to return to work after 3 pm, was a proportionate means to achieve the legitimate aim of facilitating efficient and effective collaborative working in the respondent's workplace.

179. Taking the respondent's legitimate aims and its means of achieving them into account and balancing that against any discriminatory impact on women and the claimant, clearly showed that it was proportionate and/or a reasonable means of achieving the aims viewing the matter objectively. In assessing proportionality, we took into account that this was a requirement which applied on 2 days of the week, that is 40% of the time.

Failure to invite the claimant to the Christmas party 2021 (allegation 9)

180. In respect of the 2021 Christmas party, Vicky Bull was responsible for organising it, not Helen Lecky. We find that there was no deliberate act by Helen Lecky to, in essence, deliberately fail to invite the claimant. Given that Vicky Bull was taking the lead, we find that this was not an act of discrimination because the claimant was or had exercised the right to maternity leave. In assessing whether the unfavourable treatment was because of the claimant taking maternity leave, we do not find that fact had a significant influence on the mind or mental processes of the decision-maker (whether conscious or unconscious). In looking at why there was a failure to invite the claimant we find that this was an oversight and was not motivated by reason of the claimant's protected status.
181. Nor was this an act of harassment. In reaching that decision we were mindful that this was an omission to invite her to the Christmas party held at the Roxy Ballroom in Manchester on 17 December 2021 and the claimant had been in touch with Helen Lecky on 15 December 2021. We took the view that it was more likely than not that Jessica Keane would have told the claimant about it. If so, the claimant could have pursued it with Vicky Bull. On balance, the failure to invite the claimant had been an omission by Vicky Bull, it was an isolated incident and was out of time. In respect of harassment, it was a matter which bordered on the trivial and taking everything in the round, we were not persuaded that this was unlawful harassment related to her sex.

Full time request and alleged lack of support by Ms Lecky to consider other roles (allegations 6 & 10)

182. These were alleged to be contraventions of section 26 harassment, and in the latter complaint, also section 18 maternity discrimination. As the Tribunal found as a finding of fact the claimant had access to the advertisements of posts and the Tribunal is not satisfied that the claimant has established facts from which it could conclude that the respondent had subjected her to unfavourable treatment because she had taken maternity leave. Similarly, the Tribunal could find no credible evidence to support the allegation that the advertising of the vacancies was unwanted conduct related to the claimant's sex or that such conduct had the purpose or effect of violating her dignity or creating a proscribed working environment for her. The Tribunal found, given the conduct complained of and bearing in mind the perception of the claimant and the other circumstances of the case, it was not reasonable for that conduct to have the proscribed effect.

183. As to the denial of the claimant's request to work full time as an act of maternity discrimination or harassment, the Tribunal similarly found there was no credible evidence to support a finding in respect of those complaints. The reason why Helen Lecky took the approach she did with regard to the claimant's request to move from 30 hours to 37.5 hours per week working was a genuine business related reason and we could find no credible evidence to support the contention that it related to the claimant's sex so as to found an act of harassment or treatment which was unfavourable to her because she had taken maternity leave.
184. There was no credible evidence to suggest that the fact the claimant had taken maternity leave had a significant influence on the mental processes of Helen Lecky when taking the decision she did in respect of the request for full time hours.

Dissuasion from applying for Group Finance Manager (P&P) (allegations 11, 12 & 13)

185. The claimant alleges that these were acts which contravened section 26 harassment, and/or section 18 maternity discrimination in respect of 11 and 13.. The Tribunal could find no reliable evidence to support that contention and found that Helen Lecky had a genuine business reason for the action that she took. It was in no way related to the claimant's sex or because of her maternity leave.
186. In any event, the claimant failed to establish the facts that she had been dissuaded to apply for the P&P role – Helen Lecky had discussed the duties and role with her, and the claimant said the work involved was not of interest to her. She could have applied had she wished.

