EMPLOYMENT TRIBUNALS

Claimant: Ms S Kauser

Respondent: Inaaya Solicitors Limited

HELD AT: Manchester Employment Tribunal, Alexandra House **ON:** 28, 29, 30, 31 May and 3 June 2024

BEFORE: Employment Judge Ficklin
Ms E Cadbury
Mr D Wilson

REPRESENTATION:
Claimant: In person
Respondents: Mr Williams, solicitor

REASONS

1. In an oral judgment delivered on 3 June 2024, the Tribunal found the claimant's following claims well-founded:

   1.1. The claimant's claim to have been unfairly dismissed under s.98 of the Employment Rights Act 1996.

   1.2. The claimant's claim that she was subjected to detriment as a part-time worker under the Part-Time Workers (Protection from Less Favourable Treatment) Regulations 2000.

1.3. The claimant's claim that she was discriminated against for having a disability under s. 15 of the Equality Act 2010.

1.4. The claimant's claim that she was indirectly discriminated against for having a disability under s. 19 of the Equality Act 2010.

1.5. The claimant's claim that the respondent failed to make reasonable adjustments for her disability under s. 20-21 of the Equality Act 2010.

2. The Tribunal found the following claims not well-founded and dismissed:

2.1. The claimant's claim that she was discriminated against for pregnancy or maternity under s. 18 of the Equality Act 2010.

2.2. The claimant's claim that she was indirectly discriminated against on grounds of her sex under s. 19 of the Equality Act 2010.

3. The Respondent asked for written reasons.

INTRODUCTION - CLAIM AND ISSUES

4. The Respondent, Inaaya Solicitors Limited, is a law firm based in Oldham specializing in personal injury, motorbike accidents, holiday sickness and housing disrepair. The claimant, Ms Saima Kauser, began her employment as a paralegal on 15 September 2016, though her reckonable service is longer than that because she was employed on a TUPE transfer.

5. Early conciliation commenced on 30 January 2023 and ended on 13 March 2023. The claimant presented her claim on 2 April 2023.

6. The claimant brought claims in time of 1. unfair dismissal, 2. that she suffered a determinant on the grounds of pregnancy or maternity, 3. that she was discriminated against on the grounds of her sex, 4. and on grounds of having a disability, and 5. that she was treated less favourably as a part-time worker. The respondent denies all the claims.

7. A case management hearing took place on 14 July 2023 at which the claims and issues were clarified and confirmed, and case management orders made to prepare the case for final hearing listed for 28 May-3 June 2024.

8. The issues for determination were agreed to be:

A) Indirect Disability Discrimination – (Equality Act 2010, section 19)

   a. A "PCP" is a provision, criterion, or practice. Did the Respondent have the following PCP:

      i. A requirement for employees to work on a full-time basis?

   b. Did the Respondent apply the PCP to the Claimant?

   c. Did the Respondent apply the PCP to persons with whom the Claimant does not share the protected characteristic of disability, or would it have done so?

   d. Did the PCP put persons with whom the Claimant shares the protected characteristic of disability at a particular disadvantage when compared with persons with whom the Claimant does not share the protected characteristic of disability?

   e. Did the PCP put the Claimant at that disadvantage?

   f. Was the PCP a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:

      i. To maintain the service levels for their clients and run an operational and profitable firm.

   g. The Tribunal will decide in particular:

      i. Was the PCP an appropriate and reasonably necessary way to achieve those aims;

      ii. Could something less discriminatory have been done instead;

      iii. How should the needs of the Claimant and the Respondent be balanced?

B) Discrimination arising from disability (Equality Act, s.15)

   a. Did the Respondent treat the Claimant unfavourably by:

      i. Assigning the claimant to work on debt work temporarily?

      ii. Requiring the claimant to work on housing and disrepair cases without training?

      iii. Requiring the claimant to clock in and out when taking her 15-minute unpaid breaks each hour?

      iv. By ignoring the claimant on her return to the workplace in 2022?

      v. By refusing to discuss the claimant's portfolio of work until

January 2023?

vi. By dismissing the claimant?

b. Did the following things arise in consequence of the Claimant's disability:

i. An inability to work in a full-time role?

c. Was the alleged unfavourable treatment because of any of those things?

d. Was the treatment a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:

i. To maintain the service levels for their clients and run an operational and profitable firm?

e. The Tribunal will decide in particular:

i. Was the treatment an appropriate and reasonably necessary way to achieve those aims?

ii. Could something less discriminatory have been done instead?

iii. How should the needs of the Claimant and the Respondent be balanced?

iv. Did the Respondent know, or could it reasonably have been expected to know that the Claimant had the disability? From what date?

