



EMPLOYMENT TRIBUNALS

Claimant: Ms A Muka

Respondent: Barclays Bank UK plc

Heard at: Reading **On:** Monday 9, Tuesday 10,
Wednesday 11 December 2024
(Tribunal deliberation) 3 January
2025

Before: Employment Judge Gumbiti-Zimuto
Members: Mr P Hough, and Ms HT Edwards

Appearances

For the Claimant: Mr E Lixandru, counsel

For the Respondent: Mr J Crozier, counsel

JUDGMENT

1. In a claim form presented on the 3 October 2023 the claimant made complaints of direct sex discrimination; indirect sex discrimination, harassment related to sex, and victimisation. The respondent denies the claimant's complaints.
2. The claimant gave evidence in support of her own case. The respondent relied on the evidence of J Regan, C Brooks, R Palmer, C Jones, and S Godbolt. All the witnesses provided written statements which were taken as their evidence in chief. The Tribunal was also provided with a bundle of documents containing 1307 pages of documents.
3. The issues that the Tribunal have had to decide were set out in the case summary contained in the record of preliminary hearing on the 17 April 2024. The claimant's application to amend the claim to include allegations of disability discrimination was refused at an earlier hearing by Employment Judge Brown.

Background

4. The claimant was employed by the respondent from 1 February 2008. From 28 September 2016 until the time of the events relevant to this claim the

claimant was employed by the respondent as a mortgage advisor. The claimant's employment with the respondent has since come to an end.

5. From January 2022, the mortgage Advisor team was split into branch based advisors and virtual advisors.
6. Working in branch would involve working hours of 9am to 5pm, Monday to Fridays and from 9am to 4pm on Saturdays. Virtual mortgage advisors were expected to provide assistance to customers at times which were outside branch working hours. Virtual mortgage advisors had the choice between three working patterns, one that included evenings but no weekend work, one that included Saturday working but not evenings and one that had a combination of evening and Saturdays, the shift pattern varied from day to day on a four-week rotation.
7. As a virtual advisor the claimant was able to work from a branch if she wished to do so, albeit meeting clients virtually. While the respondent did not require virtual advisors to work from home they could not carry out 100% of their work from a branch as it involved working out of branch hours. The virtual advisors changing work pattern or on a four-weekly cycle. The claimant was not restricted to solely working from home and the claimant did from time to time work in the Ealing Broadway branch.
8. The virtual mortgage advisor role, includes working in the evenings and on weekends, with a minimum of working one Friday and Thursday evening within a four-week pattern. As a full time employee the claimant was expected to conduct 12 non-core appointments¹ over a 4 week shift pattern. The claimant made a flexible working request to reduce her non-core slots. At the relevant time the claimant was working 10 non-core slots in a 4-week pattern.
9. Project Compass was the name of an exercise to decide who would be assigned to work in branch and who would become a virtual advisor. Employees were asked to express a preference to be either a virtual advisor or a branch based advisor. It was not possible to accommodate everyone's preference as there were a limited number of branch based roles.
10. As part of Project Compass the respondent conducted a selection exercise in about December 2021 to determine who would be placed in branch based roles and who would be placed in virtual roles. This was a national exercise and the decisions were made centrally. Those who scored the most points and had expressed a preference to be in branch were selected for branch roles. A scoring matrix that included performance, customer focus, and technical competencies was used by the respondent. The respondent in allocating advisors to branches took into account other factors such as travel time to branch and pre-existing relationships with the branch.

¹ Non-core appointments are appointments that start between 5pm and 8pm on weekdays or take place on Saturdays.

