Case No. 1309028/2022

& 1305669/2023

EMPLOYMENT TRIBUNALS

Claimant: Ms A Lad

Respondent: Lily Head Dental Practice Sales Limited

Heard at: West Midlands (Birmingham) Employment Tribunal

On: 1, 2, 3, 6, 7, 8 November 2023 and 23 and 24 November 2023 in chambers.

Before: Employment Judge Childe

Mrs Campbell

Mrs Chavda

Case No. 1309028/2022

& 1305669/2023

REPRESENTATION:

Claimant: In person

Respondent: Mr Linstead (counsel)

JUDGMENT

1. The complaint of pregnancy and maternity discrimination in connection with issue 2.1.5 is well-founded and succeeds.

2. The complaint of pregnancy and maternity discrimination in connection with all other issues is not well-founded and is dismissed.

3. The complaint of victimisation in connection with issue 3.2.5 is well-founded and succeeds.

4. The complaint of victimisation in connection with all other issues is not well-founded and is dismissed.

5. The complaint of direct race discrimination is not well-founded and is dismissed.

6. The complaint of unauthorised deductions from wages is not well-founded and is dismissed.

Summary of the case and Issues to be determined

7. The claimant brought two separate employment tribunal claims, under case numbers 1309028/2022 & 1305669/2023, which the tribunal had previously decided would be considered together. This case has been fully case managed at two separate case management hearings, during which the tribunal had identified the issues to be determined in the final hearing. These issues were discussed and agreed at the start of the hearing and are referred to below.

Introduction

8. We had access to an agreed tribunal bundle which ran to 1421 pages, which included three additional documents supplied by the respondent and which we agreed were relevant and should be included in the bundle.
9. Witness evidence was provided by the claimant herself. From the respondent, we were provided with witness statements from Abi Greenhough, Managing Director, Chris Mayor, Commercial Director, James Head (director) and Martin How, Director.

The Law

Race discrimination- direct discrimination

10. Under s13(1) of the Equality Act 2010 ("EQA") read with s9, direct discrimination takes place where a person treats the claimant less favourably because of race than that person treats or would treat others. Under s23(1), when a comparison is made, there must be no material difference between the

circumstances relating to each case. ‘Race’ includes nationality or national origins

11. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of race. However in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the ‘reason why’ the claimant was treated as she was. (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11; [2003] IRLR 285)

Victimisation

12. By EQA s.27:-

(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.

13. The issue here is one of causation which involves looking at the mental processes of the alleged discriminator.

Pregnancy and Maternity

14. Section 18 of the EQA protects persons with the protected characteristic of marriage and civil partnership: it states as follows:

"(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 ...

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

(a) …at the end of the additional maternity leave period …"

15. The claimant has taken two periods of maternity leave whilst working for the respondent and the relevant protected periods are as follows:
    a. For the first pregnancy: from 18 January 2021 to 14 March 2022.
    b. For the second pregnancy: from 21 June 2022 to date.
16. For a discrimination claim to succeed the unfavourable treatment must be 'because of' the employee's pregnancy or maternity leave. The meaning of this expression was considered by the EAT in *Indigo Design Build and Management Ltd and anor v Martinez* EAT 0020/14. There, His Honour Judge Richardson confirmed that the law required a consideration of the 'grounds' for the treatment and at paragraph 34 made the following statement: " *…. Failure to provide a notification or a risk assessment relating to pregnancy or maternity*

leave may be, but is not necessarily, 'because of' pregnancy or maternity leave. It may, for example, be a simple administrative error. The same process of reasoning is required in such a case as is required in any other discrimination case."

17. In *Onu v Akwiwu and anor; Taiwo v Olaigbe and anor* 2014 ICR 571, CA, Lord Justice Underhill stated: '*What constitutes the "grounds" for a directly discriminatory act will vary according to the type of case. The paradigm is perhaps the case where the discriminator applies a rule or criterion which is inherently based on the protected characteristic. In such a case the criterion itself, or its application, plainly constitutes the grounds of the act complained of, and there is no need to look further. But there are other cases which do not involve the application of any inherently discriminatory criterion and where the discriminatory grounds consist in the fact that the protected characteristic has operated on the discriminator's mind… so as to lead him to act in the way complained of. It does not have to be the only such factor: it is enough if it has had "a significant influence*". *Nor need it be conscious: a subconscious motivation, if proved, will suffice.'*

Maternity and Parental Leave regulations (MPLR)

18. By r 7 Maternity and Parental Leave Regulations (MPLR)

7(6) An employer who is notified under any provision of regulation 4 of the date on which, by virtue of any provision of regulation 6, an employee's ordinary maternity leave period will commence or has commenced shall

notify the employee of the date on which her additional maternity leave period shall end—

(7) The notification provided for in paragraph (6) shall be given to the employee—

(a)where the employer is notified under regulation 4(1)(a)(iii), (3)(b) or (4)(b), within 28 days of the date on which he received the notification;

(b)where the employer is notified under regulation 4(1A), within 28 days of the date on which the employee's ordinary maternity leave period commenced.

19. By reg 11 Maternity and Parental Leave Regulations (MPLR)

(1) An employee who intends to return to work earlier than the end of her additional maternity leave period, shall give to her employer not less than 8 weeks' notice of the date on which she intends to return.

(2) If an employee attempts to return to work earlier than the end of her additional maternity leave period] without complying with paragraph (1), her employer is entitled to postpone her return to a date such as will secure, subject to paragraph (3), that he has 8 weeks notice of her return.

Burden of Proof

20. The reversal of burden of proof applies under EQA s136 'to any proceedings relating to a contravention of this Act'.
21. The EQA provides for a shifting burden of proof. Section 136 so far as material provides as follows:

    "(2) If there are facts from which the Court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred. (3) But subsection (2) does not apply if A shows that A did not contravene the provision."
22. Consequently, it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the EQA. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention.
23. If and when the claimant establishes a prima face case of discrimination, then the second stage of the burden of proof test is reached, with the consequence that the burden of proof shifts onto the respondent. According to the Court of Appeal in *Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong* and other cases 2005 ICR 931, CA, the respondent must at this stage prove, on the balance of probabilities, that its treatment of the claimant was in no sense whatsoever based on the protected ground.

Unlawful deduction from wages

24. By section 13 Employment Rights Act 1996:

Right not to suffer unauthorised deductions.

(1)An employer shall not make a deduction from wages of a worker employed by him unless—

(a)the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b)the worker has previously signified in writing his agreement or consent to the making of the deduction…

"(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."

25. "Properly payable" refers to a legal, but not necessarily contractual, entitlement: *New Century Cleaning v Church* [2000] IRLR 27.

Health and Safety Law

26. Under the Management of Health and Safety at Work Regulations 1999,

3(1) every employer shall make a suitable and sufficient assessment of

(a) the risks to the health and safety of his employers to which they are exposed whilst they are at work;…

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him or under the relevant statutory provisions

3(3) Any assessment such as is referred to in paragraph (1) or (2) shall be reviewed by the employer… who made it if-

(a) there is reason to suspect that it is no longer valid;

(b) there has been a significant change in the matters to which it relates;

and when as a result of any such review changes to an assessment are required, the employer concerned shall make them.

3(6) when the employer employs five or more employees, he shall record

(a) the significant findings of the assessment; and

(b) any group of his employees identified by it as being especially at risk

……

16(1)(a) Where-

(a) the persons working in an undertaking include women of childbearing age; And

(b) the work is of a kind which could involve risk, by reason of her condition, to the health and safety of a new or expectant mother, or to that of her baby, from any processes of working conditions…

the assessment required by regulation 3(1) shall also include an assessment of such risk.

Findings of Fact, Analysis and Conclusion

27. The claimant is a Sales negotiator, who has been employed from 6 October 2018 and she remains employed by the respondent. Her role is to generate leads, negotiate sales through to completion, write reports and valuations for vendors and to maintain the sales database, all with assistance as this is a junior role within the Respondent.

28. The respondent is a small Dental Brokers company with about 10 employees, who market dental practices to potential buyers, and negotiate and manage sales through to completion. The respondents have no on-site HR specialist.

