



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms H Yongo

**Respondent:** The Association of Chartered Certified Accountants

**Heard at:** London Central

**On:** 7,8,10 July 2023 &  
11, 28 July 2023  
(Chambers)

**Before:** Employment Judge Akhtar  
Mr M Simon  
Mr D Clay

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Ms L Redman (Counsel)

## RESERVED JUDGMENT ON LIABILITY

### The unanimous Judgment of the Tribunal is that:

1. The Respondent has contravened s18 Equality Act 2010 by the actions it took in respect of the Claimant's role and the social lead role. The Claimant succeeds in her claim of direct pregnancy/maternity related discrimination.
2. The Respondent has not contravened s27 Equality Act 2010 and none of the complaints of victimisation are upheld.

## **CLAIMS AND ISSUES**

1. The Claimant brings claims of pregnancy/maternity discrimination under s.18 Equality Act 2010 and victimisation under s.27 Equality Act 2010. The issues were agreed as directed by Employment Judge Burns, following a case management hearing on 28 March 2023.
2. The issues are set out below and were further clarified and confirmed at the start of this hearing. The victimisation complaint was clarified to include additional emails, which the Claimant had requested be included in the bundle as evidence of her continuing to be excluded from emails.
3. The Respondent is a global member body that looks after the accounting profession. They are involved in both examinations and qualifications for accountants as well as ongoing continued professional development, mentorship and support for their membership.
4. The Claimant has been employed by the Respondent since 9 September 2019, initially in the role of Marketing Communications Manager, Social and currently in the role of Marketing Manager, Social Media.

## **LIST OF ISSUES**

### **1. PREGNANCY/MATERNITY DISCRIMINATION UNDER SECTION 18 OF THE EQUALITY ACT 2010 (THE “ACT”)**

1.1 Did the Respondent treat the Claimant unfavourably in respect of the following allegations:

1.1.1 Nick Jervis' alleged comment on 30/3/22 “you had a baby at the wrong time”;

1.1.2 Nick Jervis and Mr Miller not sending the Claimant the job description for the Social Lead role until 30 June 2022;

1.1.3 appointing Hammad Azim rather than the Claimant to the Social Lead role, which the Claimant was aware of on 23 May 2022 and which role took effect on 1 July 2022;

1.1.4 Mr Miller indication on 19 October 2022 that the Claimant would have to return to work for at least three months before a flexible working request could be considered;

1.1.5 reducing the Claimant's role to a Social Media Exec role; and/or

1.1.6 allowing the Claimant's old role of Marketing Communications Manager (Social Media) to be replaced or largely absorbed by the Social Lead role.

1.2 If so, was the unfavourable treatment because of the Claimant's pregnancy and/or because the Claimant exercised or sought to exercise the right to ordinary and additional maternity leave pursuant to Section 18 of the Act.

## **2. VICTIMISATION UNDER SECTION 27 OF THE ACT**

2.1 The Claimant relies upon her Employment Tribunal claim on 15 November 2022 as the alleged protected act for the purposes of her victimisation claim. It is accepted that the Claimant raising a claim under the Act is a protected act for the purposes of section 27 of the Act.

2.2 Did the Respondent:

2.2.1 not include the Claimant in team emails;

2.2.2 notify the Claimant of meetings without the alleged usual practice of including an agenda and not provide the Claimant with an agenda on request following a handover meeting on 18 January 2023;

2.2.3 not give the Claimant files and passwords requested to ensure a proper handover; and/or

2.2.4 not give the Claimant the necessary clarification for the terms of handover.

2.3 If the answer to any of the allegations at 2.2.1 to 2.2.4 is yes, does such amount to a detriment in terms of section 27 of the Act?

2.4 If any of the allegations at 2.2.1 to 2.2.4 are considered a detriment, did the Respondent subject the Claimant to such detriment because the Claimant raised an Employment Tribunal claim on 15 November 2022?

### **3. PRELIMINARY ISSUE – TIME-BAR**

3.1 Do some or all of the alleged acts of discrimination set out at part 1.1 form part of a continuing act of discrimination?

3.2 If the answer to 3.1 is yes, then which specific alleged acts of discrimination formed part of the continuing act of discrimination? Did the Claimant present her complaint(s) in respect of any continuing act(s) of discrimination within the applicable statutory time limit?

3.3 Have any discrimination complaints in relation to any alleged acts or omissions which do not form part of a continuing act of discrimination been brought within the applicable statutory time limits?

3.4 If any of the Claimant's complaints of discrimination have been presented outside the applicable statutory time limits, then would it be just and equitable for the Employment Tribunal to grant an extension to the ordinary time limit?

### **4. AWARD**

4.1 If the Employment Tribunal finds that the claimant was discriminated against on the grounds of pregnancy or maternity and/or was victimised:

4.1.1 what financial losses (if any) stem from that discriminatory conduct?

4.1.2 are there any grounds on which compensation should be reduced and, if so, to what extent - in particular to take account of any failure by the Claimant to mitigate her loss?

4.2 Did either party unreasonably fail to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures such that any compensatory award should be either uplifted or reduced by up to 25%?

4.3 Would it be appropriate for the Employment Tribunal to make an award of compensation for injury to feelings and, if so, which of the current Vento bands is applicable?

**PROCEDURE, DOCUMENTS AND EVIDENCE HEARD**

3. The Tribunal heard evidence from the Claimant and the evidence of the following witnesses on her behalf:

Ms Winifred Poon, Marketing Programme Lead;  
Mrs Claire Sleep, Marketing Programme Lead.

4. The Tribunal also heard the evidence of the following witnesses on behalf of the Respondent:

Mr Anthony Miller, Head of Digital Delivery;  
Ms Elaine Langley, HR Business Partner.

5. There was a tribunal bundle of approximately 392 pages. A number of additional documents were handed up during the course of the hearing. These pages were numbered and added to the bundle. The Tribunal informed the parties that unless we were taken to a document in the bundle we would not read it. Both parties provided written closing submissions as well as making oral submissions.