C) Unfair Dismissal: sections 94/98 of the 1996 Act

a. Was the claimant dismissed?

b. What was the reason or principal reasons for dismissal? The Respondent says the reason was redundancy. The claimant does not accept that a redundancy situation had arisen. The claimant asserts her dismissal was because she worked part-time. In any event, the claimant asserts the respondent did not select her fairly in that other potential candidates for redundancy were not included in any selection pool or assessed. The Claimant asserts that no suitable alternative employment was offered.

c. If the reason was redundancy, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:

i. The Respondent adequately warned and consulted the Claimant;

ii. The Respondent adopted a reasonable selection decision, including its approach to a selection pool and scoring within that pool;
iii. The Respondent took reasonable steps to find the Claimant suitable alternative employment; Dismissal was within the range of reasonable responses;
iv. A fair procedure was followed by the Respondent. The Claimant alleges that her appeal and grievance were not conducted independently or fairly.

D) Pregnancy and Maternity Discrimination (Equality Act, s.18)

a. Did the Respondent treat the Claimant unfavourably by doing the following things:
   i. Not offering her a promotion in September 2022
   ii. Not conducting an appraisal with the Claimant in September 2022
   iii. Providing her with temporary work
   iv. Failing to contact the Claimant about updated training
   v. Changing her role
   vi. Denying a pay rise
   vii. Dismissing her
b. Was the unfavourable treatment because the Claimant was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave?

E) Part Time Worker Detriment: Regulation 5 of the 2000 Regulations

a. Did the Respondent do the following things:
   i. Dismiss the Claimant
b. By doing so, did it subject the Claimant to a detriment?
c. If so, was it done on the grounds that the Claimant was working on part-time basis?

F) Indirect Sex Discrimination: section 19 of the 2010 Act

a. Did the Respondent have the following PCP:

        i. A requirement for employees to work on a full-time basis.

b. Did the Respondent apply the PCP to the Claimant?
c. Did the Respondent apply the PCP to persons with whom the Claimant does not share the protected characteristic of sex (men) or would it have done so?
d. Did the PCP put with whom the Claimant shares the characteristic (women) at a particular disadvantage when compared with persons with whom the Claimant does not share the characteristic (men)?
e. Did the PCP put the Claimant at a disadvantage?
f. Was the PCP a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:
    i. To maintain the service levels for their clients and run an operational and profitable firm.
g. The Tribunal will decide in particular:
    i. Was the PCP an appropriate and reasonably necessary way to achieve those aims?
    ii. Could something less discriminatory have been done instead?
    iii. How should the needs of the Claimant and the Respondent be balanced?

HEARING

9. The hearing took place in person at the Manchester Employment Tribunal.

10. There was a hearing bundle of 737 pages (HB) and separate witness statements. The bundle contained copies of the claim form and particulars of claim, response form and grounds of resistance, Case Management Order, and other documents.

11. We heard evidence from the claimant. For the respondent we heard from Mr Taher Shad, the Managing Director; Mr Mohammad Shafiq, the Business Development Manager; and Mrs Fareena Naz Siddiqi, the HR manager.

12. We heard submissions from Mr Williams and the claimant. We gave oral judgment on 3 June 2024 as above.

FINDINGS OF FACT

13. Having considered the evidence, we found the following facts on a balance of

probabilities. The parties will note that not all the matters that they told us about are recorded below. That is because we have confined our findings of fact to those relevant to the legal issues. Where there were disputes as to factual matters between the parties, we have explained the reasons for the fact finding we reached applying the balance of probabilities.

14. The claimant had been employed previously by Isaac Abraham Solicitors (IAS). IAS became Inaaya Solicitors under a Transfer of Undertakings and Protection of Employment rights transfer (TUPE). The Claimant has preserved continuity of employment from when she began with IAS to her termination date on 29 November 2022. Evidence of her exact start date at IAS was not before us.

15. The respondent accepts that the claimant was disabled in the meaning of the Equality Act 2010 (EA 2010) since December 2019, which encompasses all material times for the purposes of this claim. The claimant's disability was chronic pain in the right side of her body with manifestation in her lower back, right arm etc.