29. We go on in our judgment to find relevant facts in connection with the issues we have been asked to determine, as follows. Where we have had to resolve any conflict of evidence, we indicate how we have done so at the material point.

Issue 1: Did any of the alleged acts of discrimination or victimisation occur 3 months or more before the date that the Claimant lodged her claim form, and are therefore out of time under section 123 EqA" (allowing for any extensions permitted by the early conciliation period)?

30. This issue does not arise as we have not upheld any of the claimant's allegations which occurred more than three months (extension time for ACAS conciliation) prior to the first claim, brought under case number 1309028/2022.

31. The allegations that we have upheld were brought under case number 1305669/2023 and were lodged in time on 24 August 2023.

Issue 2: If so, do the alleged acts of discrimination or any of them constitute conduct extending over a period for the purposes of section 123(3) EqA such that the end of that period is in time?

Issue 3: If not, would it be just and equitable for the Tribunal to extend time for submission of the claims under section 123(1)(b) EqA?

32. These issues are not relevant for the reasons set out in paragraph 31 above.

Issue 4: Pregnancy and Maternity Discrimination (claim number 1309028/ 2022)

Issue 4 i failed to write to the claimant within 28 days of receiving her MAT B1 form on 24 June 2021, confirming maternity start and return to work dates.

33. The respondent accepts that the claimant was not provided with a written document confirming the claimant's maternity start and end dates.
34. We find that the claimant was told by Abi Greenhough during maternity check in calls held over teams, on 20 May and 14 June 2021 that she was entitled to 52 weeks' maternity leave and that her maternity leave would start on 1 October 2021. The claimant accepted this in evidence.
35. We accept the respondent's submission that there was no legal requirement to write to the claimant within 28 days. The requirement under 7(7)(a) is to notify an employee within 28 days of receipt of the MATB1 of the date on which the 12 months maternity leave period would end. There is no difficulty with that notification being given orally.

36. We find that not getting this information in writing did not treat the claimant unfavourably as she *did* have access to the information about when her 12-month maternity leave period would end, within 28 days of receipt of the MATB1 form. We therefore reject the claimant submission that she was not advised of her maternity entitlement by the respondent.

Issue 4 ii on 11 January 2022 obliged the claimant to provide 8 weeks' notice to return to work from maternity leave, before the end of 52 weeks.

37. The facts in respect of this allegation are largely agreed. The claimant said to Abi Greenhough on 11 January 2022 that she was keen to return to work as soon as possible. Abi Greenhough said she would check the position and on 14 January 2022 she emailed the claimant to say if she was going to come back early, she needed to provide eight weeks' notice of her return to work, although the respondent could consider an early date.
38. The respondent here was correctly setting out the claimant's legal rights to her. The claimant was obliged to provide eight weeks' notice of her return to work. In fact, the respondent said the claimant could come back to work earlier if she wished.
39. Accurately setting out the claimant's legal rights to her did not in any way constitute unfavourable treatment of the claimant.
40. We accept the respondent's submission that the reason Abi Greenhough provided this information was because she wanted to relay to the claimant her understanding of the legal position. It was not due to the claimant's pregnancy or maternity leave.

41. The claimant says in her submissions that the less favourable treatment is *she* was unaware she could revoke her eight weeks' notice to come back to work and could have instead continued her maternity leave. We reject this submission. This is not the claim the claimant brings. In any case we cannot see how the respondent could have been responsible for the claimant's ignorance of any alleged legal right she might claim to have.

Issue 4 iii by an email on 20 January 2022 telling the Claimant that she would be paid in lieu for her holidays instead of it carrying to the following year; the Claimant alleges that on the same day the Claimant notified the Respondent she wanted to retain holiday and asked what her options were and the Respondent emailed acknowledging the Claimant's preference but denied holiday and options in relation to it on the basis it would be detrimental to the business.

42. The respondent accepts that it made an error in the email dated 14 January 2022, when it told the claimant she would be paid in lieu of her holidays accrued in the 2021/2022 holiday year rather than permitting her to carry them over into the 2022/2023 holiday year.
43. The respondent compounded this error on 20 January 2022 when it reiterated the position, although the claimant fairly accepted in evidence that the respondent hadn't "shut the door" to the claimant being able to carry over her leave, in this email. Abi Greenhough had said to the claimant that she was open to the claimant looking into her legal rights and coming back to challenge the respondent.

44. What happened on 3 February 2023 is disputed. Abi Greenhough says she phoned the claimant, having taken advice, and agreed the claimant could carry all her holiday into 2022/2023. The claimant says that Abi Greenhough suggested to the claimant that she sell half of her holiday. The claimant did not challenge Abi Greenhough on this point in cross examination and we have accepted her evidence on this point. We found Abi Greenhough's evidence to be clear and honest on this point. It is consistent with what happened in the end, which was the claimant was allowed to carry over her holiday in 2022/2023.
45. The claimant says it was distressing that she was initially given inaccurate information about her holiday pay and entitlement and that she had to challenge it during pregnancy. We do find that the claimant was treated unfavourably in this regard.
46. However, we must then go on to consider why the claimant was initially given inaccurate information about her holiday entitlement. We find the reason for this was a mistake on the part of James Head and Abi Greenhough about the claimant's holiday entitlement and not because of the claimant's impending pregnancy or maternity leave.
47. We accept James Head and Abi Greenhoughs' evidence that they were unaware of the terms of the claimant's contract and assumed the claimant would be treated in line with all other employees who would not have been able to carry holiday forwards.
48. We accept that the respondent had very limited expertise on these matters and that the respondent was trying to navigate the various nuances of holiday pay during maternity leave without the benefit of expert advice.

49. James Head and Abi Greenhough' did put this mistake right as soon as they received accurate information from ACAS, which supports our finding that they were not motivated by the claimant's pregnancy or maternity when they gave the claimant inaccurate information initially.

Issue 4 iv by an email on 10 February 2022, assigned the claimant to events without consultation or consideration of her maternity status.

50. The claimant was provided with details of the events she was required to attend on 10 February 2022, prior to her returning to work on 4 March 2022, by Abi Greenhough.
51. We find that Abi Greenhough did consider the claimant's maternity status before allocating the claimant events for the following reasons:
    a. The claimant accepted in evidence it was part of her general job description that she attend external events, including on a Saturday and that she had previously done so.
    b. It is agreed evidence that the claimant had told Abi Greenhough on 11 January 2023 that her husband, Binda, would look after her baby when she returned to work. She had said childcare would not be a problem. Abi Greenhough was therefore reasonably working on the assumption that the claimant could come back to work and carry out her duties, including attending a limited number of events across the year.
    c. The claimant gave the impression to Abi Greenhough that she would be able to return to work and carry out her duties as before, including attending external events.

d. The claimant was allocated to four events, over a ten-month period as follows: 25 March 2022 for a whole day in London, 5 May 2022 for a day in Cambridge, 7 October 2023 for a day in London and 24 November 2023 in Birmingham.

e. The claimant in fact said to Abi Greenhough, in an email dated 10 February 2022, that she would be more than happy to attend, subject to child care and *"[i]t would be great to dress up and meet clients*".

52. However, unbeknown to Abi Greenhough prior to 10 February 2022, the claimant had subsequently reached the view that her husband Binda could not care for their child as they had planned.

53. Once Abi Greenhough found out that the claimant could not attend events outside of her working hours due to childcare reasons, the claimant was removed from the London event on 25 March 2023.

54. The claimant says in submissions that the respondent should have had a proper discussion with her about her attendance at events, considering her changed circumstances. However, we have found that once the claimant's changed circumstances were drawn to Abi Greenhough's attention, Abi Greenhough conducted herself appropriately by removing the London event from the claimant's diary.

55. The next event was not until 5 May 2022.

56. We accept the respondent's submission that after the claimant had made a further reference to childcare, and her need to be available, in her email of 7 April 2022, Abi Greenhough responded that the claimant had been allocated to daytime events only where there are two individuals available, to accommodate any childcare issues the claimant might have.

