



EMPLOYMENT TRIBUNALS

Claimant: Ms Kathy Wright

Respondent: Rotherham Metropolitan Borough Council

Heard by Teams: Remote Video Link **On:** 25, 26, 27, 28 July 2023, 5, 6, 7, 8 December 2023.
13 December 2023 (in chambers).

Before: Employment Judge Jones
Ms J Hiser
Mr D Eales

REPRESENTATION:

Claimant: Mr D Campion, counsel
Respondent: Mr K McNerney counsel

JUDGMENT

1. The work of the claimant was equal to that of Mr Kevin Lindley. It was work which was broadly similar, and the differences were not of practical importance.
2. The contract of employment between the claimant and the respondent included a sex equality clause that her remuneration would be no less favourable than that of Mr Lindley.
3. The respondent breached the sex equality clause by paying the claimant less than it paid Mr Lindley. The respondent shall pay to the claimant arrears of pay of £22,148 and interest thereon of £7,932, being a total of £30,080.
4. The respondent agreed to contact the trustees of the pension fund to ensure the pension to which the claimant is entitled reflects the correct rate of pay, in the light of this ruling. The parties have permission to make an application to the Tribunal to award a sum in damages in respect of pension loss, in the event that is not satisfactorily achieved.

REASONS

1. The findings of the Tribunal are unanimous.

Introduction

2. This is a claim for equal pay based on like work. There are also claims based upon work which has been rated as equivalent or equal value, but these are alternatives to the like work claim and were not considered at this hearing.

The Issues

3. The issues were identified at a preliminary hearing on 27 March 2023 by Employment Judge Maidment.
4. At the end of the evidence, it was accepted by the respondent that the claimant's work was broadly similar to that of Mr Lindley. The respondent also indicated that it was not advancing a material factor defence.
5. The refined issue was therefore were the differences between the claimant's and Mr Lindley's work not of practical importance in relation to the terms of their work with reference to the frequency or otherwise with which any such differences occurred in practice and the nature and extent of the differences?

The Evidence

6. The claimant gave evidence and called Ms Sharon Bloor, who had worked as an IT support officer in Corporate or Central IT having retired in August 2020.
7. The respondent called Mr Kevin Lindley, the comparator, Mr Chris Sweeney, Digital Services Manager and Mr Paul Rollinson, HR Consultant. It had submitted witness statements of Mr Kevin Waller, Lead Principal Officer for ICT Infrastructure and Mr Trevor Proctor, Principal Officer with line management responsibility for the claimant and Mr Lindley. These witnesses were not called to give evidence.
8. The parties submitted a bundle of documents running to 412 pages and an additional bundle which took the total to 586. The tribunal gave permission to the respondent to add a further document, the Matching Schedule of 2016. As the case had to be postponed, the claimant would not be prejudiced by the late production of this material because she could address the new document in a supplemental statement at the resumed hearing.

The Law

9. By Section 66 of the Equality Act 2010 (EqA):
Sex equality clause
 - (1) If the terms of A's work do not (by whatever means) include a sex equality clause, they are to be treated as including one.
 - (2) A sex equality clause is a provision that has the following effect— (a) if a term of A's is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable; (b) if A

does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.

10. By section 64 of the EqA a sex equality clause shall apply where A is employed on work that is equal to that of a comparator of the opposite sex.
11. By section of the 65 of the EqA:
 - (1) A's work is equal to that of B if it is (a) like B's work,
 - (2) A's work is like B's work if
 - (a) A's work and B's work are the same or broadly similar, and (b) such differences as there are between their work are not of practical importance in relation to the terms of their work.
 - (3) So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to— (a) the frequency with which differences between their work occur in practice, and (b) the nature and extent of the differences.