16. In November 2022 the respondent noted a significant decline in road traffic accident (RTA) work. Members of staff working in the RTA department were told on 14 November 2022 that their roles were at risk of redundancy. The matrix and scoring method were sent on 15 November 2022. Consultation meetings were held with staff including the claimant. An additional meeting took place with the claimant on 25 November 2022 to discuss a job share option. On 29 November 2022 the claimant was told that no other member of staff wished to job share. The claimant was dismissed with the given reason being redundancy. The claimant's appeal against that decision was rejected. The claimant also raised a grievance that was rejected, as was her appeal against the rejection of the grievance.

17. The respondent's witnesses effectively make up the management team of Inaaya Solicitors Limited. We found the respondent's witnesses not to be credible on several evidential points. Not all those points impact on the legal tests we apply, and we have been careful not to allow irrelevant issues to cloud our findings.

18. Examples of this include how the claimant's human resources (HR) records were deleted from the respondent's HR system. Despite the suggestion during cross examination that the claimant herself may have been able to delete it, it was

eventually accepted that the only people who could have deleted the file were Mr Shad, Mr Shafiq, Mrs Siddiqi, or a senior solicitor at the firm. It is not credible that none of the three members of the respondent's management team knew who had deleted the claimant's digital HR file. We are also surprised that the respondent's witnesses were apparently not interested in how such a serious data breach happened, when it happened or who was responsible. We do not accept that we were told the truth about that matter.

19. Similarly, Mr Shad said during cross examination that he did not have "unfettered access" to staff emails, and so could not personally search for an email that he allegedly sent on about 22 November 2022 stating that the claimant need not be invited to important training. In the first place, such a claim is surprising, since Ms Shad is the Managing Director and in such a small organisation must be responsible for Data Protection Act compliance, which would clearly require full access. Mr Shad eventually accepted in response to a question that he in fact did have full access to the email system. But in any event, the claimant alleged that the email was from Mr Shad to another employee, so there is no question of accessing anyone else's email account. We do not accept Mr Shad's eidence on this point.

20. We do not find the respondent's evidence credible regarding the claimed deletion of the recording of the meeting between the claimant and Mrs Siddiqi on 6 January 2023. We find that Mrs Siddiqi dissembled about why the recording was not available to the claimant, maintaining through most of cross examination that the agreement had only been for a transcript of the recording, not the recording itself.

21. When it was put to her that the transcript itself states that she said she would send the recording, she said that she had become uncomfortable with the tone of the claimant's correspondence and had concerns about what the claimant might do with the recording of her voice, though it was not clear what that might be. She said that she withdrew her consent to disclosing the recording, which is also what it states in one of the letters sent to the claimant about the grievance process. We find that this makes no sense because there is no difference between disclosing the transcript, which Mrs Siddiqi maintained was accurate, and the recording itself.

22. Mrs Siddiqi and Mr Shad both said that the digital file of the recording was lost

when it failed to transfer to a new device in an upgrade to new laptop computers. Mr Shad could not answer when or by what process the new laptops were obtained or what happened to the old ones. It seems to the panel that this is another example of the management team's implausible lack of knowledge or even curiosity about important, recent matters at a small business.

23. During cross examination, the claimant put to Mr Shad that Mrs Siddiqi was a part-time employee. He accepted that but said that she had been on a part-time, work-from-home contract when her employment was transferred from IAS to the respondent under TUPE. But that is not consistent with what Mrs Siddiqi said about her work pattern at IAS or in the respondent's previous premises that were occupied until sometime in 2021. We also observe that another employee was on a full-time contract but allowed to work part-time hours with Mr Shad's approval, for reasons said to be either studies or family. We find that the respondent's approach to part-time work was not consistent and any distinction between employees or their roles was obscured by the lack of clarity and credibility of the respondent's witnesses.

24. The final issue is that the appeal against the rejection of the claimant's grievance was purportedly handled by an external party, a solicitor named Iram Sheikh. Mr Shad said in oral evidence that Ms Sheikh had done locum work for the firm in the past, so he knew that she was a solicitor. He claimed that he knew nothing else about her. He did not know where she worked at the time that he asked her to adjudicate on the grievance appeal. He did not know what type of law she practised. Since the claim was issued, Ms Sheikh had become impossible to contact. Mr Shad claimed to have no further knowledge of her. This evidence is not credible. Mr Shad must have seen Ms Sheikh's CV at some point; he must have confirmed basic facts about her. He must have her contact details and bank details to have paid her. The suggestion that this person has become uncontactable is incredible. We do not accept that we have been told the truth about the respondent's knowledge of Ms Sheikh.

25. It is clear that in Autumn 2022, the Respondent decided that their standard working pattern would become a four-day week from Monday to Thursday from 9am to 5pm. In this judgment, we mean 'full-time' in this context unless we say otherwise.