57. In the circumstances we find that Abi Greenhough did take the claimant's maternity needs into account and removed events from the claimant's calendar which she could not attend due to childcare. In fact, the claimant never came back to work and did not attend any events.
58. We accept the respondent's submission that there was no unfavourable treatment because the claimant was only being asked to do what she had done before maternity leave. The claimant initially welcomed the opportunity and Abi Greenhough showed flexibility around childcare as soon as the claimant made Abi Greenhough aware of those issues. The claimant was given the option of which events she wanted to attend. The email was sent to the sales team including the claimant, who was given the option of which events she wanted to attend. There was therefore no less favourable treatment.
59. We also accept the respondent's submission that the reason for the allocation of events in this way was Abi Greenhough's desire to allocate events to the team. The reason was not the claimant's pregnancy or maternity.

Issue 4 v failed to provide the claimant with information about her options shortly after her bereavement on top, when she had stated she was not in a position to return to work.

60. We accept the respondent's submission that the respondent was not under any obligation to tell the claimant, after she had made clear that her doctor would be providing a sicknote in relation to mental health issues, that she may wish to consider not handing in her sicknotes and instead could remain on maternity leave. The claimant accepted this in evidence.

61. This is not a case where the claimant *asked* the respondent for information about her options about whether to take sick leave for maternity leave. Instead, the claimant appears to have expected the respondent to voluntarily give her advice on this complex issue.
62. The claimant confirmed in writing on 14 January 2022 that she would be returning to work on 14 March 2022.
63. We accept that the claimant had gone to her doctors of her own volition to ask for a sicknote.
64. The claimant accepted in cross examination that the respondent was not required to tell her that she may prefer not to submit her sicknote, as she had indicated, and instead to continue her maternity leave.
65. We accept that the respondent was under no legal or indeed moral obligation to voluntarily tell the claimant that she had an option of not submitting her fit note and instead could continue her maternity leave.
66. As a result, we find that the claimant was not subjected to any unfavourable treatment in connection with this allegation. The reason the claimant's maternity leave came to an end when it did was because she chose to curtail that maternity leave. The reason the claimant commenced a period of sick leave was because unfortunately the claimant was too ill to work. Neither of these matters were caused by the respondent as the claimant appears to allege in her submissions. We therefore reject this submission.
67. In the absence of unfavourable treatment, the question of causation does not arise.

Issue 4 vi failed to conduct risk assessments or update previous risk assessments prior to assigning the Claimant to work related activities and in preparation for the Claimant to return to work (her return to work date being 14 March 2022). The Claimant contends that this breached the Management of Health and Safety at Work Regulations 1999.

68. The claimant did not return to work on 14 March 2022 as originally planned and has not since returned to work.
69. We accept the respondent's submission that the duty on the employer is to make a suitable and sufficient assessment of the risks to employees and to review it if there has been a significant change in the matters to which it relates.
70. It follows that on the claimant's return to work, there would have been a duty to review the risk assessment which had been carried out on the claimant in the months leading up to her maternity leave.
71. We accept the respondent's submission that there was no legal obligation on the respondent to carry out a risk assessment prior to the claimant's return.
72. It follows that there was no unfavourable treatment to the claimant, in the respondent not reviewing a risk assessment carried out prior to 14 March 2022, prior to the claimant's return to work, as the claimant did not return to work.
73. The claimant says in her submission that had the respondent conducted such a risk assessment it could have prevented her curtailing her maternity leave. We reject this submission. This was not the purpose of a risk assessment and as we have already found at paragraph 66, the claimant herself took the decision to curtail her maternity leave.

74. We also accept the respondent's evidence that the reason a risk assessment was not completed is the fact that the claimant did not come back to work because she was signed off sick. We therefore also find that the reason for the absence of a risk assessment was not the claimant's maternity or her pregnancy.

Issue 4 vii on 14 March 2022 curtailed the claimant's maternity leave and placed her on sick leave during the maternity protected period, thereby isolating her from company developments/opportunities and leaving the Claimant with fewer rights and protections than she would have on maternity

75. We have found at paragraph 66 that the respondent did not curtail the claimant's maternity leave, nor did the respondent place the claimant on sick leave. The claimant did this.
76. There is therefore no less favourable treatment, and the issue of causation does not arise.

Issue 4 viii removed the claimant from the WhatsApp group chat on 22 March 2022.

77. The respondent accepted that Abi Greenhough, as administrator, removed the claimant from the respondent's whatsapp group chat ("the **Whatsapp Group Chat**") on 22 March 2022.
78. We find that the reason this took place was because Abi Greenhough thought it would be better for the claimant not to receive messages on the Whatsapp Group Chat whilst she was ill. We have accepted Abi Greenhough's evidence

on this point. We found Abi Greenhough's evidence genuine and straightforward on this point. It was not challenged by the claimant. It was also consistent with the documentary evidence available. The claimant had submitted a sick note five days prior to being removed from the Whatsapp Group Chat, signing her off sick for one month for bereavement.

79. It is agreed that on 7 April 2022 the claimant queried why she had been removed from the Whatsapp Group Chat (although she did not ask to be put back on). On 9 April 2022 Abi Greenhough emailed the claimant and asked if she wanted to be added back on, indicating she would do this when the claimant was ready for it. We find this is again consistent with Abi Greenhough's evidence that the reason the claimant was removed from the Whatsapp Group Chat was due to the claimant's ill health.

80. The claimant replied to say that it would have been nice if it had been explained to her before she was removed. However, as she accepted in cross examination, she did not ask to be put back on the Whatsapp Group Chat at this point.

81. We accept the respondent's submission that the claimant was not treated unfavourably by being removed from the Whatsapp Group Chat on 22 March 2022. As soon as Abi Greenhough became aware that the claimant might wish to be put back on the Whatsapp Group Chat this was offered to her. The claimant did not ask to be placed back on the Whatsapp Group Chat. In these circumstances we find no unfavourable treatment.

82. We also find that Abi Greenhough's motivation in removing her from the Whatsapp Group Chat was to ensure that she was not troubled by work matters on her phone while she was off sick. This was after the end of her

maternity leave and the sickness was unrelated to her pregnancy. There is no causative link between the actions of Abi Greenhough and the maternity.

Issue 4 ix not give the claimant the opportunity to apply for the role of Dental Broker when Tom Orchard was recruited directly into that role in August 2021.

83. We accept the respondent's submission that this allegation is factually incorrect.
84. We accept the respondent's submission that the claimant was given the opportunity to apply for the dental broker role and she was fully informed about it. She chose not to apply for it.
85. The claimant was sent a copy of the job advertisement to her email address by James Head, on 12 May 2021. The role was advertised on LinkedIn.
86. The claimant accepted in cross examination that she could have applied for the role.
87. In fact, Tom Orchard, an external candidate was offered the role.
88. In the circumstances there was no less favourable treatment because the claimant was offered the opportunity to apply for this role.
89. The issue of causation does not apply.

Issue 2 Pregnancy and maternity discrimination and Issue 3 Victimisation (claim number 1305669 2023)

90. We have considered these claims together as the allegations are identical.
91. For the purposes of the victimisation claim under claim number 1305669 2023, the respondent accepts that the claimant did do a protected act by bringing an

employment tribunal claim in relation to race and pregnancy/maternity discrimination on 16 November 2022 ("the **Protected Act**").

Issue 2.1.1/3.2.1 Chris Mayor of the respondent sent an email to the claimant informing her on 6 January 2023 that she was not eligible for SMP

92. It is agreed that the claimant was informed she was not eligible for statutory maternity pay by Chris Mayor on 6 January 2023.
93. This was incorrect and therefore was unfavourable treatment and a detriment.
94. We find that the reason Chris Mayor gave the claimant incorrect information on 6 January 2023 was because he genuinely believed the claimant's earnings were too low to qualify for statutory maternity pay.
95. As at 6 January 2023 this was an accurate statement. The claimant had incorrectly not been paid her holiday entitlement for November 2022 because Abi Greenhough had not asked payroll to process payment. This had the effect of significantly lowering the claimant's income for this period as she was absent due to sickness and therefore not receiving her full income.
96. It was Abi Greenhough who discovered this error on 25 January 2023 when the respondent's payroll provider representative, Margaret Cummins, confirmed that Abi Greenhough had not requested the claimant's holiday pay be made to her for November 2022.
97. Abi Greenhough corrected this the very next day, on 26 January 2023. On 26 January 2023 Abi Greenhough wrote to the claimant to explain the error.