Background/Facts

12. The respondent is the local government body responsible for the delivery of services to the locality of Rotherham.
13. The claimant commenced employment with the respondent in January 2003 as a Help Desk Officer.
14. On 2 April 2006 the claimant took up the post of Specialist within the Internet and Messaging Service of the ICT Information & Architecture Digital Services of the respondent. The Internet and Messaging Team has responsibility for looking after the respondent's email system and internet filtering.
15. Mr Lindley had been working for the respondent since 1987. He was working in the Internet and Messaging Service when the claimant joined. They were the only two members of that team, other than Mr Andrew Prigmore who was more senior and to whom they reported. Mr Lindley was then graded on Scale 4, SO2. Upon the claimant's appointment she was graded SO1.
16. In 2008 the respondent undertook a review of its salary structure pursuant to the Single Status Assessment Scheme. The claimant was placed in Band H. Mr Lindley was placed in Band I. Each pay band had four increments: Band H, scale points 30 to 33 and Band I, scale points 34 to 37. The claimant was placed on scale point 30, at £25,146. Mr Lindley was placed on scale point 34, at £28,270.
17. In April 2016 the respondent undertook a reorganisation. Jobs were matched to the new structure. The claimant was recorded as in Band H and Mr Lindley Band I. In the staff job matching list, both were described as holding the post of ICT Specialists. The schedule included posts of Senior IT Specialist. This document had been included in a hyperlink in an email sent to a wide list of addressees which included the claimant. She had no recollection of seeing the document. The respondent stated this would be significant because the

claimant would have realised she was on a different grade to Mr Lindley then. She was a Trade Union representative and so had good reason to study it for herself and the union members who she represented. The claimant recalls seeing a different document. We accepted the claimant's evidence she had not seen this, for whatever reason, either because there was a different document attached to the hyperlink, or she had not used the hyperlink but seen an alternative record which she had regarded as being the definitive restructure. Had she seen it, she would have been likely to raise her concerns about the pay rates at an earlier stage. We reject the submission she was misleading the Tribunal when she said she only became alive to the differential in grade later.

18. In April 2018 the Team Leader, Mr Prigmore, left and was not replaced until January 2020 by Mr Proctor. During this period the claimant and Mr Lindley picked up some of Mr Prigmore's duties. This left little time for project work and they were heavily engaged in what they termed "business as usual". The additional duties covered took their toll and both had to take time off sick.
19. In about August 2019, following her unsuccessful application for a Senior Specialist post on Band J, the claimant was informed by Mr Waller that Mr Lindley was on Band I. Until then she had believed they were both on the same Band. This led to a request to be regraded. In her application, dated April 2020, she stated that she believed there was discrimination by reason of the disparity in pay. The regrade application did not progress because of the effects of the pandemic. The resources of the human resources department were stretched.
20. The claimant renewed her application by letter dated 20 July 2021.
21. In October 2021, following a recommendation from an occupational health advisor, the claimant's hours were reduced from 37 to 29.6.
22. On 8 December 2021 Mr Waller wrote to the claimant. He did not uphold her application for a regrade. He stated that she was not working sufficiently at Band I to justify the upgrade. He gave no detailed reasons for this nor explained how or why it was that the examples of the work she had given to illustrate Grade I competencies fell short. The matrix he used was included in the bundle and included scoring, but it was incomprehensible. Mr Rollinson was unable to explain the scoring and how it had led to the conclusion that the claimant had not met the Band I criteria. In his letter to the claimant Mr Waller said an area of concern was that the current role profiles were not specific enough for the claimant's technical abilities and so he proposed a meeting with her team to discuss the claimant's role, responsibilities and development opportunities. The meeting did not take place.
23. The claimant wished to appeal the decision. She had a meeting with Mr Rollinson and Mr Waller on 11 February 2022. Mr Rollinson wrote on 8 April 2022 to update the claimant following the discussions at that meeting. He explained that the regrading application had considered the job profiles and a matrix of the different duties and responsibilities to determine what each employee were doing. He stated that the claimant had not been performing duties at Band H. He said Mr Lindley had not been performing sufficient duties

at Band I and that action needed to be taken to correct that. He observed that the claimant had informed him she did not really consider it was an issue of appealing the regrading decision, but a question of equal pay. He agreed with her. The claimant therefore did not pursue an appeal. Mr Rollinson stated that he would revert to the claimant after he had investigated the equal pay concern. With respect to the difference in grades between the claimant and Mr Lindley he stated it had been drawn to senior management's attention and action had been taken to ensure Mr Lindley was performing duties in line with his Band I profile.

24. In an email to the claimant dated 19 April 2022, Mr Rollinson wrote, *"Therefore with the working hours being undertaken is (sic) considered to be of an equal value, I do not consider the situation to be discriminatory as you claim. However it could not continue and following now being brought to Senior Management's attention, action has been taken to correct this"*.
25. The claimant gave notice on 12 May 2022 and left the employment of the respondent on 12 June 2022.