The evidence before us does not show that it was inherent in this change that roles had to be full-time for reasons that will be set out.

26. We have set out our findings in this order because we felt it was the clearest approach to addressing the claims and evidence.

Unfair Dismissal

27. The respondent says that the claimant was made redundant because the respondent was pivoting to housing disrepair (HDR) from other types of legal work and the positions had to be full-time. The respondent's redundancy business plan states that experience and ability with HDR work was effectively the only criteria.

28. The claimant was an experienced paralegal with litigation experience. She had worked on RTA and debt matters for several years. There is no evidence that suggests that she was not able to learn HDR law with an appropriate opportunity.

29. The respondent's job advertisements with start dates on 1 March 2023 are clearly areas of law and roles in which the claimant was experienced and capable and were not limited to HDR work. Mr Shafiq said in his evidence that RTA work was no longer viable. But the adverts included work for RTA and debt litigators, both of which the claimant had done for years. At least one of the roles is a hybrid role that would allow work from home, but more importantly, one of the adverts would accept a part-time worker.

30. We accept that the advert must have been posted on Indeed, the job advertisement website, at some point between the claimant's last day ie 29 November 2022, and some time in February 2023. We are also persuaded that the adverts must have been written during or after the respondent embarked on the redundancy programme, because the adverts refer to the four-day work week and HDR cases. We find that the job adverts are a public statement of their true intentions regarding the business.

31. The respondent's witnesses Mr Shad and Mr Shafiq professed to know nothing about the adverts. They both said that they were not aware who wrote the adverts or how they came to be posted on a public website, and that they did not represent the respondent's hiring intentions. Mr Shafiq said that the adverts could have been posted automatically, or could have been an exercise in CV banking for future

consideration. We do not accept this. Mr Shad is the respondent's sole director, and it was clear that Mr Shafiq is the only other member of the management team with input in recruiting. It is not credible that the only two people with the authority and responsibility to recruit for the firm know nothing about these very specific adverts and were incurious about how they came to be posted on a public website.

32. We further note that there was a period during the redundancy consultation that the respondent was open to job share arrangements. Though this option was not taken up, it shows that there is no inherent reason that a fee-earner could not be part-time.

33. The redundancy process began on 14 November 2022 and ended at an indeterminate date, but a date that was certainly later than the date the claimant was dismissed on 29 November 2022. The evidence shows, and the respondent accepts, that another employee had agreed to take redundancy but continued to work. That employee later changed her mind in January 2023. The claimant was made redundant in November 2022. We also note that the other employee was granted employment terms that did not appear in the redundancy exercise. If the redundancy exercise had been genuine, we would expect the same terms to apply to everyone, and so the other employee should have been dismissed at the same time as the claimant.

34. Further, it seems to us that even if there had been a redundancy situation, the claimant's redundancy was unfair because she could have continued in her role as a part-time worker.

35. The claimant was the only part-time fee-earner and was told that she must become full-time (Mon-Thurs) to avoid redundancy. This was not a genuine criterion because of the potential for job share and because the business almost immediately advertised for a part-time position well within the claimant's competence. The Respondent did not adopt a reasonable selection decision.

36. The scoring matrices, whether they were used or not, were not credible. The respondent's witnesses could not tell the Tribunal what source material had been used or what actual time frame was covered, and their evidence was not clear about how the subjective aspects of the matrix were completed. It is not clear to us

whether Ms Shad scored the subjective areas directly or gave commentary to Ms Shafiq who scored them.

37. Mr Shafiq and Ms Shad could not give us the dates, but on the basis that the matrix was scored in relation to the claimant's previous twelve months of employment, including time away for sick leave but not for maternity leave, it seems to us that it runs from about October 2019 to the end of October 2022. The claimant's last appraisal was in June 2018, in which her work was praised, and she received a pay rise. We were not taken to any evidence of appraisal, assessment, timeliness, billing targets or anything else that showed the basis of the claimant's matrix scores.

38. Nothing was put to the claimant about her competence. We find that the claimant's matrix scoring was arbitrary. The respondent's evidence was that the matrices were not used because the claimant did not accept the proposed position, but we find that it is evidence that the process was intended to reach the outcome of dismissing the claimant.

39. The respondent did not take reasonable steps to find the claimant suitable alternative employment as shown by the advertisement of either hybrid or particularly part-time roles directly after her redundancy. All the advertised roles were within the claimant's experience and capability. Dismissal was not in the range of reasonable responses.