98. Once this error was corrected, the claimant received her statutory maternity pay, as her holiday pay income during October and December 2022 was accurately included in the statutory maternity pay calculation.

99. We therefore find that the reason the claimant was given inaccurate information by Chris Mayor on 6 January 2023 was because of a genuine mistake about the level of the claimant's income during October and November 2022. It was not because of the claimant's maternity leave or pregnancy nor was it because the claimant did the Protected Act.

Issue 2.1.2/3.2.2 refuse to pay the claimant SSP from 3 January to 10 March 2023

100. We accept the respondent's submission that the claimant did receive statutory sick pay ("SSP") between these dates, albeit it was backdated.

101. Initially the respondent did not pay the claimant SSP because it considered the number of days off sick meant the claimant had exceeded her statutory entitlement.

102. On 21 March 2023 the claimant challenged this decision on the basis her annual leave during October and November 2022 meant the statutory sick period had reset.

103. We accept James Head's evidence that he took legal advice about this issue. As a result of this advice, Mr Head genuinely believed that there was a contradiction in the advice provided by ACAS and the government website, compared to HMRC, about whether an employee could be both on sick leave and taking paid holiday at the same time. We found James Head's evidence

on this point to be straightforward and genuine and supported by the documentary evidence we were taken to.

104. HMRC took the initial decision that the claimant should be entitled to SSP for the period 3 January to 10 March 2023. The respondent challenged this decision, by way of appeal, based on the contradictory advice provided on the ACAS and government websites. That appeal was rejected. The company agreed to pay the claimant's SSP straight away once the appeal was rejected.

105. We find that the claimant did suffer a detriment by not being paid her SSP at the correct time. This was also unfavourable treatment.

106. However, we find that the reason the claimant did not initially receive her SSP was because of James Head's interpretation of the rules about whether an employee could be both on sick leave and taking paid holiday at the same time. This interpretation was based on the advice provided by ACAS and the government website. It was not due to the claimant's maternity pregnancy, nor was it as a result of the Protected Act.

107. We accept the respondent submission that James Head's interpretation of the rules was reasonable and entirely understandable.

108. We reject the claimant's submission that James Head intentionally did not pay the claimant SSP to deter her from progressing her employment tribunal claims. There was no evidence to suggest this was so.

Issue 2.1.3/3.2.3 James Head of the respondent advise the claimant in around March 2023 not to engage with HMRC or ACAS but urge her to seek proper legal advice regarding SSP knowing that she has limited resource and access.

109. This allegation is based on James Head's e-mail to the claimant on 21 March 2023 in which he said "*We again urge you to please take proper legal advice. HMRC and ACAS are not employment law legal advisers and will only give guidance based on what you tell them.*"

110. The claimant has not set out in her closing submissions how this is to be a detriment, nor has she explained whether James Head was motivated to make this comment because the claimant on maternity leave or pregnant or alternatively because the claimant did the Protected Act.

111. We do not find that James Head's suggestion that the claimant seek proper legal advice in connection with the question of whether she was entitled to statutory sick pay was unfavourable treatment or detrimental treatment.

112. We accept the respondent's submission that the claimant was not being told not to engage with HMRC or ACAS. She was not being required to pay for independent legal advice. We observe that the claimant could, for example, have taken independent free legal advice from the citizens advice bureau or another source of free advice.

113. In addition, we accept the respondent's submission that James Head was simply stating his opinion. He was not motivated to do so because the claimant was on maternity leave or because she had made the Protected Act.

Issue 2.1.4 Chris Mayor of the respondent refuse the claimant access to a work phone from around July 2023 which hinders her ability to put forward relevant disclosure in preparation to ET hearing scheduled in November 2023

114. The claimant had full access to a work phone prior to commencing her second period of maternity leave on 10 March 2023.

115. In July 2023, whilst on maternity leave, the claimant reported that she had lost her phone in February 2023. She requested either a replacement phone or a SIM card, to enable her to continue to access the respondent's systems and the Whatsapp Group Chat.

116. The respondent does not challenge the claimant's evidence that she had lost her work phone.

117. Mr Mayor refused to replace the claimant's work phone or provide her with a replacement SIM and phone number to allow her to use her work phone.

118. Given this finding of fact, we reject the respondent's submission that it '*did not refuse the claimant access to the claimant's phone*.' This is plainly what Mr Mayor did when he refused to replace the phone and provide a SIM card. The net result was the claimant did not have access to her work phone during her second period of maternity leave.

119. The claimant says in the list of issues that the detrimental impact of not having access to the work phone was that this hindered her ability to put forward relevant disclosure in preparation for the Employment Tribunal hearing scheduled in November 2023.

120. We do not find the claimant suffered a detriment in this regard. We have accepted the respondent's submission that:

a. The claimant first said she had lost her phone and asked for a new SIM on 12 July 2023.

b. By then the disclosure process had happened within the first Employment Tribunal claim (case number 1309028/2022). Disclosure was in April 2023 and bundle was to be agreed by July 2023.

c. The second ET1 (case number 1305669/2023) was not issued until 24 August 2023 and the disclosure the claimant refers to must relate to the first claim as this was crystallised as an alleged detriment in the second ET1 (case number 1305669/2023).

121. We therefore conclude that the claimant did not suffer a detriment by being unable to access work systems with her work phone, prior to disclosure in connection with her first Employment Tribunal claim as she had access to the phone until it was lost in February 2023 and then did not tell the respondent the phone was lost until 12 July 2023, which was after disclosure took place in the first claim.

122. The issue of causation therefore does not arise.

Issue 2.1.5/3.2.5 following the claimant's alleged removal from the Whats app group chat in April 2021, the claimant requested to be re-joined around April 2023. The claimant alleges that this was done but that she still has no access to the Whats app group chat because she does not have access to a work phone

123. We have already found that the respondent refused the claimant access to a work phone from July 2023.

124. We have accepted the claimant's evidence that the only way she can access the Whatsapp Group Chat is from her work phone number and she needed a replacement SIM card, with either her existing number or a new work number, and preferably a replacement work phone, to do so.

125. We reject the respondent's submission that the claimant removed herself from the Whatsapp Group Chat and so was not subjected to a detriment by the respondent's refusal to provide her with a SIM/work phone to enable her to access the Whatsapp Group Chat.

126. We have been taken to an extract on the Whatsapp Group Chat which suggested the claimant left the chat on 7 June 2023. The claimant's case is her work phone was lost at this time and therefore she had no access to the Whatsapp Group Chat and did not remove herself. We have accepted this evidence and we do not find the claimant herself left the Whatsapp Group Chat on 7 June 2023 as we find she had no access to the Whatsapp Group Chat at this time.

127. In any case, regardless of whether the claimant removed herself from the Group Whatsapp Chat or not, the impact of the respondent's refusal to grant the claimant access to the work phone and therefore a work phone number was that the claimant could not access the Whatsapp Group Chat from July onwards after she specifically requested it.

128. The claimant said she used her work phone for personal and private matters. This is disputed evidence. Mr Mayor said he had assumed the work phone was for work matters only. There was no policy to this effect. On balance, we prefer the evidence of the claimant on this point. The company is small and collegiate, and we find there were no strict policies in place about

use of work phones. The respondent advanced no evidence to suggest it enforced a strict policy of work phones being used for work business only at the relevant time.

129. In fact, the evidence of the whatsapp messages on the Whatsapp Group Chat, is they had both a personal and a work element to them. For example, on 16 September 2021 the claimant shared pictures of her "bump" on the Whatsapp Group Chat and her colleagues commented on it, in very complimentary terms. On 17 September 2021 Mr Mayor informed everyone on the Whatsapp Group Chat that the claimant was going to be induced. These were examples of personal rather than business content on the Whatsapp Group Chat.

130. We find this factual allegation is established by the claimant. The net effect of the respondent's actions were that she had no access to the Whatsapp Group Chat from July 2023 onwards, when she first requested this.