11. The claimant attended consultation meeting with SLP her Deputy Market Leader. The claimant's expressed preference was to be branch based. Mr Godbolt and SLP carried out the claimant's scoring in accordance with the matrix and scored her at 37. This resulted in the claimant being placed in a virtual role. The claimant was disappointed with the outcome and made enquiries about an appeal.
12. There is a dispute between the claimant and the respondent as to whether the claimant actually did appeal the decision to place her in a virtual role. The claimant states that she did appeal the decision, but the respondent denies that the claimant did make any such appeal.
13. There is an email which shows the claimant requesting information about an appeal and a response to that enquiry explaining the appeal process, there is no evidence of an actual appeal by the claimant. (p917) The claimant makes no reference to an appeal against the decision to place her in a virtual advisor role in the grounds of claim or in her witness statement. There is no email produced by either party evidencing a request for a an appeal. Mr Godbolt denies that the claimant appealed stating in his evidence that he would have known if the claimant had appeal and she did not.
14. The conclusion of the Tribunal is that whilst the claimant made enquires about how to appeal the Project Compass decision she did not in fact do so.
15. During 2022 there arose vacancies for branch based advisor roles. There were a number of volunteers for such roles and Mr Goldbolt was responsible for making the decision as to who should be selected. Mr Goldbolt states that he "*assessed the colleagues who had volunteered on the basis of their pre-existing relationship with the branch.*" The claimant was considered for an branch advisor role at Hammersmith branch.
16. Mr Goldbolt stated that he was the main decision maker in allocating colleagues to branch roles but he sought feedback and suggestions from his leadership team, branch managers, and area leadership. Mr Goldbolt explained his reason for not appointing the claimant to a branch advisor role in Hammersmith as follows:

"I recall that I spoke to the Hammersmith branch about the possibility of Anna undertaking a branch-based role there. Anna used to work in the Hammersmith branch and fell out with a number of colleagues, which escalated into a huge falling out with one colleague in particular. This was known to the team and the new Branch Manager. As such, another individual was considered to be a better fit for the role which was why they were selected. At the time, I don't think I relayed to Anna the conversation I had with the branch about the concerns they had expressed because I didn't want to hurt Anna's feelings and I was conscious that the Branch Manager might not have wanted me to disclose this. However, Anna's attitude and the relationship she had with colleagues at the Hammersmith branch were known to the Branch

Manager and the team, which is why another colleague was considered more suitable.”

17. In May 2022 the claimant submitted a flexible working request. The claimant's flexible working request was agreed by Mr Siddons (TS) who was the claimant's line manager at the time.
18. It was TS, the claimant's erstwhile line manager, who initially had concerns regarding the claimant's performance from about July 2022. TS put in place an action plan for the claimant as part of the informal action under the respondent's capability procedure. TS moved the claimant from an action plan to a performance improvement plan (PIP). Despite the action plan and PIP, TS continued to have concerns about the claimant's work. The claimant in her evidence during questioning by the respondent accepted that she was “struggling to keep up with her work”. The claimant did not allege that TS's steps to manage her performance were discriminatory.
19. From October 2022, and around the end of the PIP, Mr Godbolt stepped in to directly line manager the claimant because TS commenced a period of extended sickness absence.
20. The claimant states the following in paragraph 5 of her witness statement:

“I was put on the Action Plan for not selling enough protection and for few unclear outcomes of my fact find checks. There was no support during the Action Plan, hence I ended up having Performance Plan in place and eventually Capability Hearing. I received First Written Warning.”
21. The action plan came to be considered by Mr Godbolt while TS was on long term sickness absence. Mr Godbolt was considering the PIP that had been put in place TS and he considered that the claimant was failing the PIP.
22. Having taken advice from Employee Relations ('ER'), Mr Godbolt arranged to meet with the claimant on 22 November 2022 to discuss her performance and PIP. While it was noted that the claimant's performance had improved in places she was not meeting the required standard in some areas. Mr Godbolt issued the claimant with a written warning.
23. A second PIP was instigated in respect of the claimant after the first written warning had been given, however, the claimant appealed the first written warning, and the second PIP which was to be managed by Mr Palmer was never implemented. Mr Palmer became the claimant's line manager from January 2023.
24. In the period after the warning was given and before the appeal took place the claimant states that she was told by Mr Palmer (Mortgage Team Leader), during a call, that if she resigned her first written warning would be overturned and her notice period reduced. This is denied by Mr Palmer. The parties do

agree that the claimant told Mr Palmer that she was thinking of leaving the respondent's employment some time during 2023.