40. In the claimant's final meeting on 29 November 2022 it was suggested that she could take over a part-time administrative role occupied by another employee. During the course of the meeting, Mr Shafique seemed to offer and then withdraw this option. The evidence was that Mr Shad allowed the other employee to work part-time for personal reasons, which may have been legal studies but which the claimant said was for family reasons. In any event, there was no explanation of why another staff member, albeit not a fee-earner, was arbitrarily allowed to work part-time hours. We observe that the respondent had an inconsistent approach to staff permission to work part time.

Detriment to Part-Time Workers

41. The claimant was dismissed. That dismissal was a detriment. The respondent's

own case is that the claimant was dismissed because she was a part-time employee. The fact that that reason given may have been a sham or part of a non-genuine redundancy exercise does not change the culpability of that act. The respondent's arguments that the dismissal was justified fail for the reasons that we have set out.

Disability

42. The claimant's medical evidence stated that she was not to work a full-time role and required certain breaks. She was ultimately dismissed because of her inability to work a full-time (Mon-Thurs) role, according to the respondent's case. We find that her inability to work a full-time role relates directly to her disability. The claimant's dismissal was unfavourable treatment.

43. Dismissal is not a proportionate means of achieving the legitimate aim to maintain service levels and run a profitable firm. A less discriminatory practice could have been instituted through job-share, or asking the claimant to accept the part-time role that was advertised in January or February 2023. We find that this would have balanced the needs of the claimants and respondent.

44. We also find that the requirement for the claimant to clock in and out during her medically prescribed breaks every hour to be unfavourable treatment. We make this finding in the context that the claimant was a longstanding employee, in an open-plan office in front of her colleagues, and the respondent accepted that it had no timekeeping purpose.

45. The only consistent evidence from the respondent's witnesses about the clock card was that it had nothing to do with working hours, but was a matter of health and safety to determine who was in the building. This is belied by the fact that the claimant was required to clock in and out on her breaks irrespective of whether she left the building.

46. We accept the claimant's evidence that the management team of Mr Shad, Mr Shafiq and Mrs Siddiqi were not required to use the machine. Mrs Siddiqi's own evidence was that she did not use the machine every time she entered the building. If it solely pertained to the head count in the building for emergency purposes, then there should have been a consistent approach to its use. We find that the

requirement that the claimant clocked in and out during her breaks was demeaning as it served no practical purpose. There was no legitimate aim to this practice at all.

47. For completeness, we note that we do not find that assigning the claimant debt work amounts to unfavourable treatment.

48. We also find that the Respondent's direction to the claimant to put her mobile phone away is not related to the claimant's disability. Nor does the respondent's failure to discuss the claimant's portfolio of legal work or other promotion relate to her disability.

49. We turn to the issues arising in the claim that the claimant was indirectly discriminated against. The respondent accepted that the claimant was disabled at the material time. The claimant's medical evidence shows that her disability required that she work reduced hours with certain breaks. The respondent discriminated against the claimant by requiring her to work full-time. The practice put the claimant at a disadvantage because her medical advice dictated that she should not work full-time.

50. We have considered at length whether the practice was a proportionate means of achieving the respondent's legitimate aims. But that is belied by the potential for job-share and the advertisement for a part-time role that was clearly within the claimant's competency. We find that it was not proportionate.

Reasonable Adjustments

51. The requirement to work full-time hours put the claimant at a substantial disadvantage in the redundancy exercise, in comparison with someone who was not disabled and so able to work full-time. The respondent could have taken reasonable steps to avoid the disadvantage such as advertised for a matching job-share for the claimant's hours or given her one of the advertised posts.

52. We do not accept that the respondent failed to make any other reasonable adjustments.

53. The claimant had a period of working reduced hours that lasted from January 2021 until 12 April 2021 by agreement with the respondent. At that point the respondent

rescinded the part time agreement and required her to return to full time work, which at that point meant Monday through Friday. The claimant was then signed off from work with fit notes until 27 July 2021.

54. A fit note in May 2021 specified the adjustments she needed to work, which included working part-time. She was allowed to return to part-time hours on or about 27 July 2021 under the earlier agreement. This agreement was extant until she started maternity leave on 16 August 2021.

55. When she returned to work in September 2022, her part-time working agreement was in place, and after an unclear but short delay, she was provided an auxiliary aid in the form of an ergonomic keyboard. We find that the previous failure by the respondent to make reasonable adjustments ended as of 27 July 2021, therefore making the time limit for bringing a claim in the Employment Tribunal under this head 26 October 2021. Any claim for the period during which the respondent failed to make reasonable adjustments up to 27 July 2021 is out of time.