131. We go on to consider whether this amounts to unfavourable treatment. The claimant articulated why she considered her exclusion from the Whatsapp Group Chat was unfavourable treatment, in an email to Mr Mayor on 21 July 2023. The claimant said "*I remain upset regarding initial emails denying access to data on my work phone. You/company are aware that in doing so you are excluding me (employee on maternity leave) from the what's app group chat, preventing access to my personal data on the phone and …"*

132. We find that the respondent's actions, which led to her having no access to the Whatsapp Group Chat, was less favourable treatment for the following reasons:

a. We have accepted the claimant's evidence that she felt isolated from the respondent by being excluded from the Whatsapp Group Chat. She wanted to see at her own leisure, details of work updates, social events and the general chatter on the group and could not do so.

b. The claimant was prevented from accessing personal content on the Whatsapp Group Chat, such as pictures of her daughter, pictures of her and her husband and pictures of her husband holding her "bump" ("the **Personal Content**"). We accept that was upsetting for the claimant, particularly as much of the Personal Content related to pictures of her pregnancy and her daughter.

133. The respondent submits that the claimant suffered no detriment by their decision not to give the claimant the means to access the Group Whatsapp Chat because the claimant had removed herself from the Group Whatsapp chat on 7 June 2023. We reject this submission because we have found the claimant did not do so.

134. We would add that even if the claimant had removed herself from the Group Whatsapp Chat on 7 June 2023 (which we have not accepted), on 14 July 2023 the claimant specifically told the respondent in an email she had not removed herself from the Group Whatsapp Chat on 7 June 2023 and that she wanted to be placed back into the Whatsapp Group Chat. It was at this point that the respondent refused to do so. The claimant suffered unfavourable treatment and a detriment by the respondent's decision not to put her back on the Group Whatsapp.

135. We reject the respondent's submission that it was to the claimant's advantage to be removed from the Whatsapp Group Chat and therefore it was

not less favourable treatment or a detriment. Here the respondent relies on the case of *Trustees of Swansea University Pension and Assurance Scheme and another v Williams* [2018] UKSC 65 in support of the submission that the tribunal should find that this did not amount unfavourable treatment.

136. Following the language set out in paragraph 17 of *Williams* we find that those that are on maternity leave and therefore likely to be away from the normal day-to-day interactions that they would have with colleagues, are likely to feel isolated from their employer and their colleagues. For some employees this isolation will be welcome but for many others it will not be. A team or group WhatsApp chat is a way for those individuals to keep in touch with their colleagues on a personal and professional level and to keep up to date with what is going on in their organisation. This is particularly so where, as in this case, the group WhatsApp chat involves the sharing personal news and information from colleagues as well as work news.

137. We observe that individuals on maternity leave can choose whether to engage in a work group WhatsApp chat or not. It is possible to archive or silence the messages on a work WhatsApp chat, if individual does want to engage in the chat during their maternity leave.

138. However, a unilateral decision on the part of an employer to remove an individual on maternity leave from a work group WhatsApp chat has the effect of isolating them from their colleagues and their organisation and we find, judged by our industrial experience of working life, that this is reasonably and objectively to be viewed as less favourable treatment for someone on maternity leave and detrimental treatment.

139. Having established that the claimant was placed at a detriment by the respondent's refusal to provide her with a work phone or SIM card to enable her to access the Group WhatsApp Chat, we apply the reverse burden of proof provisions in section 136 EQA, and we turn now to look at the non-discriminatory reason advanced by the respondent for doing so.

140. The first reason put forward by Mr Mayor for not providing the claimant with a work-phone or SIM was there was no reason for the claimant to access the work phone whilst on maternity leave, as it related to work matters. This was expressed in the respondent's submission as there was no need for her to view the information on the Group WhatsApp Chat.

141. We do not accept this reason. Firstly, it was agreed evidence that only three months' previously, in April 2023, Mr Mayor had agreed to add the claimant to the Group WhatsApp Chat and she had been added on 24 April 2023. The claimant was on her second period of maternity leave at this time.

142. Secondly, Mr Mayor did not ask the claimant why she wanted access to the Group WhatsApp Chat, after she made her request for access to the group in July 2023. Instead, Mr Mayor told the claimant, in an email to her dated 14 July 2023 '*You clearly did not want or need to be involved in the work Whatsapp group as you removed yourself*.' We therefore find that the reason Mr Mayor refused the claimant access to the work WhatsApp group was not because he thought she had no reason to access it during maternity leave, but rather because he had decided she did not want or need to be involved in the work.

143. This was a view not supported by the evidence available to Mr Mayor. Mr Mayor's position appeared to be that the claimant had removed herself from

the Group WhatsApp Chat, with the implication being that she didn't genuinely want to be put back on the group. There was no reasonable basis for Mr Mayor to form this view. As we have already found, the claimant had no access to her work phone on 7 June 2023 when the respondent received a notification in the Group WhatsApp Chat that the claimant had left the group. The claimant told Mr Mayor in July 2023 she had not removed herself from the Group WhatsApp Chat. She asked to go back on the group. Given this factual scenario, there was no reasonable basis for Mr Mayor to form the view the claimant had no genuine reason to go back on the Group Whatsapp group and no obvious reason why she should not be allowed to go back on the group in July 2023, particularly as he had agreed she could go back on the group in April 2023.

144. The respondent submits that Mr Mayor also had security concerns about giving the claimant access to both her workphone and to the Group Whatsapp group. We find this submission is not supported by the evidence given by Mr Mayor. Mr Mayor did not adequately explain why he had such security concerns. He said he felt there was a risk that the work phone was in someone else's hands, because the claimant didn't have access to her work phone or the Group WhatsApp chat, when her number was removed from the chat on 7 June 2023. However, his evidence was that the respondent took steps to secure the claimant's number when the phone was reported lost. He said "*James contacted our IT providers to put a temporary block and stolen bar on Asha's number*." Given that the respondent had taken steps to secure the phone number, we cannot see any reasonable basis for Mr Mayor to subsequently have any security concerns about issuing the claimant with a

new SIM with either a new phone number, or indeed her existing number if that could be done on a secure basis.

145. We have concluded that the respondent has not put forward a credible non-discriminatory reason to explain why the claimant was not provided with a replacement SIM (or indeed a workphone) to enable her to access the group Whatsapp Chat during her maternity leave.

146. In the absence of such a non-discriminatory explanation, we uphold the claimant's discrimination claim in respect of issue 2.1.5 and the claimant's victimisation claim in respect of issue 3.2.5.

Issue 2.1.6-3.2.6 require the claimant to have childcare in order to attend KIT days

during her second maternity leave, as communicated to her in April 2023 by Chris Mayor, when in 2021 the claimant says that there was no such requirement for her to have childcare in order to attend KIT days

147. There is a dispute about whether the claimant attended a keeping in touch day, with her child, in November 2021. The claimant's evidence is that she attended a "state of the company event" which is a quarterly meeting, with her child.

148. We accept the evidence of Abi Greenhough that the claimant did not attend a keep in touch day with her child in November 2021. We found Abi Greenhough's evidence to be more specific and clearer than the claimant's'. For example, the claimant could not recall when the state of the company event had taken place.

149. It also was consistent with the documentary evidence we were taken to. The state of the company event in November 2021 was held on Microsoft teams. The screen shot of this meeting showed that the claimant was not in attendance. The claimant accepted this in cross examination.

150. We also accept the respondent's submission that the stipulation that the claimant cannot take her children to work with her applies the same to all employees. We therefore do not find that it was less favourable treatment or detrimental treatment to require the claimant to attend work without her young children.

151. We also find that Abi Greenhough was not motivated by the claimant's pregnancy or maternity when she told the claimant she couldn't attend her keep in touch day with her child, nor was it because the claimant had done a Protected Act. The reason Abi Greenhough required the claimant to attend work without her child during her keep in touch day was to ensure that she focused on her work tasks that day.

Issue 2.1.7 not informing the claimant about a recruitment opportunity for the position of Director, Corporate Finance, within their sister company Lily Head Finance during the summer of 2023

152. We accept the respondent's submission that none of the respondent's employees were informed about the role of Corporate Finance Director which was externally recruited to in summer 2023.