25. The claimant's appeal against the first written warning took place on 6 March 2023. In the appeal meeting the claimant stated that she had not been given support by her line manager (TS) and that had she been given support she would not have been placed on a PIP. Also during appeal meeting, the claimant raised the concern that since asking for flexible working she had been harassed and bullied by her line manager (TS) who was looking for a reason to punish her and to manage her out of the business. At the capability appeal outcome meeting it was explained to the claimant that she could raise a grievance and that such a process would be separate to the capability process and appeal.
26. The claimant contends that between April 2022 and 26 June 2023 Mr Godbolt and Mr Palmer told the claimant many times to "*resign if she couldn't handle the change*". Mr Godbolt denies this, in his evidence he states:

"During the whole capability process, I have never said to Anna that she should leave the Bank or urged her to resign. As we had an excellent working relationship, we had candid conversations where I suggested to her that she could look for something else if she was unhappy in her role. While I might have said that she could consider other opportunities if they were right for her and would benefit her, I only done so because I knew about the difficult time she was having and she had already voiced her desire to leave. I was trying to help Anna find solutions. We had a great working relationship and she felt comfortable speaking candidly and professionally to me. If I saw any colleague unhappy at work, I would have said to them something along the lines of, "have you thought about something else" that might make them happier. I would never have said this from any other perspective than to look out for their wellbeing. Anna was the one who had spoken about leaving the Bank and I have never said she needed to resign or leave."

27. Apart from being involved in the claimant's capability meeting as a note taker and taking part in a buy-to-let observation of the claimant, Mr Palmer had no direct communication with the claimant before becoming her line manager in January 2023. Mr Palmer denies that he ever told the claimant that she "should resign if she did not like the change", he also denies that he ever said to the claimant that if she were to resign that her first written warning would be overturned. The claimant in her evidence was not clear when these statements were made and no specific occasions, save one telephone call in March 2023 and the meeting on 26 June 2023.
28. On 26 June 2023 the claimant returned to work after a period of time when she had been signed off work for four weeks. The claimant attended a return to work meeting with Mr Palmer and during the return to work meeting Mr Palmer informed the claimant that a further meeting to discuss her

performance was to take place immediately following with himself and Mr Jones. The meeting with Mr Palmer and Mr Jones concerned aspects of the claimant's performance and took place immediately after the return to work meeting and came as a surprise to the claimant.

29. The respondent requires employees to use the AWS system when speaking to customers. Mr Palmer was concerned that the claimant had not been using the AWS system to record calls with customers. In a 1-2-1 meeting, the claimant with Mr Palmer, on 21 April 2023, the claimant said that some customers called her on the work mobile phone and she continued conversations with them using that phone instead of calling them back using AWS. There was also a concern that the claimant had been filling her diary with appointments but not actually meeting customers. There was a concern as to whether the claimant was fulfilling her duties. These issues came to light during the period of time that the claimant was off sick between May and June 2023.
30. The claimant complains that she was ambushed in this meeting. The claimant was told what the meeting was about before the meeting started but had no opportunity to prepare for it. The claimant stated that she considered that at this meeting she was "*ambushed by two male managers*" and that "*harassment and intimidation tactics continue.*" The claimant contends that during the meeting she was told to resign.
31. The claimant states that in the meeting she was told that she was being investigated but was not told the reason why. The notes made by the note taker during that meeting conclude in the following way:
- AM** – That's what you say but it feels like an ambush with you both here and a witch hunt to say I'm doing something wrong. So, I will now have this hanging over me for weeks or longer now?
- CJ** – No I will speak to ER Direct today and aim to come back to you today or tomorrow to explain next steps. Until I have an answer, we will leave your diary closed while we establish where we go next.
- AM** – So what am I supposed to do, I can't see customers? I have customers waiting to see me.
- CJ** – I will get an answer as quickly as possible but for now, if someone needs to be seen urgently then do pass them to a colleague but I hope to answer today/tomorrow. In the meantime, before I call, please bring yourself up to date with PLT or anything you need to update yourself with from your time off.
- AM** –OK, I've done most of this already.
- CJ** – Please ensure you refer to the News alerts also covering the last 4 weeks. I will come back to you ASAP so as not to inconvenience you or your customers.
32. The respondent states that what this shows is that at the end of the meeting, the claimant was informed Mr Jones would speak to ER Direct about next steps and that he would confirm whether further investigation would take