**FINDINGS OF FACT**

6. Having considered all the evidence, both oral and documentary, The Tribunal made the following findings of fact. These findings are not intended to cover every point of evidence given but are a summary of the principal findings that the Tribunal made from which it drew its conclusions.
7. On 9 September 2019, the Claimant commenced employment as a Marketing Communications Manager, Social Media, with the Respondent.
8. On 21 February 2022, the Claimant began a period of leave before commencing maternity leave on 16 March 2022. The Claimant's maternity leave came to an end on

11 November 2022. She then commenced a period of annual leave, returning to work on 9 January 2023.

### Restructure

9. In or around October 2021, the Respondent hired an external consultant, Nous Group, to evaluate the operation of the business, including the sales and marketing teams. As part of that review and specific to the Brand and Marketing Team which the Claimant was part of, it was recommended that this function become at least 80% centralised, so that campaigns were undertaken by one team and rolled out locally across the globe. The review recommendations were accepted and the Respondent commenced an organisational restructure.
10. On 24 March 2022, information was communicated to Unite the union about the restructure, this was subsequently communicated to managers on 28 March 2022 and latterly to all staff on 29 March 2022.
11. On 29 March 2022, the Claimant received a message from a colleague informing her that there had been a restructure and that she should join an organisational structure call taking place later that day. The Claimant joined the call, within which a new organisation chart was shared with attendees. In respect of the Claimant, she became aware that the Head of Marketing Services role that she had previously been undertaking no longer existed. There was a new role in the social media team entitled 'Social Lead' (Hootsuite). The Claimant's substantive role, Marketing Manager (Social Media) was shown on the chart as reporting to the new Social Lead role.

### Nick Jervis comment

12. The Claimant became concerned about her role and what these changes would mean for her. She was advised to contact Nick Jervis, Director of Marketing, to get more information. At that time, Mr Jervis was the most senior manager in the Marketing team and was responsible for implementing the new structure. The Respondent was working to a global implementation date of 1 July 2022.
13. Following the organisation structure call on 29 March 2022, the Claimant received a message from her line manager, Anthony Miller, Head of digital delivery, stating "*a few changes at ACCA that would be good to catch up with you at some time. Not a direct*

*issue for you but good to keep you informed on changes when you have some time over the coming days”.*

14. A video call took place between the Claimant and Mr Jervis on 30 March 2022 to discuss the changes and the impact, if any on the Claimant. Mr Jervis informed the Claimant that her substantive role was safe, however, the Head of Marketing Services role, which the Claimant had been doing for the last few years as additional duties, no longer existed. The Claimant queried the new Social Lead role and how this differed from her substantive role, however, Mr Jervis was unable to clarify this information. We find that in the context of the conversation that the Claimant was having with Mr Jervis about her role that she shared her concern about the Social Lead role, in that it was going to be similar to her substantive post.
  
15. We find that as part of this conversation, Mr Jervis commented that *“you had a baby at the wrong time”*. Mr Jervis no longer works for the Respondent and did not provide evidence to the Tribunal, however, he was asked about this comment during the Claimant’s grievance investigation, on 23 November 2022. Mr Jervis told the grievance investigator that *“I don’t believe I would have said that. If I said anything like that it would have been as part of a human conversation rather than a professional one, it would’ve been part of a joke or part of a general conversation rather than directing her in any way shape or form but I don’t recall saying it.”* Mr Jervis does not specifically deny making the comment and attempts to provide an explanation, if he had made that comment. We find this uncertainty and lack of categorical denial supports the Claimant’s assertion that Mr Jervis made this comment.

#### Job Description request

16. During her conversation with Mr Jervis, the Claimant requested a copy of the Social Lead role job description. Whilst not specifically mentioning the job description, Mr Jervis sent the Claimant a text message on 4 April 2022 to advise that he had raised matters with HR and would keep her updated, however, the Claimant heard nothing further from him. Again, we find the context of the conversation that the Claimant had with Mr Jervis at the time and her expressing concerns about the roles support our conclusion that the Claimant requested a copy of the Social Lead job description.

17. On 31 March 2022, the Claimant had a conversation with Mr Miller, to attempt to seek further information about the Social Lead role. Mr Miller was unable to offer the Claimant any further information about the role and did not provide her a copy of the job description. We accept Mr Miller's explanation that whilst he had access to the Job description, due to being on the redundancy list, however, he did not consider it appropriate to share this without seeking approval from HR. This is evidenced by an email which Mr Miller sent to HR on 28 April 2022 making them aware of the Claimant's request and asking them to respond to her. It does not appear that HR responded to Mr Miller's email, however, there was no further update from Mr Miller to the Claimant.
18. On 30 June 2022 the Claimant requested confirmation of the roles and responsibilities from Fiona Thomson, in the Respondent's Employee Relations team. In response, on 1 July 2022, Ms Thomson provided the Claimant with a copy of the Social Lead job description.

Substantive role absorbed/reduced

19. Following the decision to restructure, the Respondent followed a process whereby all of the Brand and Marketing employees globally were put into a central pool and a structure chart was put together, which largely consisted of Marketing manager and Marketing Executive roles. Those roles were then 'mapped' across to the new structure. The Respondent decided that where a role was going to change by less than 20%, the individual would be mapped across to the new structure in the same role, with minor changes to their job descriptions to be discussed with them informally. If the role was going to change by less than 30%, the individual would be provisionally mapped across and formally consulted about the changes. If the changes to their role were more than 30% the individual was to be informed that they were at risk of redundancy. As a result of the restructure, 78 individuals were placed at risk of redundancy.
20. Prior to the restructure, the Claimant was employed in the role of Marketing Manager, Social media, this was a grade C role. Between 1 April 2021 and 30 June 2022, the Claimant was also in receipt of additional responsibility allowance for additional duties she was carrying out line managing the email marketing team. These additional duties were part of the Head of Marketing Services role, which was vacant during that period. As a result of the restructure, the additional allowance came to an end for all those



within the brand & marketing team that were in receipt of such an allowance. There were 8 other individuals that were similarly affected and all returned to substantive roles, where such roles remained in the new structure.

21. In terms of the restructure, the Claimant was mapped across to the role of Marketing Manager, Social, on the basis that the Respondent felt her role predominantly remained the same with minor changes to her roles and responsibilities. Whilst the organisational chart refers to the Claimant's job title as Marketing Manager, social, the job description refers to Marketing Campaign Manager. The Claimant's role was assessed as a grade C role both prior to and after the restructure. In the initial organisational chart shared with staff on 29 March 2022, the Claimant's role was shown as reporting to the social lead role. The Claimant was later informed by HR that this was incorrect and a revised organisational chart was shared with her confirming that she would be reporting to Mr Miller.
22. The job descriptions for the new roles were put together by an external consultant, Ms Anita Higginbottom, who was formerly Head of Organisation Design with the Respondent. We were not provided with any evidence from Ms Higginbottom, however, her role in the restructure was covered in the evidence of Ms Elizabeth Langley, HR Business Partner. In her written evidence to the Tribunal, Ms Langley stated that Ms Higginbottom created the job description for the new social lead role *"in conjunction with insight from the affected teams, which in the Social Media team, would have been at that time, Nick Jervis and Fiona Thomson"*.
23. In her interview with the grievance investigator, when questioned about the differences between a grade C and D role, Ms Langley explained "The difference between a C and D must be clear. I haven't looked at them and done a comparison myself. Anita did with Nick and they went straight to Reward". When asked about whether Ms Higginbottom had seen the Claimant's original job description, Ms Langley responded to advise that *"I don't know answer to that but the Marketing Manager one wouldn't have changed we went on the decision to go with a much more simplified one – she would've seen that one when she wrote the Lead one."*
24. We find that Mr Jervis had significant involvement in decision making relating to the restructure in the Brand and Marketing teams and was involved in shaping the job descriptions for the Claimant's role in the new structure and the social lead role.