153. We also find that Lily Head Finance was not the claimant's employer.

154. The claimant admitted in cross examination that she would not have applied for the role and was probably not qualified for the role.

155. It cannot be said to be less favourable treatment or a detriment for the claimant not to be informed about a role which she had no intention of applying for and was unlikely to be qualified for.

156. Given none of the other employees of the respondent were informed about the role of corporate finance director, we find that the respondent was not motivated by the claimant's pregnancy or maternity, nor was the respondent motivated by the Protected Act, in not drawing this role to the claimant's attention. Rather, the respondent did not do so because the respondent didn't think the claimant, or indeed anybody else within the respondent organisation, had the requisite skill set to carry out this role.

Victimisation (claim 1309028 2022)

Issue 6 Protected act Was the Claimant telling the Respondent, on 20 January 2022, that withholding her holidays was unlawful a protected act within the meaning of s.27 (1) and (2) EqA?

157. We find that the claimant was doing a protected act within the meaning of s.27 (1) and (2) EQA when she wrote to the respondent on 20 January 2022 and said that withholding her holiday pay was a breach of employment law ("the **Holiday Pay Complaint**").

158. The context of the claimant's complaint was that she wished to carry her holiday pay over into the next holiday year, during her period of maternity

leave. Had the respondent refused to allow the claimant to do so, she would have potentially had a claim for pregnancy and maternity discrimination under section 18 Equality Act 2010. In other words, the refusal to allow the claimant to carry her holiday over could have been found to be pregnancy-related discrimination.

159. We therefore find that in making the Holiday Pay Complaint, the claimant was making an allegation (albeit one was not express) that the respondent was contravening the EQA failing to allow her to carry over and take her holiday at the end of her maternity leave.

160. We reject the respondent's submission that the Holiday Pay Complaint should be read narrowly to apply only to a breach of employment law more generally and not a breach of the EQA. It seems to us that this is reading the Holiday Pay Complaint out of context.

7 Did the respondent do the following

a by an email on 10 February 2022, assigned the claimant to events without consultation or consideration of her maternity status

161. We have already dealt with this complaint in paragraphs 50 to 59 above.

162. We accept the respondent's submission that there is no evidence that Abi Greenhough had a malicious intent or allocated the claimant these events due to the Holiday Pay Complaint. The claimant was not singled out. Abi Greenhough was simply allocating events to the whole sales team.

b failed to provide the claimant with the opportunity to apply for the positions which two male non-Asian colleagues have been promoted into and one male non-Asian colleague has been externally recruited into in September 2022

163. We have dealt with this allegation at paragraphs 216 to 240 below.

164. The respondent did not fail to provide the claimant with the opportunity to apply for the positions identified in this allegation.

165. The respondent was not motivated by the Holiday Pay Complaint in its dealings with the claimant in connection with these issues.

c failed to discuss with the Claimant how staff would be informed regarding the Claimant's bereavement on 27 February 2022 despite the fact staff were informed about the bereavement of a non-Asian colleaue (Fiona Higgins)

166. We have dealt with this allegation paragraphs 60 to 67 above.

167. We accept the evidence of Chris Mayor and Abi Greenhough that the reason they did not discuss the bereavement with other people was because they regarded it as a confidential matter. We found their evidence to be compelling and genuine on this point.

168. We also accept the respondent's submission that the allegation is limited to the respondent not "*discussing with the claimant how staff would be informed*". The claimant accepted in evidence that she did not tell Chris Mayor or Abi Greenhough that she wanted other staff to be informed, but then seeks to blame them for not having a discussion with her about informing other staff.

169. We also accept the respondent's submission that the claimant's allegation that Fiona Higgins was treated differently has not come up to proof. The claimant accepted in cross examination that she did not know what conversations there had been between Fiona Higgins and management in relation to her bereavement. Abi Greenhough evidence, which we have accepted, was that at the relevant time they were having daily Microsoft teams calls, and that Fiona Higgins shared the information herself with the team.

170. We find that as the claimant failed to ask Chris Mayor and Abi Greenhough how the news of her father's bereavement should be shared, and given the claimant's confidentiality was protected, she was not subjected to any detriment in connection with this allegation.

171. We also find that the primary reason for the actions of Abi Greenhough and Chris Mayor was the desire to keep such a personal and sensitive matter confidential.

172. As a result, we conclude that neither Abi Greenhough nor Chris Mayor was motivated to keep the details of the claimant's father's bereavement confidential from the respondent staff because of the Holiday Pay Complaint.

d failed to contact the claimant on her birthday (5 May 2022), although other colleagues' birthdays were acknowledged and celebrated. The Claimant contends that Christian Riley's birthday was celebrated on 25/02/2022.

173. We have accepted the evidence of Abi Greenhough that she found it difficult to keep track of employee's birthdays. We accept Abi Greenhough's

evidence that this was not one of her strengths. Her evidence was compelling and clear on this point.

174. The claimant has not provided evidence that all employee birthdays were consistently acknowledged and celebrated by the respondent.

175. The claimant was unable to point to any policy or practice of regularly celebrating birthdays in this way.

176. We accept Abi Greenhough's evidence that birthdays were celebrated on an ad-hoc basis.

177. The respondent accepts that Christian Riley's birthday was celebrated on 25 February 2022. However, we have accepted that this celebration was carried out by fellow staff members and not by the respondent's management.

178. We also accepted the evidence of Chris Mayor that he has had three birthdays whilst working for the respondent but has only received one birthday card.

179. We therefore conclude that the claimant has suffered no detriment by the respondent failing to contact her on her birthday on 5 May 2022. The claimant has been treated the same as her colleagues in this regard.

180. We also conclude that the reason the respondent failed to contact her on her birthday on 5 May 2022 was because Abi Greenhough forgot. There was no deliberate decision to miss her out. Abi Greenhough nor did she do so because of the Holiday Pay Complaint.

e Failed to comply with DSAR knowing that this leaves the Claimant at a significant disadvantage in preparation of her tribunal claim.

181. The respondent accepts that they had not fully complied with the claimant's DSAR by 6 February 2023. The respondent knew this because, following a complaint raised by the claimant, the Information Commissioner's Office (ICO) wrote to the respondent on 6 February 2023 and "*asked [them] to reconsider whether the exemptions were appropriately applied and consider whether any more of the requested data can be provided*"

182. The respondent did not remedy this situation until 28 April 2023.

183. We do not find that the claimant was placed at the detriment of being at a significant disadvantage in preparation for tribunal claim, by the failure of the respondent to comply with the claimant's DSAR before 28 April 2023.

184. We accept the respondent's submission that the claimant has failed to identify any disclosure which she was prevented from accessing and which inhibited her claim. In circumstances where there were tribunal orders for disclosure running in parallel with the DSAR process, the claimant was not subjected to any disadvantage.

185. The claimant received full disclosure from the respondent in accordance with the employment tribunal case management orders. Whilst the claimant may have wished to have this disclosure earlier, she did not suffer a disadvantage in being provided with disclosure in accordance with the timetable set out in the employment tribunal case management order.

186. We find that the reason the respondent failed to comply with the claimant's DSAR was because they were a small business with limited

resources and the respondent knew they were going to have to make extensive disclosure in the employment tribunal.

187. We reject the claimant submission that the claimant was placed at a detriment at the preliminary hearing on 1 February 2020 because the respondent had not fully complied with the claimant's DSAR request. The claimant has provided no evidence to support this assertion. The claimant was able to fully articulate her complaints at the preliminary hearing.

188. We have accepted the evidence of Chris Mayor and James Head that they knew from 1 February 2023 that they were required to provide full disclosure to the claimant in the first employment tribunal claim. They therefore chose to complete full disclosure of all documentation, including fully complying with the claimant's DSAR, by 28 April 2023 in accordance with the employment tribunal order.

189. We therefore conclude that the reason Chris Mayor and James Head failed to comply with the claimant's DSAR initially was not because of the Holiday Pay Complaint.

f Not consulting with the claimant about placing her on annual leave (and subsequently paying holiday pay for 20, 21 and 27 October 2022, 1 November to 31 December 2022) whilst accepting at the time that she was on sick leave and not holiday

190. We accept the respondent's submission that the respondent has never accepted that the claimant was on sick leave during the period set out in this allegation.