place. The respondent denies that the claimant was told that she was being suspended. The respondent states that any reference to the claimant's diary being closed was not unusual in circumstances where an employee had been out of the business for a period of sickness absence. It was only a restriction on the claimant seeing new customers the claimant was allowed to deal with existing customers.

33. On the 29 June the claimant raised a grievance about this meeting. The claimant complained in her grievance that the meeting was "*harassment and discrimination*". The claimant was invited to a grievance meeting on the 18 August 2023 following which there was a grievance investigation which included interviewing a number of people between 4 September 2023 and 27 September 2023. The claimant was given a grievance outcome on 10 November 2023, the outcome essentially rejected the claimant's grievance complaints and made some recommendations.
34. The claimant appealed the decision on the grievance on 25 November 2023. The claimant was dissatisfied with the amount of time that the grievance appeal was taking before any action was taken and so on the 22 January 2024 the claimant withdrew her grievance appeal stating that "*HR had sufficient amount of time to provide you with any information and guidance to start the process*" and that the claimant had "*decided not to carry on with her appeal process at Barclays and wait for the independent tribunal judge to make a decision on the case.*"
35. The claimant states that she discussed, in 1-2-1 meetings with Mr Palmer, if she could work in branch on a permanent basis. The claimant states that she was constantly asking that he take into account that she was a single mother, and asking for help with her mental state and for help with her work life balance. Mr Palmer denies that the claimant ever mentioned any mental health issue when he managed her. Mr Palmer states that the claimant "*did not expressly ask to work in a branch or make any formal requests to do so while I was her line manager.*" There is no record of any 1-2-1 meeting that supports either position.

Law and issues

36. The claimant is making claims of direct sex discrimination, indirect sex discrimination, harassment related to sex and victimisation.
37. Section 13 Equality Act 2010 (EA) provides that: "A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others"
38. An employer must not discriminate against an employee by dismissing him or subjecting him to any other detriment. An employer discriminates against an employee if because of her sex he treats the employee less favourably than he treats or would treat others. Where the employee seeks to compare her treatment with that of another employee there must be no material difference between the circumstances relating to each case.

39. We bear in mind that “detriment” does not include conduct which amounts to harassment. Section 27 (EA) provides that a person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
40. To decide whether any conduct has the proscribed effect a tribunal must consider both whether the victim of the harassment perceives themselves to have suffered the effect in question and also whether it was reasonable for the conduct to be regarded as having that effect. The Tribunal must also take into account all the other circumstances.
41. If there are facts from which the employment tribunal could decide, in the absence of any other explanation that the employer contravened the provision concerned the employment tribunal must hold that the contravention occurred. However, this does not apply if the employer shows that it did not contravene the provision.
42. Section 19 EA provides that a person is discriminated against where a provision criterion or practise (PCP) is applied which has a disparate impact upon the claimant and others who share her protected characteristics.
43. The PCP must apply to the claimant and to those who share her protected characteristic. The PCP must the claimant and persons with whom the claimant shares her protected characteristic at a particular disadvantage compared to those who do not share her protected characteristic (i.e. impacts upon women disproportionately). Where disparate impact is established, it falls to the respondent to establish that the PCP is a proportionate means of achieving a legitimate aim.
44. The Tribunal notes that it is entitled to take judicial notice of the “childcare disparity”, i.e. that the childcare burden tends to fall disproportionately upon females.