Sex Discrimination

56. There is no evidence before us that the claimant’s sex was relevant in the issue of requiring full-time work. The evidence does not show that the respondent would not have applied the practice of requiring full-time work to men, to the extent that it was a genuine requirement at all. Whatever the problems of this practice, which we have already outlined, there is no evidence that the claimant's sex had anything to do with it.

Pregnancy and Maternity Discrimination

57. The claimant argues that the failure to offer her a promotion in September 2022, by which we understand to mean the failure to deal with her portfolio for submission to the Solicitors Regulation Authority (SRA) relating to her qualification as a solicitor, amounts to discrimination based on her pregnancy and maternity status. She also argues that failure to offer her an appraisal, denying her a pay rise, and other issues also amount to discrimination. But the protected period for a maternity discrimination claim runs from the beginning of the pregnancy to the end of the period of additional maternity leave, or the claimant's return to work, whichever comes first. The claimant raised all the issues after her return on 21 September

2022, which is outside the protected period.

LAW

Unfair Dismissal

58. The Employment Rights Act 1996 materially states:

> **98 General**
>
> (1)In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
>
> > (a)the reason (or, if more than one, the principal reason) for the dismissal, and
> >
> > (b)that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2)A reason falls within this subsection if it—
>
> > (a)relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
> >
> > (b)relates to the conduct of the employee,
> >
> > (c)is that the employee was redundant, or
>
> ...
>
> **139 Redundancy**
>
> (1)For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—
>
> > (a)the fact that his employer has ceased or intends to cease—
> >
> > > (i)to carry on the business for the purposes of which the employee was employed by him, or
> > >
> > > (ii)to carry on that business in the place where the employee was so employed, or
> >
> > (b)the fact that the requirements of that business—
> >
> > > (i)for employees to carry out work of a particular kind, or
> > >
> > > (ii)for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have

ceased or diminished or are expected to cease or diminish.

59. Where an employer claims that there is a redundancy situation, which means that there is a reduction in the need for employees to do work of a particular kind, then the employer must prove that this was the only, or at least the main reason for dismissal. If the employer cannot prove that, then the dismissal is unfair. Employees with two or more years' continuous employment have statutory protection against unfair dismissal.
60. If redundancy was the sole or main reason for the dismissal, then the employer must also prove that it acted reasonably in treating redundancy as a sufficient reason to dismiss. The tribunal considers whether the employer gave reasonable consideration to a pool of employees who were selected for redundancy, whether there were reasonable criteria used to select who was in the pool, whether there were reasonable steps taken to consult with the employees about the pool, and whether the employer made a reasonable attempt to find alternative roles for the selected employees. The tribunal can only interfere if the employer's decision, or its procedure, was so unreasonable that no reasonable employer could have acted that way.

Part-Time Workers

61. The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 materially states:

Less favourable treatment of part-time workers

5.—(1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker—

(a)as regards the terms of his contract; or

(b)by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.

(2) The right conferred by paragraph (1) applies only if—

(a)the treatment is on the ground that the worker is a part-time worker, and

(b)the treatment is not justified on objective grounds.

62. Claims under the Part-time Workers Regulations require an actual comparator and cannot be determined by reference to a hypothetical comparator.

Disability Discrimination

63. Section 15 of the EA 2010 defines discrimination arising from a disability as follows:

    (1) A person (A) discriminates against a disabled person (B) if—

    (a) A treats B unfavourably because of something arising in consequence of B's disability, and

    (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

    (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

64. The Equality and Human Rights Commission: Equality Act 2010 Code of Practice provides that when considering discrimination arising from disability there is no need to compare a disabled person's treatment with that of another person. It is only necessary to demonstrate that the unfavourable treatment is because of something arising in consequence of the disability. The EHRC Employment Code indicates that unfavourable treatment should be construed synonymously with 'disadvantage' and gave examples including: 'a person may have been refused a job, denied a work opportunity or dismissed from their employment.' Unfavourable treatment is not the same as detriment. The test is whether a reasonable worker would consider that the treatment is unfavourable.

65. In the case of *Sheikholeslami v University of Edinburgh* [2018] IRLR 1090, the EAT held that the approach to this issue requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence of B's disability? The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the "something" was a more than trivial part of the reason for unfavourable treatment, then stage (i) is satisfied. The second issue is a question

of objective fact for an employment tribunal to decide in light of the evidence.