Analysis

26. The jobs of both the claimant and Mr Lindley were covered by the same job description. It had been provided in June 2008. The post title was Internet and Messaging Specialist. It had no staff responsibility. The main purpose of the job, in summary, was to work as a member of the Internet and Messaging team to provide email access, secure email services, internet access and provide technical assistance to senior specialists across the ICT infrastructure teams. There were 13 main duties.
27. Although all the statements of the respondent referred to Mr Lindley as a 'Senior' Specialist and Mr Lindley said he had a security pass with that Job title, the organisational charts on the intranet described him and the claimant as Technical Officers and they appear together horizontally reporting up to Mr Proctor. The Matching Schedule of 2016 reflected the different pay grades of H and I, but referred to both the claimant and Mr Lindley as ICT Specialists, although the Job title of Senior ICT Specialist did appear for others in the document.
28. The recognition that the work was broadly similar reflected answers provided by Mr Lindley in cross examination. He said there was a big overlap in the jobs he and the claimant did. Both he and the claimant had said that the work which they coined as business as usual 'BAU' took up to 70% of their time and the remainder was project work. That concession did not sit comfortably with the pleaded case, at paragraph 15 of the Grounds of Response, that Mr Lindley was employed in a different role to that of the claimant even though some of the duties were similar and, at paragraph 17, that the same duties would typically be undertaken by Mr Lindley during the absence of the claimant because it was a team of two.

29. The written statements paid scant regard to similarities in the role. At paragraph 4 of his witness statement, Mr Lindley set out 16 duties which he said he undertook as Senior Specialist, but he did not explain to what extent, if any, these duties were not covered by the claimant. At paragraph 41 of Mr Sweeney's statement, four categories of responsibility were identified as additional roles of the Mr Lindley justifying a different grade of pay: firstly training new members of staff, secondly providing support to the claimant since 2007, thirdly ensuring the Internet and Messaging service security was maintained by taking the lead as Implementation Manager for research and testing monthly release of patches and fourthly promoting the work of the service with internal and external customers, being the lead contact with the ICT service desk and resolving complex technical problems and supporting their delivery.
30. Mr Waller and Mr Proctor provided no detail in their witness statements of the duties notwithstanding Mr Proctor had been the line manager of the claimant latterly and Mr Waller the second line manager who had considered the regrading application. They both expressed opinions: that the job of Mr Lindley was more senior to that of the claimant. Mr Waller stated that Mr Lindley would be held back from his more senior tasks by having to cover the basics of the teamwork in the claimant's absence. Both referred to the claimant's sickness absence and adjustments which had been made to assist.
31. The recognition that the work was broadly similar refocussed the enquiry onto what the differences were and whether they were of practical importance. Although the statements of Mr Lindley and Mr Sweeney explained those duties, as they saw them, none of the witness statements and the many documents in the bundle helped with the frequency with which any differences arose in practice, a matter to which we must have specific regard under section 65(3)(a) EqA. There was limited information to contextualise the nature and extent of the differences (section 65(3)(b) EqA), such as information about the projects the claimant had undertaken and how and why they were not of the scale and gravity of Mr Lindley's.
32. That type of information was therefore addressed in cross examination. The amount of time taken up on each different activity and on common duties was provided in answer to questions of the witnesses from the Tribunal. The quality of the evidence garnered in this way lacks the reliability of a measured and studied analysis of those who did or oversaw the work. It is a best attempt, momentarily, to evaluate roles and responsibilities spanning 13 years, under the pressures of giving evidence.
33. Having read the evidence on the first morning, the Tribunal invited the representatives to provide some clarification on these important matters. A schedule of similarities and differences was drawn up on the latter part of the first day and beginning of the second, before evidence was heard. It did not contain information about frequency with which different duties arose which, as we have said, had to be drawn out during live evidence.
34. The following duties in the schedule were agreed as common:

- 34.1 Fixing problems sent to the respondent's Service Desk which had been passed to the Messaging Team.
 - 34.2 Collaborating with other teams within the Information Systems Unit (ISU). 19
 - 34.3 Working on projects as directed by the respondent;
 - 34.4 Backing-up the Messaging Services used by the employees of the respondent.
 - 34.5 Training of employees of the respondent who were asked to work within the Messaging Department either permanently or on a temporary basis.
 - 34.6 Ensuring that Messaging Services' security was updated by a testing and application of Microsoft Security Updates.
35. The claimant added these further duties in the schedule, but they were not initially agreed:
- 35.1 To cover for each other in times of absence or annual leave etc and to cover for Team Leader for around 18 months after Mr Prigmore left, in around April 2018.
 - 35.2 Business-as-usual (fault) work, change requests, routine maintenance/checks and project work.
 - 35.3 The operation and security of corporate Exchange email, including filtering e.g. ensuring unsafe emails were blocked and ensuring the filter was operating correctly for security purposes and searched for, released or blocked messages from the filter as necessary.
 - 35.4 The operation of the corporate proxy servers, including filtering e.g. ensuring inappropriate web sites were blocked; allowing some blocked sites to be made available according to business requirements.
36. To questions from the Tribunal, the claimant said that these additional aspects of common duties were subsumed in the more general descriptions. Having regard also to Mr Lindley's evidence on these matters, we found they were amplification of the agreed duties and reflected what both claimant and comparator did.
37. The schedule contained the following differences which the respondent said were of practical importance:
- 37.1 Between 2015 and January 2020 Mr Lindley was the Implementation Manager for the monthly Microsoft Security Update. His involvement in the testing, co-ordination of agreed across department sign-off for the security update to be applied and it's (the security update) physical application to the servers, was deeper than the Claimant (the security difference).
 - 37.2 Mr Lindley was the primary point of contact for the Service Desk Manager on system wide issues affecting the Respondents email and internet services. Mr Lindley was more technically capable and knowledgeable in resolving the more technically complex problems / issues which arose.
 - 37.3 Mr Lindley modifies and applies Software PowerShell Scripts, to administer and manage the Microsoft Exchange platform and users on it, from May 2020 ongoing. The Claimant was less technically able to undertake this task.

- 37.4 Mr Lindley would be given Council wide projects to effect and implement. The Claimant would be assigned specific tasks and activities as part of a project. For example, the implementation of the Arcserve Backup and Disaster Recovery Solution for the Councils email system are projects that Mr Lindley would be given. The scale given to Mr Lindley was much greater.
38. The claimant disputed much of the work which was said to have differed and the extent to which it was of significance. In closing submissions, Mr McNerney said that the first, the Implementation Manager role, was the principal difference of practical significance, but the others cumulatively crossed that threshold. We therefore address each.

The Implementation Manager

39. The respondent applies patches to all its servers monthly. These are security updates supplied by Microsoft. The implementation of the patches was done by the claimant and Mr Lindley on one Sunday each month. In the early days, 2010 or thereabouts, there were 45 servers but as they became increasingly cloud based, they reduced in number.
40. Before they were installed across the servers, the patches were tested by Mr Lindley on the preceding Wednesday and Thursday. He says it was from 2015 until 2020 when Mr Proctor took over. The claimant disputed this in the schedule, stating that Mr Demissie from the Server Team took up the role in about 2015 but she acknowledged Mr Lindley had discharged that role until then. In cross examination she could not say she was 100% sure that Mr Lindley did not continue that function until 2020. She said she could only remember what she remembered and she had started working from home from 2016. Having heard from Mr Lindley we are satisfied that it is likely he tested the patches from 2015 until mid January 2020. He then took sick leave and upon his return in May 2022 the task had been taken over by Mr Proctor. Mr Lindley said that Mr Prigmore had discharged the role up to 2015, which we accept.
41. In addition to the testing of the patches, a telephone call was made on the Friday at which Mr Lindley confirmed the patch testing and approved it was, for his part, "a go or a no go". The ultimate decision was taken by a more senior manager, Mr Haycock or Mr Sweeney. The call took up to only 10 minutes and it had been undertaken by the claimant occasionally at Mr Lindley's request.
42. There was a dispute as to how long the patch testing task took on the Wednesday and the Thursday. The claimant had said about 30 minutes, but that it had been over 2 days in the early period when there were many more servers. Mr Lindley said the task, which he described as patch prepping, involved checking the Microsoft website, forums and Google for up to 2 hours, then testing one of the patches on an internal server, a task of pressing the button for the patch to be accepted which could take up to 10 minutes and the installation which could take a further 10 minutes on each so it could be anything up to an hour. Mr Lindley said that he could undertake other tasks during the installation. He said that the service had different operating systems, such as Windows 2003, Windows 2008, Windows

2012. Following installation, he would reboot the server which would take 10 to 15 minutes. He would continue to read through Microsoft forums to review any further information about the updates. Mr Lindley gave an example of a problem when a rogue patch for Windows 2008 was discovered as one which could disable the network card and make a server unusable. That involved uninstalling the patch.