191. We also accept the respondent's submission that it is incorrect to say the claimant wasn't consulted about being placed on annual leave during this period.

192. The claimant requested annual leave for this period, on 19 May 2022. This was initially overlooked by Chris Mayor but was eventually approved on 30 August 2022.

193. The claimant did go on holiday on the days that she had requested. The claimant went to India and during her trip scattered her father's ashes in the Ganges.

194. At no point did the claimant ever withdraw her request for annual leave.

195. In the circumstances, we find the claimant suffered no detriment in having her request to go on annual approved by Chris Mayor. Indeed, the claimant was paid for her annual and this enabled her to claim statutory maternity pay in 2023 which suggests favourable treatment. The claimant appears to accept this in her email dated 9 March 2023 to James Head in which she stated *"Firstly, although I appreciate I am in a more favourable position as I am now eligible for SMP…"*

196. There was no possible detriment to the claimant in the respondent paying the claimant to take the annual leave that she had requested. The claimant has not identified a detriment in her closing submission.

197. Chris Mayor approved the claimant's annual leave because the claimant had asked for it and not because of the Holiday Pay Complaint.

Direct race discrimination

Issue 10 a failed to give the claimant time off work or guidance or support when her father had a heart attack on or about 1st February 2020, and in fact piled her with more work tasks to do, despite the fact the Respondent had granted time off work to a non-Asian employee (Charlotte Hemmings) whose family member was ill.

198. The claimant agreed in cross examination that she had never asked for time off to tend to a relative and had that request refused. In particular, she did not ask for time off to support her father when he had a heart attack in February 2020.

199. We have accepted the evidence of Abi Greenhough that when the claimant rang from the hospital early in the morning to say her father had had a heart-attack, her response had been to tell the claimant not to come into work. The claimant disputes this version of events, but we have found Abi Greenhough's evidence to be honest, clear and genuine on this point and we have accepted it.

200. We have also found that Charlotte Hemmings was treated in exactly the same way as the claimant. Abi Greenhough's evidence, which we accepted, was Charlotte Hemmings was in the office when she received the call saying her grandmother had fallen down the stairs, in Leamington Spa. Abi Greenhough agreed to allow Charlotte Hemmings to leave the office and go and assist her grandmother. Charlotte Hemmings was granted one day off to do so, as was the claimant.

201. The additional work tasks the claimant identifies in her closing submissions are the curry club, training Charlotte Hemmings and attend in the Indian Dental Association event.

202. Turning initially to the curry club. We accept the evidence of James Head that the claimant's participation in the curry club was entirely voluntary. The claimant's role was to purchase food from a reputable local Indian restaurant which could then be enjoyed by the respondent's staff at James Head's home. The claimant was invited to purchase the food on behalf of the respondent because of her love of food. The claimant was under no obligation to do so and could have said any time if she did not wish to. We do not find the claimant was piled with additional tasks in this regard.

203. Dealing next with the Indian Dental Association event. We accept the evidence of James Head that it was the claimant herself who had brought this event to the respondent's attention. It was an opportunity for the claimant to shine. It involved the claimant attending the event in March 2020. The claimant could have subsequently said that she did not wish to attend this event and the respondent would have found an alternative representative. We do not find the claimant was piled with additional tasks in this regard.

204. The claimant advances no evidence to suggest that she had to carry out additional training for Charlotte Hemmings during this time and we do not find the claimant was piled with additional tasks in this regard.

205. The claimant has not articulated in her closing submissions what guidance and support she claims she required from the respondent.

206. We conclude that the claimant did not suffer less favourable treatment on the grounds of race because she was given the same amount of time off at

Charlotte Hemmings when her father had his heart attack and was not piled with additional work tasks as alleged.

Issue b allocated more favourable sales to a non-Asian employee (Chris Mayor) during the period of flexi-furlough from December 2021; the Claimant alleges that unfavourable sales were allocated to her despite her raising concerns regarding capacity to manage them, specifically:

207. We accept the respondent's submission that the claimant had asked in her 121's to be freed up to do more stage 1 transactions and to bring in new deals prior to December 2021. All staff were put on flexible furlough in December 2020 because the business was not bringing fees and cash flow was a challenge, so everyone was working a 50% timetable. The reallocation of deals was then determined by cashflow and the best interests of the client and the deals reallocated to Chris Mayor were those he was accountable for and those he had a client relationship with. We have accepted the submission because Abi Greenhough's evidence was clear, consistent and not effectively challenged under cross examination.

208. Turning to each of the specific allegations.

i A sale based in Wales that was allocated to Chris Mayor meant Chris would receive 100% of the commission for the sale despite being allocated 70% for signing the client, and the Claimant being allocated 30%.

209. The claimant accepted Chris Mayor had signed the client and done the valuation and so he was entitled to the first 70% of the commission.

210. The claimant accepted in cross examination that she was allocated 30% of the full commission (i.e. the maximum commission she could have received for this deal) by the respondent.

211. The claimant has therefore suffered no detriment. The claimant received the maximum commission due to her.

ii The Claimant was allocated a Jersey practice which Chris signed and the Claimant had minimum involvement in although the company had yet to sell a practice in Jersey.

212. We accept the respondent's submission that this deal was specifically assigned to the claimant because it involved limited activity, so it was a good deal to free up her time and resources. A sale was not achieved until long after the claimant went on maternity leave. We have accepted the submission because Abi Greenhough's evidence was clear, consistent and not effectively challenged under cross examination.

213. We accept that there was no detriment as being allocated a deal requiring minimal input was to the claimant's advantage.

214. We conclude that the reason that Abi Greenhough's allocated the deals to the claimant was because of the COVID crisis and the claimant's concerns about overwork, as opposed to the claimant's race.

Issue c failed to discuss with the Claimant how staff would be informed regarding the Claimant's bereavement on 27 February 2022, despite the fact staff were informed about the bereavement of a non-Asian colleague (Fiona Higgins).

215. We have dealt with this allegation at paragraphs 166 to 172 above. The claimant was not subjected to direct race discrimination in connection with this allegation.

Issue d despite the Claimant outperforming all other sales negotiators, denied the Claimant promotion opportunities on the basis of anxiety travelling, and not having the relevant skills and experience, when opportunities were offered to non-Asian employees in April 2021 (Chris Mayor) and September 2022 (Tom Orchard & Chris Mayor) a further non Asian male recruited as Dental Broker, Andy White, and a non-Asian employee (Helen Cheskin) was not required to travel and was able to work remotely. The Claimant contends that the Dental Broker and Sales Negotiator are almost identical in accordance with the role profile/job description apart from the Dental broker is required to sign clients and calculate dental practice valuations, although the Claimant did both these tasks for multimillion pound value clients, contributing significantly to the company's revenue, pipeline & business targets.

216. The claimant asserts she was denied the following promotion opportunities:

a. Dental Broker in September 2022, which was given to Andy White;

b. Head of Practice Sales role in April 2021, which was given to Chris Mayor;

c. Commercial Director role in September 2022, which was given to Chris Mayor;

d. Head of Practice Sales role in September 2022, which was given to Tom Orchard.

Dental Broker in September 2022, which was given to Andy White

217. The claimant did have the opportunity to apply for this role. The claimant was sent a copy of the job advertisement by James Head to her work email address on 27 June 2022. We have accepted that it did not occur to the respondent that the claimant was not receiving work emails during this time, which is why the claimant didn't see the job advertisement on her work email.

218. However, the claimant accepted in cross examination that she saw the job advert on LinkedIn. The claimant accepted in cross examination that she could have applied for the role and did not do so.

219. The claimant was not subjected to less favourable treatment here. She was given the opportunity to apply for this role. She chose not to do so. We've accepted that the reason the respondent sent the job advertisement to work email was not because of her race or the Holiday Pay Complaint but rather it was because of an administrative oversight.

Head of Practice Sales April 2021(Chris Mayor appointed to this role)

220. We've accepted the respondent's submission that Chris Mayor was already in a broker role (one grade above the claimant) and was internally promoted into an even more senior role at this time (two grades above the claimant).