66. The actual disability does not need to be the cause of the unfavourable treatment under s.15 but it needs to be "a significant influence" or "an effective cause of the unfavourable treatment". It is not enough that but for their disability an employee would not have been in a position where they were treated unfavourably. The unfavourable treatment must be because of the something which arises out of the disability - *Robinson v Department of Work and Pensions* [2020] EWCA Civ. 859.

Pregnancy and Maternity Discrimination

67. Section 18 of the EA 2010 provides:

   (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.

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

      (a) because of the pregnancy, or

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

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

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

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

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

      (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she

returns to work after the pregnancy;

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

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

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

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

68. Case law provides that the motivation of the decision-maker must be considered. Discrimination need not be the only or even the main reason for the less favourable treatment provided it significantly influenced the decision-maker, ie in a more than trivial way. Provided the protected characteristic had a significant influence on the outcome, discrimination is made out, *Nagarajan v London Regional Transport* [1999] IRLR 572, HL.

Indirect Discrimination

69. Section 19 of the EA 2010 states:

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

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

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a

legitimate aim.

...

70. A provision, criterion or practice (PCP) cannot be considered in isolation. The adverse disparate impact must also be established. Once a PCP has been established, the claimant must show that the PCP is to the disadvantage of his or her group. Before any assessment of the impact of the PCP can be made, the appropriate pool for comparison must be identified.

71. In the case of *Essop v Home Office (UK Border Agency); Naeem v Secretary of State for Justice* [2017] UKSC 27 the Supreme Court stated that the purpose behind indirect discrimination legislation is to protect people with a protected characteristic from suffering disadvantage where an apparently neutral PCP is applied. It is about achieving a level playing field and removing hidden barriers.

72. There is no obligation on the employee to explain the reason why the PCP put the group at a disadvantage when compared to others: it is enough simply to show that there is disadvantage. However, the requirement to justify PCP should not be seen as placing an unreasonable burden on employers.

73. In *Chief Constable of West Midlands Police v Harold* [2015] IRLR 790, the EAT emphasised that justification is an objective evaluation. What has to be justified is the outcome, not the process followed. In A*llonby v Accrington and Rossendale College and others* [2001] IRLR 364 the Court of Appeal made it clear that:

    "once an employment tribunal has concluded that the [PCP] has a disparate impact on a protected group it must carry out a critical evaluation of whether the reasons demonstrate a real need to take the action in question. This should include consideration of whether there was another way to achieve the aim in question."

74. The EAT emphasised in *Rajaratnam v Care UK Clinical Services Ltd* (UKEAT/0435/14) that it is the rule that needs to be justified and not its application to the individual concerned.

75. The Supreme Court held, in *Homer v Chief Constable of West Yorkshire Police* [2012] UKSC 15 that to be proportionate, a measure must be an appropriate and

necessary means of meeting the legitimate aim. Actions will not be proportionate if less discriminatory means to achieve the result were available.

76. The burden of proving objective justification is on the employer. The employer needs to produce cogent evidence that the justification defence is made out. However, the claimant has to show some evidence of disparate impact before the burden of proof placed on the employer.

Reasonable Adjustments

77. The EA 2010 materially states:

> **20 Duty to make adjustments**
>
> (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
>
> (2) The duty comprises the following three requirements.
>
> (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
>
> (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
>
> (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
>
> ...
>
> 21 Failure to comply with duty to make reasonable adjustments

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

...

78. Guidance for a Tribunal's approach to reasonable adjustments was given in *Environment Agency v Rowan* [2008] ICR 218:

    - The PCP must be identified;

    - The identity of the non-disabled comparators must be identified (where appropriate);

    - The nature and extent of the substantial disadvantage suffered by the claimant must be identified;

    - The reasonableness of the adjustment claimed must be analysed.

79. The duty only arises if the employer knows or ought reasonably to know that the employee is disabled and that the PCP put her at a substantial disadvantage. It is for the Tribunal to assess for itself the reasonableness of adjustments. What is a reasonable step for an employer to take will depend on all the circumstances of each individual case.

80. In *Royal Bank of Scotland v Ashton* 2011 ICR 632, EAT, (confirmed by the Court of Appeal in *Owen v Amec Foster Wheeler Energy Ltd and anor* 2019 ICR 1593) it was held that when addressing the issue of reasonableness of any proposed adjustment the focus has to be on the practical result of the measures that can be taken. Mr Justice Langstaff stated:

    "It is not — and it is an error — for the focus to be upon the process of reasoning by which a possible adjustment was considered… [I]t is irrelevant to consider the employer's thought processes or other processes leading to the making or failure to make a reasonable adjustment."