43. Having regard to all that was said about this, we find that the patch prepping role could take up to one and a half days per month but the innovation of cloud-based servers reduced the amount of that time over the 5 years because the number of patches to be prepped was fewer. It had reduced from 9 tests in 2015 to 3 or 4 in 2020.

44. It is an important function because it secures the servers across the respondent. Mr Lindley was the Implementation Manager for the team and Mr Demissie for the server team.

45. There was disagreement between the claimant and Mr Lindley as to the extent to which she had been involved in the prepping part of the process. The claimant said that during periods of absence of Mr Lindley she had discharged the entire duty. She accepted he had undertaken the role whenever he had been present and it was not one which they equally shared. She said it was a role she could undertake, having the qualification and experience to do so. Mr Sweeney disputed she had undertaken the role at all. Mr Lindley said that he could not say who had discharged the role when he was off for a long period, but he had assumed it was Mr Haycock. He said he did not believe the claimant knew the process. It was suggested in cross examination that there was no reason the claimant could not check the Microsoft website, Google and the forums and it did

not require any particular training, to which Mr Lindley said it would not involve training, just thorough experience.

46. Mr McNerney said that the work involved a judgement call for which Mr Lindley alone was qualified in the team. He drew attention to the fact that Mr Proctor had taken over in 2020 and therefore the period when Mr Lindley was off for four months could not have been covered by the claimant.

47. We only had absence records for the claimant. It was not clear what periods of absence Mr Lindley had had between 2015 and 2020 and for what duration either by way of holiday leave or sickness. We accept the evidence of the claimant that she had undertaken this role when Mr Lindley had been absent. Although the work involved an exercise of judgement, it was largely one which followed a process and the claimant was up to its demands. We do not believe the claimant misled us. Mr Lindley could not say who did the test when he was absent. Mr Sweeney was not the line manager of the claimant and did not have regular oversight of her work to be able to say she had never done the task. None of the documentary records addressed this matter.

48. There is no doubt that Mr Lindley did most of this work, that is the patch prepping, and it represented a difference in the duties for a period of 5 years of up to 12 hours per month. Having regard to the frequency it was undertaken, monthly, and the

nature and extent of the difference, we do not accept that it was of practical importance. Mr Lindley started doing this duty in 2015, at least 6 years after both he and the claimant had been working as a team of two, sharing their tasks. Continuing with this duty was his preference. That the claimant could, and did occasionally, undertake it was material. These two team members covered for each other, and this was no exception. The interchangeable aspect to their roles meant that other tasks would be picked up by the claimant when Mr Lindley was engaged on patch testing. These were not easier or trivial. An illustration is the project work set out below. The claimant was discharging tasks of comparable significance to the work of the team.

Primary point of contact for the service desk and more technical capability and knowledge to resolve complex problems

49. At paragraph 41 of his statement Mr Sweeney described Mr Lindley as the lead contact for the DICT service desk. Mr Lindley said that Tracey Middleton, the service desk manager, would go straight to him because he knew how to deal with complex matters and the Service Desk would avoid contacting the claimant.
50. The claimant disputed this. She said the work was tasked to the team on Service Desk software and it was picked up by whoever had workload capacity. She could not speak for Ms Middleton's choice for referral, but she said that she would be wrong if she thought Mr Lindley had more technical ability. She felt was a matter of perception. The claimant was aware that she would respond to the request and not go beyond that whereas Mr Lindley sometimes did additional work which sidestepped logging. She took this approach because of an instruction from Mr Prigmore who had said they should do no more than fix the problem, otherwise they would be making a rod for their own backs and receive frequent calls.
51. The evidence did not establish dissimilarity in this duty. We did not hear from Ms Middleton only her attributed opinion. Opinions about a difference are not sufficient to establish how any differences in fact arise, let alone the extent to which they may have occurred and their frequency.