Forced to take annual leave to delay return to work and comment by Helen Lecky on 31 January 2022 (allegations 14, 15 & 16)

187. Alleged comments made by Helen Lecky in respect of the claimant's return to work were said by the claimant to be harassment contrary to section 26. She also claimed being forced to take unplanned leave to delay her return to work to 7 February 2022 was maternity discrimination in addition to harassment. For the reasons give above the Tribunal find that Helen Lecky had been surprised that the claimant was to return on 1 February 2022, effectively giving 24 hours' notice. In context we find that the comments were not derogatory or undermining of the claimant's return to work and it would not be reasonable for her to construe them as such. Therefore, we find that here was no contravention of section 26.
188. The Tribunal reject the taking of unplanned holiday to delay the date of return to work was an act of harassment. We find the claimant agreed to do so, and made no complaint at the time, We find that had she wished to return on 1 February 2022, she could have done so but it suited both parties to have a handover. Helen Lecky was attempting to ensure that the claimant returned to work in an orderly fashion. As to the allegation that Helen Lecky had made

comments to the claimant, the Tribunal found that there was insufficient evidence to show that this had occurred in fact and secondly that it was on any prohibited ground as alleged.

189. In respect of the allegation that the respondent forced the claimant to take annual leave to delay her return to work as an act of maternity discrimination contrary to section 18, for the same reasons as in paragraph 189 above, the Tribunal could find no credible evidence to support that contention.

Claimant's return to work and treatment from 7 February 2022 to 1 March 2022 (allegations 17-25)

190. The Tribunal reject the contention that the retention of Jacqui Wood as part of the team and in a new role was an unlawful act of harassment related to her sex. As with a number of claimants allegations, the fact that she had taken maternity leave was background to the matters that arose and was not causative of the treatment she received. The claimant was given full details of the role of Group Finance Manager – P&P. This was the role that Jacqui Wood was appointed to as she was the only applicant. Given that it was open to the claimant to apply for that job had she so wished, we can find no credible evidence to support her contention that this as an act of discrimination because she had taken maternity leave nor do we accept that the claimant was dissuaded from applying for it. None of these actions were due to the claimant's sex or because she had taken maternity leave. Her claims in respect of these matters are therefore dismissed.
191. Changes to the claimant's responsibilities on her return to work were alleged to be acts of harassment or maternity discrimination. The Tribunal for the reasons set out above reject the contention that the changes were related to the claimant's sex. There was cogent evidence given as to the business rationale for the changes which took place. This was in the background of a growth in the company's business which impacted upon particularly the clinical costs centre work that the claimant had undertaken prior to the maternity leave. The evidence did not support a finding that the claimant was undertaking lower level tasks or that the undertaking of such tasks was related to her sex for the purposes of section 26 harassment. Nor was it because the claimant had taken maternity leave that these changes in tasks took place. Given that the IT and clinical costs centres were approximately 13% of the claimant's role prior to her maternity leave, we reject her contention it was done to retain Jacqui Wilson and thereby treat the claimant unfavourably because she had taken maternity leave.
192. In coming to the decision on this matter, the Tribunal took into account that Vicky Bull was similarly the subject of changes to her role and all of her responsibilities for account payments and carers payments were removed to sit under the new role of Group Finance Manager P&P. We find this to be persuasive evidence that the claimant was not picked out by being subjected to the changes in her role because she had taken maternity leave or for reasons

related to her sex. We also took into account that these complaints related to a period of 7 working days which we found to be a short period of time.