“However, taking judicial notice of the childcare disparity does not necessarily mean that the group disadvantage is made out. Whether or not it is will depend on the interrelationship between the general position that is the result of the childcare disparity and the particular PCP in question. The childcare disparity means that women are more likely to find it difficult to work certain hours (e.g. nights) or changeable hours (where the changes are dictated by the employer) than men because of childcare responsibilities. If the PCP requires working to such arrangements, then the group disadvantage would be highly likely to follow from taking judicial notice of the childcare disparity. However, if the PCP as to flexible working requires working any period of 8 hours within a fixed window or involves some other arrangement that might not necessarily be more difficult for those with childcare

responsibilities, then it would be open to the Tribunal to conclude that the group disadvantage is not made out. Judicial notice enables a fact to be established without specific evidence. However, that fact might not be sufficient on its own to establish the cause of action being relied upon. As is so often the case, the specific circumstances will have to be considered and one needs to guard against moving from an “indisputable fact” (of which judicial notice may be taken) to a “disputable gloss” (which may not be apt for judicial notice): see *HM Chief Inspector of Education, Children’s Services and Skills v Interim Executive Board of Al-Hijrah School* [2018] IRLR 334 (CA) at para 108. Taking judicial notice of the childcare disparity does not lead inexorably to the conclusion that any form of flexible working puts or would put women at a particular disadvantage.”

(Dobson v North Cumbria Integrated Care NHS Trust [2021] IRLR 729, EAT).

45. Section 26 EA provides that A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. A protected act includes, making an allegation (whether or not express) that A or another person has contravened the Equality Act.
46. A complaint is only a protected act if it is sufficiently specific as to raise an allegation for the purposes of the Equality Act. A general allegation of unfairness does not suffice. Discrimination on the basis of a protracted characteristic is an essential element of an allegation made under the Equality Act.
47. A detriment is any treatment of which a reasonable worker would or might take the view that in all the circumstances it was to her detriment. The detriment must be done “because” the claimant did (or the respondent believes that the claimant has done or may do) a protected act. This requires the Tribunal to make an assessment of whether the respondent’s motivation, consciously or unconsciously, formed some non-trivial part of the respondent’s motivation.
48. The issues that we have to decide in this case were set out after paragraph 66 of the record of preliminary hearing. The respondent contends that anything that happened before 18 May 2023 may not have been brought in time. The list of alleged detriments for the purposes of the complaint of direct discrimination because of sex are set out at 2.1 of the list of issues. In the alternative it is said that these are instances of harassment related to sex. The requirement of the claimant to work from home on a changing shift pattern is the alleged PCP for the purposes of the indirect sex discrimination complaint. The claimant relies on a protected act for the purposes of section 26 (victimisation) complaint of raising bullying and harassment issues during the first written warning appeal with Joanne Regan on 6 March 2023. The detriments she relies on are the matters set out in 2.1.