25. We find the Claimant's substantive job description prior to the restructure is very similar, if not identical in large parts to the job description for the Social Lead role. The Claimant's original substantive job title was Marketing Communications Manager, Social Media. Her job description included creating, owning and delivering the social media marketing strategy and delivering a global media strategy. The new social lead role job purpose was to develop and deliver a global marketing approach. All other key responsibilities of the Claimant's original substantive job description and the Social Lead role are virtually identical.
26. The Claimant's substantive role responsibilities prior to the restructure included her leading the social strategy and the implementation, deployment, and on-going development of the Hootsuite digital management platform. The new social lead role, includes Hootsuite in the job title and Mr Azim is now leading in that area. Prior to going on maternity leave, the Claimant produced a social media strategy plan, this is now the responsibility of Mr Azim.
27. The advert for the Claimant's maternity cover refers to the marketing manager role leading the development of ACCA's social and delivering ACCA's global social marketing approach as well as working in close collaboration with agencies, transformation teams and regional marketing teams to innovate, evolve and deploy best-in-class global campaigns.
28. The Claimant achieved a grading of 5 for her end of year review in 2021, prior to going on maternity leave. This is the highest grade available and only awarded to those considered exceptional. There is no dispute between the parties that this grade is difficult to achieve and is rarely awarded. The Claimant's planning and delivery objectives for the year included *'to support the delivery of the DMP and ensure adoption at both global and local level championing best practice approach. Lead and drive the core strategy through marketing services, identifying key efficient WoW and approaches'*.
29. We find that other individuals also saw the social lead role and the Claimant's marketing manager role prior to the restructure as having the same role and responsibilities. This was confirmed by both Ms Poon and Ms Sleep in their evidence to the Tribunal.
30. The Respondent's evidence in relation to the differentiator between the C and D grade roles was that the C role was more of a 'doer' or executive of the campaigns. Further, whilst there were elements of that in the D role as well, this role was more of a forward

looking and planning role. Mr Miller's evidence to the Tribunal was that the social lead role was less technically specialist than the Claimant's marketing manager role and was more of a stakeholder management role than a specialist marketing manager role.

31. The Claimant's job title under the new structure changed to Marketing Manager, Social although her job description refers to Marketing Campaign Manager. We find her job description significantly changed, for example all references to creating, owning, delivering and leading on the global social media marketing strategy have been removed. The focus of the new job description is around planning and executing campaigns. The changes are most starkly highlighted in the knowledge, skills and experience section, where the new job description states relevant marketing qualification preferred as oppose to educated to at least degree level or equivalent under the old job description. The old job description required in-depth knowledge of BC2 and B2B social media marketing strategy as oppose to 'experience of' BC2 and/or B2B, under the new job description.
32. We find the Claimants new job description had significant elements removed from her original job description. The Respondent's evidence was that this was done to consolidate work in its aim to become more global. In his evidence to the Tribunal, Mr Miller also stated that prior to the restructure social media was not a key focus of the business.
33. The job description of marketing campaign manager and marketing campaign executive bear a number of similarities, both have as their job purpose to contribute to the delivery of ACCA's marketing plan, the only significant difference highlighted is that the marketing campaign manager has planning responsibilities, whereas the executive role is primarily focused on execution. Both roles only stipulate relevant marketing qualifications as a preferred requirement.
34. The grading of the new roles was carried out by HR using the 'Hay' job evaluation methodology, once the job descriptions had been developed and completed. In his grievance interview, Mr Jervis confirmed that he was responsible for submitting the job descriptions for all the roles and that the grading was defined and mapped according to the skills in each job description. The Claimant's new role remained at Grade C and the Social Lead role was graded at D.

35. On 27 April 2022, the Claimant sent an email to Fiona Thomson, Senior Employee Relations Consultant, setting out her concerns regarding her role in the restructure and the new Social Lead role effectively 'matching' her substantive role.
36. Ms Thomson responded on 11 May advising the Claimant that her role remained in the structure and "*had been unchanged in any material way*".
37. On 31 May, the Claimant responded to Ms Thomson advising that despite requesting information as to how the mapping had been carried out, she had not been provided this. The Claimant also asked how she could move her grievance forward to positive resolution.
38. There were a number of further email exchanges between the Claimant and Ms Thomson, within which the Claimant continued to set out her concerns relating to the new social lead role. Ms Thomson continued to communicate the Respondents position that there were no significant changes to the Claimant's role. The last email between Ms Thomson and the Claimant was on 1 July 2022, when Ms Thomson provided a copy of the Social Lead job description.

#### Hammad Azim appointment

39. Mr Hammad Azim was formally appointed to the Social Lead role on 23 May 2022, he subsequently commenced the role on 1 July 2022. Prior to him taking up this role, Mr Azim was the Head of Marketing, Grade D in Pakistan. Following the restructure, his role was made redundant and put at risk, he subsequently successfully applied for the Social Lead role. The restructure resulted in marketing teams within the regions being reduced with the aim of the teams becoming consolidated and more global.

#### Flexible working Request

40. On 19 October 2022, during a telephone conversation between the Claimant and Mr Miller, the Claimant mentioned that she was considering flexible working options. There is dispute between the parties as to what was said in relation to this matter. The Claimant contends that she informed Mr Miller that she wished to return on condensed hours, however, he advised her that she would have to return to work for a period of 3 months before she could request flexible working and that the request was likely to be

subject to a salary sacrifice. In a contemporaneous text message, sent to Ms Poon on the same day, the Claimant relayed her summary of the conversation.