193. The claimant makes complaint about the resources available to her in her role on return to work from maternity leave. There was no credible evidence to support her contention that the Cash Accountant role which had been in place to support her duties, and which was shared on her return with Jacqui Wood showed that there was no resource available to her. It was clear in evidence that once Jacqui Wood moved into the Group Finance Manager – P&P role, the support worker who had been shared with Jacqui Wood would then solely be responsible for work for the claimant. However, we note that the claimant did not raise that issue with Helen Lecky which undermines the credibility of this aspect being a complaint of discrimination. We find that the arrangement was made by reason of the business needs of the respondent and not because of the claimant having taken maternity leave or indeed related to her sex.
194. The claimant made a number of allegations in respect of Ms Lecky's alleged comments, scheduling a meeting on 14 February 2022 in order to derail the claimant's return to work, and ignoring the claimant on 14 February 2022. Helen Lecky gave evidence to the effect that 14 February 2022 was the first day that the claimant's new working arrangements were put in place whereby the claimant would leave to pick her child up from school. On the Friday beforehand, Helen Lecky booked a meeting for 2.30 pm on Monday 14 February 2022 out of a habit of avoiding the lunch hour. The meeting involved the claimant, Helen Lecky and Jacqui Wood. The Tribunal note that the claimant could have asked for that meeting to be rearranged but did not do so. We do not find that it was a deliberate act to derail the claimant's flexible working arrangements. There was no credible evidence to support the claimant's allegations relating to her treatment on 14 February 2022,
195. For the reasons given above, the Tribunal do not find that any comment made about "slicker" operations being in place was in any way meant to be or intended to be a slight against the claimant. The Tribunal can find no credible evidence to support the contention that this was criticism of the claimant. Further, the Tribunal find that for the purposes of section 26 harassment it was not reasonable for the claimant to perceive the conduct as having a proscribed effect.
196. We heard some evidence about a Finance Systems Administrator role. However, the evidence in this regard was somewhat vague and unpersuasive in respect of establishing that there had been an act of unlawful discrimination in respect of that support.
197. Further, the claimant made an unsubstantiated claim of dishonesty on the part of Helen Lecky in the grievance process with regard to the handling of Capital Accountant role which was a more senior role and higher level report/resource for the claimant. In her statement the claimant says that Helen Lecky sent an email to Jo Denye in which the claimant says that Helen Lecky had all of a sudden decided to move the new role of Capital Accountant to report to the

claimant. The claimant says that Helen Lecky was misleading Jo Denye and the role was only sent to the claimant on 3 May 2022 to cover up Helen Lecky stating that recruitment was taking place for the role on 25 April 2022 when in fact it was not.

198. The Tribunal finds that the claimant has not shown facts to establish she suffered discrimination relating to reduced support on her return to work until she took sick leave.

Failure to contact the claimant during her sickness absence to check on her health (allegation 26)

199. The claimant contends that this was an act of harassment contrary to section 26. The Tribunal found that on the balance of probabilities, given the adverse view the claimant had of Ms Lecky, we find that she did request HR to inform Ms Lecky that she would not welcome contact from her. On the facts, we find that this contention is not made out.

Failures in handling of claimant's grievance (allegation 27)

200. The Tribunal heard limited evidence in regard to this allegation. The claimant alleges that the handling of the grievance constituted unlawful harassment. She relied upon what she perceived to be a lack of impartiality or bias and/or collaborative approach as the foundation of her complaint that the handling of the grievance was an act of harassment.
201. As set out in our findings above, the Tribunal could find no credible evidence that the complaints the claimant makes about the handling of the grievance in respect of impartiality, lack of impartiality or bias are made out. Given that the claimant must establish that the alleged proscribed conduct was related to her sex, we do not find this to be so as there was insufficient evidence to determine that allegation. Her claim in this regard is therefore dismissed.

Restructuring commenced 16 May 2022 - failure to offer Head of Revenue or Senior Management Accountant role. (allegation 28)

202. The claimant alleges that this is an act of discrimination contrary to section 18 maternity leave or section 27 victimisation.
203. The respondent accepts that the raising of the grievance is a protected act for the purposes of section 27. By the time of these events the claimant had entered into early conciliation on 12 April 2022. The respondent does not accept it constitutes a protected act. The rationale for this is that it was not clear whether the early conciliation related to a complaint of discrimination. However, the alleged discriminators, Helen Lecky and/or Melissa O'Brien, were unaware of the ACAS early conciliation notification in any event. It cannot therefore be the basis of the victimisation claim. The upshot is that the alleged victimisation must arise in consequence of her raising her grievance in mid-March 2022.