Conclusions

Direct sex discrimination and harassment related to sex

49. The Tribunal is satisfied that in November 2022, the respondent put the claimant through a capability/ disciplinary process. The claimant's line manager TS had genuine concerns about the claimant's performance, these concerns were in part shared by Mr Godbolt and Mr Palmer when they were considering the claimant's performance.
50. It is not disputed that on 22 November 2022, Stuart Godbolt issued the claimant with a first written warning.
51. The Tribunal is not satisfied that on the evidence presented that it can conclude that in March 2023, in a telephone conversation, Mr Palmer told the claimant that if she resigned, her first written warning would be overturned and her notice period reduced. The Tribunal is satisfied that the claimant raised the issue of leaving the respondent's employment on a number of occasions with both Mr Palmer and Mr Godbolt. The Tribunal is not satisfied that any conversation took place between the claimant and Mr Palmer as characterised in paragraph 2.1.3 of the list of issues.
52. The parties agree that on 26 June 2023, a return to work meeting took place between the claimant and Mr Palmer. This meeting was followed soon after with a meeting between the claimant, Mr Palmer and Mr Jones. The Tribunal is unable to agree on whether this meeting can properly be described as an ambush but are unanimously of the view that the claimant was taken by surprise in respect of the meeting with the two managers and that she had no opportunity to prepare for the meeting. In the course of the meeting the claimant was asked about her booking and cancelling appointments, and her low level of recorded calls. At the end of the meeting the claimant was not told that she would be under investigation but we consider that she might reasonably have considered that she was under investigation at the conclusion of the meeting. It ought to have been clear to the claimant what the issues of concern were as these matters had been clearly put to her during the meeting.
53. The claimant alleges that in April 2021 Mr Godbolt did not select the claimant for a branch / face to face advisor role. Mr Godbolt did not make any such decision, his involvement was to participate in the scoring of the claimant, the decision whether to appoint the claimant for a in branch advisor role was made by Project Compass not Mr Godbolt.
54. Mr Godbolt was responsible for the decision not to appoint the claimant to the in branch role in Hammersmith.
55. There is no evidence before the Tribunal that Mr Palmer did not agree the claimant's request for a branch / face to face advisor role in 2023.
56. The claimant contends that between April 2022 and 26 June 2023 Mr Godbolt and Mr Palmer told the claimant many times to "*resign if she couldn't handle the change*". The conclusion of the Tribunal is that there were discussions

between the claimant and her managers about the claimant potentially leaving the respondent's employment and taking up employment as a mortgage broker. In the Tribunal's view it is more likely than not that these discussions would have been prompted by the claimant, and that it may have been that such a discussion arose in the context of discussion about the claimant's performance. We are not satisfied that the evidence before us shows that the claimant was told by managers that she could or should "*resign if she couldn't handle the change*".

57. The claimant states that between about 2019 and December 2022 Mr Godbolt asked the claimant why she didn't get married or if she was seeing anyone. We consider that it is more likely than not that in conversations which took place between the claimant and Mr Godbolt, who had worked together for many years (since 2015) and who enjoyed a good relationship, in the course of which Mr Godbolt became aware of personal matters relating to the claimant, that a comment along the lines suggested by the claimant might have been said, however, there is a lack of specificity in the claimant's allegation and if such a comment was made it is in our view more likely than not to have just been 'chit-chat' between employees which at the time was intended without offence and taken as such.
58. In relation to the matters set out above the Tribunal is not satisfied that the claimant was treated less favourably or that the treatment was because of the claimant's sex. The claimant has not adduced evidence beyond mere assertion that she was treated worse than someone else was treated in circumstances where there was no material difference.
59. In respect of each of the matters referred to at 2.1 of the list of issues we conclude as follows:
- 59.1 The action taken by TS, Mr Godbolt and Ms Regan in respect of the capability process was justified they had genuine concerns about the claimant's performance. There were genuine concerns about the claimant's performance and the manner in which the matters were dealt with was proportionate and within the respondents capability procedures. When Ms Regan allowed the claimant's appeal she did so because of the respondent's inability to evidence support that should have been given to the claimant during the action plan and the PIP, she was however satisfied that the claimant's performance was such that the action plan and PIP were justified. There is no evidence from which the Tribunal is able to conclude that the claimant's sex was the reason for the claimant's treatment (re 2.1.1 and 2.1.2).
- 59.2 The Tribunal is not satisfied that the conversation as alleged by the claimant in 2.1.3 took place as alleged.
- 59.3 The Tribunal is unable to conclude that there is any evidence that shows that the claimant's treatment during the meetings on 26 June 2023 was due to the claimant's sex. There was a genuine concern about the claimant's performance which Mr Palmer and Mr Jones were

entitled to pursue. While the claimant may have been taken by surprise by the way that the meeting about her performance was called we are satisfied that this was not in any sense related to the claimant's sex. (re 2.1.4)