Modifying and applying Software PowerShell Scripts

52. PowerShell was introduced following the migration from Microsoft Exchange to Microsoft 365 (Exchange online). That was from May 2020. At paragraph 23 of his statement Mr Lindley said that the claimant refused to perform any IT service desk requests that required the use of PowerShell, stating lack of training, in contrast to his approach which was to self-teach and apply it.
53. In her statement, at paragraph 30, the claimant said she worked on developing Powershell whilst also trying to teach herself the PowerShell scripting language. The claimant acknowledged in cross examination that she was not as advanced as Mr Lindley, but she did do some of the scripts. She returned one of the referrals from the Service desk because she was about to go on holiday and did not have time to complete the task which required more research in the PowerShell scripting which she was still learning.

54. There was some significant backtracking in the evidence of Mr Lindley from what he had said in his witness statement. Contrary to paragraph 23, Mr Lindley accepted in cross examination that the claimant had undertaken some PowerShell scripts. When it was put to him that the claimant had not refused, he said he was not 100% sure, he could not recall but thought it had been mentioned at a team meeting. In respect of training, he said that he had been directed to some webinars and Microsoft training licences by Mr Proctor and he had undertaken these. He assumed the claimant had also been referred to these programmes, as a matter of fairness, but accepted he was not directly aware of that.
55. We are not satisfied the claimant was provided with the training which she repeatedly asked Mr Proctor to provide, in contrast to his approach with Mr Lindley, who he encouraged to do his learning and provided the whereabouts for it. The claimant had purchased a book to teach herself and was learning the process at a slower rate than Mr Lindley.
56. As both undertook this work and were developing their skills, we do not regard it as a satisfactory distinction between their duties which amounted to one of practical importance. Moreover, the additional encouragement given to Mr Lindley appears to reflect a desire to ensure his duties were distinguishable, given what had been revealed in respect of similarities of work in the regrading process, addressed in our conclusions below. Any difference which emerged because of preferential opportunities for training was confected.

Projects

57. The evidence about projects was far from clear. The reference to the Arcserve Backup and Disaster Recovery project is first referred to in the schedule, but not referred in any of the witness statements. The questioning of the witnesses led to further confusion as to when it was carried out and by whom. The claimant's belief was that Mr Prigmore had undertaken this before 2008 but when this was put to Mr Lindley, he said that the project did not commence until 2010. He said he worked on it then with Mr Prigmore, but Mr Lindley said that the server team probably set up the back-ups. In summary we had very little evidence about what input Mr Lindley had in the Arcserve project or its importance and how he contributed to that. This is the only named example provided of a project which might have been of significance of his. Mr Lindley referred in his evidence to another project which he had been given in February 2022 but there was no evidence of what it was. There is simply insufficient material from which we could understand how Mr Lindley's contribution was markedly different to that of the claimant in other projects.
58. The schedule states that, in contrast to the Council wide projects which Mr Lindley undertook, the claimant did "specific tasks or activities as part of a project". The claimant gave examples of projects she undertook in her witness statement. She gave further detail about these in her cross examination. She designed the process to migrate the GCSX mailbox. She and Mr Lindley then implemented it. This was the secure public server network which was shut down. The claimant had discovered, in her reading, that this was due to take place in March 2019 and so she drew this to the attention of her manager, Mr Haycock. Following a meeting to

discuss it, the claimant was tasked to draw up the Implementation plan. This is confirmed in a document in the bundle prepared for the claimant's cyber security level 4 course. The respondent's departments which provided sensitive information securely to the police, NHS or other State departments were affected, 280 mailboxes. In answer to questions Mr Lindley said it was not Council wide. He could not be sure that the claimant produced the plan and he had assumed Mr Haycock had done it. We were satisfied this was a significant project for the respondent which the claimant initiated and drew up. We reject the marginalisation of it and of the claimant's contribution to it by the respondent.

59. The claimant gave other examples of the projects in which she worked, namely the decommissioning of XLCS, DMARK implementation and the restructuring of the whole Active directory. When asked about these, Mr Lindley said he believed the claimant would be involved in the first two, but he knew nothing about the last.
60. Both the claimant and Mr Lindley agreed that projects would be allocated by their manager and that it would often depend upon who had the time to take it on. Examples of what was undertaken and their importance was greater in respect of the claimant than Mr Lindley. The witnesses of the respondent were long on their assertions about the importance of the project work of Mr Lindley but short on details. There was no established difference of practical importance.