204. It was the claimant's case that Helen Lecky, Melissa O'Brien, Mr Janet, and others in the respondents HR Department had entered into collusion and scheming. For the reasons given in paragraphs 98-99 above, the Tribunal rejected that contention.
205. Turning to the allegation that it was an act of maternity discrimination contrary to section 18, the respondent had recognised that there was a need to undertake a reorganisation of the department in January 2022. The shape of that reorganisation and the structure of it had to be formulated and that was to take place by end of March 2022. The preparatory work having been undertaken, the reorganisation was finalised and announced in May 2022.
206. The Tribunal finds that the reorganisation resulted in all Finance Manager roles ceasing to exist.
207. The claimant was not offered the more senior roles of Head of Revenue or Senior Management Accountant because better qualified candidates were appointed. We reject the claimant's claims that these were acts of discrimination contrary to either victimisation or section 18 maternity discrimination. Her claim in respect of these two aspects therefore fails.

Offer of a post reporting to Jacqui Wood which was an alleged demotion (allegation 29)

208. For the reasons set out above, the Tribunal do not find that the offer of the alternative role was an act of victimisation contrary to section 27. The Tribunal find that the claimant was not offered the more senior roles for the reasons set out above and it was not because she had done a protected act. We dismiss those claims.
209. As the claimant was not offered either of the two more senior posts above, the role of Management Accountant was offered to the Claimant because it was a suitable role in the redesigned structure. It was not a demotion. There is no credible evidence to support the claimant's allegation that she had been subjected to victimisation in this regard.

Misleading email on 16 June 2022 stating claimant had accepted alternative role. (allegation 30)

210. The Tribunal found no credible evidence to support the contention that the email was an act of harassment related to the claimant's sex. The Tribunal also find that even if it were, objectively judged it is not credible to find that it was an act which was humiliating or created a proscribed environment for the claimant. The Tribunal therefore dismisses this claim as an act of unlawful harassment.

Time limits and extension of time

211. The Tribunal finds that there were no acts which were on the face of it a case of conduct extending over a period. We find that there were intermittent acts which were not connected, and they do not amount to a course of conduct extending over a period.
212. In respect of determining whether a just and equitable discretion should be exercised in the claimant's favour, the burden being on the claimant to provide evidence whereby that discretion can be exercised, we find that there is no such evidence to support the exercise of our discretion to allow otherwise out of time claims to be treated as being within time. The claimant was supported by her trade union, and we find that she, in accordance with the balance of probabilities, had access to advice to assist her in the presentation of a claim in time had she acted accordingly. Given that the exercise of discretion is an exception rather than the rule we decline to do so.
213. As the claimant entered into early conciliation on 12 April 2022, prima facie any act on or before 12 January 2022 is out of time.

Dismissal of claimant on grounds of redundancy. (allegation 31)

214. The Management Accountant role was discussed fully with the claimant. It was her decision to decline the offer of the role. The role was open to her on the same terms and conditions as she had enjoyed previously. She could have taken the role up on either part time or full-time hours, whichever she preferred. For the reasons given above, we do not find that the dismissal was because the claimant had raised her grievance in March 2022. Nor do we find that her entering into early conciliation on 12 April 2022 was a protected act. There was no credible evidence to support the allegation that the dismissal was unlawful victimisation contrary to section 27 of the EqA 2010.

Unfair dismissal

215. For the reasons set out above we find that there was a redundancy situation caused by the reorganisation. This was a genuine redundancy situation. The respondent's approach to filling the vacancies by skills matching where appropriate or interviewing where there was not such a match, we find was within the range of reasonable responses. Given that the claimant had declined alternative employment, she was redundant, served with notice and was dismissed by reason of redundancy. We find the dismissal was within the range of reasonable responses and therefore fair.

Wrongful dismissal

216. The claimant alleges that her dismissal was wrongful in accordance with common law. She was given contractual notice to end her employment. She asked for the notice to be shortened and the respondent agreed to her request. Although she was dismissed, we find that there was an agreement as to the date that her

employment would end and that being so, there is no basis on which to find that she was wrongfully dismissed, and that claim is dismissed.

Summary

217. The claimant's claims under the Equality Act 2010 of maternity discrimination, indirect discrimination, harassment and victimisation, as well as unfair and wrongful dismissal, fail and are dismissed.