41. Mr Miller's evidence to the Tribunal is that the Claimant referred to both condensed and reduced working hours and he explained that condensed and reduced hours were two different things. He stated that when he explained this to the Claimant, she was unsure at that point whether she wanted to return on the same hours but less days or return on less hours. He asked her to consider what would work best for her and it could be explored with her on her return.
42. Following the conversation, Mr Miller sent the Claimant an email on 12 December 2022, stating *"you mentioned possibly reducing to 4 days or looking at the condensed hours policy, if you have had a chance to read up on the difference, also very happy to take that forward"*. The Claimant responded by email on 14 December, stating *"glad you are able to accommodate condensed hours as previously asked about, can you let me know what needs to happen to move this forward"*.
43. On 21 December 2022, Mr Miller responded to the Claimant's email of 14 December and asked whether the Claimant could let him know whether it is condensed or reduced hours she was seeking and for further details so that he could seek to progress things with HR. Mr Miller also sent the Claimant a link to the "ways of working" playbook, which set out further information regarding flexible working. On the same day, Mr Miller sent a further email attaching a link to the flexible working application form and asking the Claimant to complete this.
44. The Claimant did not progress her flexible working application until her return to work on 9 January 2023. The flexible working application set out the Claimant's request to work condensed hours over 4 days, Monday to Thursday.
45. On 11 January, Mr Miller sent the Claimant an email advising that he will be supporting the Claimant's application and meeting with HR later in the week to help move the application along and get any feedback.
46. On 19 January Mr Miller sent the Claimant a further email inviting her to a meeting on 24 January, so that he could discuss the flexible working application in further detail before a decision was taken in relation to this. This meeting did not take place as

shortly after the email was sent, the Claimant went off sick with stress, from 24 January until 20 April 2023.

47. Following her return to work from sick leave, at the request of Mr Miller, the Claimant amended her flexible working application to include rest break details. Mr Miller supported the application and it was approved on 9 May 2023.
48. Between 9 January 2023 and until the flexible working request was granted, Mr Miller informally accommodated the Claimant's request of not working Fridays. This was accommodated by the Claimant either using flexi-time or annual leave.

#### Claimant's return to work January 2023

49. On 9 January 2023, on her first day back at work, the Claimant had a general catch up meeting with Mr Miller, who set out the new structure and shared the brand and marketing playbook. A team meeting was also held on the same day, at which the Claimant also met Sidra Khan, her maternity cover and Mr Azim. At the meeting the Claimant was taken through a slide deck about new processes, tools, documents, links and upcoming meetings.
50. The Claimant informed Mr Miller on her first day back that she had submitted an employment tribunal claim against the Respondent. In or around the same time, the Claimant also informed Mr Azim and Ms Khan that she had submitted this claim.

#### Not including the Claimant in team emails

51. On 17 January 2022 the Claimant was forwarded an email from a colleague, entitled social weekly campaign update. The original sender of the email was Ms Khan. The email was copied to a number of recipients but did not include the claimant. On 18 January 2022, the Claimant sent Ms Khan an email asking that she be included in "such things". In his evidence to the Tribunal, Mr Miller accepted that the Claimant may have been left off some emails, particularly when she first returned from leave but in this instance and others, it was due to the fact that the Claimant had not been included in the previous emails due to being on maternity leave and emails had inadvertently being forwarded to the same groups. We find prior to the Claimant's return to work, there were email groups that had been created for social weekly campaign updates.

52. On 10 May 2023, the Claimant sent a message to Mr Azim and Mr Miller requesting to be included in meetings *"like the Jaywing today"*. The original meeting invite had been sent by Jaywing, an external client. The Claimant informed Mr Azim and Mr Miller that she had only become aware of the meeting from a colleague that day. There was no response from Mr Miller but Mr Azim responded to advise that he had just shared the link with Ms Khan as well and that the invite had come from Jaywing, an external client.
53. On the same day, the Claimant sent another message to Mr Azim, after becoming aware of another meeting that she had not been invited to. The Claimant again asked Mr Azim to share invites with the whole team. Mr Azim responded to advise *"you were already on the call Hannah, when I shared the invite with Sidra"*.
54. There is no dispute that there were occasions when the Claimant was missed off emails and meetings invites. The Claimant contends that this was done deliberately.

Not providing the Claimant with Meeting Agendas

55. On 23 January 2023 the Claimant sent Ms Khan an email requesting an agenda for a meeting that was taking place on 25 January. We heard no evidence as to whether Ms Khan replied to the Claimant, however, the Claimant's evidence was that no response was received to this request. In his evidence to the Tribunal Mr Miller advised that it was not common practice for the Respondent to prepare agendas for team meetings and these would only be produced for longer external meetings.
56. In the list of issues, the Claimant specifically sets out as an act of victimisation that she was not provided an agenda for a meeting that took place on 18 January 2023. We were not taken to any documentary evidence in relation to this allegation, however, in his evidence to the Tribunal, Mr Miller advised that the only meetings he was aware of on 18 January were two social media team meetings for which agendas were not produced, it was likely that one of these meetings was to discuss the live handover document, as detailed below.
57. We prefer the evidence of the Respondent in relation to this matter and find specifically that no agenda was produced for the meetings on 18 and 25 January 2023. The Claimant did not challenge the evidence of the Respondent in relation to the existence

of agendas for these meetings and did not produce any evidence to support the contention that agendas had been prepared but not forwarded to her.

Handover to the Claimant

58. On 12 January 2023, the Claimant exchanged a number of messages on the team chat with Mr Azim and Ms Khan concerning the provision of a handover document and being provided access to everything that she required.
59. As Ms Khan's maternity cover contract was extended to allow a gradual handover period to the Claimant upon her return, Mr Azim advised the Claimant that a handover document would not be prepared until closer to Ms Khan's contract end date, in March, as Ms Khan was still expected to continue with her duties until then. The Claimant advised Mr Azim that she felt it was not unreasonable for her to ask for a handover documents containing passwords and links, as without these she could not do her job. She also advised that she would escalate matters to HR as she felt this was discrimination.
60. Mr Azim responded to the Claimant to advise that the team had been very supportive of her return to work. Mr Azim pointed out that the team had shared files with her on teams and via email and that no one was suggesting that the Claimant wait until Ms Khan's contract end, for access to things that she needed. The need to wait was only specifically in relation to a handover document.
61. In the same chat a number of emails were exchanged between Mr Azim and the Claimant in relating to accessing platforms and assistance is provided to the Claimant to enable her to access the brandwatch platform. In response to Mr Azim asking whether the Claimant required assistance with accessing any other platforms, the Claimant advised she was unsure as she has been on maternity leave hence why she felt a handover document setting out all the platforms and matters that Ms Khan had been working on would be of assistance.
62. Following the Claimants indication that she would be contacting HR, Mr Azim added Mr Miller to the chat and shared the conversation from the last few days. Mr Miller suggested that the chat forum was not the best place to discuss such matters and a meeting would be helpful to discuss matters.