Conclusions

61. The claimant and Mr Lindley had worked as a team of two for many years, from when she joined it in 2005 until she left it in 2022. At the outset, it was not an equal team. Mr Lindley supported and assisted the claimant in gaining the knowledge and experience to be a Technical Officer, or Internet and Messaging Specialist. He was well established in the role.
62. In evidence Mr Lindley said it would take a couple of years to be good at IT. The claimant expressed her belief that from 2009 she and he were undertaking similar work at the same level. Mr Lindley said that there was a big overlap in the jobs they did and most of the time the claimant was equally competent to him.
63. We accepted the claimant's evidence that she had been unaware of the discrepancy in pay and that, because she believed they had both been working at the same level for many years, it was a shock to discover in 2019 that Mr Lindley was paid at a higher grade.
64. The work was plainly broadly similar, as has now been conceded. For 70% of the time both were doing BAU tasks and during the 18 months after Mr Prigmore's departure this was all they did. There were dissimilarities in the work, but these were for the minority rather than majority of the time. That does not preclude them from being of practical importance, by any means. The frequency of the tasks is one consideration, but so is the nature and extent of the difference and an infrequently discharged task could easily amount to one of practical importance because of its significance.

65. In approaching our assessment of whether the differences which we have found met the practical importance test, we noted the feedback about Mr Lindley's duties following the regrading application. Mr Rollinson had said that not only had the job profile and matrix of duties and responsibilities been considered with respect to the claimant but also Mr Lindley. We saw no such matrix of Mr Lindley's duties. Mr Rollinson said nor had he. He said he must have expressed himself poorly in the letter. What was indisputable was that Mr Lindley had been performing largely Band H duties and insufficient Band I duties and it had been felt by Mr Proctor, and presumably Mr Waller who had undertaken the regrade assessment and was present at the meeting, that Mr Lindley would have to do more to justify the higher grading. It emerged in evidence that in some later discussion Mr Lindley had been told that a reduction in grading might otherwise be necessary.
66. Mr Sweeney's denial that there had ever been a concern was not credible. He had been copied by email into the letter and had to address the problem, albeit he says he did not need to do anything.
67. We were not undertaking a job evaluation by reference to the respondent's job grading system. Nevertheless, the fact a question mark arose as to whether the differential in pay was justifiable by reference to the grading, led to a common view of Mr Waller, Mr Rollinson and the claimant that this was about equal pay and not regrading. The claimant did not therefore pursue her appeal. In a rather Delphic comment about equal pay, Mr Rollinson suggested the claimant and her comparator had been discharging work of equal value and it could not justifiably continue.
68. This perspective does not support the portrayal of the senior role of Mr Lindley given by Mr Sweeney in evidence and the witness statements of Mr Waller and Mr Proctor. There was a concerted effort in the response to this case to exaggerate any differences and overstate them. Mr Lindley had felt under threat of a reduced grade and felt understandably defensive about his work and extensive experience, but this coloured his evidence and there was a marked difference between his witness statement and the acknowledgements made in evidence.
69. Mr Champion reminds us that an evidential burden falls upon the respondent to demonstrate that the difference in work was of a practical importance to take them outside the definition of like work, ***Shields v E Coomes (Holdings) Ltd [1978] ICR 1159***. We note that an evidential burden is different from a legal burden and merely requires a party carrying that burden to adduce evidence of a difference and how it was one of practical importance. Nevertheless, having considered all the evidence in respect of each purported difference in the schedule, we have not found any were of practical importance. Our analysis and reasons for that are set out above.
70. Even had we found that the Implementation Manager role was one of practical importance, we would have found that the equality clause had taken effect prior to the taking on of those duties in 2015 and, pursuant to the case law of ***Sorbie v Trust House Forte Hotels [1977] ICR 55***, ***Sodexo Ltd v Guttridge [2009] ICR 1486***, and ***Reading Borough Council v James [2018] IRLR 790***, the claimant

remains entitled to the benefit of it for the entire remaining period of her employment.

Remedy

71. The parties agreed the sum in arrears and interest, in the event of a finding in favour of the claimant.
72. Mr McNerney said the respondent would ask the pension provider to adjust its calculations to reflect a decision that an equality clause applied. If that were not possible, the parties have liberty to apply for an award of damages with respect to that loss.

Employment Judge D N Jones

Date: 21 December 2023

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

22 December 2023

Public access to employment tribunal decisions

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

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practicedirections/>