Judge Callan
Date: 6 October 2023

JUDGMENT SENT TO THE PARTIES ON
16 October 2023

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

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

ANNEX 1 – LIST OF ISSUES

AGREED LIST OF ISSUES

Time Limit – Course of Conduct

1. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - a. Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the Act to which the complaint relates.
 - b. If not, was there conduct extending over a period?
 - c. If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period.
 - d. If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:
 - i. Why were the complaints not made to the Tribunal In time?
 - ii. In any event, is it just and equitable in all the circumstances to extend time?

Harassment

2. Did the respondent do the following alleged things:
 - a. Fail to offer the Claimant a position of Head of Revenue/or Senior Management Accountant on 10th June 2022;
 - b. Deny the Claimant opportunities during her maternity leave;
 - c. (Helen Lecky) send a misleading public email on 16th June 2022 indicating that the Claimant had accepted a position which would result in the Claimant reporting into her Maternity Cover;
 - d. Fail to handle the Claimant's grievance fairly;
 - e. (Helen Lecky) fail to contact the Claimant during her sickness absence to check up on her health;
 - f. (Helen Lecky) ignore the Claimant's presence in the office when she returned to work and initiate a conversation with other colleagues regarding Valentines Day on 14th February 2022;
 - g. (Helen Lecky) ignore the Claimant during a meeting on 14th February 2022;
 - h. (Helen Lecky) refuse the Claimant's flexible working request for reasons outside of the statutory reasons on the basis of concerns about how it would be perceived by others in the business;

- i. (Helen Lecky) schedule a meeting during a time it was agreed the Claimant would pick up her children on 14th February 2022 in order to have a reason to refuse to make the Claimant's trial flexible working arrangement permanent and to make the Claimant's return to work more difficult;
- j. (Helen Lecky) make, in a catch-up meeting on 9th February 2022, derogatory comments that she did not want to lose accuracy around month end or miss deadlines, which was an implied criticism of the Claimant's work and suggested there had been improvement whilst she was on maternity leave;
- k. Reduce support and reallocate duties so that the Claimant was undertaking work at a much lower level upon her return from maternity leave on 7th February 2022;
- l. Retain Jacqui Wood as part of the team in a new role;
- m. Require the Claimant to undertake tasks which would normally be undertaken by a member of staff at a lower level i.e., property team timesheets, posting month-end journals etc.;
- n. (Helen Lecky) state on 31st January 2022 that she did not expect the Claimant's return until the end of February/beginning of March 2022 and was not ready to welcome the Claimant back after her maternity leave;
- o. Force the Claimant to take unplanned annual leave to delay her return-to-work date;
- p. (Helen Lecky) state: "I wouldn't know what to do with you," "No one would be in the office" and that she was "not trying to be awkward here!";
- q. Deny the Claimant's request on 17th November 2021 to work full-time hours, with Helen Lecky stating that 'she could really do with spending the budget elsewhere' and using the budget to retain the maternity cover;
- r. Change and dilute the Claimant's roles and responsibilities by awarding these to the maternity cover;
- s. (Helen Lecky) dissuade the Claimant on 16th January 2022 from applying for the position of Group Finance Manager – Projects and Processes;
- t. (Helen Lecky) mislead the HR Department, stating that the Claimant was not interested in the Group Finance Manager - Projects and Processes position but that she would send the job specifications to the Claimant so they are 'covered';
- u. (Helen Lecky) fail to send the job specification to the Claimant;
- v. Fail to invite the Claimant to a Christmas Party that was organised in December 2021, for which the company contributed £20 per

- person and (Helen Lecky) fail to invite the Claimant even when was prompted by a colleague;
- w. Fail to consider the Claimant for a discretionary bonus when she was on maternity leave;
 - x. Deny the Claimant the opportunity to apply for the Finance Manager – Fostering role in April 2021;
 - y. Deny the Claimant the opportunity to apply for a Senior Finance Manager – Education role;
 - z. Deny the Claimant the opportunity to apply for the Finance Manager – Education role; and
 - aa. (Helen Lecky) make no effort to support the Claimant in her request to consider other roles in the business if full time hours were not possible in her substantive role.
- 3. If so, was that unwanted conduct?
 - 4. Was it related to sex?
 - 5. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
 - 6. If not, did it have that effect? The Tribunal will take into account the perception, the other circumstances of the case and whether it is reasonable for the conduct to have the effect.