63. Following Mr Miller being copied into the chat, the Claimant asked to speak to him regarding the chat messages. Mr Miller and the Claimant spoke on 12 January and it was agreed that the team would create a live handover document of current work and projects which the Claimant would have access to.
64. On 18 January a meeting took place to discuss handover and the live document that had been created which was populated with details of current work and projects for social.
65. On 19 January, Ms Khan posted a message on the team chat stating that the Claimant was expected to produce a report and this had not been completed yet. The Claimant responded to advise Ms Khan that she not aware of this and further to the handover meeting, this did not align with what had been agreed.

#### Grievance

66. On 23 October 2022, the Claimant raised a formal grievance with the Respondent in respect of maternity discrimination. The grievance included the following complaints:
  - i) The Claimant not being mapped to the Social lead role;
  - ii) The roles and responsibilities of the Claimant's role being transferred to the Social lead role;
  - iii) Mr Jervis's comment to the Claimant about having a baby at the wrong time;
  - iv) Mr Millers conversation with the Claimant about flexible working.
67. Mr Jervis, Mr Miller and Ms Langley were all interviewed as part of the investigation.
68. On 8 December 2022, the Respondent wrote to the Claimant advising her that her grievance complaints had not been upheld.
69. On 1 March 2023, the Claimant raised a second formal grievance with the Respondent in respect of bullying and victimisation. The grievance included the following complaints:
  - i) The Claimant not being provided access to passwords;
  - ii) The Claimant not being included in emails or meeting invites;
  - iii) The Claimant not receiving a handover upon her return to work;

iv) The Claimant not being sent an agenda for a meeting.

70. On 18 May 2023, the Respondent wrote to the Claimant advising her that her grievance complaints had not been upheld.

### Time Limits

71. The Claimant contacted ACAS on 26 October 2022 and the Early Conciliation period ended on 15 November 2022. The Claimant submitted her Claim Form to the Tribunal on 15 November 2022. The Respondent therefore submits that any alleged act or omission occurring before 27 July 2022 is prima facie out of time.

72. The Respondent does not accept that any of the pleaded allegations were part of any continuing act or series of acts, or that it would be just and equitable to permit the Claimant to pursue her claims in relation to those allegations. The Respondent submits there is forensic prejudice to the Respondent should the claims be allowed to proceed as 2 key witnesses, Mr Jervis and Ms Thomson are no longer employed by the Respondent and it was unable to secure any evidence from these witnesses.

73. The Claimant submits it would be just and equitable for the Tribunal to extend time due to the fact that she was engaging with the Respondent through the normal limitation period and had made them aware of the discrimination matters she complains of in these proceedings. The Claimant highlights that these events unfolded during the first few months of her baby's life and she was dealing with these matters as well as motherhood. The Claimant submits that she initially raised an informal grievance on 27 April 2022 and then notified the Respondent on 18 June 2022 that she wished to formalise her complaints of discrimination.

### Relevant Law

#### Pregnancy and Maternity Discrimination

74. Section 18 of the Equality Act 2010 provides;

*(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably—*

*(a) because of the pregnancy, or*

*(b) because of illness suffered by her as a result of it.*

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

*(4) A 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.*

*(5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).*

*(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—*

*(a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy.*

*(b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.*

*(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—*

*(a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or*

*(b) it is for a reason mentioned in subsection (3) or (4).*

### Burden of Proof

75. Section 136 of the Equality Act 2010 provides;

*(1) 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.*

76. ***O’Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor [1997] ICR 33, EAT.*** The protected characteristic only has to be an effective cause of the treatment. It does not have to be the main or only reason. The EAT found that there were always ‘surrounding circumstances’ to a pregnancy. For example, the fact that an employer’s reason for dismissing a pregnant woman was that she would become unavailable for work did not make it any the less a dismissal on the ground of pregnancy.
44. ***R (on the application of E) -v- Governing Body of JFS [2009] UKSC 15 (SC)***  
The “but for” test should not be used to determine whether discrimination has been proved, unless the factual criteria applied by the respondent are inherently discriminatory.
45. ***Interserve Limited -v- Tuleikyte [2017] IRLR 615 (EAT).*** When considering allegations of unfavourable treatment because of absence on maternity leave under Section 18(4) EqA, the correct legal test is the “reasons why” approach; it is not a “criterion” test.
46. ***Amnesty International -v- Ahmed [2009] IRLR 884 (EAT).*** The fact that [a protected characteristic] is part of the circumstances in which the treatment complained of occurred, or the sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason, for that treatment.
47. ***Johal -v- Commission for Equality and Human Rights [2010] IRLR 0541 (EAT).*** Where an employee on maternity leave was deprived of the opportunity to apply for promotion due to an administrative error, it was the administrative error and not the fact of the maternity leave which was the reason for the treatment. Maternity leave was the occasion for the treatment complained of; it was not the reason for the treatment.
48. ***The Law Society -v- Bahl [2003] IRLR 640.*** A tribunal is not entitled to draw an inference of discrimination from the mere fact that an employer has treated an employee unreasonably. It is a wholly unacceptable leap to conclude that whenever the victim of unreasonable conduct has a protected characteristic then it is legitimate to infer that the unreasonable treatment was because of it. All unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory. To establish unlawful discrimination, it is necessary to show that the employer’s reason for acting was one of the proscribed grounds. Discrimination may be inferred if there

is no explanation for the unreasonable behaviour, it is not then the mere fact of unreasonable behaviour which entitles the tribunal to infer discrimination, but rather the fact that there is no reason advanced for it.