- 59.4 The reason that the claimant was not selected for in branch role in Project Compass was because she did not achieve a high enough score to be able to secure her preference and there were more people seeking in branch roles than there were roles available. The claimant in evidence does not impugn the integrity of the scoring process that led to her being scored 37. It was this score that led to the claimant not being assigned an in branch role pursuant to project compass. There is no other evidence advanced by the claimant from which we could conclude that the claimant's sex played a part in the decision not to assign her to an in branch role (re 2.1.5).
- 59.5 In deciding not to appoint the claimant to the Hammersmith role the deciding factor was that the manager was opposed to the claimant's appointment and in any event the successful candidate was a woman.
- 59.6 The Tribunal is not satisfied that the events alleged in 2.1.6 occurred as alleged by the claimant.
- 59.7 The Tribunal is not satisfied that the claimant was told many times by Mr Godbolt and Mr Palmer to "resign if she couldn't handle the change." The Tribunal is satisfied that any discussion about the claimant's employment with the respondent coming to an end would have been because the claimant raised the possibility with Mr Palmer or Mr Godbolt. (re 2.1.7)
- 59.8 For the reasons set out in paragraph 57 above the conclusion of the Tribunal is that the claimant was not treated less favourably or because of her sex by Mr Godbolt in respect of the matters alleged at 2.1.8 of the list of issues.
60. For the reasons we have set out above the Tribunal is of the view that the claimant's complaints of direct discrimination are not well founded and are dismissed.
61. For the same reasons as set out above the Tribunal is of the view that the claimant's complaints of harassment are not well founded and are dismissed. The respondent's conduct was not harassment and it was not related to sex.

Indirect discrimination

62. Did the respondent have the PCP of "*A requirement to work from home on a changing shift pattern*"?
63. The claimant was not required to work from home however it was also clear that the claimant could not fulfil the full scope of her role without working from

home as the role involved working outside of hours that the bank was open. The claimant was required to work over a changing shift pattern over a four week period.

64. The claimant's evidence showed that she had a specific set of circumstances that led to her being disadvantaged by working from home. It is not clear from the evidence before us that it has been shown that there was a group disadvantage. The Tribunal concur with the respondent's submission that in this case the "*childcare disparity*" "*does not read over to any particular working pattern in issue in this case necessarily impacting upon those with childcare burden more than any other.*" It is not shown by the evidence that women are subject to group disadvantage in the circumstances of this case. The claimant's own circumstances do not arise in a way that suggests that there is group disadvantage as she relied on in her own specific circumstances that made working from home challenging.
65. We have not considered it necessary to go into the justification issue in this case. The conclusion of the Tribunal is that the complaint of indirect discrimination is not well founded and is dismissed.

Victimisation

66. The claimant's appeal itself did not refer to discrimination. In the course of the appeal meeting the claimant refers to being harassed and bullied. The respondent contends that this was not a protected act and argues that the claimant does not refer to anything to do with her sex (or other protected characteristic), rather that the claimant made a generalised allegation of harassment and bullying only which is insufficient to amount to a protected act.
67. Even if we were to conclude that the claimant did do a protected act by alleging that she had been subjected to harassment the respondent contends that the claimant has not shown that there is a basis on which those who are alleged to have subjected the claimant to victimisation could have known of the claimant's complaint as the complaint arises in the appeal meeting only and does not progress, because the claimant does not follow the invitation to raise a grievance. Mr Palmer and Mr Jones both confirmed that they did not know of what was said in the appeal meeting.
68. The conclusion of the Tribunal is that the claimant has not shown that there is a protected act and in any event if there is a protected act there is no evidence at all that the protected act was the reason for the alleged detrimental treatment. The only allegations that post date the making of the said protected act are the matters of the 26 June 2023. The reason for the meeting on the 26 June has been explained and in our view there is no basis for a conclusion that it was because the claimant made a complaint about harassment by TS in the capability appeal hearing. The evidence off Miss Reagan was that she did not mention the matters raised by the claimant outside the context of the appeal considerations.

69. The conclusion of the Tribunal is that the claimant's complaints are not well founded and are dismissed.

Approved by:
Employment Judge Gumbiti-Zimuto
Date: 13 January 2025
Sent to the parties on: 21 January 2025

T Cadman
For the Tribunals Office

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