Pregnancy and Maternity Discrimination (Equality Act 2010 section 18)

- 7. Did the respondent treat the Claimant unfavourably by doing the following things:
 - a. Not allowing the Claimant to return to the same role/responsibilities post maternity leave on 7th February 2022 due to changes in role and allocation of responsibilities to her maternity cover as part of a plan to retain the maternity cover;
 - b. Reducing support and reallocating duties on the Claimant's return to work on 7th February 2022 resulted in the Claimant undertaken work at a much lower level;
 - c. Failing to make arrangements to allow the Claimant to return to work on 1st February 2022 and suggesting that annual leave be utilised to delay her return;
 - d. Refusing to allow the Claimant to change her hours to work full-time;
 - e. Failing to fairly consider and notify the claimant for the Group Finance Manager role -Project and Processes which was advertised prior to the Claimants return to work and failing to send her the job specification for this role;
 - f. Leading the claimant to believe on 16 January 2022 that the group finance manager role - project and processes role would be predominantly managing accounts payable and dissuading her from

- applying because Helen Lecky had already allocated the role to Jacqui Wood as part of a plan to retain her;
- g. Not allocating the Claimant the work that she had been undertaking prior to her maternity leave and/or duties such as work for a company called WP Associates Limited which had been acquired during the Claimant's maternity leave;
 - h. Failing to notify the claimant of the Finance Manager — Education position in December 2021;
 - i. Ignoring the Claimant's request to be advised of any roles in the business which would allow her to work full time;
 - j. Failing to invite the claimant to the Christmas party in December 2021 after Helen Lecky was prompted by a colleague in the business to invite the Claimant in December 2021;
 - k. Failing to consider the claimant or pay a discretionary bonus whilst she was on maternity leave;
 - l. Failing to notify the Claimant of the Finance Manager — Fostering position in April 2021;
 - m. Failing to notify the Claimant of the Senior Finance Manager — Education position in March 2021
 - n. Refusing to offer the claimant a position of Head of Revenue in June 2022 and failing to take into account the fact that the Claimant was not offered or considered for the role of Head of revenue during maternity leave; and
 - o. Refusing to offer the claimant a position of Senior Management Accountant 2022 and failing to take account of the fact that the Claimant was not offered or considered for the role that her maternity cover took up as Senior Management Accountant.
- 8. Did the unfavourable treatment take place in a protected period?
 - 9. If not, did it implement a decision taken in the protected period?
 - 10. Was the unfavourable treatment because of pregnancy?
 - 11. Was the unfavourable treatment because of illness suffered as a result of pregnancy?
 - 12. Was the unfavourable treatment because the Claimant was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave?

Indirect discrimination (Equality Act 2010 section 19)

- 13. A "PCP" is a provision, criterion, or practice. Did the Respondent have the following PCP(s):
 - a. Requiring employees to work 'anchor days' which are mandatory days in the office for all staff in the business.
- 14. Did the Respondent apply that PCP to the Claimant?

15. Did the Respondent apply any such PCP to persons with whom the Claimant does not share the characteristic, e.g., “men” or would it have done so?
16. Did the PCP put persons with whom the claimant shares the characteristic, e.g., “women” at a particular disadvantage when compared with persons with whom the claimant does not share the characteristic, e.g., “men” in that more women than men have childcare responsibilities and employees with childcare responsibilities were expected to return to the office after school pick-ups on anchor days.
17. Did the PCP put the Claimant at a disadvantage?
18. Was the PCP a proportionate means of achieving a legitimate aim, in particular:
 - a. Was the PCP an appropriate and reasonably necessary way to achieve those aims;
 - b. Could something less discriminatory have been done instead;
 - c. How should the needs of the Claimant and the Respondent be balanced?

Unfair Dismissal

19. What was the reason or principal reason for dismissal?
20. Was it a potentially fair reason?
21. Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

Wrongful dismissal/Notice pay

22. What was the Claimant’s notice period?
23. Was the Claimant paid for that notice period?
24. If not, had the Claimant’s contract been varied so that she was no longer entitled to be paid for that period of notice?