49. In ***Islington Borough Council v Ladele [2009] ICR 387*** Mr Justice Elias explained the essence of direct discrimination as follows: “*The concept of direct discrimination is fundamentally a simple one. The claimant suffers some form of detriment (using that term very broadly) and the reason for that detriment or treatment is the prohibited ground. There is implicit in that analysis the fact that someone in a similar position to whom that ground did not apply (the comparator) would not have suffered the detriment. By establishing that the reason for the detrimental treatment is the prohibited reason, the claimant necessarily establishes at one and the same time that he or she is less favourably treated than the comparator who did not share the prohibited characteristic.*”
50. ***Burrett v West Birmingham Health Authority 1994 IRLR 7, EAT*** is an example of the proposition that it is for the tribunal to decide as a matter of fact what is less favourable treatment and the test posed by the legislation is an objective one. The fact that a Claimant believes that he or she has been treated less favourably does not of itself establish that there has been less favourable treatment, although the Claimant’s perception of the effect of treatment is likely to be relevant as to whether, objectively, that treatment was less favourable.
51. In order for a disadvantage to qualify as a “detriment”, it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to “detriment”. However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, ***Shamoon v Chief Constable of RUC [2003] UKHL 11***.
52. ***Igen v Wong and Others [2005] IRLR 258 and Madarassy v Nomura International PLC [2007] IRLR 246***. The employment tribunal should go through a two-stage process, the first stage of which requires the Claimant to prove facts which could establish that the Respondent has committed an act of discrimination, after which, and only if the Claimant has proved such facts, the Respondent is required to establish on the balance of probabilities that it did not commit the unlawful act of discrimination. In

concluding as to whether the Claimant had established a prima facie case, the tribunal is to examine all the evidence provided by the Respondent and the Claimant.

53. ***Madarrassy v Nomura International Ltd 2007 ICR 867*** - the bare facts of the difference in protected characteristic and less favourable treatment is not “without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the Respondent” committed an act of unlawful discrimination”. There must be “something more”.
54. ***Nagarajan v London Regional Transport [1999] IRLR 572, HL***,-“The crucial question in every case was, 'why the complainant received less favourable treatment ... Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?’”
55. ***Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830, [2001] ICR 1065, HL***, - The test is what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously was their reason? Looked at as a question of causation ('but for ...'), it was an objective test. The anti-discrimination legislation required something different; the test should be subjective: 'Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.'

#### Victimisation

56. Section 27 of the Equality Act provides as follows:-

*(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.*

*(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*

(4) *This section applies only where the person subjected to a detriment is an individual.*

(5) *The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.*

57. In a victimisation claim there is no need for a comparator. The Act requires the tribunal to determine whether the claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in ***Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830***:- “*The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so*”. The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof.
58. To get protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says “Detriment does not ... include conduct which amounts to harassment”. The judgment in ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285*** is applicable.
59. The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see ***South London Healthcare NHS Trust v Al-Rubeyi EAT0269/09***.
60. Once the tribunal has been able to identify the existence of the protected act and the detriment the tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent’s state of mind. In the case of ***St Helen’s Metropolitan Borough Council v Derbyshire [2007] IRLR 540*** the House of Lords said there must be a link in the mind of the respondent between the doing of the acts

and the less favourable treatment. It is not necessary to examine the motive of the respondent see ***R (on the application of E) v Governing Body of JFS and Others [2010] IRLR 136.***

61. In establishing the causative link between the protected act and the less favourable treatment the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, see ***Nagarajan*** above.
62. In ***Owen and Briggs v James [1982] IRLR 502*** Knox J said:- "*Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination.*"
63. In ***O' Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615*** the Court of Appeal said that, if there was more than one motive, it is sufficient that there is a motive that there is a discriminatory reason, as long as this has sufficient weight.

#### Time limits

64. Section 123 of the Equality Act 2010 provides as follows;  
  
*(1) [Subject to [sections 140A and 140B],] proceedings on a complaint within section 120 may not be brought after the end of— (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable. (3) For the purposes of this section— (a) conduct extending over a period is to be treated as done at the end of the period; (b) failure to do something is to be treated as occurring when the person in question decided on it.*



65. ***British Coal Corporation v Keeble [1997] IRLR 336***, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion'
66. ***(Southwark London Borough v Afolabi [2003] IRLR 220). Robertson and Bexley Community Centre (trading as Leisure Link) 2003 IRLR 434CA*** - there is no presumption that time should be extended to validate an out of time claim unless the Claimant can justify the failure to issue the claim in time. The Tribunal cannot hear a claim unless the Claimant convinces the Tribunal that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.
67. ***Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640*** - the "such other period as the employment tribunal thinks just and equitable" extension indicates that Parliament chose to give the tribunal the widest possible discretion. Although there is no prescribed list of factors for the tribunal to consider, "factors which are almost always relevant to consider are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the Respondent".
68. The Court of Appeal made it clear in ***Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686***, that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for an applicant 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 she has to prove, 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 oppose to "a succession of unconnected or isolated specific acts". It will be a relevant, but not 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 that involves a number of different individuals.
69. ***South Western Ambulance service NHS Foundation Trust v King 2020 IRLR 168***  
*"non-discriminatory acts alleged to be part of a course of conduct extending over a period cannot form part of a continuing act"*.

## DISCUSSION & CONCLUSIONS

70. In terms of approach, we decided to initially determine if there had been breaches of the Equality Act before moving on to determine the time limits question(s). In doing so, we reminded ourselves of the dicta in ***South Western Ambulance Service NHS Foundation Trust v King* 2020 IRLR 168**, which is that non-discriminatory acts are prohibited from being part of a “conduct extending over a period” of time.

### Direct pregnancy/maternity discrimination

71. There was no dispute that during the acts of direct discrimination being complained of the Claimant was exercising her right to ordinary and/or additional maternity leave and thereby within the ‘protected period’ under s18 Equality Act 2010.

#### Nick Jervis comment

Reducing the Claimant’s role to a Social Media Exec role; and/or Social Lead role  
Absorbing/reducing Claimant’s old role

72. We have considered these three complaints together as there is commonality in our reasons for reaching the conclusions we have. As set out earlier, we concluded that Mr Jervis made the comment that the Claimant ‘had a baby at the wrong time’. The comment was made during a conversation relating to a restructure in the workplace and at a time when the Claimant was expressing concerns about the new social lead role and what this would mean in terms of her own role.
73. Whilst we agree with the Respondent’s submissions that the comment would unlikely be sufficient to conclude that the Claimant has been subject to unfavourable treatment in that as a comment alone it may not necessarily put the Claimant at a disadvantage. However, the resulting chain of events and Mr Jervis’ involvement in relation to changes to the Claimant’s role and the addition of the new social lead role lead us to conclude that the comment cannot be taken in isolation and the context in which it was made is highly relevant. We conclude, the fact the comment was made at a time when the restructure and the Claimant’s role were being discussed evidences the nexus in Mr Jervis’ mind between the Claimant’s maternity leave and her role within the restructure. We find all of Mr Jervis’ resultant actions in respect of the Claimant’s role

and the social lead role were tainted by his view that the Claimant “had a baby at the wrong time”.