221. Chris Mayor is therefore not an appropriate comparator to the claimant for the purposes of s.13 EQA as his circumstances are materially different from those of the claimant.

222. We accept the respondent's submission that:

a. He had worked in dentistry for over 9 years both as a business consultant and a partnerships consultant.

b. He had worked within financial services for 13 years prior to this.

c. He had an existing business network in the north of England.

d. He had demonstrated that he was an effective broker, and was suited to lead the operational team through his leadership and people development skills.

223. The claimant did not challenge the points in paragraph 222 effectively in cross examination.

224. In all the circumstances that the claimant has not been subjected to less favourable treatment on the grounds of race in connection with this allegation.

Commercial Director September 2022 (Chris Mayor appointed to this role)

225. We have already found that Chris Mayor was not an appropriate comparator to the claimant, for the reasons set out in paragraphs 220 to 224 above.

226. We accept the respondent's submission that it is not plausible that given the opportunity, the claimant would have applied for this role. It was three grades above her current role. The claimant had chosen not to apply for the dental role broker role, a more junior position, at this point.

227. We conclude that the claimant has not been subjected to less favourable treatment or a detriment in not being given the opportunity to apply for the commercial director role in September 2022. We conclude the claimant had no intention of applying for this role.

228. The reason the role was offered to Chris Mayor was because of his skills and experience and not because of the claimant's race or the Holiday Pay Complaint.

Head of Practice Sales September 2022 (Tom Orchard appointed to this role)

229. Tom Orchard was already in a broker role (one grade above the claimant) and was internally promoted into an even more senior role at this time.

230. Tom Orchard is therefore not an appropriate comparator to the claimant for the purposes of s.13 EQA as his circumstances are materially different from those of the claimant.

231. We accept the respondent's submission that:

a. he managed a whole office of an estate agency.

b. He also worked for national brokerage doing valuations of pubs and hotels.

232. We accept the respondent submission that it is not plausible that given the opportunity, the claimant would have applied for this role. It was two grades above her current role. The claimant had chosen not to apply for the dental role broker role, a more junior position, at this point.

233. We conclude that the claimant has not been subjected to less favourable treatment or a detriment in not being given the opportunity to apply for the Head of Practice Sales role in September 2022. We conclude the claimant had no intention of applying for this role.

234. The reason the role was offered to Tom Orchard was because of his skills and experience and not because of the claimant's race or the Holiday Pay Complaint.

Dental broker roles

235. We have accepted the evidence of Abi Greenhough that the claimant was developing as a sales negotiator but was not yet ready for a dental broker role. Abi Greenhough's evidence was clear consistent and honest and also supported by contemporaneous documentation. For example on 30 August 2022 Abi Greenhough wrote to Martin How to say the following:

Asha had demonstrated high performance sales skills and some qualities relevant to the role. However, her valuation skills were observed to be limited and high-level valuation skills are required to

fulfil the broker role. We observed Asha's mediation and dispute resolution skills needed development; Asha reported the impartiality required to resolve issues challenging. Managing conflict, mediation and disputes is a significant requirement for the dental broker role, which for Asha required much further development. We had identified in reviews the quality of valuation presentations and written quality of client facing document/communication required improvement, as evidenced in the July 2021 annual review.

236. We have concluded that Abi Greenhough had fairly assessed that the claimant was not yet ready to carry out the dental broker role.

237. We therefore conclude on the balance of probabilities that had the claimant applied for either of the dental broker roles available, she would not have been successful.

238. There is conflicting evidence about whether the claimant outperformed all other sales negotiators. We don't need to decide this matter as we have concluded that the claimant was not yet ready to carry out the dental broker role for the reasons set out in paragraphs 235 to 237 above.

239. We therefore conclude that the claimant was not treated less favourably by not being promoted to a dental broker role. The reason for this was because the claimant did not apply for such a role.

240. We also find that even had the claimant applied for a dental broker role she would not have been successful in her job application because of the reasonable concerns that Abi Greenhough had about the claimant's ability to do the role, at that time. Those concerns were not connected to the claimant's

race or the Holiday Pay Complaint but instead were based on Abi Greenhough's accurate and honest assessment of the claimant's skills and experience at that time.

e Being informed on 15 February 2021 that she would not be paid commission as agreed for a deal and subsequently being informed by Abi Greenough that she felt the claimant's attitude and one word answers in relation this was 'sulky.

241. We accept the respondent's submissions that in summary, in relation to a practise called Alexandra Dental, Abi Greenhough informed the claimant that she would be paid 20% instead of 30% commission on completion. This was because of the claimant's limited involvement in closing the deal. When the claimant complained Abi Greenhough said agreed to increase that commission back up to 30%.

242. It is accepted in evidence that Lily Head signed this client and therefore the claimant was not entitled to stage one commission.

243. The claimant's assertion in her closing submissions that the respondent did not 'honour' the agreement to pay the claimant stage two commission in respect of this deal is therefore factually inaccurate as the claimant was paid the maximum amount of commission she could have earned because stage 2 (30%).

244. The claimant accepted in her closing submissions that she gave one-word answers to Abi Greenhough when these matters were being discussed, partially as a coping mechanism. Abi Greenhough described this

communication style as being “sulky”. This is because Abi Greenhough formed the view the claimant was behaving unprofessionally when discussing these matters. The claimant did not challenge Abi Greenhough on her evidence in this regard.

245. There was no detriment in the allocation of commission. The claimant was given the maximum commission possible under stage two of the deal.

246. The claimant was not described as sulky by Abi Greenhough because of her race or because she made the Holiday Pay Complaint. We find that Abi Greenhough genuinely thought the claimant was being unprofessional when discussing the issue of commission on this deal, by using only one-word answers.

f Not being paid commission, provided with flowers or congratulated for the first deal she managed in 2019 (the claimant says a non-Asian colleague Jane Chadwick was given flowers and congratulated via a LinkedIn her for the first sale she completed on).

247. We have accepted Abi Greenhough’s evidence that the first deal the claimant completed, which related to a dental practise called Durham Arches, did not generate significant income for the respondent. This was a difficult sale but a buyer was found and the sale completed in 2019. It was a distress sale, meaning that the practice was being marketed at £50,000 pounds, but the vendor received only £5,000. The consequence was that the buyer could not afford to pay commission. The fee to the respondent should have been £6,000, but it was agreed that he would pay £1,250 plus VAT (£1,500 total).

Commission is not payable to brokers on the valuation fee. Abi Greenhough's evidence was clear and straightforward on this point and was not challenged by the claimant. We have accepted it.

248. We were taken to significant evidence which demonstrated to us that the claimant's achievements, successes, and sales were frequently and publicly celebrated. For example, the claimant was given a medal, an angel card, was regularly congratulated on her achievements, was awarded a discretionary bonus of £1,000 in November 2020, in July 2021 was awarded an 11% pay rise (no-one else in the team received an 11% pay rise that year) and in August 2022 received a 6% pay rise.

249. This all suggests to us that the claimant's race played no part in the respondent's decision not to celebrate the claimant's first deal and is consistent with Abi Greenhough's evidence that the respondent did not celebrate this sale with the claimant was because it did not generate significant income for the respondent. Other achievements were celebrated.

250. We have accepted Abi Greenhough's evidence that Jane Chadwick's first deal was more successful than the claimant's first deal and this was the reason it was celebrated.

251. We therefore conclude that the claimant has suffered no less favourable treatment by the failure of the respondent to celebrate one of her deals which had a relatively poor outcome.

252. We have accepted Abi Greenhough's evidence that the reason the respondent did not celebrate this sale with the claimant was because it did not generate significant income for the respondent. We therefore conclude that the claimant's race played no part in this decision.

Unlawful deduction from wages

13 (i) Did the Respondent on 14 March 2022 curtail the claimant's maternity leave and place her on sick leave?

253. We have already found that the respondent did not curtail the claimant's maternity leave or place her on sick leave.

15 Was the amount paid by the Respondent from 14 March 2022 onwards less than the amount of wages properly payable to her, pursuant to s.13(3) ERA 1996?

254. No it was not. The claimant was paid the correct sums due to her during her period of sickness absence.

Employment Judge Childe

Date 11 December 2023

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