Victimisation (Equality Act 2010 section 27)

25. Did the Claimant do a protected act as follows:
 - a. Raised a grievance on 16th March 2022; and
 - b. Presented a Tribunal claim on 12th April 2022
26. Did the Respondent do the following things:
 - a. Ignore the Claimant’s experience and determine not to grant her the role of Senior Management Accountant or Head of Revenue;
 - b. Offered suitable alternative employment on 10th June 2022 which equated to a demotion; and
 - c. Make the Claimant redundant on 19th August 2022.
 1. By doing so, did it subject the Claimant to detriment?
 2. If so, was it because the Claimant did a protected act?

3. Was it because the Respondent believed the Claimant had done, or might do, a protected act?

Remedy for Discrimination or Victimisation

4. Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?
5. What financial losses has the discrimination caused the Claimant?
6. Has the Claimant taken reasonable steps to replace lost earnings, for example, by looking for another job?
7. If not, for what period of loss should the Claimant be compensated?
8. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
9. Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for what?
10. Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?
11. Did the ACAS Code of Practice on Disciplinary and grievance Procedures apply?
12. Did the Respondent or the Claimant unreasonably fail to comply with it?
13. If so, is it just and equitable to increase or decrease any award payable to the Claimant?
14. By what proportion, up to 25%?
15. Should interest be awarded? How much?

Remedy for unfair dismissal

16. Does the Claimant wish to be reinstated to their previous employment?
17. Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?
18. Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
19. Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
20. What would the terms of re-engagement order be?

21. If there is a compensatory award, how much should it be? The Tribunal will decide:
 - a. What financial loss should the Claimant be compensated?
 - b. If not, for what period of loss should the Claimant be compensated?
 - c. Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - d. If so, should the Claimant's compensation be reduced? By how much?
22. Did the ACAS Code of Practice on Disciplinary and Grievance Procedure apply?
23. Did the Respondent or the Claimant unreasonably fail to comply with it?
24. If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
25. If the Claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?
26. If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
27. Does the statutory cap of fifty-two weeks' pay or £86,444 apply?
28. What basic award is payable to the Claimant, if any?
29. Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

RESERVED JUDGMENT

ANNEX 2 - FACTUAL ALLEGATIONS

CHRONOLOGICAL LIST OF FACTUAL ALLEGATIONS

This is a list of each instance of conduct alleged to constitute harassment related to sex and/or pregnancy or maternity discrimination and/or victimisation in what R understands to be chronological order.

It has been extracted from and is cross-referenced to the List of Issues (Annex 1) by the key:

H - Harassment
P/M - Pregnancy or maternity leave discrimination
V - Victimisation

R understands all the allegations are against Helen Lecky save [27]

1. March 2021 onwards – denied the Claimant opportunities during her maternity leave – H(b).
2. March 2021 onwards – denied the Claimant the opportunity to apply for or failed to notify the Claimant of a Senior Finance Manager Education role – H(y) or P/M(m).
3. April 2021 – denied the Claimant the opportunity to apply for or failed to notify the Claimant of the Finance Manager – Fostering role in April 2021 – H(x) or P/M(l).
4. October 2021 – denied the Claimant the opportunity to apply for or failed to notify the Claimant of the Finance Manager – Education role – H(z) or P/M(h).
5. Ignored the Claimant’s request to be advised of any roles in the business which would allow her to work full time P/M(i).