74. Mr Jervis was a senior manager in the organisation and was responsible for implementing the restructure in the Brand & Marketing team. As part of his role, we are in no doubt that Mr Jervis would have been under significant pressure to ensure that there were no delays or issues relating to the successful implementation of the new structure in his area of responsibility. The Respondent was working to a strict global implementation date of 1 July 2022 for the launch of the new structure.
75. The restructure affected large parts of the Respondent’s business and the Respondent’s evidence was that following the restructure, social media was a key focus for the business. Mr Jervis was heavily involved in shaping the job descriptions for both the Claimant’s role in the new structure and the social lead role. Mr Jervis was aware that the Claimant was in the early part of her maternity leave and would not be returning to work for many months. The Respondent needed someone to lead in the area of Social Media from 1 July 2022 and it was evident that the Claimant was not going to be around to do this. We conclude that these considerations impacted the decisions that Mr Jervis took in respect of the Claimant and her role including the roles and responsibilities of the new social lead role.
76. We find the Claimant’s substantive role duties were reduced significantly almost to the same level as a marketing executive. This was most notable in terms of the reduction in the knowledge and expertise required for the Claimant’s role. We conclude that the Claimant had her line management and strategic duties removed from her and her lead role in terms of social media was absorbed into the newly created Social Lead role. In terms of practical day to day work, the Claimant’s witnesses, Ms Poon and Ms Sleep both corroborate the Claimant’s evidence that prior to her maternity leave she was carrying out the duties that now form part of the Social Lead role. We conclude that these duties were not something just referred to in the job description rather the Claimant was carrying out the range of roles and responsibilities set out in her job description.
77. The Respondent’s evidence was that the new social lead role was a forward thinking role, driving strategy as opposed to the Claimant’s manager role which was a more specialist role focused on how to develop and deliver on plans for how the strategy will be put forward. We do not accept the Respondent’s position in relation to this distinction and find there is very little difference between the Claimant’s old role and

that of the new Social Lead role. The Claimant's old job description included leading on the global strategy and it is evident that is how the Claimant saw her role as did others both within the business and externally. Prior to going on maternity leave, the Claimant had produced the strategy paper for social media and her involvement in leading and delivering social media strategy was clearly evidenced in her 2021 end of year review.

78. The Respondent asserted that the only real change to the Claimant's role was that it had now become more globally focused. We find that this would have been the position for all roles in that previously all roles were regional focused, following the restructure they all become globally focused. That is not to say that the roles previously did not involve looking at strategies globally for the business, as that was clearly included in the Claimant's job description.
79. In relation to these three complaints, we find that the Claimant has proven facts from which we can establish that the Respondent has committed acts of discrimination. In light of this finding, we reminded ourselves that the burden of proof shifts to the Respondent to prove that it did not commit the unlawful acts of discrimination.
80. We accept to some extent the Respondent's position that the restructure affected everyone not just the Claimant, however, we saw no evidence from the Respondent which showed that others were affected in the same way as the Claimant. Whilst others also had additional duties removed from them and were placed back into their substantive roles, we have seen no evidence that their substantive roles were affected to the same significant extent as the Claimants. In fact to the contrary, in Ms Poon's evidence to the Tribunal, she stated that she was given additional responsibilities in her role, rather than a reduction in responsibilities, as was the case with the Claimant.
81. In light of all our findings above, we conclude Mr Jervis' comment, the reduction of the Claimant's role and her duties being adsorbed by the Social Lead role was unfavourable treatment. We also conclude that the Claimant's maternity leave had a significant influence on the Respondent's actions.

Social Lead Job description provision

82. We find there was a significant delay in providing the Claimant with a copy of the Social Lead job description. The Claimant had asked for a copy of this at the end of March, during her conversations with Mr Jervis and Mr Miller. Despite these requests, she was

not provided with a copy until 1 July 2022. Had she been provided the job description earlier, she would have been able to raise her concerns and challenge the creation of the new social lead role. Instead by the time she was provided a copy of the job description Mr Azim had already been appointed to the role. We find that the Claimant was treated unfavourably and has proven facts from which we can conclude that discrimination has occurred. As a result the burden of proof moves to the Respondent to show that the reason for the treatment was non-discriminatory.

83. We concluded earlier that Mr Miller not providing the Claimant with a copy of the job description was due to him believing it was not appropriate to do so as the only individuals that had access to the job descriptions at that time were those who were at risk of redundancy. In respect of Mr Miller, we conclude that this was the reason he did not provide the job description to the Claimant, this was not because of the Claimant's maternity leave.
84. With regard to Mr Jervis, we concluded earlier that the Claimant had asked him for a copy of the Job description. We have not heard any evidence in relation to why Mr Jervis did not provide the Claimant a copy. Mr Jervis was aware of the Claimants concerns and as a senior manager involved in the restructure, it would have been within his remit to share the job description with the Claimant but he chose not to do so. By not providing the Claimant a copy of the job description, this made it very difficult for her to evidence the fact that her duties had been absorbed into the new role and to seek to formally challenge this. We have seen no evidence that anyone else was affected to the same extent as the Claimant whereby they were expressing concerns about their roles being diminished and replaced. We conclude, the Claimant was treated unfavourably and in light of the findings we have already made in relation to Mr Jervis, we conclude that the Claimant's maternity leave was a significant factor in him not providing the job description.

Appointing Hammad Azim rather than the Claimant to the Social Lead role

85. With regard to the appointment of Mr Azim rather than the Claimant, we accept that once the restructure roles had been created and decisions had been made about mapping and new roles, the Respondent applied the same policy to everyone in that the new roles were ringfenced for those at risk of redundancy. However, in the Claimant's particular situation her substantive role had been reduced and absorbed into the new social lead role. Had the Claimant not been discriminated against in the

first place then she would not have found herself in the position she did as she would have been mapped across to the social lead role. The only reason Mr Azim was appointed to the role was the fact that it had been created as a new role and the Claimant was unable to apply.

86. For all the reasons we have set out above in relation to the Claimants' role being reduced and absorbed because of her maternity leave, we find that Mr Azim's appointment to the role rather than the Claimant was unfavourable treatment and that the Claimant's maternity leave had a significant influence on this action.