81. The test of reasonableness in s.20 of the EA 2010 is an objective one. It is the Employment Tribunal's view of what is reasonable that matters (*Smith v Churchills Stairlifts plc* 2006 ICR 524, CA). The exercise for the Tribunal is to determine

objectively the extent to which any objected to adjustment would cause disruption, not whether the employer reasonably believed that such disruption would occur. The proposed adjustment must be considered from both sides.

82. A Tribunal may be required to substitute its own view for that of the employer, rather than focusing on the reasonableness of the process by which the employer reached the decision not to make a proposed adjustment.

CONCLUSIONS

83. We refer to our findings made above.

Unfair Dismissal

84. The claimant was unfairly dismissed within the meaning of s. 98 of the Employment Rights Act 1996. In this context that means we determine whether the claimant was dismissed mainly because the respondent intended to cease to carry on the business or work of a particular kind that the claimant did. We find that there was no genuine redundancy situation. We find that the reason for the claimant's dismissal was not because of redundancy, but because she was part-time. Even if there had been a redundancy situation, the respondent did not act reasonably in treating that as a sufficient reason to dismiss the claimant. Her redundancy was unfair because she could have continued in her role as a part-time worker. Dismissal was not in the range of reasonable responses. Her claim is well-founded.

Part-Time Work

85. Regarding detriment to part-time workers under Regulation 5 of the Part-Time Workers (Protection from Less Favourable Treatment) Regulations 2000, we find her claim to be well-founded. The legal test under Regulation 5 is whether the claimant has been subjected to a detriment as a result of being a part-time worker, and the treatment is not justified on objective grounds. The claimant was subjected to the detriment of dismissal and with reference to our findings, there was no objective justification for this.

Disability Discrimination

86. We find that the respondent discriminated against the claimant because of her disability under s. 15 of the EA 2010. The claimant's dismissal was unfavourable treatment. The claimant's medical evidence stated that she was not to work a full-time role. We find that her inability to work a full-time role relates directly to her disability.

87. Dismissing the claimant was not a proportionate means of achieving the legitimate aim to maintain service levels and run a profitable firm. A less discriminatory practice could have been instituted that this would have balanced the needs of the claimants and respondent. Her claim is well-founded on that basis.

88. We also find that the requirement for the claimant to clock in and out during her medically-prescribed breaks every hour to be unfavourable treatment. There is no legitimate aim to this practice.

Indirect Disability Discrimination

89. The claimant was indirectly discriminated against on the grounds of her disability under s.19 of the EA 2010. Her medical evidence shows that her disability required that she work reduced hours with certain breaks. The respondent discriminated against her by requiring her to work full-time. The practice put the claimant at a disadvantage because her medical advice dictated that she should not work full-time.

90. Requiring her to work full-time was not a proportionate means of achieving the respondent's legitimate aims, because the respondent was advertising for part-time roles that she could have done. The claimant's claim is well-founded.

Reasonable Adjustments

91. The claimant claims that the respondent failed to make reasonable adjustments under s. 20-21 of the EA 2010. We find that the requirement to work full-time hours amounts to a criterion that put the claimant at a substantial disadvantage in the redundancy exercise which is a relevant matter, in comparison with someone who was not disabled and so able to work full-time. The respondent could have taken reasonable steps to avoid the disadvantage such as advertised for a matching job-share for the claimant's hours or given her one of the advertised posts.

Sex Discrimination

92. The claimant claims that the respondent discriminated against her indirectly based on her sex under s. 19 of the EA 2010 by imposing a practice of requiring full-time working hours which led to her dismissal. The test is whether the respondent applied or would apply that practice of requiring full-time work to men, and if it would then whether it puts women at a disadvantage that is not proportionate to the legitimate aim, which remains an operational and profitable firm. There is no evidence before us that the claimant's sex was relevant in this issue. The evidence does not show that the respondent would not have applied the practice of requiring full-time (Mon-Thurs) work to men, to the extent that it was a genuine requirement at all. We find that this is not well-founded and is dismissed.

Pregnancy and Maternity Discrimination

93. We do not have jurisdiction to deal with claims under s. 18 of the EA 2010 for pregnancy and maternity discrimination outside the protected period. Her claim under pregnancy and maternity discrimination is not well-founded and is dismissed.

REMEDY

94. The Tribunal ordered that remedy would be determined by the same Tribunal in a one-day hearing on 3 September 2024, if not agreed.

Employment Judge Ficklin

31 July 2024

SENT TO THE PARTIES ON

2 August 2024

FOR THE TRIBUNAL OFFICE