6. Made no effort to support the Claimant in her request to consider other roles in the business if full time hours were not possible in her substantive role – H(aa).
7. October/November 2021 – Failed to consider the Claimant for or pay a discretionary bonus to her when she was on maternity leave – H(x) or P/M(k).
8. 15 December 2021/13 January 2022 – refused the Claimant’s flexible working request for reasons outside of the statutory reasons on the basis of concerns about how it would be perceived by others in the business.
9. December 2021 – failed to invite the Claimant to a Christmas party that was organised in December 2021, for which the company contributed £20 per person and failed to invite the Claimant even when was prompted by a colleague – H(v) or P/M(j).
10. 13 & 19 January 2022 – denied the Claimant’s request to work full time hours, stating that ‘she could really do with spending the budget elsewhere’ and using the budget to retain the maternity cover – H(q) or P/M(d).
11. 19 January 2022 – dissuaded the Claimant from applying for the position of Group Finance Manager – Projects and Processes or led the Claimant to believe that the group finance manager role - project and processes role, would be predominantly managing accounts payable and dissuaded her from applying because Helen Lecky had already allocated the role to Jacqui Wood as part of a plan to retain her H(s) or P/M(f).
12. January 2022 – misled the HR department, stating that the Claimant was not interested in the Group Finance Manager – Projects and Processes position but that she would send the job specification to the Claimant, so they are ‘covered’ – H(t).
13. January 2022 – failed to send the job specification to the Claimant in respect of the Group Finance Manager role and/or failed to notify her of or fairly consider her for the role H(U) or P/M(e).
14. 31 January 2022 – stated that she did not expect the Claimant’s return until the end of February/beginning of March 2022 and was not ready to welcome the Claimant back after her maternity leave – H(n).
15. 31 January 2022 – stated “I wouldn’t know what to do with you,” “No one would be in the office” and that she was “not trying to be awkward here” – H(p).

16. 1 February 2022 – forced the Claimant to take unplanned annual leave to delay her return-to-work date to 7 February 2022 – H(o) or P/M(c).
17. After the Claimant's return to work on 7 February 2022, retained Jacqui Wood as part of the team in a new role – H(l).
18. After the Claimant's return to work on 7 February 2022 until the Claimant's absence from 1 March 2022, required the Claimant to undertake tasks which would normally be undertaken by a member of staff at a lower level i.e., the property team timesheets, posting month-end journals etc. – H(m).
19. After the Claimant's return on 7 February 2022 until the Claimant's absence from 1 March 2022, changed and diluted the Claimant's roles and responsibilities by awarding these to the maternity cover to retain her – H(r) or P/M(a).
20. After the Claimant's return to work on 7 February 2022 until the Claimant's absence from 1 March 2022, did not allocate the Claimant the work that she had been undertaking prior to her maternity leave and/or duties such as work for a company called WP Associates Limited which had been acquired during the Claimant's maternity leave P/M(g).
21. After the Claimant's return to work on 7 February 2022 until the Claimant's absence from 1 March 2022, reduced support, and reallocated duties so that the Claimant was undertaking work at a much lower level – H(k) or P/M(b).
22. 9 February 2022 – in a catch-up meeting, made derogatory comments that she did not want to lose accuracy around month end or miss deadlines, which was an implied criticism of the Claimant's work and suggested there had been improvement whilst she was on maternity leave – H(j).
23. 14 February 2022 – scheduled a meeting during a time it was agreed the Claimant could pick up her children on 14 February 2022 in order to have a reason to refuse to make the Claimant's trial flexible working arrangement permanent and to make the Claimant's return to work more difficult – H(l).
24. 14 February 2022 – ignored the Claimant's presence in the office when she returned to work and initiated a conversation with other colleagues regarding Valentines Day but failed to include the Claimant in this conversation – H(f).
25. 14 February 2022 – ignored the Claimant during a meeting on 14 February 2022 – H(g).

26. After 1 March 2022 – failed to contact the Claimant during her sickness absence to check up her health – H(e).
27. 16 March 2022 – failed to handle the Claimant’s grievance fairly – H(d).
28. 10 June 2022 – failed to offer the Claimant a position of Head of Revenue/or Senior Management Accountant – H(a) and/or failed to take into account the fact that the Claimant was not offered or considered for the role of Head of Revenue during maternity leave – P/M(n) and (o) and V1.
29. 10 June 2022 – offered C a role reporting to JW which was a demotion – V2.
30. 16 June 2022 – sent a misleading public email indicating that the Claimant had accepted a position which would result in the Claimant reporting into her maternity cover – H(c).
31. 19 August 2022 – dismissed the Claimant on the grounds of redundancy – V3