Flexible working request – Mr Miller's indication re: 3 month return

87. It is clear from the documentary evidence at the time of the conversation between Mr Miller and the Claimant that their understanding and recollection of events differs from one another. However, what is clear is that Mr Miler understood the Claimant was unsure about whether she wanted to apply for condensed or reduced hours. His email to the Claimant of 12 December 2022 sets out his understanding of the conversation and he asks the Claimant to clarify what she intends to apply for. There is no suggestion in Mr Miller's email that the Claimant is any way unable to apply for flexible working or that she must return to work for 3 months before she is able to apply.
88. The Claimant's email in response on 14 December also evidences her understanding that there was potentially an issue with her seeking to condense hours. She expresses positivity that Mr Miller had stated that her request for condensed hours could be taken forward. Mr Miller informally accommodated the Claimant taking Fridays either as flexible or annual leave until her flexible working application was approved. There was a delay in the Claimant's application being approved, however, this was largely due to the Claimant being on sick leave. Once her application was submitted with the additional detail that was required, it was approved swiftly.
89. In respect of this complaint we conclude that the Claimant has not proven facts from which a tribunal could conclude that discrimination has occurred.

Victimisation

90. There is no dispute between the parties that the Claimant made a protected act in the form of her employment tribunal claim, which was filed on 15 November 2021.

91. The Respondents evidence to the Tribunal was that Mr Miller, Ms Khan and Mr Azim were informed about her submitting an employment tribunal shortly after her return to work on 11 January 2023. The Claimant did not seek to challenge this evidence and we conclude that the Claimant made all 3 aware of her employment tribunal claim.

Not including the Claimant in team emails/meeting invites:

92. There is no dispute between the parties that the Claimant was missed off emails on a number of occasions. The dispute between the parties is whether these actions were inadvertent or deliberate. We conclude that the email of 17 January was sent to a email group that had been in existence prior to the Claimant's return and she had not been added to the group. We accept that on 17 January Ms Khan simply forwarded this email, inadvertently not including the Claimant.
93. In relation to the meeting invites referred to on 10 May 2023, we accept that these were sent by external clients rather than the team internally. Mr Azim's response that he had only just sent these on to Ms Khan supports the Respondent's assertion that such errors were inadvertent and that the Claimant in this instance was not the only person that had been missed off the invite.
94. In respect of this complaint we conclude that the Claimant was missed off a number of emails and meeting invites, however, we have seen no evidence that these acts were anything other than inadvertent and not because the Claimant had done a protected act.

Not providing Agenda for meetings/ Handover meeting 18 January 2023

95. We found earlier that agendas were only prepared for longer meetings. Specifically in relation to the agendas for the meeting of 18 and 23 January 2023, we conclude that no agendas were prepared. The Claimant was not provided agendas because these had not been prepared not because the Claimant had submitted an employment tribunal claim. We have seen no evidence that agendas had been available for certain meetings and that these were deliberately not provided to the Claimant.

Not providing files and passwords requested

Not providing necessary clarification for the terms of handover

96. We deal with these allegations together as there is commonality in our findings and conclusions.
97. We conclude that efforts were made to provide files and passwords to the Claimant. The documentary evidence shows that pro-active steps were taken by Mr Azim in assisting the Claimant access systems. Mr Azim checked with the Claimant on a number of occasions to ensure that she had access to what she required. We conclude the difficulty was more with the fact that the Claimant was only able to confirm access to systems that she was aware of, had this information been provided in a handover document, the Claimant would have been able to advise which systems she was unable to access.
98. In relation to the handover, there was disagreement about how this should be done, largely due to the fact that Mr Azim and Mr Miller felt it was appropriate that a formal written handover document be prepared at the end of Ms Khan's contract, whereas the Claimant felt that she required a handover document as soon as she returned to work otherwise, she was unable to carry out her duties effectively. We accept that efforts were made to assist the Claimant, following her discussion with Mr Miller about a handover document. A live handover document was created, populated and shared with the Claimant on 18 January 2023, we find that this was supportive and an effort to try and further assist the Claimant. We conclude that a handover document may have been helpful at an earlier juncture, addressing in particular which systems the Claimant may require access to, however, we do not find that the decision to deal with the handover in this way was due to the protected act.
99. In his evidence Mr Miller admitted that in hindsight there may have been a better way to do the handover but in no way was the plan and decision influenced by the Claimant's protected act. We conclude that there is no evidence to suggest that the decisions in terms of the handover or any actions in terms of providing files and passwords was because of the protected act.
100. In terms of all of the victimisation complaints generally, it is evident that there were a number of disagreements between the Claimant and in particular Mr Azim and Ms Khan. There were a number of blunt messages exchanged between them and we were taken to documentary evidence, where the Claimant informed Mr Azim and Ms



Khan that she would be taking matters to HR. In this respect we agree with the Respondent's submissions that any hesitation or lack of comfort in the team that were felt related to the Claimant's responses when there were disagreements, most notably in her seeking to escalate issues to HR. We agree that this is not the same as the protected itself being the motivation for any of the Respondent's actions.

101. In summary, we dismiss all of the Claimant's victimisation complaints as we conclude there is no causal link between the acts complained of and the Claimant bringing an employment tribunal claim.

#### Time Limits

102. The Claimant lodged her claim with ACAS on 26 October 2023, making any claims before 27 July 2022 potentially out of time.
103. As we have concluded that the flexible working complaint and none of the victimisation claims were discriminatory acts, there can be no continuing course of conduct, in respect of these claims. This leaves acts of direct maternity discrimination which occurred between March 2021 and 1 July 2021, which without any continuing course of conduct are out of time.
104. We reminded ourselves that the discretion to extend time should only be exercised in exceptional circumstances. The burden is on the Claimant to persuade the Tribunal that it is just and equitable to extend time. We accept the reasons put forward by the Claimant, particularly that the events relating to these claims arose in the early months after the Claimant had given birth. She was a new mother and it is entirely understandable that the additional demands and stresses of motherhood that she had to contend with, meant she was unable to bring her claim within the time limits..
105. In terms of prejudice to the Respondent in not being able to obtain the evidence of key witnesses, we heard no evidence as to whether the Respondent had made any efforts to contact Mr Jervis or Ms Thomson. Had such an approach been made and had the witnesses refused, the Respondent could have pursued witness orders compelling Mr Jervis and Ms Thomson to attend the Tribunal and provide evidence. Additionally, we find the prejudice to the Respondent is limited as the Claimant had also raised her complaints informally in or around 27 April 2022 before formalising her grievance on 23 October 2022. Mr Jervis was interviewed in respect of these complaints and had provided his response to the allegations. Ms Thomson's position is also detailed in

documentary evidence included in the bundle. In light of these findings we conclude that it is just and equitable to extend time.

106. This case will be listed for a remedy hearing, with notification and directions being sent to the parties at the earliest opportunity.

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**Employment Judge Akhtar**

28 November 2023

Sent to the parties on:

04/12/2023

For the Tribunal Office:

**Note**

**Public access to employment tribunal decisions**

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.